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The Situation in Darfur : The Prosecutor v. Omar Al Bashir



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Introduction

The International Criminal Court (ICC) exercises under the following areas of law: crimes against humanity, war crimes and genocide. The foundation of this court is based upon the Rome Statute, which entered into force during 1 July 2002. However, the Republic of Sudan is not a state party, hence it was not authorised to exercise its jurisdiction over the respective crimes listed in the Rome Statute. Nonetheless, during the United Nations Security Council (UNSC) session of 31st March 2005, Resolution 1593 authorised ICC to exercise jurisdiction, abiding the Rome Statute, for crimes that were committed in Sudanese territory of Darfur after 1 July 2002.

Hereby, the UNSC concluded that “the situation in Sudan continues to constitute a threat to international peace and security”, displacing 1.65 million people internally and resulting with 200,000 refugees originating from Darfur in the neighbouring country of Chad. Omar Hassan Ahmad Al-Bashir is allegedly one of the main violators of the Rome Statute. He is the president of Sudan from 16 October 1993 and head of the National Congress Party. In addition, Al Bashir is the first incumbent head of state sought by the ICC. The allegations follow crimes against humanity, war crimes and genocide, allowing the ICC to exercise its jurisdiction. He was present in the conflict between Government of Sudan (GoS) and many armed groups, allegedly perpetrating unlawful violence and systematic pillages of towns and villages, acts of murder and extermination, acts of forcible transfer of hundreds of thousands of civilians, acts of torture and the act of contaminating water sources in towns and villages, against members of Fur, Masalit and Zaghawa. These crimes are preceding many others, together with the investigating and weightage of responsibility of Omar Al-Bashir, with the causation of insurgency.





Map of Sudan

Definition of Key Terms

Genocide

According to the Article 6 of the Rome Statute, is the commission of listed acts in the clause with an intention to partially or completely eradicate “a national, ethnical, racial or religious group”.

War Crimes

According to the Article 8 (1) of the Rome Statute, War crimes are committed as part of a policy, plan or in mass commission of crimes, explicitly stated under the following clauses of the article.



Crimes against Humanity

According to the Article 7 (1) of the Rome Statute, crimes against humanity are considered when the respective acts (listed) are committed as a “widespread or systematic attack directed against any civilian population, with knowledge of the attack”.

Fur, Masalit & Zaghawa

Ethnic groups inhabited in western region of Sudan, namely Darfur. The three major tribes formed the Sudan Liberation Army and the Justice and Equality Movement rebel groups due to their displacement from the humanitarian crisis.

General Overview

Historical context

First, to fully understand the basis of the case it is important to take notice of what happened before the War in Darfur that started in February 2003.

British Conquest

The British Occupation of Egypt in 1882, to prevent the potential nationalist revolution, led to the development of Sudan’s colonial history. Britain required assured security in the Nile valley from the rival European powers as the survival of Egypt depended upon it. The Italian and German powers were persuaded to leave the desire for conquest in that region, however tensions arose with France. As the conflict developed, the Anglo-Egyptian army invaded Sudan in order to insulate the Nile Valley from France. The Mahdist Caliphate which governed Sudan was heavily defeated by the army whereby the Khalifa fled, yielding the Caliphate of Sudan to Britain. Consequently, Britain and France were preparing for war against one another, due to the condition of the French Army, it was forced to leave, resulting with the Anglo-French agreement of 1899, whereby France were to cease eastward expansion at the Nile Watershed and Sudan as a colony of the British Empire was formed when the Anglo-Egyptian Condominium was founded in the same year. The agreement was crucial as it gave the British Empire and the Egypt, the right to govern Sudan. In the northern region of Sudan, Britain was relatively successful in pacifying it and modernised with the aegis of civilian emperors starting 1900. On the other hand, the southern region was vastly conflicted and has prolonged resistance contrary to British Rule, this reduced the progress of the administration to modernise the region and only maintain peace to the most achievable extent. As of the



