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Sudan in Crisis: A Tale of Despair and Annihilation

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Sudan has been engulfed in an internal armed conflict, starting in mid-April 2023 between the Sudanese Armed Forces (SAF) and the Rapid Support Forces (RSF), which displaced the majority of the population and has led to a huge hunger crisis; in addition, there have been repeated reports of war crimes, crimes against humanity, as well as possibilities of genocide. Through humanitarian law and international criminal law, and conflict tracing, the roots of the conflict can be traced from the post-2019 political transition in the country and then a rapid expansion into Darfur and Kordofan. From a legal perspective, it identifies international legal instruments such as the Geneva Conventions, the Rome Statute, the Genocide Convention, and Council Resolution 1593, and argues that the International Criminal Court's 2005 Darfur referral would not apply to the 2023 conflict.

In comparison between national accountability measures (such as Sudan's in-absentia death sentences against RSF commanders) and the response of the international community, it is pointed out that the current legal and institutional framework is, structurally speaking, simply too weak to stop or redress the situation appropriately in the case of violence. The conclusion is that this crisis's lasting character should not be read as meaning that law doesn't exist, but rather as a manifestation of a lack of political will and consistent enforcement of international justice. In this article, it is recommended that an enlarged, well-supported mechanism for accountability be established that is in line with the levels of suffering in Sudan.

Keywords: *Sudan civil war, international humanitarian law, Security Council, crimes against humanity, genocide.*

INTRODUCTION AND BACKGROUND

Sudan's current conflict is far from being a sudden development. In Khartoum on the 15th April 2023, the two main military groups in Sudan, the Sudanese Armed Forces (SAF) led by General Abdel Fattah Al Burhan and the Rapid Support Forces (RSF) commanded by General Mohamed Hamdan Dagalo, better known in the local parlance as 'Hemedti ', had their first skirmish, which soon escalated into major street fighting. In a short time, what had essentially been a fight over the possession of the presidential city developed into an all-out battle in which, by the third year, nearly half the regions of the 18 regional states found themselves embroiled in fighting.[1]

The direct cause that came to light was the lack of agreement in the negotiations about integrating RSF, a paramilitary force which can be traced back to Janjaweed militias who have terrorised western Sudan in the early days of this century, into a single national army. But underneath lies an entire saga that goes back to after Sudan's long period of President Omar Al-Bashir's leadership, which, in April 2019, had been succeeded by a government formed after months of popular uprising. This was a power-sharing civilian-military arrangement which has been repeatedly undermined, culminating in a 2021 military coup. After months of political talks, a deal between major stakeholders, however, fell through in part because the RSF's role and control were not agreed.[2]

The conflict, which started as the power play of two generals, has become by any count at least one of the severest humanitarian crises of our times. Not only have some 9.3 million Sudanese people been forced to flee within their own country, but also more than 4.4 million have found refuge in countries bordering Sudan such as Chad, Egypt and South Sudan. Thus, Sudan is the country of refuge with the highest number of internally displaced persons and refugees worldwide. Independent experts have found evidence that shows both belligerents, the RSF and its allied militias, have been engaging, among other things, in indiscriminate shelling of civilian areas, systematic sexual violence, ethnically targeted killing in a fashion similar to the 2003-2005 genocide in Darfur, child-soldier recruitment, and deliberately stopping the delivery of food and medicines to starving people. Around 62% of the people

[1] *World Report 2026: Sudan* (Human Rights Watch 2026)
[2] 'Independent International Fact-Finding Mission for the Sudan' (*Office of the United Nations High Commissioner for Human Rights*, 05 July 2024) <https://www.ohchr.org/en/hr-bodies/hrc/ffm-sudan/index> accessed 13 August 2026

in Sudan are facing acute food insecurity so severe that their lives depend on humanitarian aid, and famine conditions have been confirmed in camps of displaced people in North Darfur and Kordofan.[3]

This is, without doubt, a very serious crisis that takes place exactly at the point where international humanitarian law, which describes the behaviour of parties to an armed conflict, meets the broader field of international law, including the law of state responsibility, international criminal law, etc. Also, the institutional framework of the United Nations Security Council and the International Criminal Court is part of it. Sudan, being a country outside the ambit of the Rome Statute, does not have a treaty obligation to abide by the rules thereof. Nevertheless, the Court continued exercising the role of adjudicating cases related to Darfur after the intervention of a Security Council referral in 2005.[4] However, these grounds on which the Court could intervene, which are already nearly a generation old, have lately become a matter of heated juridical arguments between legal experts as to whether they can be used for a subsequent conflict that came to life just eighteen years after the initial referral decision. Meanwhile, the Sudanese government has claimed to have put RSF heads in absentia on trial and condemned them to capital punishment. It's not a very comfortable scenario that this action will create when one looks at it from the point of view of the issues of complementarity, fairness, and the use of criminal law for gaining political advantage.[5]

