

5. Darfur Humanitarian Crisis

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Pg. No: 59-69

i. Abstract

International Humanitarian Law (IHL) came into force in the 19th century and has evolved from Hague and Geneva Conventions and lays down principles and rules to be followed during the time of armed conflicts. It has a two-fold objective; to ensure the protection of those who are victims of armed conflicts and the second is to regulate the means and methods of armed conflicts in the world. The International Committee of Red Cross (ICRC) that has been established to look into the protection of the IHL since inception has concentrated on relocating the victims back to their regular lives. However, from time to time, it has not been an easy task for the international organization to achieve its objective. Humanitarian Crisis that has been going on since 2003 in Darfur, Sudan, Africa poses one such threat to International Peace.

The Humanitarian Crisis in Darfur has been a continuous violation of International Humanitarian Law, though the international communities such as UNO, the African Union (AU), and ICRC, etc. have tried to negotiate between the parties, and nothing has turned ripe. With the increasing attention from the international community, the Sudanese government has reduced the media flow in the field of conflict, thereby increasing the worry of the international community towards those civilians who await the help of the community to lead their life in normalcy which seems unachievable.

In this paper, let us look into an in-depth analysis of the regime of International Humanitarian Law, the Darfur Crisis, and the international response towards the crisis going on for more than a decade now. The author at the end has also expressed steps that could be done to bring the situation into control.

Table of Contents

S. No.	Title	Pg. No.
i.	Abstract	60
1.	Introduction	62
2.	Darfur Humanitarian Crisis: An Overview	63
3.	International Attention towards Darfur Crisis	64
4.	International Humanitarian Law and the Darfur Crisis	66
5.	Suggestions and Conclusion	68

1. Introduction

From time immemorial, wars and armed conflicts have been the regular practice to conquer the territories in the garb of having more power to emerge as the ruler of the world. Be it from the times of Kings and Kingdoms; or to the present nations and nationals; the humans from time to time in one way or another wanted to control the whole world.

During the times of kingdoms, certain rules were laid down between the parties of the war, as to decide the place, timings, etc. to fight a war and also related to the protection of civilians and the hurt soldiers. But, when nations started emerging, these rules were overthrown by adapting principles such as secret agreements, deceit, sexual exploitation of the civilians, the killing of prisoners of war, and many other tactics, which were termed to be unfair. These unfair practices not only cause harm to the during World Wars; but also caused irrevocable damage to the rule of law, and the principles of equity, equality, and natural justice which are few ground principles on whose basis the legal systems around the globe stand on.

International Humanitarian Law, is one of the efforts of the international community to ensure that the want of power of the officials does not affect the civilians and thus, to reduce the effects of the war. Humanitarian law is the set of principles to be followed by the parties to war; these principles are obligatory and safeguard the basic rights and freedom of all even during the crisis of the war. It aims at ensuring that civilian life is not disturbed for a military gain, also to help those wounded in the war by providing medical help on the field.

The International Humanitarian Law finds its roots in the Geneva and Hague Conventions, where the concepts of medical help to wounded and sick, principles regarding the protection of prisoners of war, civilians, etc. have been discussed and rules have been laid down to protect the minimum fundamental rights of every human being popularly termed as Humanitarian Rights.

International Humanitarian Law is often mistaken as Human Rights Law, however, both the laws are wide apart in their scope as the first one deals only with the armed conflicts, while the latter one is in force throughout the war and non- war times. In the case of diversion between both the laws, the International Humanitarian Law presides over the other during the war. The International Commission of Red Cross (ICRC), along with its organs of Red Cressant and Red

Crystal work together to ensure that every human being is treated in a humane way irrespective of any discriminatory grounds present and help the victims of the war to recover, rehabilitate and re-live their life in a peaceful manner.

In this write up we will look into the birds-view of the Darfur Humanitarian Crisis and its effect on the International Humanitarian laws.

