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The conflict in Darfur in the perspective of Genocide Prevention

Introduction

The conflict in Darfur began in 2003 and still has not ceased until today. Assessing the scale of international crimes perpetrated on its black citizens in this Sudanese province has become a major issue. Despite considerable evidence of genocide by the forces of the Sudanese Army and Janjaweeds, in the literature on the subject there is no consensus over the nature of crimes committed in Darfur. Therefore, it seems essential to consider all the arguments which may help to determine the legal construction of the events in Darfur. This is not merely a unification of terminology, but above all a consideration of necessary preventive measures and determining how to respond.

1. Examination of the genocide in Darfur

In July and August 2004, an international group of investigators called The Darfur Atrocities Documentation Team (ADT), travelled along the Chad-Sudan border interrogating approximately twelve thousand refugees from Darfur. The data collected by the team was later evaluated by the U.S. Department of Intelligence and Analysis, effecting Colin Powell's declaration before the United States Senate Committee on Foreign Relations, in which he stated that what had happened in Darfur was genocide and that it might still be taking place. Consequently, studies were organised by the American State Department and U.S. Agency for International Aid

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(USAID) to confirm, on the spot (i.e., in Darfur), that crimes seen on images provided by NASA were really occurring on such a scale, and who was responsible for them. The project was financed entirely by USAID. The investigation clearly showed that the refugees, most of whom were non-Arabic residents of the region, had been the victims of attacks by the army of Sudan and Arab militias. About half of the refugees pointed at combined forces of the Government and Janjaweeds as responsible for the attacks on their villages, while another quarter of the respondents found only the Government forces guilty. In two thirds of the cases attacks were accompanied by Sudanese bombardment.[1] The report on the inquiry was presented by the Department of State to the UN Security Council, which directly contributed to the adoption of the UN Secretary-General's decision on the establishment of the International Commission of Inquiry on Darfur (ICID).

Before Colin Powell declared that what had happened in Darfur was genocide (June 23), Pierre-Richard Prosper holding the post of Ambassador-at-Large for War Crimes Issues had taken a stand before Congress. Based on materials collected by ADT, Prosper certified that events which had taken place in Darfur were essentially a crime of genocide. The main evidence was the destruction and burning of villages belonging to black inhabitants of the region, while the neighbouring Arabic villages were not harmed during attacks. This was a proof of the desire to carry out the annihilation of a particular group, which could become one of the arguments for the recognition of the crime of genocide in Darfur.[2] Prosper also claimed that the large number of people killed in Darfur would help to prove the crime of genocide had been committed. But a large number of victims is not sufficient evidence of the existence of an act of genocide according to many scholars.[3] Other arguments included killing of cattle and poisoning of water, as well as preventing Sudanese humanitarian organisations from entering camps for internally displaced people.

In the first years of the conflict in Darfur, dealing with the issue was more about debate than action. In July 2004, the United States Congress adopted a resolution which named events in Darfur as a situation of genocide. On 9 September 2004 the Secretary of State Colin Powell argued before Congress that "[…] genocide has been committed in Darfur and the Government of Sudan and the Janjaweed bear the responsibility."[4]

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[1] A.S. Natsios, "Moving Beyond the Sense of Alarm", in: S. Totten, E. Markusen (eds), *Genocide in Darfur. Investigating the Atrocities in the Sudan*, New York–London 2006, p. 38.

[2] S.A. Kostas, "Making the determination of Genocide in Darfur", in S. Totten, E. Markusen (eds), *Genocide in Darfur. Investigating the Atrocities in the Sudan*, New York–London 2006, p. 121.

[3] H. Burkhalter, F. Pocar, "Preventing genocide and crimes against humanity", *Proceedings of the Annual Meeting American Society of International Law,* Vol. 98, p. 41–47.

[4] N. Grono, "Darfur: The International Community's Failure to Protect", in: *Explaining Darfur. Four Lectures on the Ongoing Genocide,* Amsterdam 2006, p. 39.