This article has another five sections. Part II traces the course of the conflict chronologically from the outbreak to the present and shows how it has expanded from Khartoum to Darfur, Kordofan, and further. Part III outlines the legal basis, analyses the relevant Geneva Conventions, Rome Statute, Genocide Convention, and Security Council resolutions on which the international response is based, as well as the key precedents for their interpretation. Part IV looks at different national and international responses to the crisis by highlighting the different accountability mechanisms proposed by Khartoum and by the

[3] World Report 2026: Sudan (n 1); 'Sudan Humanitarian Needs and Response Plan 2026 – Summary' (*UN Office for the Coordination of Humanitarian Affairs*, 30 March 2026) <https://www.unocha.org/publications/report/sudan/sudan-humanitarian-needs-and-response-plan-2026-summary> accessed 13 August 2026

[4] UN Security Council resolution 1593 (2005) [on referring the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court] 2005

[5] Samson Ristom Asfaha and Senai Woldeab Andemariam, 'Sudan's Death Sentences Against RSF Leaders: Complementarity and Accountability Under International Law' (*EJIL:Talk!*, 11 August 2026) <https://www.ejiltalk.org/sudans-death-sentences-against-rsf-leaders-complementarity-and-accountability-under-international-law/> accessed 13 August 2026

fractured and sluggish international community. Part V is the main thrust of the article, and it provides a continuous and rigorous legal and institutional critique of those failures that have left the Sudanese disaster largely to its fate. Part VI ends with some thoughts on how to be credible on the way to accountability.

THE CHRONOLOGY OF RECENT EVENTS

The war's immediate cause was purely military, with the RSF starting to move its troops around Khartoum on the 13th of April 2023 without any communication with the SAF. Khartoum viewed it as an indication of an impending power seizure. The conflict reached its immediate and most tangible phase two days later, on 15 April 2023, when both sides engaged in direct fighting, with the RSF swiftly capturing the capital airport, the presidential palace and several other military buildings. The following days saw the situation escalate from the capital city and reach the twin cities of Omdurman and Bahri, through which most people and supplies enter and leave the capital. Strategically important bridges over the Nile that connect various parts of the city, and which facilitate both the transport of people and goods, became points of conflict.[6]

The war did not remain confined to Khartoum for long. From 24 April 2023, the RSF and allied militias launched a sustained assault on El Geneina, the capital of West Darfur, culminating in the killing of the state's governor and the RSF's consolidation of control over the city by mid-June 2023. What followed in El Geneina, described in later fact-finding reports as attacks bearing an intersecting ethnic and gender character disproportionately targeting the Masalit community, evoked, for many observers, the darkest chapters of the 2003 to 2005 Darfur genocide.[7]

Over the following months, the RSF pressed its advantage across the wider Darfur region. Nyala, the capital of South Darfur, and the headquarters of the SAF's 16th Infantry Division fell in October 2023, alongside Zalingei in Central Darfur. By early November 2023, the RSF had taken the SAF's 15th Division headquarters at Ardamata, on the outskirts of El Geneina, and by late November, following the SAF's withdrawal from El Daein in East Darfur, the RSF controlled four of Darfur's five states, leaving only parts of North Darfur, chiefly its capital,

[6] Independent International Fact-Finding Mission for the Sudan (n 2)
[7] *Ibid*; Asfaha (n 5)

El Fasher, under SAF and allied control. In December 2023, the offensive of the Rapid Support Forces took them eastward, resulting in the acquisition of the town of Wad Madani, which serves as the main city of the Gezira State. This state is not only a place for the growth of agricultural products but also a centre for the logistical support of such activities.

Throughout the year 2024, the geographical areas affected by the war kept expanding, with the SPLM-N side led by Abdelaziz al-Hilu engaging the SAF in South Kordofan. As time passed, it turned out that clashes were also happening in Sennar State because the RSF was heading towards Sinja town, and people in the areas were being displaced. As September 2024 came to an end, fourteen out of the eighteen states in Sudan had witnessed fighting firsthand while the SAF tried to regain their positions in Khartoum and Bahri, which they considered part of the capital.[8]

North Darfur and mainly the war-torn city of El Fasher have become the most challenging and symbolic site of the whole war fighting. The RSF's prolonged blockade of the city was considered one of the few urban centres in Darfur that were still resisting the control of the RSF, and the siege continued for over a year. This blockade caused destruction to camps with internally displaced persons through shelling, imposed food and medical aid blockades, and the United Nations' investigators mentioned that the conduct demonstrated a pattern that matches the characteristics of genocide.[9]