2. Darfur Humanitarian Crisis: An Overview⁷⁶

Darfur is a state in Sudan that lies in the dark continent of Africa. Ever since the pre-colonial era, Darfur has been active as a home for various ethnicities of people coming from different backgrounds such as Arabs, non- Arabs, Muslims, etc. It has been from time to time ruled by some of the strongest rulers until World War I, post which the mighty colonizer England took control over it.

It was posted this colonial era and independence in 1956, that the people of Darfur segregated themselves into various groups creating differences and discriminations between themselves to use them in the political and social movements; otherwise, the same differences were a matter of occupational identity in Darfur till then. The historical storyline of Darfur seems very similar to that in India, keeping in view the independence movements given the Hindu- Muslim conflict in India.

It can be observed that the governments formed after the independence of Sudan were mostly the Arabic dominated governments, these governments started framing laws and policies in favor of Arab and Islamic origins; with the effect of the troops from neighboring regions who settled in Darfur, such as Libya. This led to the start of rebellious outbreaks from around the 1960s in the region of Darfur.

Sudanese People Liberation Movement (SPLM/SLM) was popular in the regions of Sudan during the 1980s and worked with the motto of a ‘new Sudan’, to protect the marginalized and the vulnerable groups in Sudan aiming to convert Sudan into a state with equity, equality,

⁷⁶ (“*The World’s Worst Humanitarian Crisis*”: *Understanding the Darfur Conflict | Origins: Current Events in Historical Perspective*, n.d.).

democracy and non- discrimination. On the other hand, the National Islamic Front (NLF) sprang into action with the growing strength of the SPLM to protect and establish Sudan as an Islamic Nation. The members of NLF not only dominated the membership in armed forces, but were regarded as the economically developed nationals. This made it easier for the group to overthrow the SPLM and its members, by hook or crook, leading to a massive abuse of the Human Rights vis-à-vis degradation of economic and political stability in the nation.

Thus, this has become the base for the inter-communal dispute of the crisis in Sudan, popularly famous as Darfur Crisis, considering the important part played by the Darfur regionals, in the armies of the NLF and who made it possible to overthrow the SPLM in Sudan. Further, with the intervention of international communities and the oncoming of the Comprehensive Peace Agreement between the two groups to put an end to the bloodshed in Sudan and nearby regions, though has helped to curb the violation of human rights in the northern regions, failed to look into the awaiting crisis in Darfur, that has become one of the deadliest humanitarian crisis for the world.

3. International Attention towards Darfur Crisis⁷⁷

By 2003, the Darfur region was highly influenced by the groups of Sudan Liberation Army (SLA) and Justice and Equality Movement (JEM); though both the group on paper aim for a democratic Sudan, the actions of the groups have time and again proved different. The first renowned clash between these two groups was during mid- 2003, where the Sudanese Army was attacked by the other causing damage of about 3, 00, 000 deaths in Darfur and internal displacement of millions of people⁷⁸.

The Veto powers of the United States and China have involved themselves, by the US calling the act as genocide, while China tried to stay on good books of Sudan and increase its trade relations. The United Nations, amid threats planned to send a peacemaking committee to calculate the circumstances in the Darfur region and to restore peace; however the Sudanese government allowed only African peace-keepers into its region. The UN had to give in to the

⁷⁷ (The International Community's Failure to Protect *Darfur*, 2006).

⁷⁸ (DeWaal, 2014).

Sudanese government and negotiated to send a committee comprising of African and UN forces popularly termed as UNAMID⁷⁹, however, the committee was never formed or sent to Sudan due to lack of funds and logistics, keeping in mind the non- supportive Sudanese government towards the UN.