January 2005 brought the report of the ICID, which was set up at the request of the United States by the UN Security Council. The commission was designed to examine the accuracy of reports about breaches of international law and human rights, as well as to determine whether what had happened in the province was genocide. The Report did not confirm expressly that genocide had taken place in Darfur, but pointed at the people who might be liable for such genocide, and are responsible for significant violations of international law. Among them were senior representatives of the Sudanese authorities. The report also recommended a study of the matter by the International Criminal Court (ICC), not accepted by the US as a recognized institution. Americans proposed, therefore, that the matter should be dealt with by the War Crimes Tribunal in Tanzania.[5]

One of the consequences of the Commission's activities was the Sudanese administration movement, which on 7 June 2005 appointed the Special Criminal Court on the Events in Darfur (SCCED) with the task of handling the issue of crimes committed in Darfur since 2003. However, the Special Court did not produce results till the end of 2009. The Court had only 13 cases which, moreover, had the nature of common crime proceedings. It is likely that the establishment of the Court was only a sham operation on the part of the Sudanese Government, to manifest its good intentions on the international stage. After 2005, other institutions were appointed to examine violations of international law in the province, most of them only for propaganda purposes.

For many analysts the lack of an official statement from the United Nations Investigation Commission about the nature of events in Darfur was astonishing.[6] The Commission stated that there were contradictions in the evidence that suggested the committing of genocide in Darfur by the Sudanese Government and Janjaweeds. Surprisingly, one of the Commission's arguments was that in the attacked villages the entire population was not always killed. However, it is important to remember that the Convention on the Prevention and Punishment of the Crime of Genocide[7] defines genocide as attempts to destroy even a part, not necessarily the whole, of a group. The Commission disagreed that there might be an attempt to eradicate some groups, pointing at the camps organised for the

[5] "Darfur atrocities do not amount to genocide, UN team says", Global Security (2005), at http://www.globalsecurity.org/military/library/news/2005/02/mil-050201-irin04.htm

[6] O. Ulich, "The UN Security Council's Response to Darfur: a humanitarian perspective", https://odihpn.org/magazine/the-un-security-councils-response-to-darfur-a-humanitarian-perspective/; E. Wax, "Darfur killings spark genocide debate", Washington September 9, 2005; E. Reeves, "Lies, Demanded Lies, and Statistics on Darfur", www.Darfurinformation.com; D. Hoile, "Darfur in Perspective", London 2005.

[7] "Ustawa o przystąpieniu Rzeczypospolitej Polskiej do Konwencji z dnia 9 grudnia 1948 r. o zapobieganiu i karaniu zbrodni ludobójstwa z dnia 18 lipca 1950 r." (Dz.U. Nr 36, poz. 325).

victims of the conflict, providing them with shelter and allowing international humanitarian aid to operate.[8] However, the members of the Commission neglected the fact that back in 2004 the Sudanese administration had done everything in its power to prevent humanitarian organisations from assisting the victims. Even in the early 2010s, Sudanese officials obstructed conducting operations by aid organisations by not issuing visas, refusing permission to travel freely within the territory of the province, etc. The organizing of camps for displaced people was due to pressure from the international community on the Sudanese regime, it was not an act of good will. The arguments put forward by the Commission were insufficient to conclude that acts of genocide were not taking place in Darfur. Once again, the UN sought to proceed cautiously and failed to contribute to a faster solution for Darfur.

Although the UN Commission of Inquiry stated clearly in its report of January 2005 that genocide had not occurred in Darfur, President Bush maintained the view that it had taken place. It is worthwhile asking why Bush's administration used the rhetoric of genocide while it was already militarily engaged in Iraq and Afghanistan, and wished to avoid new interventions at any price. A big influence was the pressure from the evangelical lobby urging the US administration to condemn the Sudanese regime and actively defend Christians from the South, who had suffered as a result of the conflict within Khartoum. Darfur could be the next argument in the Evangelic battle. The conduct of the US administration was definitely influenced by Afro-American organisations which saw the conflict in Darfur as an attempt to annihilate "their black brothers" by Arabic Sudanese authorities. Also, the tenth anniversary of the genocide in Rwanda could lead the administration of George Bush to determine that the conflict in Darfur was genocide. Ten years earlier Clinton had avoided naming events in Rwanda, which became one of the biggest political mistakes in his career, causing the death of hundreds of thousands of people. The anniversary of the genocide in Rwanda induced decision makers to accelerate a reaction on the massacre in Darfur, as well as provoked them to find similarities between the events in Rwanda and Darfur. E.A. Heinze supports the alternative view to avoid comparisons between the events in Rwanda and Darfur, arguing about the huge differences in the speed of escalation of these conflicts, as well as the number of victims. According to him, 800,000 people were killed in Rwanda during 100 days, while in Darfur over a period of 10 months the number of victims reached 70,000. Moreover Heinze states that upholding the opinion that there was geno-