After the RSF occupied the city, in October 2025, stories of the killing of unarmed civilians who were trying to flee came out instantly, which brought to mind the ethnic atrocities at the start of this millennium anew. When the war reached its third year, it was still without sign of resolution: the ceasefire proposals that were supported through different regional groups and by the African Union had all failed to be implemented; meanwhile, the Darfur arms embargo under Security Council Resolution 1556 not only did not include the rest of the counties in its scope but also had not been implemented; and the forces like SAF and RSF kept getting their needs through material, money and logistical supply lines from the states across their borders, which they then channelled as the supply lines.[10]

[8] *Ibid*
[9] World Report 2026: Sudan (n 1)
[10] 'Statement of ICC Deputy Prosecutor Nazhat Shameem Khan to the United Nations Security Council on the Situation in Darfur, pursuant to Resolution 1593 (2005)' (*International Criminal Court*, 16 July 2026)

LAWS AND PRECEDENTS DECODIFIED

Any legally grounded analysis of the war in Sudan has to start with its classification. The hostilities between SAF and RSF, despite the presence of affiliated militias and foreign representatives, are, under international humanitarian law, a non-international armed conflict, as at different times combatants on the Sudanese Government side included a group of different armed non-state actors, whereas those opposing them were all non-state armed entities. This definition of the fighting is important mainly because it determines which set of humanitarian law will be applied. Certainly, in any war between states the applicable humanitarian law is the one directly and fully provided for in the four Geneva Conventions of 1949; on the other hand, laws regulating a non-international armed conflict are basically laid down in Common Article 3 to the four Geneva Conventions, Additional Protocol II of 1977, and also in a wide system of customary international humanitarian law.[11]

Common Article 3 bans, under all conditions, the use of life and limb violence such as murder, mutilation, cruel treatment/torture, taking of hostages, and outrages upon personal dignity. It also prohibits, among others, issuing sentences not based on a fair trial with regard to those who have no active part in the hostilities. The human rights violations on the ground from April 2023 onwards, such as extrajudicial killings, systematic and ethnically targeted use of sexual violence, arbitrary detention and torture, and attacks on medical staff and hospitals, are read as almost a full catalogue of Common Article 3 violations by both chief fighting forces.[12]

The Rome Statute of the International Criminal Court supplies the principal framework for individual criminal responsibility. Article 8(2)(c) and (e) enumerate war crimes committed in non-international armed conflicts, including murder, mutilation, cruel treatment, outrages upon personal dignity, and, under Article 8(2)(e), intentional attacks on civilians, humanitarian personnel, and objects, as well as rape, sexual slavery, and other forms of

<https://www.icc-cpi.int/news/statement-icc-deputy-prosecutor-nazhat-shameem-khan-united-nations-security-council-situation> accessed 13 August 2026

[11] 'How is the Term 'Armed Conflict' Defined in International Humanitarian Law?' (2008) International Committee of the Red Cross Opinion Paper <https://www.icrc.org/sites/default/files/document_new/file_list/armed_conflict_defined_in_ihl.pdf> accessed 13 August 2026; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) 1978

[12] Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War 1950, art 3

sexual violence. Article 7 defines crimes against humanity as acts, including murder, extermination, deportation, torture, rape, persecution, and enforced disappearance, committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack; unlike war crimes, no armed conflict nexus is required. Article 6 of the Rome Statute reproduces, almost verbatim, the definition of genocide first codified in Article II of the 1948 Genocide Convention: acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such, including killing, causing serious bodily or mental harm, and deliberately inflicting conditions of life calculated to bring about the group's physical destruction. It is this special intention, known as dolus specialis, and the fact that it is necessary to prove this intention, that explains why genocide has been and to a great extent still is the most challenging of international crimes in terms of proof. The 2005 Commission of Inquiry on Darfur indeed found, based on the material evidence at its disposal, that the Sudanese government had not been carrying out genocidal actions, even though the Commission found the conduct amounting to crimes against humanity and war crimes on a level comparable only to genocide.[13]

The jurisdictional basis that the Court has been able to exert over Sudan stems from Resolution 1593 adopted by the Security Council in 2005, which the Council referred under Chapter VII of the Charter of the United Nations, the situation in the region of Darfur since 1 July 2002, to the Prosecutor. Such a referral was unique; Sudan has not been and has never been a party to the Rome Statute. Under normal circumstances, Article 12 of the Statute limits the Court's jurisdiction to the nationals and territory of the States parties. But in addition to that, under Article 13(b) of the Rome Statute, the Court is allowed to assume jurisdiction over the offences listed in Article 5 when a situation, as opposed to a particular case, is referred to the Prosecutor by the Security Council acting under Chapter VII. The latter kind of referral resulted in the first time for the Court's exercising jurisdiction over Sudanese nationals, in the form of the 2007 arrest warrants against Ahmad Harun and Ali Muhammad Ali Abd-Al-Rahman (Ali Kushayb) for war crimes and crimes against humanity, and in the 2009 issuance

