

**The Blue Nile, Sudan:  
When Will the International Community  
Hear Their Cries?**

**By: Rachel Tripp\***

[1] Some of the most atrocious human rights violations of the twentieth century are occurring in the Blue Nile Region of southern Sudan. The violent racial and religious persecution has taken place for over two decades. Some of the worst atrocities have occurred in the last twelve years.<sup>1</sup> To date, more than two million racially and ethnically tribal African people have died in the war in Sudan.<sup>2</sup> Most of these people are Christian,<sup>3</sup> who have been brutally murdered because of their faith, while another four million people have been displaced.<sup>4</sup> With the sheer number of the dead and the well-documented accounts of gruesome brutality in Sudan,<sup>5</sup> it would

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<sup>1</sup> COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES – SUDAN, 2001 U. S. DEP'T OF STATE, <http://www.state.gov/g/drl/rls/hrrpt/2001/af/8405.htm> (March 4, 2002) [hereinafter 2001 REPORT – SUDAN].

<sup>2</sup> *Id.*

<sup>3</sup> *Situation of Human Rights in Sudan*, UN Comm'n on Human Rights, 50th Sess., Provisional Agenda Item 12, at II(A)(7), ¶ 75, UN Doc. E/CN.4/1994/48 (1994)[hereinafter E/CN.4/1994/48]. “The restrictions on freedom of movement for church personnel, their lack of contact with the Sudanese Council of Churches and the prevention of church activities, including relief activities, and the arbitrary interdiction of prayers and religious celebrations have created a particularly grave situation for Christians in areas which are difficult to reach, like the Nuba Mountains or the Ingessana Mountains in southern Blue Nile province.” UN Comm'n on Human Rights, 50th Sess., at ¶ 95, 96, A/48/601.

<sup>4</sup> *Id.* See Millard Burr, WORKING DOCUMENT II: QUANTIFYING GENOCIDE IN SOUTHERN SUDAN AND THE NUBA MOUNTAINS, 1983-1998, 8, 13 (1998), <http://www.refugees.org/news/crisis/sudan.pdf> (Dec. 1998). See also 2001 REPORT - SUDAN, *supra* note 1.

<sup>5</sup> *Full Sudan Country Report*, VOICE OF THE MARTYRS, <http://www.persecution.com/members/countryMap/index.cfm> (2002). The report details the

seem that international humanitarians, humanitarian aid organizations, and the United Nations would be outraged and adamant in bringing an end to the horrible violence, physical abuse and other human rights violations in Sudan motivated by of racial and religious animus.<sup>6</sup> Similar

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persecution of Christians in a concise summary, including rape and sexual slavery of women, crucifixions of captives by government armies, torture, and maiming. *Id. See also Persecution [sic.] and Suffering in Sudan*, THE BLUE NILE PROJECT, at <http://www.blue-nile.org/suffering.html> (Oct. 25, 2001). The Project website has news stories from 1998-1999 about the armed conflict, including an estimate of the dead, government atrocities, forced Islamization, burning and bombing of civilian targets, and enforcement of harsh Shari'a Law. *Id.* Shari'a Law is Islamic law as found in the Koran, Sunna, and for some Muslims, in other religious texts. ENCYCLOPEDIA OF THE ORIENT (Tore Kjeilen, ed.), at <http://i-cias.com/e.o/sharia.htm> (last modified 2003). It encompasses religious and ritualistic laws as well as juridical and political laws and regulations. *Id.* A few Muslim governments, such as Sudan, have imposed Shari'a Law on all aspects of their citizens through the legislative and judicial functions of government, although other countries only adhere to Shari'a law in domestic arenas of family and inheritance laws. *Id.* In Sudan, Shari'a penal laws include blasphemy against Allah, apostacy, and sodomy as against religious duty to procreate. *See Shari'a Law*, THE INTERNATIONAL LESBIAN AND GAY ASSOCIATION, at [http://www.ilga.org/site\\_index.htm](http://www.ilga.org/site_index.htm) (last updated 6/17/99), citing TERESA ALLEN, ISLAMIC LAW: CONFLICTS AND CONTRASTS WITH NON-ISLAMIC LEGAL SYSTEMS and DENNIS J. WIECHMAN, JERRY D. KENDALL AND MOHAMMAD K. AZARIAN, ISLAMIC LAW: MYTHS AND REALITIES (full citations unavailable). Punishments for crimes under Shari'a Law range from eighty lashes for public drunkenness and amputation of hands or feet for theft to the death penalty for a range of crimes such as apostacy, adultery, sodomy, and espionage. *Id.* Sometimes torture is used as a measure of returning the apostate to faith before the death penalty is carried out. Abdurrahmani'l-Djaziri, Apostasy in Islam, at <http://www.light-of-life.com/eng/ilang.htm> (last visited Nov. 18, 2003). *See Different Issues Regarding the Sharia Law*, ANSWERING ISLAM, at <http://answering-islam.org.uk/Sharia/> (January 2003). *See also* 2001 REPORT – SUDAN, *supra* note 1; 1999 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES – SUDAN, U. S. DEPARTMENT OF STATE, at [http://www.state.gov/www/global/human\\_rights/1999\\_hrp\\_report/sudan.html](http://www.state.gov/www/global/human_rights/1999_hrp_report/sudan.html) (Feb 25, 2000) [hereinafter 1999 REPORT –SUDAN] (outlining the history of the last thirteen years since the Al-Bashir coup in 1989 and the implementation official elimination of all non-Muslims and non-Islamic culture).

<sup>6</sup> Note that many organizations are aware and trying to do something. However, many only discuss the Muslim victims, and do not address the animus against Christians by Muslim northerners. See e.g. Human Rights Watch, Sudan: Darfur Destroyed, vol 6, no. 6(A), May 2004, available at <http://hrw.org/reports/2004/sudan0504/>.

tragedies that occurred in Rwanda<sup>7</sup> and the former Yugoslavia<sup>8</sup> which rocked the international community with the number of atrocities and human rights violations, yet the death toll and number of displaced in Sudan are higher than either of these tragedies.<sup>9</sup> Ironically, very few organizations are addressing the situation and little aid is effectively reaching the oppressed and brutalized people of southern Sudan.<sup>10</sup> Few in the international community appear to be aware of the scope of the atrocities, treaty violations, and violations of humanitarian law perpetrated by the northern Muslim government against its own Christian citizens to the south. Why is this topic so politically unpopular? Does the United Nations know of the many human rights treaty violations that are occurring in the Sudan? The United Nations does know what humanitarian and treaty obligations are being violated and the scope of these violations.<sup>11</sup> Nevertheless, it has

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<sup>7</sup> *FAQs – ICTR*, COALITION FOR INTERNATIONAL JUSTICE, at <http://www.cij.org/index.cfm> (copyright 2002), citing deaths in the Rwandan genocide at between 500,000 to one million, with atrocities of torture and other crimes against humanity.