[8] J. Fowler, "A New Chapter of Irony: The Legal Definition of Genocide and the Implications of Powell's Determination", in: S. Totten, E. Markusen (eds), *Genocide in Darfur. Investigating the Atrocities in the Sudan*, New York–London 2006, p. 133.

cide in Darfur by the American administration, especially after the UN Commission of Inquiry presented a different view, could be seen as a manifestation of the power of the United States and its will to attack Sudan for its rich oil deposits.[9]

However, during the conflicts in Darfur and Rwanda international governments faced exactly the same problems in assessing and reacting to the evidence of genocide. Although today the assessment of the conflict in Rwanda is unambiguous and recognises that Tutsi were victims of genocide, in 1994 this matter caused a lot of emotions and the international opinion was ambiguous. State Department spokesperson Christine Shelly tried to clarify at the time that acts of genocide had happened in Rwanda, but that genocide itself had not. Shelly was unable however to explain how many acts of genocide would have to happen to be considered a crime of genocide. This is a great example of how difficult it was for Clinton's administration to address the crisis in 1994.[10] Similar hesitation in identifying genocide happened in the case of Darfur. Although both chambers of the US Government, the President, and the Secretary of State acknowledged that de facto genocide had happened in Darfur, it did not affect an active operation or intervention on the part of the US administration. "The crisis in Darfur reveals that, despite all the promises since Rwanda that such a catastrophe would not be allowed to happen again, the international community still lacks the institutions, procedures, and political unity necessary to respond in a timely way. The global response to rapidly developing conflicts is still the same: painfully and tragically slow."[11] A similar view is represented by G. Prunier who states that: "Those who still dare to say never again are either totally ignorant or hypocritical."[12]

2. Origins of the concept of genocide and its legal frames

The notion of genocide came into the international law and social sciences after World War II, thanks to the work of Polish lawyer Rafal Lemkin. The term first appeared in his work *The Axis Rule in Occupied Europe*, published in 1944. Lemkin, whose family was murdered in the Nazi extermination camps, spent the greater part of his life fighting to protect humanity from the crime of genocide. Unfortunately most of his works are

[9] E.A. Heinze, "The Rhetoric of Genocide in U.S. Foreign Policy: Rwanda and Darfur Compared", *Political Science Quarterly*, Vol. 122, N°3 (2007), p. 376.

[10] G. Caplan, "From Rwanda to Darfur: Lessons Learned", in: S. Totten, E. Markusen (eds), *Genocide in Darfur. Investigating the Atrocities in the Sudan*, New York–London 2006, p. 175.

[11] C.O. Igiri and P.N. Lyman, "Giving Meaning to *Never Again*: Seeking an Effective Response to the Crisis in Darfur and Beyond", Council on Foreign Relations, CSR N°5 (2004), p. 23.

[12] G. Prunier, "Genocide in Darfur", *Le Monde diplomatique*, March (2007), at http://mondediplo.com/2007/03/08darfur

forgotten and over 20 thousand pages remain unpublished.[13] However, Lemkin's efforts had contributed hugely to establishing *The Convention on the Prevention and Punishment of the Crime of Genocide*, adopted by the UN General Assembly in December 1948, just a day before the adoption of the *Universal Declaration of Human Rights*. The convention was adopted despite many problems with establishing its final shape, concerning mainly the decision of which groups should be protected by it. Some countries initially proposed to recognize crimes against social and political groups as genocide, not as it is set out in the final version, i.e., groups attacked on ethnic, national or religious grounds. The Convention came into force in 1951, and was ratified by Sudan in 2003.

