

Prepared for office of RC/HC

## Background Note: Ethnic cleansing

With regard to the recent discussions on the situation of human rights in Darfur and the use of the term "ethnic cleansing", some remarks are made as follows (See *European Journal of International Law*, Drazen Petrovic, *Ethnic Cleansing – An Attempt at Methodology*, Vol. 5, no. 3, Oxford University Press, 1994):

### I. BACKGROUND & DEFINITION

As a result of the internal conflict in the former Yugoslavia between 1990 and 1995, the word "ethnic cleansing" described a set of human rights and humanitarian law violations in both Bosnia and Herzegovina and Croatia. The term was initially used by journalists and politicians who applied it later to other crisis situations, but it has also been adopted as part of the official vocabulary of UN Security Council documents and by other UN institutions and governmental and non-governmental international organizations.

The former Special Rapporteur Mazowiecki defined ethnic cleansing in his report of 17 November 1992 in the following terms:

"The term ethnic cleansing refers to the elimination by the ethnic group exerting control over a given territory of members of other ethnic groups" (*UN Doc. A/47/666 and S/24809 of 17 November 1992*).

Later, in his *Sixth Report* the Special Rapporteur argued that

"ethnic cleansing may be equated with the systematic purge of the civilian population based on ethnic criteria, with the view to forcing it to abandon the territories where it lives" (*74 Sixth Mazowiecki Report II, at 44, point 283*).

A further definition was provided by the Commission of Experts, in their first Interim Report of 10 February 1993. They were of the view that

"...in the context of the conflicts in the former Yugoslavia, ethnic cleansing means rendering an area ethnically homogenous by using force and intimidation to remove persons of given groups from the area.

According to Andrew Bell-Fialkoff,

"ethnic cleansing can be understood as the expulsion of an 'undesirable' population from a given territory due to religious or ethnic discrimination, political, strategic or ideological considerations, or a combination of these" (*Foreign Affairs, Vol. 72, No. 3, 1993*).

There are even broader definitions of ethnic cleansing. According to some international experts, ethnic cleansing could be described as a well-defined policy of a particular group of persons to systematically eliminate another group from a given territory on the basis of religious, ethnic or national origin. Such a policy involves violence and is very often connected with military operations. It is to be achieved by all possible means, from discrimination to extermination, and entails violations of human rights and international humanitarian law.

### II. ETHNIC CLEANSING & INTERNATIONAL LAW

The relationship between ethnic cleansing as a policy and international humanitarian law, understood in a broader sense, could be analysed on three levels which however do not exclude each other (After giving the list of elements of the ethnic cleansing, the Commission of Experts concludes that "ces pratiques constituent des crimes contre l'humanité et peuvent être assimilées à des crimes de

*guerre bien définis. Qui plus est, elles pourraient également relever de la Convention sur le génocide', UN Doc. S/25274, at 16, point 56).*

#### **A. The Geneva Conventions**

Most ethnic cleansing methods are grave breaches of the 1949 Geneva Conventions and 1977 Additional Protocols. Even a superficial survey of the actions listed above supports this conclusion.

In fact, when the UN Security Council used the term ethnic cleansing for the first time in Resolution 771 (1992) of 13 August 1992, it expressly stated that it violated international humanitarian law (*UN Security Council's Resolution 771, 1992 at para. 2*).

#### **B. Crimes Against Humanity**

The UN Secretary-General, in his proposal on the Statute of the Tribunal for former Yugoslavia, explained that 'crimes against humanity are aimed at any civilian population', and listed the examples of murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial and religious grounds, and other inhuman acts (*94 UN Doc. S/25704, at 13, points 48-49*).

The Commission of Experts established by the Security Council understands those crimes to mean

« toute violation flagrante des règles fondamentales du droit humanitaire et du droit relatif aux droits de l'homme, commise par une personne dont il peut être établi qu'elle appartient à une partie au conflit, dans le cadre d'une politique officielle de discrimination à l'encontre d'un groupe déterminé de personnes, qu'il y ait ou non de guerre et quelle que soit la nationalité de la victime » (*Report of 10 February 1992, UN Doc. 25274, at 25, point 49*).

#### **C. Genocide**

UN General Assembly Resolution 47/121 of 18 December 1992 is very explicit in its paragraph 9 of the Preamble, declaring that: (...) the abhorrent policy of 'ethnic cleansing' (which) is a form of genocide. In its Resolution 1992/S-2/1, of 1 December 1992, the Commission on Human Rights calls upon all States to consider the extent to which the acts committed in Bosnia and Herzegovina and in Croatia constitute a genocide, according to the Convention on the Prevention and Punishment of the Crime of Genocide.

To recognize an example of 'deliberately inflicting on the group the conditions of life calculated to bring about its physical destruction in whole or in part', it is enough to analyse the 'living' conditions prevailing in concentration camps and prisons and in occupied or besieged towns. Certain administrative measures adopted in the framework of ethnic cleansing would also fall within the definition. Furthermore, preventing the passage of humanitarian aid and essential supplies and the destruction of vital means for survival could bring the population to physical destruction.

Rape could also have the objective of preventing births within the group by inflicting psychological damage on women that would drive them to refuse future sexual contact or to give birth.

In specific circumstances, other relevant elements should be taken into consideration in analysing the intent. These elements could be: a profile of the population killed (sex, age, social position, specific categories, level of education, etc.), characteristics of individual crimes committed (brutality, cruelty, humiliation, etc.), the systematic nature of certain crimes (rape, destruction of

property and objects necessary for survival of population, destruction of places of worship, prevention of delivery of humanitarian aid, etc.).

### **III. DARFUR CASE**

Prior to any international investigations on violations of international humanitarian law and human rights in Darfur region, it is difficult to determine any legal term which would correspond to the international law terminology. But the pattern and forms of human rights abuses in Darfur (e.g. discrimination, ethnic and religious exclusivity, dominance and the sense of superiority of one group, rape, destruction of property and objects necessary for survival of population, prevention of delivery of humanitarian aid, etc.) correspond to the term of so-called “ethnic cleansing”.