<sup>8</sup> *Federal Republic of Yugoslavia: government must avoid errors of the past* [sic], AMNESTY INTERNATIONAL, at <http://web.amnesty.org/ai.nsf/Index/EUR700532000> (October 6, 2000).

<sup>9</sup> In Rwanda, up to one million died and 3-4 million were displaced. COALITION FOR INTERNATIONAL JUSTICE, *supra* note 7, at “*Overview – ICTR*”. In the Former Yugoslavia, over 200,000 died in Bosnia alone, and the fighting displaced more than one million. *Report of the Secretary-General pursuant to General Assembly Resolution 53/35 – The fall of Srebrenica*, UN SECRETARY-GENERAL, G.A. 54th Session, at 8, U.N. Doc. A/54/549, (1999), <http://www.un.org/News/oss/sg/pages/statements.html> [hereinafter A/54/549].

<sup>10</sup> Mindy Belz, *Out of Africa*, 15 WORLD MAGAZINE, No. 49 (Dec. 16, 2000), available at [http://www.worldmag.com/world/issue/12-16-00/international\\_2.asp](http://www.worldmag.com/world/issue/12-16-00/international_2.asp) (Dec. 16, 2000).

<sup>11</sup> See generally, *Special Rapporteur of the Commission on Human Rights on the situation of human rights in Sudan*, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, documentation, links, and facts at <http://193.194.138.190/html/menu2/7/a/msud.htm> (last visited April. 8, 2004) (for a brief overview of U.N. reports documenting UN information). See also G.A. Res. 182, U.N. GA Third Committee, 54th Sess., U.N. Doc. A/RES/54/182 (2000); *Reports on Human Rights Situation in Cuba, Rwanda, Sudan Presented in Third Committee*, Third Committee of the G.A., 39th met, Press Release, at 5, U.N. Doc. GA/SHC/3333 (1995) [hereinafter GA/SHC/3333]; *Potential ‘Tragedy’ Looms In Southern Sudan with Government*

systematically adopted policies it deems “neutral;” and it has cooperated with Kartoum, the actual oppressor of southern Christians in its attempts at providing humanitarian aid.<sup>12</sup>

**A. ISSUE**

[2] The Blue Nile region is being harmed by the “neutral” policy of the United Nations and its reticence to apply pressure or raise international consciousness of violations to the human rights and treaty obligations of which it is fully aware. United Nations policies in southern Sudan are antithetical to its mission and inconsistent with its prior treatment of similar human rights crises around the world.

**B. SCOPE**

[3] This note will not specifically condone or denigrate past or future United Nations action or inaction in States’ conflicts, nor make any conclusion regarding United Nations’ authority juxtaposed with State sovereignty. Rather, this comparative study will review the facts regarding United Nations policy and action in two particular crises similar to the atrocities and human

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*Suspension of Relief Flights, Warns Humanitarian Affairs Office*, OFFICE OF HUMANITARIAN ASSISTANCE, Press Release, U.N. Doc. IHA/644 (1998).

<sup>12</sup> Press Release, *Non-Governmental Organization Staff Evacuated From Southern Sudan*, OFFICE OF HUMANITARIAN ASSISTANCE, U.N. Doc. IHA/697 (2000) (detailing the decision of UN Office for the Coordination of Humanitarian Affairs (OCHA), on behalf of Operation Lifeline Sudan (OLS), to refuse to sign the Memorandum of Agreement with the SPLA, a “rebel army” holding the government out of certain secured locations in the south. The decision required the evacuation of at least one hundred forty nine workers in eleven of thirty five OLS NGOs working in the southern, war torn region of Sudan.); see Mindy Belz, *Blue Nile Blackout II*, 15 WORLD MAGAZINE No. 29 (July 29, 2000), available at [http://www.worldmag.com/world/issue/07-29-00/international\\_7.asp](http://www.worldmag.com/world/issue/07-29-00/international_7.asp) (June 29, 2000) (“Displaced people from the town of Guffa report that food stocks were rounded up into the center of town, soaked in diesel fuel, and burned by government forces before the residents were chased out.” *Id.* This article also details the extent of UN cooperation with the government through policies aimed against the SPLA.)

rights violations in the Blue Nile and evaluate the inconsistency of current and ongoing United Nations policy and action concerning the Sudan conflict.

[4] Although the Muslim, ethnically Arab discrimination and abuse extends to both southern, black Christian Sudanese and minority tribal cultures particularly in the Nuba Mountain region,<sup>13</sup> this note refers generally to the persecution of the southern, black Christians. The facts and issues regarding the Sudanese government's crimes against humanity, war crimes, and violations of numerous treaties are virtually the same in the cases of persecuted Nubians and southern Christians.<sup>14</sup>

### **I. BACKGROUND TO SUDAN VIOLATIONS**

[5] Sudan is a country that has been torn apart by a civil war raging for nearly 20 years. In 1989 Al-Bashir won control of the government by military coup.<sup>15</sup> From the time that he seized control, he has purposely established a policy of ruthless ethnic and religious 'cleansing' in Sudan, particularly amongst the tribal Christians living in the southern Blue Nile Region.<sup>16</sup> Abel

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<sup>13</sup> See William L. Saunders Jr. & Yuri G. Mantilla, *Human Dignity Denied: Slavery, Genocide, and Crimes Against Humanity in Sudan*, 51 CATH. U. L. REV. 715, 716 (Spring 2002). The distinction made here refers to religious differences between many of the Nubian Mountain tribes and the predominantly Christian tribes to the south. Nubians practice different forms of Islam and animism. *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> 2001 REPORT - SUDAN, *supra* note 1.

<sup>16</sup> *Id.* Upon taking control, Al-Bashir and his National Salvation Revolution Command Council (RCC) "suspended the 1985 Constitution, abrogated press freedom, and disbanded all political parties and trade unions." *Id.* Bashir also made 'Arabization' and forced Islamization official government policies, requiring genocide on these ethnic and religious grounds. *Id.* See also Nathan A. Adams, IV, *A Human Rights Imperative: Extending Religious Liberty Beyond the Border*, 33 CORNELL INT'L L.J. 1, 11 (2000).

Alier, Sudanese Christian Judge at The Hague<sup>17</sup> and former Vice President of Sudan, stated that the war is "racial, religious and cultural. The government is on an Islamic crusade."<sup>18</sup>

[6] Humanitarian and human rights organizations, the United Nations, and the U.S. State Department have documented trafficking in persons, torture, mass rape, bodily mutilation (often under the guise of "punishment" under Shari'a law) and forced child labor and conscription.<sup>19</sup> Racial discrimination, at all levels, has increased, although it has existed for decades against ethnically non-Arab Sudanese, despite a profession of Islamic faith.<sup>20</sup>

[7] Since 1956, Sudan has been a member of the United Nations,<sup>21</sup> and it is currently a member to most relevant human rights conventions,<sup>22</sup> and was recently elected to the UN Commission on Human Rights.<sup>23</sup>

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<sup>17</sup> The Hague, in the Netherlands, is the location of and a common term for the International Court of Justice (ICJ), also referred to as the "World Court." The ICJ, set up by the UN Charter, presides over legal disputes between State parties, often over territory, boundary, and treaty interpretation issues. STATUTE OF THE ICJ, art. 34-36, <http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicstatute.htm> (last visited Nov. 18, 2003).