The Convention on the Prevention and Punishment of the Crime of Genocide recognises genocide as a crime within the meaning of international law regardless of whether it was committed in a time of peace or war. (Article I) Article II defines genocide as an act carried out "with the intention to destroy, in whole or in part, a national, ethnic, racial, or religious group."[14] This provision enables intervention only if it is proven that there was an intention of eradication of a group, which is extremely difficult. The Convention, in its records, protects groups of a lasting nature, in which membership usually is not the matter of choice. Therefore it does not cover the protection of, for example, political groups in which participation is voluntary. If, however, the attempt is to qualify as genocide mass and systematic violations of human rights in African countries for political reasons, in most cases one could do so without interpretation or extension of the Convention. It is due to the specific nature of African political movements that most of them are arising along the lines of existing ethnic or tribal divisions. David Warszawski (Konstanty Gebert) opposes the implementation of the Convention which would extend the protection to social or political groups, claiming that: "[…] all modifications of the definition of genocide would end up in its watering down."[15] The Convention obliges the international community to prevent genocide, but only Article I treats about it and even then it does not specify what the prevention would consist in, nor does it stipulate what measures might be used in order to prevent crimes of genocide; which weakens its proactive nature. It seems therefore that the obligation to respond in cases of genocide is only a dead provision of international law taking into account that since 1948 it has not provided

[13] C.P. Scherrer, *Genocide and Crisis in Central Africa. Conflict Roots, Mass Violence, and Regional War,* Westport 2002, p. 2.

[14] "Convention on the Prevention and Punishment of the Crime of Genocide", in: S. Totten, E. Markusen (eds), *Genocide in Darfur. Investigating the Atrocities in the Sudan*, New York–London 2006, p. 269–273.

[15] D. Warszawski, "Nazywanie nieszczęścia", *Polityka*, 45, 2730 (2009), p. 33.

the basis for any international reaction. It is possible that the rule requiring intervention has been removed from the international law as a result of the Desuetudo principle. It can also be suspected that this non-action taken by the international community could be due to the peripheral location of conflicts and a small amount of information provided by the world media, because of the difficultly in accessing the conflict zones.

Genocide, in the light of the definition contained in Article II, can be divided into: physical genocide which is causing damage to health and death; genocide as the biological control of birth through, inter alia, compulsory sterilisation or preventing reproduction; cultural genocide as a compulsory exclusion, prohibition on the use of a native language, destruction of the cultural goods and assets. In the light of the Convention, punishment would not only be administered for committing the above offences, but also for incitation to commit them, or participation in the genocide (Article III). The document says that offenders will take full responsibility regardless of their functions in the State, or within the public sector (Article IV). They will be subject to the jurisdiction of the State's courts on the territory, or of the international criminal courts, required to prosecute crimes against humanity (Article VI). Although at the time of adopting the Convention such courts did not exist, the intention of the authors was to appoint one, which materialized half a century later when the ICC was established. Although one of the earliest drafts of the Convention anticipated the introduction of the so-called 'principle of universal jurisdiction' which would oblige states/parties to investigate and punish those guilty of genocide in any territory, irrespective of the origin of the offender or the place of the offence. However, fearing a breach of sovereignty, the idea was discontinued. As it was emphasised by Kosińska, in her analysis of legal doctrine and international judicial decisions, even lacking a clause about universal jurisdiction, the Convention is commonly used in relation to crimes of genocide. "Taking into account the provisions of the Convention as a whole and, in particular, the content of Article I, which imposes on all states obligation to prevent and punish genocide, there is no doubt that it is possible to exercise jurisdiction on a universal basis."[16]

The Convention itself, as emphasised by most experts, is not sufficiently defined in terms of prevention and punishment of genocide. This is probably due to the historical period in which it originated. The nature of it was purely a settlement after, still recent then, the Holocaust. Its role was to underline that crimes like this would never happen again. The international opinion did not believe in 1948 that the crime of genocide would ever occur in the future; hence the Convention adopted a declaration con-

[16] K. Kosińska, *Zbrodnia ludobójstwa w prawie międzynarodowym*, Toruń 2009, p. 124.

demning the crimes of genocide, rather than shaped ways of prevention and punishment. It did not introduce any monitoring mechanism, or universal jurisdiction for the legal punishments, which deteriorates its preventive impact.[17] In the Convention, there is no clear way of implementing its provisions. However, even this kind of formulation of a document can lead to achieving the aims determined in the Convention. Implemented provisions ought to be interpreted and should oblige international governments to react in every case where there is a possibility of perpetrating genocide in any part of the world.

