The ICC Intervention in the Darfur Crisis

Is the warrant of arrest against Omar Al-Bashir acceptable and enforceable or is the intervention a case of "neo-colonialism"? - A paper about the acceptable boundaries for the intervention of the International Criminal Court in a sovereign nation.

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The human tragedy in Darfur is a matter of serious concern to us and to Africa, as it is to the international community. In that regard, in the interest of justice and accountability, we believe that further delay in reaching an agreement in the hope of a more desirable outcome would not serve the needs of justice of the aspirations of the people of Darfur to peace, justice and reconciliation... We are relieved that the Council has ultimately taken action on the matter... We strongly believe that the [International Criminal] Court is the most appropriate organ for dealing with the situation in Darfur, as recommended by the Commission of Inquiry.

Tanzania, voting for Security Council Resolution 1593

quoted in Redress, 2007
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"Too many times, in the aftermath of mass atrocities, we've promised 'never again',"

British Foreign Secretary, David Milliband.

1. Introduction

Darfur, a region on the west of Sudan, is home to over six million people, is divided into different ‘African’ tribes such as Zaghawa, Masalit, and Fur, and also many ‘Arab’ tribes. For many years there have been clashes over land and water between the Muslim north and the Christian south; and their resources have been escalated by a high rate of desert growth (Shapiro & Marlowe, 2004). Regardless of the only recent attention to the conflict in Darfur, these tribal clashes are not new; however, there have always been traditional frameworks for solving these conflicts. But as of now, the Government of Sudan (President Al Bashir) has stepped up its support for some Arab tribesmen and particularly for a militia group known as Janjaweed. In fact, the government has not only supported the Janjaweed with weapons, but it has also indiscriminately attacked civilian areas with its full military arsenal, particularly aerial bombings from Antonov bomber planes (Shapiro & Marlowe, 2004).

Africa has been for many years now the host to many of the most terrifying atrocities of modern times. Some of these crimes, defined as crimes against humanity and war crimes and the failure of the state where the crime has been committed to deal with a proper prosecution of the alleged criminals, have been the reasons why tribunals such as the Criminal Court for Rwanda were created. Following the creation of several ad hoc tribunals, the decision to create a permanent court was implemented and the International Criminal Court (ICC) became active in 2002 (International Criminal Court [ICC], 2008). The ICC works under the strict framework of the Rome Statute, which is a complex and complete document entailing the legal definitions of crimes against humanity and war crimes, the Court’s jurisdiction, the process of investigation and prosecution, the explanation of a trial, the penalties, etc…(International Criminal Court [ICC], 2008). These procedures are all explained
more in depth later on this essay. In the last couple of years the court has faced its biggest case in its history. The ICC has issued a warrant of arrest for the president of Sudan, Omar Al-Bashir on the charges of five counts of crimes against humanity: murder; extermination; forcible transfer; torture and rape and two counts of war crimes: intentionally directing attacks against a civilian population as such or against individual civilians not taking direct part in hostilities; and pillaging (ICC, 2009). A major question has been raised after the issuance of the warrant of arrest. To what extent is the intervention of the ICC legally and morally acceptable in a sovereign nation like Sudan? There are conflicting views and perceptions on the intervention of the ICC in Darfur. Some claim the ICC is performing a neo-colonialist move by interfering with a sovereign state, and others claim that the ICC is not doing enough to bring justice to the alleged criminals in Darfur; these changing views are partly due to the lack of outreach\(^1\) possibilities of the ICC to the people of Darfur, therefore a misunderstanding of the functions of the court and also false expectations.

This essay deals with the research question fully supporting the intervention of the ICC in the particular case of Darfur and it is developed in the following order; to fully understand the intervention of the ICC in Darfur, it is important to explain in detail, first, the different factors influencing and fueling the civil conflict; what has happened, and why? Who are the actors involved? A second section is dedicated to the explaining of the functioning of the ICC and the Rome Statute. This section serves as background information to the understanding of the ICC’s intervention in Darfur by defining what is considered war crimes, crimes against humanity, how cases are chosen, the relationship between the United Nations and the ICC, the investigation process and the trial procedure. Following this explanation, as a third section, the intervention of the ICC in the civil conflict of Darfur is examined and an analysis of whether the boundaries for intervention are set accurately is provided. The fourth section deals with the views and perceptions of Sudanese civilians, a Sudanese judge; and other African states’ civilians’ views. This section also includes personal statements from Sudanese nationals taken from a recent outreach event of