<sup>18</sup> James Solheim, *Sudanese Lawyer Brings Grim Message of Human Rights Abuses to U.S. Audiences*, EPISCOPAL NEWS SERVICE, 99-014, at <http://www.episcopalchurch.org/ens/archives/99-014.html> (Feb. 19, 1999). This was an address by his Excellency Alier to the New York Episcopal Church Center. *Id.*

<sup>19</sup> *ICRC Annual Report 2001*, INTERNATIONAL COMMITTEE OF THE RED CROSS, ICRC Doc. 119-123, <http://www.icrc.org/> (June 30, 2002); *Amnesty International Annual Reports for 2001 – Sudan*, AI Doc. POL 10/001/00, <http://web.amnesty.org/web/ar2001.nsf/> (2001); GA/SHC/3333, *supra* note 11; *see also* 2001 REPORT - SUDAN, *supra* note 2.

<sup>20</sup> Mindy Belz, *Daniel of the Year*, 15 WORLD MAGAZINE No. 49 (December 16, 2000), available at [http://www.worldmag.com/world/isuse/12-16-00/national\\_2.asp](http://www.worldmag.com/world/isuse/12-16-00/national_2.asp) (Dec. 16, 2000) (following the life of Michael Yerko, a Jumjum Christian, pastor, and overseer at one time for a displacement camp housing over 5,000 Sudanese, who was living in Wadega, Sudan at the time of the article.)

<sup>21</sup> Press Release, *List of Member States*, U.N. Doc. ORG/1317 (2000), <http://www.un.org/Overview/unmember.html> (last modified Sept. 27, 2002).

## II. Similar International Incidences of Humanitarian Law, Treaty, and Customary International Law Violations

### A. Rwanda

[8] In April of 1994, a civil war erupted between the Hutu and Tutsi peoples in Rwanda.<sup>24</sup>

The conflict began when Hutu extremists attacked and brought down a plane carrying the moderate Hutu President, Juvenal Habyarimana.<sup>25</sup> In the ethnic fighting that ensued, the Hutus and Tutsis committed horrible atrocities amounting to genocide, torture, and other war crimes.<sup>26</sup>

Before the UN Security Council took any action, between 500,000 and one million Rwandans were killed in the fighting, in only a matter of months.<sup>27</sup> Another three million Rwandans

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<sup>22</sup> Slavery Convention 1927; Supplemental Convention on Abolition of Slavery 1957; Geneva Conventions 1957; International Covenant on Civil and Political Rights (CCPR) 1976, Torture Convention, 1986. It also ratified the Rome Treaty of the Statute of the new International Criminal Court in 2000. AI Doc. POL 10/001/00, *supra* note 19.

<sup>23</sup> *Amnesty International Annual Reports for 2002 – Sudan*, AI Doc. POL 10/001/2002, available at <http://web.amnesty.org/web/ar2002.nsf/afr/sudan!Open> (last visited Nov. 16, 2003). Sudan was elected to the Commission for 2002-2004, and has this year had its membership extended to 2007. See Commission on Human Rights, Membership listing, at <http://www.unhchr.ch/html/menu2/2/chrmem.htm>.

<sup>24</sup> Frederick J. Petersen, *Note: The Façade of Humanitarian Intervention for Human Rights in a Community of Sovereign Nations*, 15 ARIZ. J. INT'L & COMP. L. 871, 895-7 (1998).

<sup>25</sup> *Id.* at 895.

<sup>26</sup> See, e.g., Indictments of criminals charged under ICTR, First Amended Indictment, (ie., Clement Kayishema, Ignace Bagilishema, Charles Sikubwabo, Aloys Ndimbati, Vincent Rutaganira, Mikaeli Muhimana, Ryandikayo, Obed Ruzindana), 1995 ICTR 1 – I, available at <http://www.ictr.org/default.htm> (last visited Nov. 18, 2003).

<sup>27</sup> COALITION FOR INTERNATIONAL JUSTICE, *supra* note 7, at *Overview – ICTR*.

became refugees in neighboring states and as many as a million others were internally displaced.<sup>28</sup>

*1. UN's Understanding of the Situation*

[9] The United Nations, from the beginning, was informed of this conflict in Rwanda.<sup>29</sup> News reports in the middle of 1994 noted that the then UN Secretary-General, Boutros Boutros-Ghali, petitioned the Security Council, at the beginning of the hostilities, to protect the innocent civilians.<sup>30</sup> On April 21, 1994, two weeks after the beginning of the chaos, the Security Council issued Resolution 912,<sup>31</sup> stating it had “considered” and “take[n] note” of the Secretary-General’s report of April 20, 1994.<sup>32</sup> The Security Council was not only aware of the conflict but was:

Appalled at the ensuing large-scale violence in Rwanda, which has resulted in the death of thousands of innocent civilians, including women and children, the displacement of a significant number of the Rwandese population, including those who sought refuge with UNAMIR, and the significant increase in refugees to neighbouring countries. . . .<sup>33</sup>

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<sup>28</sup> Petersen, *supra* note 24, at 895 (citing Robert J. White, *Shameful U.S. Delay Compounded Crisis Engulfing Rwanda*, STAR-Trib, at §19A. (St. Paul-Minneapolis July 28, 1994).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> S.C. Res. 912, U.N. SCOR, 3368th mtg., at 2, U.N. Doc. S/Res/912 (1994), *available at* <http://www.un.org/Docs/scres/1994/scres94.htm> (last visited Nov. 18, 2003). This resolution came on the heels of the murders of the Presidents of Rwanda and Burundi, and upon recognition by the Security Council that action was necessary by the UN and parties external to the conflict. *Id.* at 1-2.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 2.

[10] The Secretary-General's report noted that, "[T]he members of the Security Council are fully aware of the critical situation in Rwanda following the crash of the plane at Kigali airport on 6 April 1994, which caused the deaths of all those on board . . ."<sup>34</sup>

[11] Following Resolution 912, the Security Council further acknowledged the extent and scope of the atrocities and issued Resolutions 918<sup>35</sup> and 925.<sup>36</sup> Finally, the Security Council, taking action under Resolution 929,<sup>37</sup> clearly stated its role and encouraged others to get involved.