This should only lead to the interpretation of its provisions which oblige the international community to respond in all cases of genocide. The example of Darfur shows clearly that the international environment still lacks a common reacting policy when it comes to suspicions of genocide because, once again, innocent victims suffer. J. Fowler emphasizes that the regulations defining genocide in the Convention are so ambiguous that the prospect of preventing or suppressing genocide becomes very problematic.[18] However, it should be recalled that Article VII explicitly allows any state/party to turn to the relevant agencies of the United Nations and expect an adequate response. It is worth mentioning that the Convention was not ratified by the United States, the main player on the international political stage until 1988.

During the Cold War the provisions of the Convention were referred to very rarely, failing in the case of crimes committed in China (the cultural revolution), Indonesia (the rule of Suharto) and Cambodia (75-79). The preventive role of the document also failed in the cases of conflicts during the breakup of the Soviet Union (Srebrenica, Rwanda).[19] Therefore the question of the measures which should be applied in order to effectively respond to possibilities of genocide still has not been answered.

3. Prevention of genocide

It is worthwhile considering measures for prevention of genocide and their effectiveness. One of the major initiatives established to carry out this task was the opening of the U.S. Holocaust Memorial Museum (USHMM) in Washington in 1993. The activities of this institution are not limited to the remembrance of crimes committed by the Nazis upon Jews during World War II, but also promote taking steps to prevent the reoccurrence of

[17] W.A. Schabas, "Convention on the Prevention and Punishment of the Crime of Genocide", Introductory Note, U.N. Audiovisual Library of International Law, at http://legal.un.org/avl/ha/cppcg/cppcg.html

[18] J. Fowler, "A New Chapter of Irony…", p. 127.

[19] D.C. Peifer, "Introduction to Genocide", in: D.C. Peifer (ed.), *Stopping Mass Killings in Africa. Genocide, Airpower, and Intervention,* Maxwell 2008, p. 6.

such tragedies in the future. Two years after the establishment of USHMM, the Committee on Conscience (COC) was formed to influence international politics and propagate the idea of fighting genocide. In 2000, a system of quick reaction was established within the Committee framework and it was used in that same year in response to the Sudanese government's actions in the Southern provinces of the country. In appreciation of that initiative, among others, the American administration actively engaged in peace talks between the Sudanese government and Northern rebels.

A comprehensive programme of response to genocide and attempts to prevent it was created within the so-called Global Human Rights Regime, the collection of many organizations and researchers involved in defence of human rights around the world.[20] It consists primarily of creation of a theory of effective prevention of genocide, its implementation in practice and potential humanitarian intervention by international governments in regions where other methods are failing. The idea of protecting people and preventing genocide has not been an object of controversy since WWII. Problems occur only when it comes to its effective implementation. This is primarily due to the fact that to effectively prevent the crimes there should be a system of rapid response to serious indications of breaches of human rights, which may lead to genocide in the future. Researchers engaged in human rights violations discourse note that in a number of cases, prior to carrying out genocide on a particular group, its members were oppressed and their rights as human beings were severely breached. Hence the need for an early response to cases of serious human rights violations, which are likely in the long term to lead to genocide. As Neal Riemer declares: "[…] the battle against genocide necessarily involves protecting a range of human rights violations that are often premonitary (or early warning) signals of coming genocide. Such human rights violations, for example, are exemplified by gross maltreatment of ethnic and political opponents, religious persecution, racial discrimination, and violations of other basic human rights, including freedom of speech, press and association."[21] As already stated in previous sections, serious violations of human rights had led to the crisis which broke out on a massive scale in Darfur in 2003. The primary issue in the prevention of genocide seems to be the reinforcement of international monitoring in unstable regions of the world. The disaster in Darfur has shown that monitoring measures, as well as in the case of genocide in Rwanda, failed in the light of the tragedy occurring in the region.[22]

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[20] N. Riemer, "Conclusion", in: N. Riemer (ed.) *Protection Against Genocide. Mission Impossible?*, Westport 2000, p. 145–157.

[21] *Ibid.*, p. 146.

[22] S. Totten, "The Intervention and Prevention of Genocide: Where There Is the Political Will, There Is a Way", in: S. Totten, W.S. Parsons and I.W. Charny (eds) *Century of Genocide*, New York–London 2004, p. 471–472.