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\(^1\) Outreach is an effort by individuals in an organization or group to connect its ideas or practices to the efforts of other organizations, groups, specific audiences or the general public. Unlike marketing, outreach does not inherently revolve around a product or strategies to increase market share.
the ICC in The Hague and an interview with a former German Ambassador to Sudan. This essay is concluded by reiterating that the intervention of the ICC in the conflict of Darfur has been based upon legal and moral accurate boundaries. The purpose of this essay is first to clarify the ICC’s mandate; second, to emphasize the importance of awareness of the conflict in Darfur, third and most importantly to reiterate the unity and solidarity of the human race as a whole, because the crimes committed in Darfur are so grave that they should be seen as aggressions against all humanity and not just an internal, domestic Sudanese affair.

2. The Conflict in Darfur

Sudan, the largest country in Africa, and one of the most diverse regions, emerged from a 20-year war between the Muslim north and the Christian south. Since then, Sudan has lived through two brutal civil wars, out of which one is still ongoing. Due to the region’s ethnic division, the profession of the different ethnicities has been one of the reasons for the struggle within Darfur. The camel herding Arab nomads live in the northern region of Darfur whereas the farming so-called black Africans live in the south. According to *The Tragedy of Sudan*, by Simon Robinson (2004) the conflict is literally rooted into the soil of Darfur. Over the last decades a persistent drought has forced the Arab tribes to move from the north to the more fertile south. By doing so they started to push the black Africans away and the government in Khartoum supported them in their struggle for land. This eventually led to an enormous frustration amongst the black African part of the population. Tensions between the Muslim Arab nomadic tribes and the black Africans grew stronger in April 2003 in the impoverished and arid region of Darfur when the Sudanese Liberation Army (SLA) and the Justice and Equality Movement (JEM) attacked government targets retaliating for the oppression of black Africans and the favoring of Arabs. During this attack the rebel groups killed 75 Sudanese soldiers, destroyed four aircrafts and kidnapped the air-force chief (Robinson, 2004). In response, Al-Bashir called on all local Arab tribes to crush the rebellion. It turned out that small Arab nomad groups that saw the opportunity to gain land “under the banner of state-
sanctioned military operation” were the most eager recruits (Robinson, 2004). These are called the Janjaweed. However, the Janjaweed did not stick to just crushing the rebellion; by August 2003 they were held responsible for attacking and killing Darfuri civilians, often members of the same tribe as the core rebels. Robinson (2004) says that the conflict in the region soon became an ethnic cleansing, as the Janjaweed began to attack people on basis of ethnicity. Al-Bashir utilizes a specific strategy for the attacks; first the Sudanese air-force bombs villages, and then the Janjaweed fighters attack, destroying anything that is left untouched and/or unharmed and killing the remaining inhabitants (Goff, 2007). Even though Omar Al-Bashir denies backing the Janjaweed, several witnesses’ accounts and former Janjaweed fighters claim he does.

The government in Khartoum has since the beginning of their struggle supported the Arabs in their fight for land. This has led to enormous frustration of the African part of the Darfuri population. The attacks on the airport in al-Fashir happened in response to the enormous frustration of what the SLA, Jem and other rebel groups claim to be decades of political oppression and economic neglect of the Sudanese government (Mans, 2004). Given the complexity of the conflict and the several armed rebel groups, it is necessary to clarify who plays which roles; therefore, the rebel groups are briefly explained below.

The Janjaweed is the Arab militia fighting in Darfur, backed by the Sudanese government. The African name means “Devils on horsebacks” and most of its members are drawn from small Arab camel-herding tribes of the northern Darfur region. Their hope is to gain land by forcing the black Africans out of the region. The Janjaweed has shown everyone how aggressive they can be and actually are. Their attacks are deliberately and systematically directed to Darfuri civilians leading to the displacement of thousands of black Africans. Furthermore, through working closely with the government they enjoy great freedom and the government authorizes impunity to the militia (Hastrup, 2008). Another group known as the Sudanese Liberation Movement/Army (SLM/A) was, according to the BBC, one of the first rebel groups in Darfur. The movement is composed of the three largest non-Arab tribes
of the region, the Fur, Zaghwa and Masalit. SLM/A has as of now, split into three different groups.