## 2. UN Policy and Action

[12] The Security Council's Resolution 929, authorized the use of "all necessary means to achieve humanitarian objectives" in Rwanda under Chapter VII of the Charter.<sup>38</sup> This resolution

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<sup>34</sup> *Special Report of the Secretary-General on the United Nations Assistance Mission for Rwanda*, S.G. 470, U.N. Doc. S/1994/470, at 1 (1994) available at <http://www.un.org/Docs/secu94.htm> (last visited Nov. 18, 2003). The report outlined the facts known at the time, including which governmental and other actors were perpetrating the killings, and reported that actual numbers of the massacres were not currently known. *Id.* at 1. The Secretary-General petitioned for UN action toward a cease-fire, authorization and assistance to UNAMIR, and evacuation for ex-patriots. *Id.* at 2.

<sup>35</sup> S.C. Res. 918, U.N. SCOR, 3377th mtg., at 4, U.N. Doc. S/Res/918 (1994), available at <http://www.un.org/Socs/scres/1994/scres94.htm> (last visited Nov. 14, 2003) (mandating an arms embargo to Rwanda).

<sup>36</sup> S.C. Res. 925, U.N. SCOR, 3388th mtg., U.N. Doc. S/Res/925 (1994), available at <http://www.un.org/Docs/scres/1994/scres94.htm> (last visited Nov. 14, 2003).

<sup>37</sup> S.C. Res. 929, U.N. SCOR, 3392d mtg., U.N. Doc. S/Res/929 (1994), available at <http://www.un.org/Docs/scres/1994/scres94.htm> (last visited Nov. 14, 2003). This resolution, although specifically stating that the UN would not be an "interposition force between the parties," encouraged UN, OAU, and other surrounding countries' assistance in suppressing the conflict and ending the mass violence in Rwanda. *Id.* at 1.

<sup>38</sup> *Id.* at 2.

empowered other nations to join the UN and Organization of African Unity (OAU)<sup>39</sup> efforts to secure peace in Rwanda.<sup>40</sup> The Security Council stressed that the operation was of a “strictly humanitarian character . . . which shall be conducted in an impartial and neutral fashion, and shall not constitute an interposition force between the parties . . . .”<sup>41</sup> Furthermore, the joint effort was to last as long as was necessary to bring the UNAMIR up to the strength needed to defend itself, civilians, and UN workers.<sup>42</sup>

[13] In sum, the United Nations was concerned and involved in the conflict both prior to the incredible atrocities of 1994 and in bringing it to an end. The UN has since remained involved in reparations and retribution. An ad hoc tribunal, the International Criminal Tribunal for Rwanda (ICTR), the second UN Tribunal since the International Military Tribunal (IMT) set up by the Allies at Nuremberg to try Nazi war criminals, was formed by the UN on November 8, 1994.<sup>43</sup>

#### B. Former Yugoslavia

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<sup>39</sup> Organization of African Unity, *Creation of the OAU*, ed. Makonnen Ketema (2000), at <http://www.oau-creation.com/>. The OAU was founded in 1963 and is open to all independent African countries. *Id.*

<sup>40</sup> S/Res/929, *supra* note 37, at 1.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 2. UNAMIR – UN Assistance Mission for Rwanda, was set up by the Security Council on October 5, 1993. S.C. Res. 872, U.N. SCOR, 3288th mtg., at 1, U.N. Doc. S/Res/872 (1993), available at <http://www.un.org/Docs/scres/1993/scres93.htm> (last visited Nov. 18, 2003). The purpose of the Mission, even prior to the outbreak of the 1994 genocide, was to establish “an international neutral force in Rwanda, as underlined both by the Government of the Republic of Rwanda and by the Rwandese Patriotic Front” and to facilitate compliance with the Arusha Peace Agreement. *Id.* The Mission was given effect for six months, and thereafter could be extended by Security Council Resolution. *Id.* at 2.

<sup>43</sup> S.C. Res. 955, U.N. SCOR, 3453d mtg., at 2, U.N. Doc. S/Res/955 (1994), available at <http://www.un.org/Docs/scres/1994/scres94.htm> (last visited Nov. 18, 2003).

[14] The conflict in Yugoslavia was precipitated by the ethnic and religious differences between the cultures represented in the country. Under Tito,<sup>44</sup> after World War II, the Socialist Federal Republic of Yugoslavia (SFRY) stayed precariously balanced in power among the groups.<sup>45</sup> However, upon Tito's death in 1980, the Serbs, the dominant ethnic group, asserted power over the other ethnic groups, including Croats, Macedonians, and Slovenians.<sup>46</sup> Serbian nationalist leader Slobodan Milosevic militantly sought to bring Yugoslavia under sole Serb power.<sup>47</sup> From 1990 through 1991, all the different groups within Yugoslavia claimed independence.<sup>48</sup> The primarily Serbian Yugoslav National Army (JNA) started an armed attack, beginning in Slovenia, then targeting Croatia and Bosnia-Herzegovina, ostensibly with the purpose of maintaining the unity of the SFRY.<sup>49</sup> Horrible atrocities occurred throughout the decade as the JNA and militias fought over territory with tactics amounting to ethnic and religious genocide.<sup>50</sup>

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<sup>44</sup> Josip Broz (Tito) assumed power over the nine provinces in Yugoslavia delineated by the monarchs in those regions prior to WWII. JEFFREY L. DUNOFF ET AL., *INTERNATIONAL LAW: NORMS, ACTORS, PROCESS A PROBLEM ORIENTED APPROACH*, 107 (2002). He also renamed the country the Socialist Federal Republic of Yugoslavia and partitioned it into six regions of differing ethnicities. *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> DUNOFF, *supra* note 44, at 107, 109.

<sup>49</sup> *Id.*; *Report of the Secretary-General*, A/54/549, *supra* note 9, at 8.

<sup>50</sup> *Id.* at 7, 12. The report states: "During those [first] 60 days [of the war], approximately 1 million people were displaced from their homes. . . . Several tens of thousands of people, most of them Bosnian Muslims, were killed." *Id.* at 7. *See also* DUNOFF ET AL. *supra* note 44, at 126. "In Bosnia, the conflict exacted its largest toll – some 200,000 dead, including the war's worst

### 1. UN's Understanding of the Situation

[15] The Security Council was well apprised of the internal armed conflicts occurring amongst the ethnic regions of Yugoslavia.<sup>51</sup> Even as the fighting continued due to declarations of independence from each region, the UN pursued a “measured” approach to the conflict, although it was well aware of the ongoing human rights tragedies and hoped to prevent further devastation.<sup>52</sup> For this purpose, the UN targeted the High Commissioner for Refugees (UNHCR) for humanitarian aid in Bosnia and Herzegovina, “establishing a significant presence in the country almost as soon as the conflict erupted.”<sup>53</sup> There were also requests, by parties of opposing ethnic groups, for UN intervention to establish peace.<sup>54</sup>

### 2. UN Policy and Action

[16] Despite UN knowledge of the situation, action was not immediate. Beyond the relief aid of UNHCR, the UN was hesitant to become involved when its forces were requested.<sup>55</sup>

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single atrocity, the July 1995 massacre of 5,000 to 8,000 Bosnian Muslim men and boys at Srebrenica.” *Id.* at 123.