[13] Rome Statute of the International Criminal Court 2002, arts 6–8; William A Schabas, 'Convention for the Prevention and Punishment of the Crime of Genocide' (UN Audiovisual Library of International Law, 2008); Omer Y Elagab, 'The Darfur Situation and The ICC: An Appraisal' (2008) 1(3) Journal of Politics and Law 43, 45 <https://doi.org/10.5539/jpl.v1n3p43> accessed 13 August 2026

of a warrant against then President Omar Al-Bashir, the first warrant the Court has ever issued against a serving head of state.

Two important lines of judicial reasoning are the basis for explaining the legal disagreement in Sudan nowadays. The first issue is the 2021 Abd-Al-Rahman jurisdictional challenge in which the Appeals Chamber chose not to invalidate Resolution 1593 but instead reiterated, also for the first time, that the Court has a residual Kompetenz-Kompetenz to check whether a Security Council referral is compatible with the Rome Statute whenever there is a real incompatibility. This idea of a court of first instance having some residual authority to check referrals made by an international organisation, in this case the Security Council, is similar to the one developed by ad hoc tribunals in their Tadić jurisprudence. The second issue at the centre is a discussion between experts and legal practitioners as to whether Resolution 1593's open-ended and not time-bound referral of the Darfur situation, along with its broad statements of the Sudan situation and the Council's expression that it will continue to have the matter under consideration, encompasses also the crimes committed after April 2023, which are considerably beyond the Commission of Inquiry's original period of 2002 to 2005.[14]

Advocacy organisations have put on record official communications based on Article 15 of the statute to the Prosecutor of the ICC. They maintain that the connection or continuity aspect between Janjaweed (the precursor of RSF), the repeated attacks on the ethnically targeted communities by the same perpetrators, and the fact that the conflict area coincides with Darfur, is enough to conclude that the latest fighting in Western Darfur belongs to the original scope of the case still under referral at the ICC.[15]

There are voices which warn the legal community that, in order to have later crimes falling under a particular situational scenario as a trigger for a criminal proceeding, a very close link is required as per the jurisprudence of the Court. They explain that stretching the referral letter, which has been valid for two decades, to the current war is entirely different in fact

[14] Talita de Souza Dias, 'The Principle of Legality in the ICC's Appeals Judgment on Abd-Al-Rahman's Jurisdictional Challenge: A Follow-Up on Merits and Shortcomings' (*EJIL:Talk!*, 01 December 2021) <https://www.ejiltalk.org/the-principle-of-legality-in-the-iccs-appeals-judgment-on-abd-al-rahmans-jurisdictional-challenge-a-follow-up-on-merits-and-shortcomings/> accessed 13 August 2026

[15] Mariana Goetz, 'The ICC's Jurisdiction Must Go Beyond Darfur: The Violence in the Rest of Sudan is Part of the Same Pattern of Conduct' (*Rights for Peace*, 27 January 2026) <https://www.rightsforpeace.org/post/art-15-communication-sudan> accessed 13 August 2026

and might violate the legal principle known as the principle of legality as mentioned in Article 22 and other parts of the Rome Statute.[16]

Apart from that, the Security Council's Resolution 2417 from the year 2018 which denounces starving the civilians as being warfare and the denial of humanitarian access without legal grounds, constitutes one more basis of law for referring to the deliberate hindrance of the distribution of aid as one of the internationally recognized violations of human rights that might be criminally punishable, especially in the context of sieges like those of El Fasher, Zamzam, and several other communities that could not get the aid they desperately needed, as a violation of Article 8(2)(e)(xxv) of the Rome Statute according to which starving the civilians intentionally is a prohibited manner of warfare in the case of the involvement of the parties of a non-international armed conflict only.[17]

NATIONAL AND INTERNATIONAL PERSPECTIVES

Sudan itself has responded to the allegations against the country through its institutions in a way similar to the period when the Darfur crisis took place in the 2000s: totally denying the jurisdiction of the International Criminal Court, as well as employing domestic courts one by one, whose independence and capacities are still in doubt and heavily contested. In the Darfur phase that came earlier, the government of Sudan created the Special Criminal Court on the Events in Darfur along with related bodies, and over the course of several years, these were responsible for only a very few minor convictions, yet they managed to leave the senior officials who had been targeted with arrest warrants by the Court untouched. The same pattern is taking place in the present conflict: the Sudanese courts, which are loyal to the SAF-backed government, have condemned, in absentia, senior RSF commanders who were involved in the atrocities committed in El Geneina and El Fasher to death sentences.