preceding year, Sir Reginald Wingate was appointed as the Governor-General, his rule was able to consolidate confidence in the Christian-British rule for ethnic Muslim-Arab people. However as the Sudanese tribal, religious and cultural connections were displaced, the Sudanese, similar to the Egyptian nationalist movement, sparked Sudanese Nationalism, which first occurred during 1921 when ‘Alī ‘Abd al-Latīf founder of the United Tribes Society, was arrested for nationalist agitation. In 1924, the independence movement began with the formation of the White Flag League. The assassination of the Sir Lee Stack in Cairo on 19th November 1924, forced the withdrawal of semi-Egyptian rule in Sudan. Britain also destroyed a Sudanese battalion which had mutinied. There was no further occurrence on any major movements for independence until World War II.

The Graduates' General Congress was formed as an alumni association of Gordon Memorial College, which looked upon all educated Sudanese populations. It progressed with educational and social activities, until the Egyptian support which led to the demand to formalise the Congress (recognition by Britain). However, the Congress was divided into two parties, the majority accepting the Sudanese Government, thus British Rule and the radical minority administered by Ismail Al-Azhari which sided with Egyptian nationalism. Amidst WWII, 1943, Azhari and its supporters gained the control of Congress, organising Sudan's first political party "Ashiqqa Brothers". Whereas the Ummah (Nation) Party manifested by Sayyid ‘Abd al-Rahmān al-Mahdī, the son of deceased Mahdi strived to cooperate with Britain for independence. The leader of Khatmiyyah brotherhood sided with Ashiqqa Brothers, forming the National Unionist Party (NUP) in 1951. October of the same year, Egypt invalidated the Anglo-Egyptian Treaty of 1936 and proclaimed Egyptian rule over Sudan as a result of Britain instituting southern participation in the legislative council in 1947. On 12th February 1953, Egyptian Government and Britain signed a treaty whereby Sudan would have the right to self-determination within 3 years. The elections for Sudanese Parliament followed in November and December of 1953. Egyptian government supported the NUP and Azhari's NUP won a majority in the parliament, shocking Britain and Ummah Party. NUP declared Sudan as a Sovereign Republic on 1st January 1956.

The post-independence was deeply impacted by the colonial history as liberalism was integrated into Sudan by the Western powers. The liberal democracy was overthrown by authoritarianism as the parliament did not have parties with concrete manifestos and rather strived to pursue personal interests. The night of 16th November 1958, General Ibrāhīm ‘Abbūd, carried out coup d'état and dissolving the parties of the parliament. In attempt to build foreign reserves, the military sold all the cotton of Sudan and reached agreement with Egypt over Nile Waters. Consequently the foreign Christian Missionaries were expelled in 1962 and



1964, which outraged the vastly influenced southern region by Britain, transitioning from English curriculum to Arabic. Succeeding to the discontent sentiment of south and non-agreeable policies being carried out, tensions arose.

Allegations of apartheid

In 1972, when successive famines and deficiencies in the Darfur region led to a civil war opposing non-Arab sedentary farmers and Arab nomads. This conflict was strengthened in 1986 - under the government of Sadiq al Mahdi - when an Arab supremacist movement that advocated that Arabs should have control over the Non-Arabs emerged and started to have a considerable influence in Sudan. This produced a strong discontent among the Non-Arabs who were scared that it would encourage discrimination against them, or that their rights and interests would be neglected. When Omar al-Bashir came to power after the coup in 1989, his regime still relied on these pro-Arab networks, which drove a deeper wedge between the varying communities in Darfur.