<sup>51</sup> *Report of the Secretary-General, A/54/549, supra note 9. See also S.C. Res. 713, U.N. SCOR 3009th mtg., at 43, S/Res/713 (1991), available at <http://www.un.org/Docs/scres/1991/scres91.htm> (last visited Nov. 18, 2003) (early Security Council Resolution calling for a general arms embargo against SRFY).*

<sup>52</sup> *Report of the Secretary-General, A/54/549, supra note 9, at 8.*

<sup>53</sup> *Id.* at 9.

<sup>54</sup> *Id.* at 10.

<sup>55</sup> *Id.* at 11. “The situation in Bosnia and Herzegovina is tragic, dangerous, violent, and confused. I do not believe that in its present phase this conflict is susceptible to United Nations peacekeeping treatment. Any successful peacekeeping operation has to be based on some agreement between the hostile parties.” *Id.* (quoting Mission Report S/23900).

Nevertheless, the Security Council acted through Resolution 713<sup>56</sup> and, in harsh terms, through Resolution 757.<sup>57</sup> The Security Council finally sent some troops, through the Protection Force (UNPROFOR), by strong suggestion of the Secretary-General in his mission report.<sup>58</sup> Despite UN measures, largely through UNHCR evacuation of persons in the center of much of the fighting between Bosnians and Serbs near Srebrenica, the city fell in 1995, becoming the “worst single atrocity”<sup>59</sup> in the war.<sup>60</sup> The UN issued a special report from the Secretary-General that outlined the details of the Yugoslavian conflict, UN action pursuant to the crisis, and the conclusion that UN action was insufficient, which could be at fault in some degree for its ineffectiveness in preventing the massacre at Srebrenica.<sup>61</sup>

[17] Regardless of UN diplomatic or armed involvement during the conflict, it is taking a dominant role in restitution and retribution. In 1993, the UN set up the first ad hoc criminal

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<sup>56</sup> *Id.*; S/Res/713, *supra* note 51.

<sup>57</sup> S.C. Res. 757, U.N. SCOR, 3082nd mtg., at 14, U.N. Doc. S/Res/757 (1992), *available at* <http://www.un.org/Docs/scres/1992/scres92.htm> (last visited Nov. 18, 2003). Resolution 757 put bite into UN action, calling for a wholesale embargo against the dissolving country. *Id.*

<sup>58</sup> *Report of the Secretary-General*, A/54/549, *supra* note 9, at 11. The Security Council enlarged the troops under UNPROFOR through S.C. Res. 758, U.N. SCOR, 3083rd mtg., at 17, U.N. Doc. S/Res/758 (1992), *available at* <http://www.un.org/Docs/scres/992/scres92.htm> (last visited Nov. 18, 2003).

<sup>59</sup> DUNOFF ET AL. *supra* note 44, at 123.

<sup>60</sup> *Report of the Secretary-General*, A/54/549, *supra* note 9, at 13-14.

<sup>61</sup> *Id.* at 105-6. The report also notes that, as tensions rose during 1992-1995, the Security Council passed many resolutions, specifically regarding the localized problems of Bosnia-Herzegovina in the overall Yugoslavian conflict. “To this date, no issue in the history of the Security Council has engendered more resolutions and statements over a comparable period.” *Id.* at 17. There appears to have been much rhetoric and Chapter VII waving, at least at first, and even with Resolutions 836 and 844 authorizing Chapter VII force, there was still reluctance to use it. *Id.* at 27, 105.

tribunal since Nuremberg, the International Criminal Tribunal for the Former Yugoslavia (ICTY).<sup>62</sup> The ICTY is responsible for trying alleged violations of the Geneva Conventions, war crimes, and crimes against humanity that occurred in the former Yugoslavia since 1991.<sup>63</sup> To date, the court has had one hundred and two accused before it, with seven trials currently on the docket and thirty-three at pre-trial stage.<sup>64</sup> Thirty-five cases have been completed, a few sentences served, and a few defendants have died in custody.<sup>65</sup>

### III. COMPARISON OF UNITED NATIONS POLICY IN PRIOR CRISES WITH UNITED NATIONS POLICY TO DATE IN SUDAN

#### A. Sudan Violations of International Treaty Obligations

##### 1. *Slavery Convention*

[18] The Slavery Convention was drafted by the League of Nations and entered into effect on March 9, 1927.<sup>66</sup> Since the late 1800's, all nations have come to officially recognize the egregious breach of human rights and dignity of the African slave trade, forced servitude and

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<sup>62</sup> See Statute of the ICTY, adopted by S.C. Res. 827, U.N. SCOR, 3712th mtg., U.N. Doc. S/Res/827 (1993) available at [www.un.org/Docs/acres/1993/scres93.htm](http://www.un.org/Docs/acres/1993/scres93.htm) (last visited Nov. 18, 2003).

<sup>63</sup> COALITION FOR INTERNATIONAL JUSTICE, at *Overview –ICTY*, available at <http://www.cij.org/index.cfm> (2003); See also, the STATUTE OF THE TRIBUNAL, Articles 1-5, and amended as of May 17, 2002 by S.C. Res. 1411, U.N. SCOR, 4535th mtg., U.N. Doc. S/Res/1411 (2002), available at <http://www.un.org/icty/legaldoc/index.htm> (last visited Nov. 18, 2003).

<sup>64</sup> *Fact Sheet on ICTY Proceedings*, ICTY at a Glance, (October 21, 2002), at <http://www.un.org/icty/glance/index.htm>. (These numbers relate to the time as of the last editing of this article, spring 2004).

<sup>65</sup> *Id.*

<sup>66</sup> Slavery Convention, March 9, 1927, 60 L.N.T.S. 253, <http://www.unhchr.ch/html/menu3/b/f2sc.htm> (last visited Nov. 15, 2003).

labor in any form.<sup>67</sup> Thus, the Convention was only a step codifying what was eventually considered customary international law.<sup>68</sup> Articles I and II of the Slavery Convention broadly prohibit “slavery in all its forms.”<sup>69</sup> As established by the convention, slavery is defined, “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”<sup>70</sup> Furthermore, “slave trade,” is defined as including:

all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.<sup>71</sup>

[19] Subsequent to this convention, several more conventions were drafted and ratified regarding the institution of slavery:<sup>72</sup> Protocol Amending the Slavery Convention;<sup>73</sup>

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<sup>67</sup> *Id.*

<sup>68</sup> It is widely understood in international law that war crimes, crimes against humanity, and crimes against the peace outlined in the International Military Tribunal (IMT) at Nuremberg are now customary international law crimes. *See* Charter of the Nuremberg International Military Tribunal, art. 6, August 8, 1945, Art. *at* <http://www.derechos.org/nizkor/nuremberg/judgment/ncharter.html> (last visited Nov. 15, 2003). The very recent STATUTE OF THE INTERNATIONAL CRIMINAL COURT, Article 7 also gives a more up to date list of crimes against humanity. The Statute may be accessed online, at <http://www.un.org/law/icc/statute/rome.htm>.