Beyond this domestic framing as a move to confirm judicial sovereignty and as a retaliation against non-action by international courts, these trials may conflict with the complementarity rule set out in Article 17 of the Rome Statute as well as the international fair trial safeguards, including Article 14 of the International Covenant on Civil and Political Rights. It is due to

[16] Danielle Flanagan and Mariana Goetz, 'ICC Jurisdiction Within & Beyond Darfur: Mapping the Limits of Resolution 1593' (*Opinio Juris*, 10 February 2026) <https://opiniojuris.org/2026/02/10/icc-jurisdiction-within-beyond-darfur-mapping-the-limits-of-resolution-1593/> accessed 13 August 2026; Rome Statute of the International Criminal Court 2002, art 22

[17] UNSC Resolution No 2417, 2018; Rome Statute of the International Criminal Court 2002, art 8(2)(e)(xxv)

the fact that the accused were absent from the trials not only physically and in terms of legal defence, but also their role was completely symbolic; the proceedings were conducted by judges from one of the warring sides.[18]

As the world stands at attention, the international community has responded fragmentedly and restrained due to its policies. For example, the Human Rights Council established, through its Independent International Fact-Finding Mission for Sudan in October 2023, that such a fact-finding mechanism has generated the most authoritative and thorough factual record of the conflict, describing patterns of killing, sexual violence, arbitrary detention, torture, and the denial of aid by the two sides, and classifying RSF's behaviour in El Geneina as persecution and showing signs of genocide. The Mission is suggesting international cooperation with the expansion of the International Criminal Court's (ICC) jurisdiction to the entire Sudan territories, the installation of a neutral civilian force for the protection of the affected citizens, and the setting up of an independent international judicial mechanism to work in the shadow of the Court. However, such suggestions, in isolation, do not impose any mandatory requirements on the countries; their real effect can only be achieved by getting the Security Council or the Human Rights Council political support to act upon them. Both councils were, to be precise on the matters, not so much ready to act as the results of the reports would demand.

The Security Council itself remains constrained by the same structural divisions that hobbled the Council's response to Darfur two decades ago: competing strategic interests among the permanent members, reluctance among African and Arab states to support what is perceived by some as a further instance of external interference in an African crisis, and the absence of consensus on extending or enforcing the arms embargo that, on paper, has applied to Darfur since Resolution 1556 of 2004. The African Union and the League of Arab States have offered no meaningful support for expanding the Court's role, reflecting long-standing regional ambivalence, dating back to the Bashir-era warrants, about the Court's perceived focus on African situations. Meanwhile, the Court's own Office of the Prosecutor has continued periodic briefings to the Security Council, including a January 2026 briefing signalling continued, if incremental, investigative engagement with Darfur and adjoining regions, even

[18] Rome Statute of the International Criminal Court 2002, art 17; International Covenant on Civil and Political Rights 1976, art 14

as the practical capacity of the Court to secure custody of any suspect, given Sudan's persistent non-cooperation, remains negligible.

In addition to the formal set of institutions, the perceived international position on the issues has also been affected by the fact that global media and diplomatic attention paid to the conflict is clearly disproportionate to its scale. Although Sudan is the country that is currently causing the biggest crisis of displaced persons around the globe, and apart from the credible allegations of behaviours that could constitute genocide in fact, the country has received a much smaller amount of international media coverage and has been less pressured from a diplomatic point of view, along with less humanitarian funding, all this even though the need for these has been clearly described (documented). In fact, this gap has been sharply highlighted by many humanitarian workers and people in the media who argue that it shows a larger imbalance of values in the international society, and the publics that the society relies upon, concerning the attention paid to African suffering far away from these people.

ANALYSIS: THE MALAFIDES OF THE INTERNATIONAL RESPONSE

The introduction has outlined a rather complete system of laws and also made available a set of factual records that, compared to the level of factual reporting in contemporary armed conflicts, may be considered unusually complete. That being said, this part focuses, to some extent, on what has not been said. More specifically, it questions why, even with that, killing, displacement, and starvation in Sudan have mainly remained unresolved beyond three years and contends that the fact that the crisis has been going on is not due to the absence of laws, but to a variety of structural failures, as well as some failures that have been deliberately cultivated by the actors and institutions with responsibilities for the application of the laws.