During the two decades that followed, the phenomenon of exclusion of non-Arabs only worsened since many measures were thought to deliberately isolate non-Arabs and therefore split Darfur into three distinct regions, breaking the unity of the Darfuri populations. Members of the excluded Non-Arab tribes (Fur, Zaghawa and Masalit) began to create a force opposing the regime by creating rebel groups. As a matter of fact, Khalil Ibrahim of the Zaghawa tribe founded the Justice and Equality movement in 2001 and the Sudanese Liberation Army/Movement (SLA) and formed an alliance between the Fur and Zaghawa communities in 2001 as well.

The Second Sudanese Civil War

In February 2003, the Sudan Liberation Movement (SLM) and the Justice and Equality Movement (JEM) rebel groups engaged in a conflict against the Government of Sudan, which they accused of oppressing the non-Arabs of Darfur's population. The Government responded with a campaign of ethnic cleansing of the non-Arab tribes. The campaign was directed through GoS forces, including the Sudanese Armed Forces and their allied Janjaweed militia, the Sudanese Police Forces, the National Intelligence and Security Service (NISS) and the Humanitarian Aid Commission (HAC). This was the beginning of a major armed conflict known as the War in Darfur that lasts for more than 14 years.

The West Darfur region has been described as one of the most preoccupying humanitarian crises in the world, according to the United Nations (UN). More than 2.3 million people have been displaced in camps with terrible hygiene and harsh living conditions in Darfur



and Chad (neighbouring country). Furthermore, peacekeepers and aid workers have restricted access to those in need.

According to United to End Genocide, the conflict has taken over 300,000 lives, internally caused 2.7 million people to be displaced and 250,000 to flee abroad. Human Rights Watch and Amnesty International, among others, have stated that the militias working with the government were engaged in an ethnically-targeted campaign of mass killings, forced displacement, destruction of property and using rape as a weapon of war.

Since Al Bashir has been President of the State of Sudan and Commander-in-Chief of the Sudanese Armed Forces, if the mass-killing did occur, then he would have had to have played a key role in designing and implementing this extermination campaign.

ICC Case: The Prosecutor v. Omar Al Bashir

The first arrest warrant for Omar Hassan Ahmad Al Bashir was issued on the 4th of March 2009, however, the Pre-Trial chamber ruled that there was not enough evidence to prosecute Omar Al Bashir for the crime of genocide. A second arrest warrant issued on the 12th of July 2010 afterwards did prosecute Omar Al Bashir for three crimes of genocide. The prosecutor stated that al-Bashir must turn himself in to face the charges, and that the Sudanese authorities must detain him and turn him over to the ICC if he refuses to do so. As Sudan is not an ICC member, the Sudanese government has refused, even if it is still under the obligation to cooperate with the arrest warrant. Al Bashir has since visited many countries but all have refused to arrest him. "We don't recognise whatever comes out from the ICC, to us it is non-existent," a spokesman for Sudan's foreign ministry, Ali al-Sadig, told Reuters.

Alleged crimes (non-exhaustive list)

The ICC stated there were reasonable grounds to believe that Omar Al Bashir (as commander in chief of the Sudanese Armed forces) "played an essential role in coordinating the design and implementation of the common plan" and could therefore be prosecuted for the crimes of:

- Five counts of crimes against humanity: "Bashir organised the destitution, insecurity and harassment of the [innocent civilians]. He did not need bullets. He used other weapons: rapes, hunger, and fear" Moreno-Ocampo said in a ICC statement.

→ Murder : 300 000 is the number of deaths of men, women and children the Bashir Watch says Bashir has caused.



→ Extermination : As said in the ICC statute, this is the act of mass killing members of a civilian population, it is a widespread or a systematic attack against a population. This act therefore differs from the act of genocide as it is not on a specific group.

→ Forcible transfer: This means that Omar Al Bashir deported or forcibly transferred, without grounds permitted under international law, one or more persons to another location.