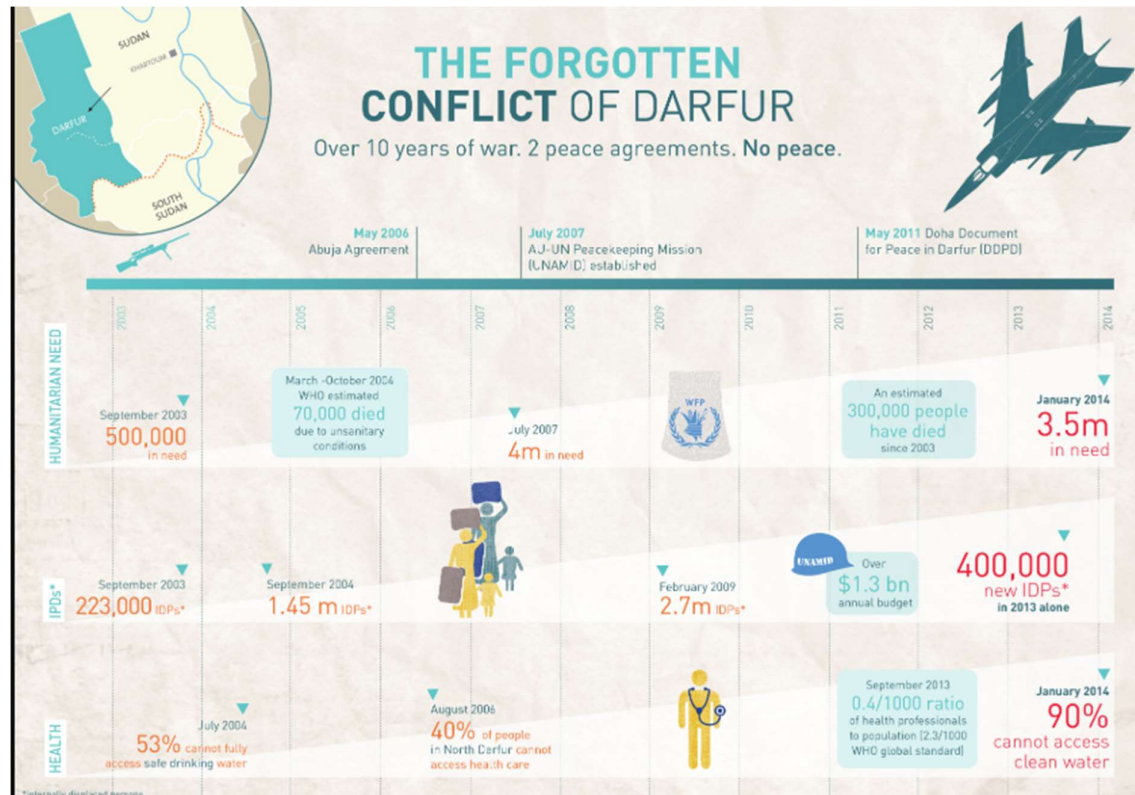


Figure 1⁸⁰- The picture depicts how the crisis in Darfur has been increasing the Internally Displaced People and their needs and health hazards since its inception in 2003.

When referred to the International Criminal Court (ICC), the crisis was indeed held to be genocide⁸¹, but the Sudanese government refused to exercise the jurisdiction of the court to execute the judgment. The Sudanese government is trying its best to cover up the crisis as a small rebellious outbreak, but largely there have been proofs against the atrocities of the government in destroying the peace in the civilian community by destroying the houses, farming lands, sexually harassing and exploiting women and children, stopping the supply of

⁷⁹ (Overview of the crisis in Darfur, n.d.).

⁸⁰ Sourced from: https://enoughproject.org/files/Forgotten%20Conflict%20in%20Darfur_0.jpg.

⁸¹ (International Criminal Court *Darfur, Sudan*, n.d.).

essentials of food to the civilians. However, the government is not ready to give in to the threats of the United Nations.

While on the other hand, the North Atlantic Treaty Organization (NATO), another powerful international organization, because of the member state of United States, though provided financial aid to the civilians to ensure that basic food requirements are met for some time; it has not sent any of the troops to the Sudan to end the crisis. Even the powerful European Union (EU) has settled itself by providing financial support to the African Union (AU) who deployed observation troops to the Sudan, to get the logistics right and has openly denied sending its forces and manpower to intervene in the Darfur region. China as aforesaid mentioned has developed trade relations with Sudan and thereby is not keen on backing the decisions of the UN against the acts of the governments terming them to be internal conflicts, where the UN has no right to intervene as per the United Nations Charter.