The Jurisdictional Fiction of Resolution 1593: An honest assessment of the ICC's involvement in Sudan must start with the point that Resolution 1593 was not even supposed to predict, let alone regulate, a civil war between the SAF and RSF that would occur eighteen years later. The resolution's operative language talks about the conditions in Darfur from 1 July 2002, time-wise deliberately open-ended but geographically and factually limited. On its face, it points out a specific regional conflict involving specific parties, that is, the Government of Sudan, the Janjaweed, and named Darfuri rebel movements, committed to particular patterns of violence that a UN Commission of Inquiry had studied and described.

The new idea that the RSF's descent from the Janjaweed and the repeat of the violence against the same ethnic communities is enough to bring the entire post-2023 conflict within the compass of Resolution 1593 is innovative from the legal point of view but weak in its reasoning.

It requests the Court to regard a Security Council referral made to respond to a particular historic outrage as merely the opening round, an ongoing juridical permission covering any instance of future violence in Sudan which inadvertently finds itself linked by the same perpetrator's descent or the same victim group's shared heritage. At the extreme, this line of argument would lead to every future war in Sudan, even the slightest or far away from what happened in 2003-2005 or the causes and nature of it, that still has any link with Darfur, being potentially the reason for investigation by the Court without any decision needing to be taken again by the Council, which is against the principles of legal certainty and the condition, laid down both in international customary law and also in the judgments of the Court, that crimes committed afterwards must still be closely linked to the original situation that was referred.

The deeper problem is that this interpretive contortion is being attempted precisely because the alternative, a fresh Security Council referral covering the whole of Sudan since April 2023, is politically unobtainable given the Council's current composition and the positions of certain permanent members. In other words, international lawyers are being asked to stretch a two-decade-old text to do work that the political organ charged with authorising it has simply declined to do. This is not a criticism of the advocates making the argument, who are working within the tools available to them in the absence of any better option; it is a criticism of a system that has left the protection of millions of Sudanese civilians dependent on whether a chamber of international judges can be persuaded to read an old resolution creatively, rather than on any deliberate, contemporaneous decision by the states charged with maintaining international peace and security.

The Genocide Question and the Poverty of the Intent Standard: The Fact-Finding Mission's finding that RSF conduct in El Geneina, and later in the siege of El Fasher and the Zamzam camp, bears the hallmarks of genocide deserves to be taken seriously, not diluted by the same

sterile debate that attended the 2005 Darfur Commission of Inquiry's finding of no genocidal policy. [19]

It is yet another proof of the fact that the specific intent requirement of the Genocide Convention as a way of capturing mass ethnic violence in real time is not adequate on a structural level. The dolus specialis standard, as narrowly interpreted by the International Court of Justice in Bosnia and Herzegovina v Serbia and Montenegro and by the ad hoc tribunals, requires proving that perpetrators intended not only to kill, displace, or terrorise members of a group but also to destroy the group, in whole or in part, as such. This bar is hardly evidentiary and is practically almost impossible in most cases outside of the exceptional ones like Srebrenica. And that is exactly the problem that allowed the government of Sudan and its supporting circles to belittle the crimes-against-humanity findings of the 2005 Commission as somehow lesser and to deny responsibility for as long as twenty years. The same scenario is now in jeopardy; by redirecting worldwide debate from the issue of whether the RSF's actions qualify as genocide to whether they meet the very high standard of the genocide threshold, rather than concentrating on the full list of war crimes and crimes against humanity which are already thoroughly documented, that do not need the destructive intent to be evidenced, and that are much easier to prove on the current record of evidence, respectively, media, academics, and various organisations, as a matter of fact, leave perpetrators quite the room for playing the argument based on the law rather than victims benefiting.

Insisting on a genocide label, though morally sound, is counter-productive if it ends up being a prerequisite for international intervention instead of being only one potential way to address the problem. Crimes against Humanity and war crimes, the 2005 Commission emphasised, are equally serious and evil as genocide; nonetheless, the international community still acts as if only the word ‘genocide’ is capable of bringing about any important political change, thus establishing a priority of horrors that neither reflects the seriousness of the actions taken nor the wording of applicable international treaties.

The Enforcement Vacuum and Security Council Paralysis: Lack of enforcement of international law despite its clear and compelling existence is perhaps nowhere exemplified

[19] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment) [2007] ICJ Rep 43

better than the plight of Sudan. The arms embargo against Darfur, which has been a part of the formal law from Resolution 1556 of 2004, has never been enforced with any degree of seriousness, has never been extended to Sudan entirely, despite years of documented flow of arms into both Darfur and other parts of the country, and external states and non-state actors alike continue to flout it. The Security Council, the only institution authorized by Chapter VII to enforce compliance, is still splitting along the lines that gave rise to the original Darfur deadlock twenty years ago: the permanent members are competing in their strategic and economic interest, they are reluctant to impose sanctions against African countries and to be viewed as the enforcers in a continent that has its own mechanisms of governance, and last but not least, any resolution that is supposed to broaden the current sanctions regime by targeting more actors, referring the larger conflict to the International Criminal Court, or authorizing a civilian protection force capable of carrying out a meaningful mission, would necessitate that five countries with significantly divergent national interest in Sudan all agree it.