The Minni-Faction is led by Minni Minnawi, one of the first to sign the Darfur Peace Agreement (DPA) in 2006. By doing so, he was rewarded with the symbolic post of being Omar Al-Bashir’s special adviser (BBC News, 2009a). However, his group had already been losing support before the DPA and lost even more after the agreement and therefore their power in Darfur is minimal (BBC News, 2009a). The second group, under Abdel Wahid who lives in exile, enjoys wide support amongst the Fur tribe. The group controls a part of the central Jebel Marra mountain area (BBC News, 2009a), however they seem to be losing support as Wahid refuses to come back to Sudan. Wahid claims to be the only rebel interlock utor (BBC News, 2009a). Furthermore he demands security in Darfur, including the total disarmament of the Janjaweed militias, before peace talks (BBC). The third unit is the SML/A Unity was formed due to dissatisfaction with Minni Minnawi and Abdel Wahid. It is based in northern Darfur and consists mainly of Zaghwa tribe members. The ICC has accused this unit for attacking an African Union base in 2007 in which 12 African Union were killed (BBC News, 2009a). Another important actor in the conflict is the Justice and equality movement (Jem), their development is explained next.

The Jem was founded by the Darfuri Hassan al-Turabi. He used to be a partner to Al-Bashir and collaborated with him in the 1989 military coup that overthrew the former government. The Jem has bases in Chad and the Khartoum government claims that Chad supports it in many ways. As the Janjaweed attack Chadian villages close to the border, the Chadian government has a specific interest in supporting the rebel groups. Nonetheless, the government in Chad denies any interferences with Sudanese rebel groups. It is said to be the most significant fighting force in Darfur at the moment. When JEM attacked the capital Khartoum in May 2008 they gained a lot of support from the population. The group has signed a “declaration of intent” for a peaceful settlement of the war (BBC News, 2009a).
3. Functioning of the ICC and Rome Statute

Before explaining the court itself, it is important to reiterate that the court’s mandate is purely and only judicial. The court does not intend to bring humanitarian relief; it intends to bring justice. It is an international court established to investigate, prosecute and try individuals (not states) accused of committing the most serious crimes like: genocide, crimes against humanity and war crimes. It was created by the United Nations General Assembly after arriving to the conclusion that a permanent international court was needed following the prior establishment of two ad hoc tribunals (Yugoslavia and Rwanda) (ICC, 2009). The court works under the strict framework of the Rome Statute which is a treaty adopted on 17 July 1998 in a conference of 160 states (ICC, 2009). The Rome Statute entails the definitions of the crimes under the jurisdiction of the ICC. The countries which have accepted these rules are known as States Parties and are represented in the Assembly of States Parties. As of June 2009, 108 countries were States Parties to the Rome Statute. Out of these, 30 are from Africa. Sudan is not a State party to the Statute of Rome.

It is important to clarify that even though the ICC was created by the UN General Assembly, the ICC is an independent body with its own mandate and jurisdiction. The Court was not established to replace any national criminal justice system; it is a complement to them (ICC, 2009). It only interferes when the State where the crimes are being perpetrated is unable or genuinely unwilling to do so. The ICC may only investigate crimes that have occurred after the entry into force of its Statute on 1 July 2002. Furthermore, under the ICC mandate, no one is exempt from prosecution because of his or her position; as it can clearly be seen in the case of Darfur with the issuance of arrest for President Al-Bashir (ICC, 2009). Al-Bashir is being accused of committing crimes within the jurisdiction of the Court. These crimes are defined by the Rome Statute as follows:

**Crimes against humanity**

Crimes against humanity include widespread or systematic attack directed against any civilian population, these crimes include: Murder; extermination; enslavement;
deportation or forcible transfer of population; imprisonment; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence; persecution against a particular group on political, racial, national, ethnic, cultural, religious or gender grounds; enforced disappearance of persons; the crime of apartheid; other inhumane acts of similar character (ICC, 2009).