→ Rape: thousands of civilians belonging mostly to the Fur, Masalit and Zaghawa groups were subjected to the act of rape. Human Rights Watch, said it interviewed 212 victims and witnesses of the Darfur attacks between 2014 and 2015. In February 2015, Human Rights Watch stated that Sudanese army forces abused more than 200 women and girls in a prepared attack on the north Darfur town of Tabit in October 2014. (VOA News)

→ Torture

- Genocide: Omar Al Bashir and his troops are believed to have attempted genocide against tribal (therefore ethnical) groups Fur, Zaghawa, Masalit.

→ By killing: In the non-Arab ethnic groups of the regions, 200 000 people have died since 2003.

→ By causing serious bodily or mental harm.

→ By deliberately inflicting on each target group conditions of life calculated to bring about the group's physical destruction: The ICC prosecutor, Luis Moreno-Ocampo, accused Bashir of keeping 2.5 million refugees in Darfur in camps "under genocide conditions, like a gigantic Auschwitz". This act would have been in the deliberate intent of exterminating the specific groups.

- War crimes: The ICC declared Bashir was criminally responsible as the head of state (and commander of the Sudanese armed forces) for the offences on three armed groups in Darfur.



Al Bashir's involvement

Omar Hassan Ahmad al Bashir has been accused of being the mastermind of the genocide present in Darfur, yet he denies the charges made by the International Criminal Court . The President is subject to an arrest warrant and an international travel ban, but in recent years has been allowed passage abroad by the states of Egypt, Saudi Arabia and South Africa. The controversy over the latter led South Africa to withdraw from the ICC altogether.

It is believed that as president and leader of the government, Bashir is in control of what happens in the country and the decisions made by the government. "Of course, I am the president so I am responsible about everything happening in the country," Bashir said to the Guardian in 2011, when asked about the conflict in Darfur.

He however denied the alleged crimes that were charged, saying that the number of deaths and displaced were all being enlarged and exaggerated in the Western media. "It is a duty for the government to fight the insurgents, but we did not fight the people of Darfur," so he said, countering the evidence used by the ICC. Bashir even goes to mention that the International Criminal Court's charges are only politically based due to the fact that Sudan is one of the only countries that has not yet signed the treaty.

Major Parties Involved

Sudan

Sudan plays a key role in the trial which will take place next November, although it has not signed the Rome Statute. Omar Al Bashir, President of Sudan since 1993, will be trialed for all the crimes committed by the Government of Sudan (related to his campaign of ethnic cleansing) from 2003 to 14 July 2008 in the Darfur region during the armed conflict. In Sudan, the answer to whether or not the Sudanese politician is guilty of war crime and genocide, as seen, is very controversial with opinions drastically varying.

The United Nations

The United Nations made a first attempt to deploy a peacekeeping mission in the Darfur region with resolution 1706. But, for the first time, a United Nations deployment of armed forces failed. It was not until July 2007 when the resolution 1769 was voted unanimously by the Security Council that a peacekeeping mission called the African Union/United Nations Hybrid operation in Darfur (UNAMID) was sent to Darfur. The forces were deployed to restore peace and stability in the region and to support the rebel groups that were subjected to many forms of violence.



UN Involvement, Relevant Resolution, Treaties and Events

- Resolution 1706 of the UN Security Council, 31 August 2006 (**S/RES1706**)
- The African Union/United Nations Hybrid operation in Darfur (UNAMID) approved by the Resolution 1769 of the UN Security Council, 31 July 2007 (**S/RES/1769**)

Timeline of Key Events

Date	Description of Event
30 June 1989	Coup d'Etat of Omar Al Bashir under the government of Sadiq Al Mahdi
16 October 1993	Omar Al Bashir is officially elected President of Sudan
2001	Creation of the Sudan Liberation Movement (SLM) and the Justice and Equality Movement (JEM) by Khalil Ibrahim
26 February 2003	Beginning of the War in Darfur
31 July 2007	The UN peacekeeping mission UNAMID is successfully deployed
4 March 2009	The first warrant of arrest for Omar Al Bashir is issued
12 July 2010	The second warrant of arrest for Omar Al Bashir is issued

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