<sup>69</sup> Slavery Convention, *supra* note 66, at arts. 1-2.

<sup>70</sup> *Id.* at art. 1.

<sup>71</sup> *Id.* The subsequent articles outline the Contracting Parties’ obligations with respect to eradicating the trade and slavery, and other provisions regarding when forced labor may, in fact, be used for public punitive purposes. *Id.* at arts. 3-12.

<sup>72</sup> *See* the United Nations website, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS for a listing of Human Rights treaties by subject, <http://www.unhchr.ch/html/intlinst.htm> (last visited June 5, 2004).

<sup>73</sup> *Id.* Approved G.A. Res. 794, U.N. Doc. GA/Res/794(VIII) effective December 7, 1953.

Supplementary Convention of the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery;<sup>74</sup> Forced Labour Convention;<sup>75</sup> Abolition of Forced Labour Convention;<sup>76</sup> and Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.<sup>77</sup> Sudan, as a member of the United Nations since 1956,<sup>78</sup> is also a member of the Slavery Convention<sup>79</sup> and the Supplementary Convention of the Abolition of Slavery.<sup>80</sup>

[20] Despite its membership in these important Human Rights conventions, the Sudanese government perpetrates and supports shocking violations of international laws against slavery.

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<sup>74</sup> OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, *supra* note 72. Entered into force April 30, 1957. Article 1 includes serfdom, debt bondage, and involuntary marriage for payment as actions constituting slavery, and thus requiring Party States to take all measures necessary to assure the abolition of these acts. *Id.*

<sup>75</sup> OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, *supra* note 72. Entered into force May 1, 1932. *Id.*

<sup>76</sup> *Id.* Entered into force June 25, 1959. *Id.*

<sup>77</sup> United Nations Website, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, <http://www.unhchr.ch/html/intlinst.htm> (last visited Nov. 15, 2003). Entered into force July 25, 1951. *Id.* This convention deals solely with the trafficking of women for forced sex work. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, *supra* note 72. It is considered that “prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community.” Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Preamble.

<sup>78</sup> *List of Member States*, *supra* note 21.

<sup>79</sup> Ratified on September 9, 1957. Slavery Convention, *supra* note 66.

<sup>80</sup> “Supplementary Convention of the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery” – Ratified on September 9, 1957. ECOSOC Res. 608(XXI), *available at* <http://www.unhchr.ch/html/menu3/b/30.htm>. Ratification information for both the Forced Labour and Abolition of Forced Labour Conventions was unavailable at the time of writing of this article, <http://www.unhchr.ch/html/menu3/b/32.htm>.

The most recent US State Department country report on Sudan states that, as of 2003, slavery is an ongoing problem, particularly against women and children,<sup>81</sup> as is the abduction of Christians in the south who are often subsequently relocated to hostile and unfamiliar regions in central and northern Sudan.<sup>82</sup>

There have been frequent and credible reports that militia raiders, supported by government troops, took women and children as slaves during raids in Bahr El Ghazal State and the Upper Nile (see Sections 1.a. and 1.c.). The Government did not take any action to halt these practices or to punish the perpetrators *and continued to support some tribal militias with horses, weapons, and ammunition*. The majority of the victims were abducted in violent raids on settlements *carried out by government-affiliated militias accompanying and guarding troop trains* to the southern garrison town of Wau. . . . Civilians often were killed, and villages were destroyed. Following the raids, there were credible reports of practices such as the sale and purchase of children, some in alleged slave markets, and the rape of women. Abductees frequently are forced to herd cattle, work in the fields, fetch water, dig wells, and do housework. Abductees are subjected to torture and rape, and at times, are killed. These practices *all have a pronounced racial aspect, as the victims are exclusively black southerners and members of indigenous tribes of the Nuba Mountains*.<sup>83</sup>

[21] The present slave trade in Sudan is equally as ghastly as any of the most egregious cases of slavery of the 18th and 19th centuries. Women and girls are sold for sex or slave labor, or both.<sup>84</sup> Documented accounts and many individual survivors' depictions show that slave traders make even more money by selling people back to their families; with even worse consequences

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<sup>81</sup> COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES – SUDAN 2003 U.S. DEP'T OF STATE, <http://www.state.gov/g/drl/rls/hrrpt/2003/27753.htm> (February 25, 2004).

<sup>82</sup> 2001 REPORT - SUDAN, *supra* note 1; *see also* NINA SHEA, IN THE LION'S DEN: A SHOCKING ACCOUNT OF PERSECUTION AND MARTYRDOM OF CHRISTIANS TODAY AND HOW WE SHOULD RESPOND 33-34 (1997).

<sup>83</sup> 2001 REPORT - SUDAN, *supra* note 1, *emphasis added*.

<sup>84</sup> PAUL MARSHALL WITH LELA GILBERT, THEIR BLOOD CRIES OUT 21 (1997).

for many girls, having been raped and therefore unfit for marriage and participation in their community.<sup>85</sup> Dr. Kevin Vigilante of the Puebla Institute reported before the Subcommittees on International Relations and on Africa that:

To prevent captured Christians from escaping, they are branded or mutilated. A southern Christian boy . . . was enslaved by an Arab master who cut the Achilles tendons of male slaves who did not convert to Islam. . . . A young Christian girl . . . displayed a large scar on her thigh – the mark of a brand she received while enslaved by a Muslim master in northern Sudan.<sup>86</sup>

[22] Of course, the government in Khartoum continues to deny that slavery exists or that it has any part therein. It excuses known reports of abduction as “hostage-taking” in the context of war, and has refused to identify or prosecute any private parties responsible for abduction and forced labor, despite the fact that such action is criminal under Sudan’s domestic laws.<sup>87</sup> Sudan even created the Committee to Eliminate Abduction of Women and Children (CEAWC), promising to stop the blight of hostage-taking that results in forced labor or death. This has proven wholly ineffective.<sup>88</sup>

## 2. *Convention against Genocide*

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<sup>85</sup> *Id.*

<sup>86</sup> SHEA, *supra* note 82, at 34.

<sup>87</sup> *Id.* Beyond the Slavery Convention violations, the taking of hostages in itself and their further inhumane treatment is against the Geneva Conventions and the Charter of the IMT. Geneva Conventions, *infra* note 109-110, at art. 3; Charter of the Nuremberg International Military Tribunal, *supra* note 68, at art. 6(b).

<sup>88</sup> SHEA, *supra* note 82, at 34.

[23] As with slavery, genocide is a criminal offense in customary international law, considered a “crime against humanity,” as proscribed by Nuremberg<sup>89</sup> and codified in the Genocide Convention.<sup>90</sup> Genocide was not a new phenomenon at the time of the Holocaust, having been a grotesque byproduct of colonization and war in Namibia (1904),<sup>91</sup> Armenia (1915),<sup>92</sup> and the Ukraine (1932)<sup>93</sup> against minority races, religious groups and/or cultures.