War crimes

These crimes include grave breaches of the Geneva Conventions and other serious violations of the laws and customs applicable in international armed conflict. In the case of Darfur, President Al-Bashir is accused on two counts of war crimes: intentionally directing attacks against a civilian population as such or against individual civilians not taking direct part in hostilities; and pillaging (ICC, 2009).

The Court does not have its own army, therefore it relies on State cooperation, which is completely necessary for the arrest and surrender of suspects. Al-Bashir’s trial would be held in The Hague and he would be provided with proper legal assistance if he is unable to pay for it himself.

4. Intervention of the ICC in Darfur

4.1 What happened in the United Nations before the case of Sudan was referred to the International Criminal Court?

People around the world, especially human rights activists, got alarmed by the growing number of reports about atrocities and displacements in Sudan throughout 2003 and 2004. These concerns grew when the African Union decided to send soldiers to Darfur in order to ensure peace and safety, the soldiers operated under the name African Union Mission in Sudan (AMIS). Meanwhile the UN favored a peaceful solution based on diplomacy rather than sending military forces to the region (Redress, 2007). In early 2005, the United Nations decided to establish the United Nations Mission in Sudan (UNMIS) to promote peace and to give humanitarian assistance (UN-
Regardless of the presence of foreign troops and observers the Government of Sudan did not intervene or stop the atrocities for that matter. At this point, the United Nations decided in September 2004 to establish the International Commission of Inquiry on Darfur (Redress, 2007) which presented its report to the Security Council in January 2005. According to this report the Government of Sudan and the Janjaweed were responsible for serious crimes against the population in Darfur which constituted crimes under international law. Furthermore the actions the government has taken were not adequate and efficient. Although the government had installed special courts dealing with crimes committed in Darfur the impartiality and functionality of these courts was questioned by the Commission and hence the Commission stressed “the need to do justice” (UN, 2005, p.144).

The Commission strongly recommends that the Security Council immediately refer the situation of Darfur to the International Criminal Court, pursuant to article 13(b) of the ICC Statute.

(UN, 2005, p.5)

The ICC is, according the to the report of the Commission, the only international institution that deals with criminal justice and hence the only organization that can deal with the difficulty of investigations in Sudan as it is independent from national interests of certain countries and backed up by the UN. Furthermore the fact that the ICC could be activated immediately fostered the opinion of the Commission. After the Commission’s presentation of the report, the majority in the Security Council voted for Resolution 1593\(^2\), agreeing with the recommendation to refer the case to the ICC.

\(^2\) According to resolution 1593 the UN Security Council decided to refer the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court. The ICC was urged to cooperate with domestic courts and to promote the rule of law. Furthermore the UN invited the Prosecutor to address the Council within three months of the date of adoption of the resolution. All member states of the United Nations have to support the ICC. (Security Council, 2005)
4.2 What were the actions, the International Criminal Court has taken and which Problems does the court face?

On 1 June 2005, Luis Moreno-Ocampo, chief prosecutor of the ICC, opened the investigation into the situation in Darfur. The Prosecutor’s office collected thousands of documents, videos and interview transcripts, reporting about killings of thousands of people, the displacement of almost two million people whose villages got destroyed and looted and a serious number of rapes and cases of sexual violence. (hrw.com, 2008) According to Ocampo, these crimes have not been genuinely prosecuted in Sudan because of an inconsistent legal framework, which does not acknowledge “war crimes” or “crimes against humanity” (Redress, 2007). As a result of his first findings the Prosecutor has taken actions to further investigate the situation in Darfur. He has set up a team of investigators from different disciplines and a database, reporting and merging crimes committed in Sudan. Moreover he has selected events for full investigations and identified persons that are likely to be responsible for crimes committed in Darfur (Redress, 2007).

The insecurity observers of the ICC would face in Sudan, makes an investigation within Sudan impossible. This will make the process of justice slower as information must be gathered in other countries. Another complicated issue is related to the high importance the ICC puts on investigation, since they aim for the highest possible amount of evidence, otherwise an accusation against a head of state would not be realizable (Redress, 2007). Accordingly, only a small number of person gets accused by the ICC, in the case of Darfur only three until now have been named: Ahmad Harun, Ali Kushayb and Omar Al-Bashir. In terms of execution of their decisions the ICC lacks support by other states or intergovernmental organizations. The ICC has no police or armed forces to arrest suspects (International Criminal Court [ICC], 2008).