International Committee of Red Cross (ICRC) along with its offspring Red Crescent has been functioning in the region of Sudan and in particular in Darfur, providing assistance and relief to the civilians⁸². Though the operations are at a slow pace owing to the restrictions imposed by the Sudanese governments, there is a ray of hope to the civilians that the international community stands by them in this period of crisis and are waiting for the help to lead a normal life.

4. International Humanitarian Law and the Darfur Crisis

International Humanitarian Law from its inception has aimed to provide assistance to those affected by the war and to ensure that they lead regular lives back. However, this aim of the IHL seems far-fetched in the case of the Darfur Crisis. Several principles and rules laid down under the International Humanitarian Law as per the Geneva Conventions are overseen by the warring parties in Sudan.

The primary duty of the parties being that no civilian would be attacked; otherwise, it would result in the armed conflict being a war crime. Under Article 13(2) of Additional Protocol II of

⁸² (*Responding to the crisis in Darfur - ICRC*, 09:23:17.0).

Geneva Convention⁸³, the principle of ‘distinction’ has been laid down which propagates that the warring parties must distinguish between civilians and opponents and in any circumstance, a civilian or a civilian object cannot be attacked.

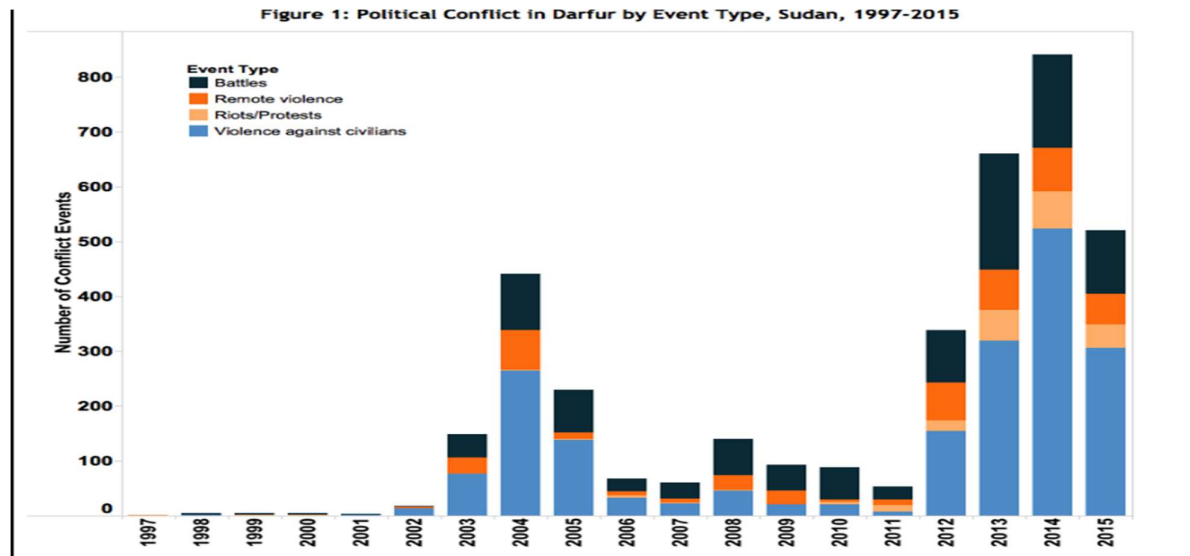


Figure 2⁸⁴ - The graph shows us the proportions of the conflicts in Darfur between 1997- 2015. We can observe that since 2003, the conflicts against civilians have been alarming; though the proportion has come down between 2006-2011; post-2011 the conflicts have again started increasing; showing no signs of an end to the ongoing humanitarian crisis.