The sluggish flow of information about events taking place in the province was a clear demonstration of it. The peripheral location of Darfur in no way justifies the inappropriate and ineffective monitoring of the situation. It is only evidence of the necessity of stronger efforts in order to supervise troubled areas of the world. There are already UN agencies and NGOs which operate effectively in troubled areas, the only matter is to coordinate and extend their operations. It would create a system of rapid response to suspicions of genocide and would be based on the activities of the independent agencies within the UN organisation. The creators of such a system would have to be experts in the field of international law, human rights and genocide.[23] However, knowledge of the possibility of genocide in some parts of the world is not adequate. At some point action has to be taken in order to prevent the crime. Diplomatic efforts are not always effective and greater steps should be taken to prevent tragedy, hence the proposal of creating a special force within the UN framework which would guard human rights. The nature of those forces would be voluntary and they would participate in missions in risky areas.[24] According to S. Totten, they would have a "[...] strong mandate with a well-trained, well-equipped, and adequately sized contingent of personnel working in a timely manner."[25] For the time being the issue of the legitimacy of a global force standing on guard for human rights is only too pending. Their formation would most likely confirm an assumption that formed in the Western order: human rights are universal, and not many representatives of non-western cultures will agree with that. Not joining the discussion on the universal nature of human rights, it has to be said that genocide is the most tragic crime against humanity that directly endangers its survival, so prevention and defence against it should be a global matter. Therefore it seems to be necessary to emphasise the great role of particular countries, nations and cultures in preventing and fighting genocide.

4. Dilemmas of humanitarian intervention

The fundamental problem which appears when examining humanitarian intervention issues is their legitimacy. It is worth remembering that since the peace of Westphalia in 1648 sovereignty of a country has become a supreme matter in mutual relations between states, as well as in the basis of the world order. On the one hand, it does not allow the violation of borders and the independence of a state and significantly limits aggression on the international arena. On the other hand, it has allowed many lead-

[23] *Ibid.*, p. 475.

[24] N. Riemer, "Conclusion…", p. 148.

[25] S. Totten, "The Intervention and Prevention of Genocide…", p. 481.

ers, often tyrants or usurpers, to interpret their sovereignty as the right to treat their subordinates in a reprehensible manner, without fear of interference from the outside world. Military intervention is certainly a violation of the sovereignty of a state, hence disputes in modern legal doctrine on force of its application in certain passages.

Nevertheless, the United Nations Charter (Article 2, paragraph 7) expressly states that: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter."[26] Recognizing the sovereignty of a state as a fundamental value one may wonder where the limit at which the international environment should react is. One cannot after all accept notorious violations of the human rights, persecution of a group or committing crimes on citizens, as only an internal matter of a state, in which no one should interfere. Article 1, point 3 of the United Nations Charter clearly demands: "To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."[27] One of the key ideas contained in the document is the protection of human rights. Its importance is demonstrated in the words of the Preamble to the Charter, which are the objectives facing the international environment: "We, the peoples of the United Nations, determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom."[28] In the light of the Charter, protection of human rights is paramount and should be implemented at any cost. Although the document protects the right to sovereignty of a state, it seems that this entry is of less importance and should be subordinate in relation to the need to protect human rights. In certain situations, when it is impossible to implement both of the rules at the same time, if there

[26] *Charter of the United Nations* (1945) United Nations, at http://www.un.org/en/documents/charter; „Karta Narodów Zjednoczonych, Statut Międzynarodowego Trybunału Sprawiedliwości i Porozumienie ustanawiające komisję przygotowawczą Narodów Zjednoczonych z dnia 26 czerwca 1945 r." (Dz.U. 1947 Nr 23, poz. 90).

[27] *Ibid.*

[28] *Ibid.*

is a conflict between them, in this case primacy should be given to one of them. Of course, both rules will still apply, still form the basis of the system, however, one of them should be elevated above the other. In the case of crimes of genocide, it seems even more obvious. As indeed one can invoke the right to sovereignty of states, which maintains a policy of extermination of its own citizens.