The outreach program developed by ICC faces many obstacles as well. The security situation in Darfur makes it difficult for employees of the ICC to inform the population of Sudan about the actions the court has taken. The information about the ICC available in Sudan is not objective and influenced by domestic media. (Redress, 2007).
dress, 2007) This leads to frustrated expectations, feelings of distrust and even opposition to the ICC amongst civilians which makes the standpoint of the ICC highly difficult. On the other hand expectations towards the ICC may be rather high. This is best illustrated in the movie Darfur:Now, where rebel troops waited for Ocampo and “international troops” to liberate Darfur. (Braun, 2007) Also the relation between witnesses and the court is difficult. A lack of means of protection exposes witnesses to the Sudanese authorities. A prosecution of those contributing to the investigation would occur without any possibility to preserve witnesses (International Criminal Court [ICC], 2008).

### 4.3 Are the boundaries for the intervention of the ICC in the sovereign state of Sudan set legally and morally accurately?

The Statute of Rome gives the ICC a framework which should ensure legitimacy of the courts actions. Prior to the commencement of the investigation by the ICC, and its intervention in the state’s domestic judicial process a state has the opportunity to investigate first. Only if the national system of adjudication does not function properly or the state is not serious about a comprehensive investigation the court intervenes. Furthermore the Prosecutor has a duty to monitor possible improvements of the legal system of the state and consider efforts made, in order to return the case to domestic courts, if possible (ICC, 2009). The overwhelming evidence collected by the prosecutor makes it obvious that crimes against humanity and war crimes have been committed in Darfur. A prosecution of these crimes is necessary to ensure justice (Just, 2008). However, the legal framework of Sudan does not recognize these crimes and hence an effective judicial proceeding is unlikely. The independence of the domestic courts is challengeable and the influence of the government in it makes a conviction of Members of the Government unlikely. Hence justice will probably not occur within the current system in Sudan (International Commission of Inquiry on Darfur, 2005).
The ICC is independent from other institutions and states. According to an agreement signed in 2004, the Court and the UN cooperate on matters of mutual interest. Hence the court is not under control of the UN but a partner since the UN may refer cases to the ICC and vice versa. The close relationship between the UN and the court makes a prosecution of member states possible which are not part of the Rome Statute. Sudan, which has not ratified the Rome Statute but is a member of the UN, has an obligation to adopt UN Resolution 1593 and support the court with its prosecution. By joining the UN and accepting the agreement between UN and the court, Sudan has to cope with the results. States must be aware that a membership in the United Nations could have negative consequences if a violation of human rights (war crimes, crimes against humanity or genocide) occurs.

Sudanese members of government and those who support their position claim that the intervention is a “neo-colonist” movement. As Al-Bashir stated on March 7, 2009 in Fashir, capital city of North Darfur, the prosecution against him and other associates of the regime is an attempt of Western powers to regain influence in Africa’s biggest economy (chinadaily, 2009). This statement is questionable as the only motivation of the court is the strive for justice in Darfur. The ICC clearly has no intention to influence the further development of Sudan. They do not have a direct impact on Sudan’s citizens as they do not provide any humanitarian or financial aid. The ICC is only concerned about judicial issues and provides a neutral basis for a prosecution. This is proven by the high number of lawyers and judges coming from African states. The judges obviously are not in favor of a “neo-colonist” movement in Sudan but support the prosecution of Al-Bashir which obviously means that neutrality and justice are the most important aspect of the process. Additionally the fact that the ICC is backed up by the UN makes the idea of neo-colonialism extremely questionable. The ICC is also not influenced by donators because it is based on two separated pillars. The administrative pillar is concerned with bureaucratic and organizational issues while the judicial pillar deals with the process of prosecution and the trial. These two pillars are kept completely separated, hence donations will not influence the judicial section guaranteeing impartiality. (ICC, 2009)

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3 Source: Meeting at International Criminal Court (The Hague, NL) on June 13, 2009
"Such a move ushers a new era of domination and infringement upon the independence and sovereignty of Sudan."