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<sup>89</sup> Charter of the Nuremberg International Military Tribunal, *supra* note 68, at art. 6(c). Crimes Against Humanity, outlined in the Charter, are “murder, extermination . . . deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of Tribunal.” *Id.*

<sup>90</sup> Convention on the Prevention and Punishment of the Crime of Genocide, December 9, 1948, at art. 1, adopted by G.A. Res. 260(III), UNGA, 3d Sess., U.N. Doc. Part I A/810 (1948), available at [http://www.unhchr.ch/html/menu3/b/p\\_genoci.htm](http://www.unhchr.ch/html/menu3/b/p_genoci.htm) (last visited Nov. 18, 2003).

<sup>91</sup> *Talking about Genocide: Namibia 1904*, PEACE PLEDGE UNION INFORMATION, at [http://www.ppu.org.uk/genocide/g\\_namibia.html](http://www.ppu.org.uk/genocide/g_namibia.html) (last visited Nov. 18, 2003). German forces exterminated the Herero, tribal cattle herders, who were in arms over oppressive taxes, breached contracts, and unconscionable debt arrangements against German settlers in the region. *Id.* Under von Trotha, German policy became extermination on October 2, 1904. “All the Herero must leave the land. If they refuse, then I will force them to do it with the big guns. Any Herero found within German borders, with or without a gun, will be shot. No prisoners will be taken. This is my decision for the Herero people’.” *Id.* at <http://www.ppu.org.uk/genocide/g-nambial.html>.

<sup>92</sup> *Talking about Genocide: Armenia 1915*, PEACE PLEDGE UNION INFORMATION, at [http://www.ppu.org.uk/genocide/g\\_armenia.html](http://www.ppu.org.uk/genocide/g_armenia.html) (last visited Nov. 18, 2003). Armenian Christians were oppressed for centuries by non-Christian foreign governments until finally, at the turn of the nineteenth century, they were exterminated in a calculated, horrendous regime: “Hundreds of thousands of Armenians were driven out of their homes and either massacred or force-marched into the desert until they died. The German ambassador to Turkey wrote home: ‘The government is indeed pursuing its goal of exterminating the Armenian race in the Ottoman Empire’. Between 1915 and 1923 the western part of historic Armenia was emptied of Armenians. The death toll is reliably estimated to be over a million.” *Id.*

<sup>93</sup> *Talking About Genocide – Ukraine 1932*, PEACE PLEDGE UNION INFORMATION, at [http://www.ppu.org.uk/genocide/g\\_ukraine.html](http://www.ppu.org.uk/genocide/g_ukraine.html) (last visited Nov. 15, 2003). In the 1920’s, Ukrainian farmers were forced to surrender farms to the USSR Communist government, but most refused, and were severely punished. *Id.* In the end, taxes were raised to an unbearable amount and farmers who resisted government plans were massacred. *Id.* “A man-made famine

[24] On December 9, 1948, the Convention on the Prevention and Punishment of the Crime of Genocide was adopted by UN member states in response to the human rights atrocities since the turn of the 20<sup>th</sup> century, including both world wars.<sup>94</sup> The convention defines genocide as:

Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.<sup>95</sup>

[25] The Convention further states that genocide, conspiracy, attempt or direct, and public incitement to commit genocide, and complicity in genocide are internationally prosecutable crimes.<sup>96</sup>

[26] Sudan is neither a signatory to the Convention nor a member by ratification.<sup>97</sup> However, its international obligation to refrain from genocide lies within customary international law; its violations are punishable by any competent tribunal under universal jurisdiction principles.<sup>98</sup>

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was thus created deliberately to starve political resisters to death. Up to 7 million people in ethnic Ukrainian regions died of hunger. Some of the too-slow-to-die were shot in large numbers to hasten the genocide.” *Id.*

<sup>94</sup> Convention on the Prevention and Punishment of the Crime of Genocide, *supra* note 90.

<sup>95</sup> *Id.* at art. 2.

<sup>96</sup> *Id.* at art. 3.

<sup>97</sup> *Id.* See Participants, provided by UNHCR, *available at* <http://www.unhchr.ch/html/menu3/b/treaty1gen.htm> (last visited Oct. 9, 2001).

<sup>98</sup> See Charter of the Nuremberg International Military Tribunal, *supra* note 68, at art. 10-12.

Furthermore, prosecution for genocide is within the authority of the ICJ, which has jurisdiction over Sudan as a UN Member.<sup>99</sup>

[27] Actions by the Arab North-African, Muslim government in Khartoum against regions in the south inhabited by tribal black Christians constitute genocide within the meaning of the Genocide Convention.<sup>100</sup> Reported and confirmed accounts detail government-sponsored murder of masses of civilians in the south, Nuba Mountains and SPLA controlled areas,<sup>101</sup> along with

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<sup>99</sup> United Nations Charter, Jun 26, 1945, art. 92-93, *available at* <http://www.unhchr.ch/pdf/UNcharter.pdf>. (last visited Nov. 18, 2003). The ICJ is set up by the UN Charter, based upon the Statute of the Permanent Court of International Justice (ICJ). *Id.* at art. 92. *See* Saunders, *supra* note 12, at 731, citing CHERIF BASSIOUNI, INTERNATIONAL LAW CONVENTIONS AND THEIR PENAL PROVISIONS 46 (1997) (the ICJ has expanded the Genocide Convention definition and punishable crimes to include “ethnic cleansing, mass rapes, and repeated patterns of forced disappearances directed against national, racial, ethnic, or religious groups.”).

<sup>100</sup> *See* 2001 REPORT - SUDAN, *supra* note 1; MARSHALL, *supra* note 84, at 20.

<sup>101</sup> Burr, *supra* note 4, at 72. Numbers of dead in genocidal attacks in the south were over 200,000 in the years between 1994-1998 alone. *Id.*; Verified reports stated:

government troops killed a large number of civilians (see Section 1.g.). Government forces and allied militia pursued a scorched earth policy aimed at removing populations from the areas surrounding the newly built oil pipeline and other oil production facilities, which reportedly resulted in some deaths (see Section 1.g.). On numerous occasions, the Government bombed civilian facilities, which resulted in a number of civilian deaths, including of children (see Section 1.g.). Explosions of government-laid landmines resulted in some deaths (see Section 1.g.). There were reports that during raids and attacks on civilian settlements, government forces killed a number of persons . . .