Considering the issue of the Security Council's position on humanitarian intervention, we need to notice a slight but significant change in the 1990s. It shall be recalled that during the Cold War it was rare to justify use of force with humanitarian reasoning. The Western countries noticed, however, the great importance of civilians protection during armed conflicts and it affected the Security Council's position on humanitarian intervention. It referred to accepting the internal country state as a possible threat to international peace and safety. In 1991, for the first time since the reaction to human rights crisis in Rhodesia and the Republic of South Africa, the Security Council admitted that infringement of Kurds' rights and freedoms constituted a threat to international peace. It could have been acknowledged as a milestone on the way to make international reaction effective; however, there was no recall to Art. VII of UN Charter in 688 resolution.[29]

Nevertheless, the change in the attitude towards reaction to internal conflicts and limits on state competences within internal affairs was important in developing the humanitarian intervention concept. In time passing the Security Council broadened the scope of the notion referring to a threat to peace or safety beyond the aggression or armed assault to include internal conflicts, humanitarian disaster or the fall of the legitimate government (resolutions on Somalia, Rwanda and East Timor), as well as acts of terror (Security Council resolutions 1368, 1373).

The only legal possibility for the of use force in international relations must be authorized by the Security Council. Justifying grounds to use force cannot rely only on legal criteria, due to the Security Council's deadlock, but must consider the ethical issue, that legitimizes the intervention, which is in fact illegal. Use of force is a controversial issue and one of still unresolved problems in public international law. We cannot resign, however, from such analyses appealing to the sovereignty concept or ban on use of force, as in many cases an armed intervention becomes the only possible solution to prevent or stop mass killing, genocide or other crimes against humanity and international law.

[29] N.J. Wheeler, "The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society", in: J.M. Welsh (ed.), *Humanitarian Intervention and International Relations,* Oxford 2004, pp. 29–33.

As Zajadlo noticed: "humanitarian intervention must be considered as an ultima ratio and enacted in extraordinary circumstances of mass human rights crises."[30] Hence, there is a need to define conditions of its acceptability to exclude possibility of abuse and realization of a particular, neo-imperial policy. While discussing the relation between humanitarian intervention and states' sovereignty, it must be underlined that such an intervention is only possible when sovereignty is no longer positively attached to the citizens' protection duties and starts to threat internal safety. If a country abuses its governmental obligations, exterminates people on ethnic grounds, or kills its citizens, it is not permitted to rely on sovereignty exception in case of external intervention. *Responsibility to Protect* (R2P) project became one of the central elements of the United Nations reform that was about to be introduced during the World Summit in 2005. The idea was well received by international community which was about to establish the criteria of international reaction to armed conflicts, genocide prevention, ethnic cleansing or other war crimes. The fundamentals of R2P project was the Canadian Government's decision to establish the independent International Commission on Intervention and State Sovereignty (ICISS). The result of its work was publishing R2P report in 2001. Report laid an emphasis on states' obligation to protect their citizens within their sovereignty. The international community would be legitimized to intervene when the government of a particular country breached this obligation allowing its citizens to suffer from a domestic war, repressions or persecutions.

One of the indicators that allow declaring humanitarian intervention as legitimate is the definition of a just intention in undertaking it. In *Humanitarian Intervention. Legal and Political Aspects* report, the just intention is combined with impartiality and non-involvement. The state intervening shall not support any of the conflict parties and act straight to cease humanitarian crisis. The best option is to delegate rights of intervention to the state that has no interests in the country of intervention, which obviously is hard to achieve in reality.[31] As J. Sharp underlines, it is sufficient for international community members to undertake intervention even without any personal interests: "But when force is needed to discipline rogue nations, the system must provide for the major powers to intervene for the common good, even when their own short term national interests are not at risk."[32]

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[30] J. Zajadło, *Dylematy humanitarnej interwencji: Historia – etyka – polityka – prawo*, Gdańsk 2005, p. 206.

[31] *Humanitarian Intervention. Legal and Political Aspects,* Danish Institute of International Affairs, DUPI, Copenhagen 1999, p. 110.

[32] J.M.O. Sharp, "Appeasement, Intervention and the Future of Europe", in: L. Freedman (ed.), *Military Intervention In European Conflicts*, Oxford 1994, p. 34.

In the course of increasing the transparency or legitimacy of intention in certain operations it is advisable to undertake actions by a group of states rather than by a certain country. The best option is cooperation with some regional organization. Its purpose is to minimize the role of other motives than strictly humanitarian, as common political reasons are hard to achieve in a group of states. For that reason a multilateral intervention must be considered to be most transparent.