Omar Al-Bashir at the COMESA\(^4\) summit in June 2009

(mg.co.za, 2009)

This statement was made in reaction to the issuance of warrant of arrest in Victoria Falls in Zimbabwe. This highly loaded phrase has a quite simple message: The independence and sovereignty of Sudan are challenged by the ICC. The idea behind this statement is supported by what he said during an interview with Sir David Frost in the show *Frost over the world* indicated on *Aljazeera English*: “We have a judiciary system that is respected and recognized regionally and internationally” (Frost, 2009)

He claims that an intervention by the ICC is not necessary and that all crimes committed in Darfur will be sufficiently prosecuted by domestic courts. So far, only leaders of rebel groups and some minor members of Sudanese forces had been accused. A genuine prosecution has not taken place in Sudan (International Commission of Inquiry on Darfur, 2005). One has to agree that the sovereignty of Sudan is overstepped by the ICC to a certain point. Generally, jurisdiction is an issue on a national level. However, Omar Al-Bashir cannot expect that the world community is only an outside observer when hundreds of thousands of people get killed and millions get displaced. These crimes against humanity have assumed such alarming proportions that the world community had to intervene rather than watch and wait for Sudanese courts to bring Justice to Darfur. The ICC tries to leave as much responsibility as possible with domestic courts but once they fail to prosecute accurately, an intervention is necessary to prevent further atrocities. So far, the ICC has not rated the conflict as a genocide but if the intervention by the ICC is not successful it could develop to one, soon. Consequently, the world community is morally obliged to take action on the situation in Darfur.

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\(^4\) Common Market for Eastern and Southern Africa
4.4 Means and possibilities to arrest Omar Al-Bashir

The warrant of arrest against Omar Al-Bashir is an important step to bringing those to trial which are responsible for the crimes committed in Darfur. However, the ICC has no forces to implement the warrants and hence cannot arrest Al-Bashir autonomously. To arrest Omar Al-Bashir the ICC is reliant on cooperation by states. So if Omar Al-Bashir travels to another country, which is member of the United Nations, this state has to hand him over to the ICC. Nevertheless, not every member state of the UN acts in compliance with Resolution 1593. When Omar Al-Bashir visited Zimbabwe on 6 June 2009 for a meeting with President Mugabe he was sure of a warm welcome (BBC News, 2009b). Only if Al-Bashir travels to a country that is willing to cooperate with the ICC and to implement Resolution 1593 he will get caught. Since over half of the African states have ratified the Rome Statue and actually every African state is member of the United Nations, his extradition is not unlikely since he probably will not stay in Sudan for the following decades. During his visit to the United Nations Security Council on 5 June 2009, Moreno-Ocampo said that the court is a permanent body and hence the warrant of arrest will be implemented certainly in the long-term. He stresses that although the ICC has no time pressure, the people of Darfur should not be exposed to these conditions, any more and hence a fast realization of the warrant of arrest is what Darfur needs (Besheer, 2009). If the Sudanese government will not surrender and hand over Omar Al-Bashir to the court the means to imprison the president are scarce. Al-Bashir could surrender and hand himself over to the ICC, for example if riots or a revolution occurred in Sudan or a rebel group could arrest him and transfer him to the ICC. These possible outcomes are not very likely because currently the Sudanese government and the Janjaweed have the predominance in Sudan and Darfur and a military strike against Al-Bashir or an overthrow of the government by rebel groups will not occur in a short-term period.