Under Article 4(I) of Additional Protocol II⁸⁵, that deals with Non- international armed conflict, like the one in Darfur, where the armed conflict is between to internal groups of the same nation, a fundamental guarantee has been laid down that the civilians and *hors de combat* i.e., people who were a part of the war, but no longer are; shall be treated humanely in all respects; however, we can establish that this principle has also been violated in the present Darfur crisis. These are the basic norms that have to be followed by the states in case of non- international armed conflicts as the international community does not have the power to interfere, but these fundamental principles which are the standing pillars of the international humanitarian law are violated in Darfur.

⁸³ (OHCHR | Protocol II Additional to the Geneva Conventions of 12 August 1949, n.d. Art.12).

⁸⁴ Sourced from (“Updated Conflict Data Surrounding Early Darfur Crisis,” 2015).

⁸⁵ (OHCHR | Protocol II Additional to the Geneva Conventions of 12 August 1949, n.d. Art.4).

Even under the customary international humanitarian law, certain rules were laid down that are to be observed in international as well as non- international armed conflicts, but they have been violated in the present crisis. Some of them are listed as follows:

As per Rule 14, the Principle of ‘proportionality’⁸⁶ cannot be overthrown and if the possible civilian damage is larger than the military advantage then the armed conflict should be suspended. In the present case, it is clear that the act of the government and the rebel groups is unending and is only causing loss to the civilian community.

Further Rule 53, lays down that starvation as a method of warfare is prohibited, but the international media has time and again provided proof to the international community of how the food supplies are destroyed in Darfur leading to the violation of international humanitarian law⁸⁷.

The International Commission of Inquiry on Darfur, established by Security Council of the UN in 2004, has opined that “It is the responsibility of the state to guarantee the basic rights related to health, food, and house to everyone and special protection of women and vulnerable groups, such as children and displaced persons. Additional Protocol II of the Geneva Conventions evokes the protection of human rights for every human; this in itself applies the duty of the state to protect in situations of armed conflict.”⁸⁸

Thereby, the Darfur crisis has been an instance of violation of the International Humanitarian Law, and nothing has been done that could be noted in the actual field of conflict in terms of fulfilling the duty of the international community towards innocent civilians, that is being crushed in this crisis.

5. Suggestions and Conclusion

The situations in Darfur are rightly pointed out by the ICC fall under ‘genocide’; as under acts committed with the intention to destroy an ethnic group. The acts also come under the purview

⁸⁶ (*Customary IHL - Rule 14. Proportionality in Attack*, n.d.).

⁸⁷ *Ibid* at 3.

⁸⁸ (International Legal Protection of Human Rights in Armed Conflicts, United Nations, 2011, p. 119).

of Crimes against humanity as per Article 7 of the Rome Statute⁸⁹, wherein the attacks are directed against the civilian population⁹⁰.

What is now required by the international community is a strong step to help the people of Darfur, the United Nations should take up active steps in deploying help to the civilians, and internally displaced people, this would be possible only with the support of the members of the UN, especially the VETO powers who are till now in the back. The African Union should re-frame the objectives of their peacekeeping committees and should reformulate as the protecting agencies rather than just being a watchdog⁹¹.

The situation in Darfur is becoming more and more alarming as the time passes by, with increased restrictions on the media personnel by the Sudanese government, the factual circumstances are misrepresented and Darfur is being isolated to curb the rebels, who seek a democratic and a sovereign Sudan. Amidst all the chaos, it is the civilian population that looks up towards the protection against this “**Ethnic Cleansing**” and await reparation, which is their right under various international laws, which lay down that “the victims of armed conflicts are eligible for proportional reparation to the gravity of the violation and harm suffered.”⁹²

The crisis has made us realize that the better functioning of the humanitarian laws is possible only with the better exercise and implementation of the principles laid down under various treaties and conventions, it is not a set of rules that is now required but effective implementation of those rules, that can bring an end to this crisis.

⁸⁹ (Rome Statute of the International Criminal Court , n.d., p. 10 Article 7).

⁹⁰ “Report of the Preparatory Commission for the International Criminal Court” (PCNICC/2000/1/Add.2).

⁹¹ (*Sudan: Darfur Destroyed*, n.d.).

⁹² (*Protection of victims of armed conflict through respect of International Humanitarian Law - ICRC*).