What ultimately arises is a Council whose ritualistic language of its own resolutions enables it to remain seized of the issue, dutiful to its role, whereas the substantive matter continues to develop on the ground, practically free from any obstacles. This should not be regarded as a failure of international law because there are sufficient set and fixed rules: the ban on supplying arms to parties who are likely to commit atrocities, the duty of the countries to prevent genocide when there is a high risk, the customary international law of protection of civilians, etc. However, it reveals a fundamental flaw in the institutional arrangement which is supposed to put into operation the rules of international law. This failure has become habitual to such an extent in most of today's conflicts that it cannot even be thought of as a freak anymore but rather as a regular and accepted feature of our international relations.

Third-State Complicity and the Illusion of the Arms Embargo: The most serious feature of the international response is the degree to which countries other than Sudan have sustained the conflict even though they have, in name, backed peace efforts. Investigators have recorded the passage of personnel, weapons, and logistical assistance to the RSF via neighbouring and regional states, owing to the weak borders in Chad, Libya, and other places, thus creating a de facto proxy aspect of what is officially regarded as an internal armed conflict. Under the International Law Commission's Articles on State Responsibility,

a state that knowingly provides aid or assistance to another state, or to a non-state actor, in the commission of an internationally wrongful act may itself incur responsibility, and the obligation to exercise due diligence to prevent genocide, recognised by the International Court of Justice as extending to acts by entities over which a state has influence even beyond its own borders, applies with particular force once credible findings of ethnically targeted mass violence have been published by a United Nations-mandated body. Yet no third state implicated in sustaining either belligerent has faced meaningful diplomatic, let alone legal, consequences for this conduct. The gap between the due diligence obligations recognised in principle, in the Genocide Convention's interpretation by the International Court of Justice, in the customary duty to ensure respect for humanitarian law under Common Article 1 to the Geneva Conventions, and in the general prohibition on arms transfers where there is knowledge that the weapons would be used to commit genocide or crimes against humanity, and the complete absence of accountability in practice, is not a marginal gap. The war has been able to continue for more than three years for both sides for this central reason: a conflict in which the weapons are mostly supplied by outside sources and which is financed by patrons who do not have to suffer any reputational or legal consequences that their agents do will not be worn out simply through attrition.[20]

National Justice as Theatre: The RSF Death Sentences: The fact that Sudan has decided to try, convict and impose the death penalty on RSF commanders in absentia merits close examination not since it is objectionable in itself to carry out domestic prosecutions of serious crimes, for the complementarity principle which forms the basis of the Rome Statute actually supports genuine national prosecutions rather than international intervention, but because the particular nature of these proceedings appears to be little more than wartime propaganda disguised as a judicial process rather than a real attempt at accountability. A trial held in absentia before a judiciary acting under the authority of one of the two belligerent parties, against the commanders of the other belligerent, resulting in a death sentence, and failing to provide any of the procedural safeguards- the presence of the accused, effective legal representation, or independent adjudication - which Article 14 of the International Covenant

[20] Report of the International Law Commission on the work of its fifty-third session (23 April–1 June and 2 July–10 August 2001) (2001) UN Doc A/56/10, art 16; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment) [2007] ICJ Rep 43, [430]; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War 1950, art 1

on Civil and Political Rights requires even in the most exceptional cases, cannot plausibly be described as the type of genuine domestic proceeding that Article 17 of the Rome Statute's complementarity system was intended to protect from being taken over by international bodies.[21]

If anything, such proceedings illustrate the kind of reluctance or the institutional disability that the Court is entitled to go against, according to Article 17, of a state claiming that it has taken action: a state conducting war, using its own judicial apparatus to punish its enemy's leaders, is, as far as one can imagine, the nearest thing to the ideal situation of a territory where justice cannot be relied upon to be unbiased. However much it may try to justify the practice by citing words of sovereignty and responsibility, the reality is that such a tribunal cannot be considered impartial. Sadly, the verdicts may actually lead to more war instead of ending it, since RSF officers who have been sentenced to death by this state apparatus now have hardly any reason to agree to a truce, which would make them face this very apparatus that condemned them with their words heard.