According to the means and possibilities to arrest Omar Al-Bashir, a soon result is not very likely. Al-Bashir will not be so careless to travel to countries which could possibly hand him over to the ICC and a surrender by him or members of his
governments will not occur, either. Nevertheless, since the ICC is a permanent institution and not an ad-hoc tribunal dealing solely with the case of Sudan, in the long-term he will probably be brought to justice. It is up to other states to bring peace to Darfur, the ICC will deal with the condemnation in the aftermath. As they act on mutual interest with the United Nations, every kind of intervention by the UN would mean that Al-Bashir, as well as the other indictees would face a process at the ICC. Scholars such as Rosanna Limbscomp stress that an installation of a hybrid court, a cooperation between the ICC and domestic courts, would be the best way to bring justice to the leaders of military groups, rebels as well as the Janjaweed and the army (Limbscomp, 2006). According to Limbscomp this would “reap the benefits of a purely domestic prosecution, invaluable in international criminal accountability, while maintaining the impartiality of a purely international mechanism” (Limbscomp, 2006, p.186). Limbscomp states that a hybrid court, situated either in Sudan or a neighboring country, would help to overcome issues like the question of legitimacy of the ICC, promotion of reconciliation and provide a better access to accused persons since the domestic forces would cooperate more comprehensively. However, the issuance of a warrant of arrest is a first step to present the aim of the ICC: Bringing justice to Darfur. The circumstances under which justice will be brought to Sudan are unsure but in the long-term, Al-Bashir will most likely face a trial, either at the ICC, a domestic court or a hybrid court.

5. Views & Perceptions

5.1 Interview with former German Ambassador to Sudan

For a more in depth understanding of the topic and to avoid a bias voice, this paper dedicates an entire section to the views and perceptions on the conflict of Darfur; this section entails an interview with former German ambassador to Sudan, Franz Freiherr von Mentzingen (personal communication, June 22, 2009).

According to Mr. Mentzingen, during his period in Sudan, the situation within the population was much different than it is today. Throughout the early 1980s
peace and harmony between the Arabs and Blacks prevailed; however, periods of unrest between the two ethnicities occasionally occurred. Those unrests were mainly raids by nomad Arab tribes into the African area of Darfur with the aim to rob cattle and women, similar to today’s proceedings of the Janjaweed. Due to his [Mr. Mentzingen] involvement in politics while Al Bashir took over in Sudan, the former ambassador was asked to describe the reaction of the other African countries he worked at when Al Bashir took over. Mr. Mentzingen claims that there was not much concern, as military coups and assumptions of power by a dictator was generally not considered as something unusual. “It happened very often in African countries” said Mr. Mentzingen.

In Mr. Mentzingen’s opinion the current conflict developed due to the increased occurrence of common raids. However, this was done with modern weapons on a larger scale. The Khartoum government that had for long supported the Arab tribes provided the Janjaweed with Kalashnikov assault rifles. In Mr. Mentzingen’s opinion, tribal rifts and petty differences between Arabs and Black tribes were subterfuges for other aims and interests. With the new outbreak of hostilities between North and South the government wanted to prevent direct contacts between the black tribes of western Sudan and the Southerners. The indulgence and even more or less clandestine support of the bellicose Janjaweed and other tribal warriors was a cheap means to contain the African tribes. However, the government’s efforts to deny any involvement lost credibility in the process. The mere dimensions of the atrocities called the world community to the scene. In his [Mr. Mentzingen] opinion the chances for a peaceful settlement are not promising at the present. As in almost all major conflicts around the globe; it is obvious that the world community has little means to settle things peacefully and permanently. Neither (military) intervention nor sanctions have proved to be effective, above all, when the culprit enjoys support by friendly allies. The international community can only try to alleviate the suffering of the people and bring the parties involved to refrain from atrocities. Mr. Mentzingen thinks a change of attitude from the government of Sudan is not to be expected as long as the present protagonists remain in power.
Mr von Mentzingen was also asked for his position on the issuance of warrant of arrest for Omar Al Bashir by the ICC. He [Mr. von Mentzingen] sympathizes with the measure and appreciates that it expresses in no uncertain terms that Al Bashir and his Regime are suspected to commit crimes against human rights. If, on the other hand thanks to the lack of cooperation of a number of states, the impotence of the International Organizations once more is evident, it helps to erode the prestige of the organizations such as the ICC. Nonetheless, it should be a matter of careful consideration in each case. If a measure like for instance the issuance of an arrest warrant for a head of state or other prominent leaders of certain states is likely to be successful and therefore advisable.