When we are dealing with acts of genocide, it seems to be obvious that this policy must be given primacy: the principle of protection of human rights. This is necessary if we want to avoid such a tragedy that brought us to the 20th century, which were the saturated acts as ways, being modified for such a wide scale that in no way can one express the extent of the atrocities, which was undoubtedly a defeat to arrogance. There should be no consideration about the right to sovereignty for those countries which are committing genocide on part of their population. This position, despite the earliest of the direct representatives of the international community and lawyers, who recognized the protection of sovereignty to be the highest value, is already considered in force from the early 1990s.

Summary

The events which took place right after the outbreak of the insurgency in Darfur meet the definition of genocide. Crimes were committed primarily on black citizens of the region (Fur, Masalit, Zaghawa) by the Sudanese Government's forces with the participation of Arab militias paid from Khartoum. It is difficult to prove that they could have been prevented, however many facts suggest that pursuing prevention would have led to good results. The evidence of the tragedy happening in the region existed through, inter alia, satellite photos provided by NASA. However, once again, as in the case of the genocide in Rwanda ten years earlier, the international community failed to respond. Thus, having this in mind, in this article I attempted to present possible ways to respond to genocide.

In the case of Darfur, preventing the genocide was unsuccessful, which does not mean that international agencies are released from the obligation to draw conclusions for the future. The Darfur tragedy should be a lesson that we never repeat. The manner of decision-making in the United Nations and, particularly, the Security Council, which at the time of the conflict in Darfur was paralyzed by pro-Sudanese China and Russia, has to dramatically change, otherwise there is little chance for the effective prevention of genocide in the future.

So far any attempt to reform the UN has ended in fiasco. One of the most interesting ideas was to create, independent of the UN, NGOs which

should look at both prevention of and reaction to genocide. They would be based primarily on a system of rapid response, which would combine activities of many existing NGOs, involved in preventing genocide, with those units created in the framework of the Agency's own response groups. It could also combine with representatives of the media, who often risk their own lives to be the first to reach troubled spots.

However, even if this system could act without reservation, it would not be sufficient enough to effectively respond to a crime in every situation. In most cases, to more actively prevent genocide, measures of a diplomatic, political, and economic character should be taken and, when necessary, a military intervention should be carried out by international forces, independent of the United Nations. An end ought to be finally put to the view that sovereignty of the state is the highest value and should be protected at all costs. The principle of sovereignty of a state should not be honoured if human rights are breached. Of course, military interventions always have, and still do, caused a lot of controversy. This happened most recently as an effect of the imperialistic politics of the United States and its interventions in Afghanistan and Iraq, or similar steps Russia took in Ukraine, or when, like in the case of Iraq, it appears later that the main reason for the invasion – the suspicion that it has weapons of mass destruction – was proved to be bogus. The Ukrainian case is even worse, as the intervention was legitimized by the idea of protection of Russian citizens aimed at regaining independence of a particular region, like Crimea and Donetsk (presently occupied or under the war). Failed and unjustified military intervention should not however be used in building an opposition to the policy of humanitarian intervention in genocide. There is a need to create an international decision making base to respond to any crisis. An independent intervention by one state is unacceptable as it may inadvertently lead to multiple degenerations and distortions. It is necessary to create an international forum in which participants will be professionals in the field of international law and the prevention of genocide, representatives of international organisations and the media, with practice in the prevention or fighting genocide. Its framework should be a basis for an international agency, whose sole task would be to monitor 'trigger points' in the world and effectively respond to crimes.

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THE CONFLICT IN DARFUR IN THE PERSPECTIVE OF GENOCIDE PREVENTION

Abstract: The article presents the records collected by the Darfur Atrocities Documentation Team (ADT), which have proved the occurrence of genocide in Darfur. It describes the discussion of the academic community and often conflicting political positions on the issue. The author attempted to analyse the results of the work of the International Commission of Inquiry on Darfur (ICID), appointed at the request of the United States by the UN Security Council, which examined the numerous violations of the international law in the province, but did not express an opinion whether or not genocide had taken place in Darfur. He has confronted the collected evidence of crimes committed in Darfur with the "Convention on the prevention and punishment of genocide", which obliges the international community to intervene when genocide is proved to be happening. The conflict in Darfur has been presented as an example of the ineffectiveness of the response of the international community to genocide. Therefore, an analysis was carried out on the means of effective prevention of genocide, which can be used in future prevention of crimes in other regions of the world.

Key words: DARFUR, GENOCIDE PREVENTION, CONFLICTS IN AFRICA, SUDAN