The Politics of Selective Attention: A Global Hierarchy of Victimhood: Any sincere portrayal of the international community's efforts in response to the crisis in Sudan must, inevitably, confront the sad truth revealed in the contrast between the disaster's size and the minimal worldwide reaction. At the moment, Sudan is facing the biggest displacement crisis in the world with documented evidence of actions that suggest genocide, and yet, it has persistently found it hard to attract media attention, diplomatic support, and humanitarian funds that are adequate to similar, at best, if not smaller, disasters.

Appeals for humanitarian help for Sudan are funded much less than the real need, although at the same time newspapers and radio channels show lots of coverage for prolonged periods about other war situations. It's not only that human rights groups and news coverage are crowded, and the news cycle is full. This actually goes much deeper; it is a pattern where the way people see the political and geographical situation of the victims affects the level of international involvement in the suffering of these people very much, and many

[21] Rome Statute of the International Criminal Court 2002, art 17; International Covenant on Civil and Political Rights 1976, art 14

humanitarian workers as well as media writers have pointed out this pattern and criticised it. Some of them have even used terms like world hierarchy or order of the victim.

In terms of international law, whatever the reason is for this inequality in reaction, one thing is quite obvious: the protective system of the international legal framework, be it sound on paper or very well elaborated, is being implemented within a political economy context characterised by a lack of attention and resources for crises like Sudan's. Hence, the whole issue should not be solved just by changing the wording of the scope or of the intent clause of the genocide convention and of Security Council Resolution 1593, but it is an issue where it is also about changing what the Security Council and the donor community are moved to do because the facts have shown the need for immediate action.

Sovereignty, R2P, and the Structural Bad Faith of the International System: Hiding underneath each of these specific failures, i.e., jurisdictional ambiguity, evidentiary difficulty, paralysis in enforcement, third-state complicity, hollow domestic prosecutions, and asymmetric global attention, is a more fundamental tension which the Sudan crisis reveals exceptionally clearly. Responsibility to Protect doctrine, unanimously adopted by the 2005 World Summit and re-adopted by Council Resolution 1674(2006), binds the international community to action, via the Council, where a state is obviously failing to protect its citizens from genocide, war crimes, ethnic cleansing, and crimes against humanity. Based on the Fact-Finding Mission's findings, Sudan today, under any reasonable reading, satisfies the material condition that the doctrine was to be triggered by. However, its third part, international collective action, has never worked, precisely because it's the same Council, which political division, due to its structure, makes it incapable of action.[22]

The main idea of the doctrine is that the very thing (the protection) can be promised where the (political) conditions for delivery are least likely to be the case; the protection can only be a necessity if the enforcement of it is a problem. Sudan is not at all a unique case; this flaw can also be present in others (e.g. Darfur in Sudan). This can be demonstrated in the most straightforward fashion in an honest and open manner through Sudan's case, as no genuine observer can blame the lack of international decisive action on any reason other than a lack of information, misunderstanding of the law, or lack of mechanisms. The mechanisms do

[22] UN General Assembly World Summit Outcome Resolution 2005; UN Security Council Resolution 2006

exist. The information, too, is there. The only thing that is lacking is the political will to make them work, and even the most beautifully worded legal systems at the international level, when not accompanied by an actual international legal enforcement power, can in practice, as in the case of Sudan, be described as a legal system with a malicious and dishonest (e.g. mala fide) character; this because the rules themselves are not the problem, but the international community that is supposed to apply them has chosen, again and again, not to do so.

CONCLUSION

The Sudanese civil war is, simply put, an experiment to see if the international law after 1945 is able or willing enough to protect those who have no other hope than to rely upon the law. The list of agreements- the Geneva Conventions, the Genocide Convention, the Rome Statute, and the Responsibility to Protect- is just the tip of the normative iceberg in modern international law that aims to protect human rights.

However, as this article's case study has shown, the international legal framework, for all its promises, has failed. Sudan, as a country of armed conflict, is hardly unknown. In fact, thanks to the work of the UN Human Rights Fact-Finding Mission and the International Human Rights Fact-Finding Mission, which is still active although disputed, its events are exceptionally well documented compared to similar conflicts. It is not a lack of knowledge; what is lacking is political will on the part of permanent members of the Security Council, regional organisations, and the international community to change the situation, to take into custody those who have been documented for war crimes and crimes against humanity, etc.

Until the arms embargo is actually enforced across all of Sudan, until there is a clear new legal basis for prosecuting the crimes committed since 2023, until countries that are arming the warring parties are held accountable, and until it is admitted and the fact is acknowledged that the world pays far less attention to Sudan than to other crises, all the laws described in this article will stay what they have been for Darfur and the rest of Sudan- a promise written down twice, and broken twice. The people of Sudan deserve more than another round of inquiry commissions whose reports are ignored while people keep being killed. Whether the international community can do better is not just a legal question. It is a

question of political will- and international law needs political will to work, which it cannot create on its own.