5.2 Interview with President Omar Al-Bashir on Aljazeera English

On 20 June 2008, Sir David Frost got the chance to interview Omar Al-Bashir after the International Criminal Court had issued the warrants of Arrest against Ali Kushayb, leader of the Janjaweed and Ahmed Harun, former Minister of State for the Interior. The interview was published on Aljazeera English in a special broadcast dealing with the situation in Darfur. Generally, one has to say that Al-Bashir tried to avoid answering some of the questions asked by Frost. When Frost brings up the responsibility the government has, Al-Bashir tries to play down the severity of the whole case. He says that the figures mentioned by the United Nations and many other institutions (300,000 killings and 2.5 million displacements) are totally made up. According to him, not more than 10,000 have been killed and less than half a million have been displaced. By minimizing the whole conflict the responsibility of the government gets smaller, as well. However, he says that the UN as well as other institutions have created figures to incriminate his government. Furthermore, he states that leaders of rebel groups have admitted in front of Sudanese courts that they had sat together with Moreno-Ocampo and made up stories for the same sake.

These claims seem rather far-fetched and can be refuted by looking at the history of the ICC. An institution, launched by the UN and supported by 108 countries

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5 The interview can be retrieved on YouTube: http://www.youtube.com/watch?v=IFHjRbyO3OM
from all continents, can probably not be accused of inventing stories on such a rude manner. The reports concerning the numbers of killings and displacements as well as rapes can be found on the online presences of many human rights organizations, such as Human Rights Watch (hrw.com, 2008). These numbers were obtained autonomously and hence it is very likely that they portray the situation sufficiently. Furthermore he says that 90 per cent of all Darfuris live normal lives, again. The humanitarian situation in Darfur is, as he claims, better than in many other vast areas in Africa. He declares that aid workers never took a closer look to the villages in Darfur and hence do not provide the Western world with a comprehensive overview but a biased and limited picture. Organizations like Medecins sans Frontiers have employees working in Darfur since longtime. They have taken close looks on the whole region, hence the credibility of their information is given.

Frost asks why then all these accusations against his government have been articulated. The reason, Al-Bashir gives, is again rather far-fetched. He talks about a conspiracy against Sudan, founded by “lobbyist groups, linked to Jewish or Zionist organizations”. He fails to give evidence for this statement. Al-Bashir did not answer the question concerning the responsibility of his government throughout the interview. He makes light of the situation and tries to dismiss the findings by international non-governmental organizations.

6. Conclusion

In the previous sections the civil conflict of Darfur was examined. Over the past years there has been a struggle over water and land between the ‘African’ tribes and the ‘Arab’ tribes. The Sudanese government (President Al-Bashir) has showed particular support for an Arab militia group called Janjaweed. This group is recognized for being the perpetrators of many of such crimes that have reached thousands of civilians who have become the victims of rape, murder, massive extermination, forcible transfer and other violations of human rights.

Furthermore, there are no grounds to believe that the Sudanese government is willing to prosecute the war crimes and crimes against humanity mentioned
throughout this essay; moreover, the Sudanese government does not recognize the crimes committed in its territory and does not hold a clear definition of such crimes in its constitution. Therefore, it can be said that there is a need for the intervention of the ICC in Darfur. The unwillingness of the government of Sudan to investigate or prosecute these crimes has led to the referral of the Darfur case by the UN to the ICC. However, the [International Criminal] Court does not claim to be able to solve all the problems of Darfur or to bring humanitarian relief. The Court’s mandate is purely judicial and its purpose is to bring justice to the alleged criminals. The Court has created awareness of the permissiveness that has existed and still exists in Sudan regarding these crimes.

The views and perceptions of the Sudanese differ in their support and disapproval for the intervention of the ICC in Darfur. It can be seen in the questions raised by the Sudanese nationals in the recent outreach event of the ICC in The Hague. Some matters of concern for the Sudanese are the inquiry for the merging of the [International Criminal] Court with other Sudanese courts, also referred to as the implementation of article 16 of the Rome Statute. Other concerns deal with loss credibility they Court may face if Al-Bashir continues to travel without facing arrest. However, he [Al-Bashir] has only traveled to states that are not member of the Rome Statute.

In conclusion, the crimes referred to in this essay are so severe and grave that they are considered a matter of global concern. Therefore, when measures are not taken to mend the damages or to prevent them, like it can be seen in Sudan, the ICC should intervene. Furthermore, this intervention must not be seen as a “neo-colonialist” move but as a duty of human beings as such to rebel against atrocities.
7. References


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