2001 REPORT – SUDAN, *supra* note 2. Further,

In May 2000, soldiers who defected from the armed forces testified before members of a fact finding human rights NGO that they were ordered to participate in ground attacks and were instructed to kill civilians in non-government and SPLA controlled villages in the

bombings of NGOs, international aid centers assisting southern Sudanese, Christian churches of all denominations,<sup>102</sup> and scorched earth practices against black, southern Christian farmers or persons thought to support the SPLA,<sup>103</sup> also creating famine and drought.<sup>104</sup> There are many reports of disappearances, and as of 2001, “between 10,000 and 12,000 persons, most of whom are Dinka, remained unaccounted for at year's end.”<sup>105</sup> Furthermore, in many government camps for the displaced, government workers subject refugees to forced labor and threat-or-torture-induced conversion to Islam.<sup>106</sup> In the south, government militia routinely rape tribal women and conscript young boys.<sup>107</sup>

[28] Genocidal activities by the government have been the intention since early in Al-Bashir's coup.<sup>108</sup> It is not merely an aggregation of serious human rights abuses, but a program to

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Talisman oil concession area in the Western Upper Nile region in 2000; there were similar reports during the year.

*Id.*

<sup>102</sup> Burr, *supra* note 4, at 14 (numbers dead from government bombing are hard to calculate, but civilian casualties directly and indirectly resulting from the hundreds of bombing raids were in the tens of thousands between 1994-1998); 2001 REPORT - SUDAN, *supra* note 2 (“[T]he Government conducted bombing raids that targeted NGO's and often impeded humanitarian activities in the south, . . .”). See SHEA, *supra* note 82, at 32.

<sup>103</sup> Sudanese Peoples Liberation Army. 2001 REPORT - SUDAN, *supra* note 2. Although it is merely the military arm of the liberation movement (SPLM) it is used in this paper to refer to SPLM/SPLA and SPDF, which is fighting against the regime in Khartoum. *Id.*

<sup>104</sup> *Situation of Human Rights in Sudan*, U.N. Commission on Human Rights, 57th Sess., Provisional Agenda Item 111(c), at 6, ¶ 39, U.N. Doc. A/57/326 (2002) [hereinafter A/57/326].

<sup>105</sup> 2001 REPORT - SUDAN, *supra* note 1.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> See Burr, *supra* note 4, at 15. “The Khartoum government began to bomb civilian locations only months after taking power on June 30, 1989. The Sudan government used the Air Force in a

annihilate the people of the south on account of their race, culture, and religion.<sup>109</sup> Chris Smith, Chairman of the Subcommittee on International Operations and Human Rights stated:

Although it might be possible to argue that the bombing of villages and the crucifixions and even the mass rapes may have been committed in an attempt to subjugate the people of southern Sudan rather than to destroy them, I can find no way to reconcile this argument with the hundreds of thousands of deaths in recent years. . . . Why would Kartoum have engineered a famine in the south, and then imposed a ban on airlifts of food by the United Nations agencies that had formerly been allowed to conduct such airlifts, unless it wanted to destroy the people of southern Sudan as a people?<sup>110</sup>

[29] Millard Burr, retired U.S. official and consultant to the US Committee on Refugees (USCR), also describes the acts of the Khartoum government as genocide, based upon his independent study beginning in 1989, stating, “there was little doubt that the Khartoum government's incessant effort to arm and direct the activity of Arab Murahileen formed part of an effort to extirpate the Dinka of northern Bahr al-Ghazal.”<sup>111</sup>

### 3. *Geneva Conventions*

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campaign of indiscriminate aerial attacks on civilian populations in the Nuba Mountains and in Blue Nile province.” *Id.*

<sup>109</sup> ABDULLAHI A. AN-NA’IM & PETER N. KOK, *Fundamentalism and Militarism: A Report on the Root Causes of Human Rights Violations in the Sudan* (1987).

<sup>110</sup> Saunders, *supra* note 13, at 733, quoting Opening Statement of Representative Chris Smith, Chairman, Subcommittee on International Operations and Human Rights Crimes Against Humanity in Sudan (May 27, 1999), *available at* [http://www.house.gov/international\\_relations/hr/wshr527992.htm](http://www.house.gov/international_relations/hr/wshr527992.htm) (May 27, 1999).

<sup>111</sup> Burr, *supra* note 4.

[30] The Geneva Conventions of 1949 include the Convention relative to the Treatment of Prisoners of War<sup>112</sup> and the Convention relative to the Protection of Civilian Persons in Time of War.<sup>113</sup> Article three in all four Geneva conventions is identical, referred to as “Common Article 3”.<sup>114</sup> This article addresses, specifically, the minimum protection and aid afforded to victims of

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<sup>112</sup> Geneva Convention relative to the Treatment of Prisoners of War, August 12, 1949, entered into force, October 21, 1950, *available at* <http://www.unhchr.ch/html/menu3/b/91.htm> (last visited Nov. 15, 2003).

<sup>113</sup> Geneva Convention relative to the Protection of Civilian Persons in Time of War, August 12, 1949, entered into force, October 21, 1950, *available at* <http://www.unhchr.ch/html/menu3/b/92.htm> (last visited Nov. 15, 2003).

<sup>114</sup> Article 3 of the Conventions states:

*In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:*

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) Taking of hostages;

(c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;

(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2. The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

internal, or non-international armed conflict.<sup>115</sup> Protocols I and II to the Geneva Conventions were adopted multilaterally in 1977 and pertain to developments in humanitarian law regarding both international and non-international armed conflicts.<sup>116</sup>

[31] The conventions generally require humane treatment of all captured persons and to those not involved in the armed conflict, or who, by reason of illness or wounds, are no longer in the fighting.<sup>117</sup> Hostage taking, conduct against human dignity, killing, mutilation, and torture are prohibited.<sup>118</sup> It should be noted that Article 4 of the convention regarding Prisoners of War (POWs), although not expressly applicable to the instance of an internal war, delineates the international standards for treatment of captured opponents.<sup>119</sup> It provides that those who may be taken as POWs must be members of the armed forces, militia, or volunteer groups of a state party who are: a) lead by a commander or other leader responsible for his subordinates; b) wear a uniform or distinctive sign of their military affiliation; c) carry arms openly; and d) act in

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The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

*See* Geneva Conventions, *supra* notes 112-113, at art 3. (emphasis added.)

<sup>115</sup> *Id.*

<sup>116</sup> Protocol I, June 8, 1977, entered into force December 7, 1979, in accordance with Art. 95.; Protocol II, June 8, 1977, entered into force December 7, 1978, in accordance with Art. 23., *available at* <http://www.unhchr.ch/html/intlinst.htm> (last visited Nov. 18, 2003).

<sup>117</sup> Geneva Conventions, *supra* note 112-113, at art. 3(1).

<sup>118</sup> *Id.*

<sup>119</sup> Geneva Convention relative to the Treatment of Prisoners of War, *supra* note 112.

accordance to the laws of war.<sup>120</sup> These provisions are relevant in the case of Sudan because the government has persisted in torturing or otherwise violating the rights of captured soldiers of the rebel SPLA, and it refuses to distinguish between armed SPLA soldiers and civilians, as required by the Geneva Conventions.<sup>121</sup>

[32] The provisions of the Geneva Conventions are binding because Sudan has acceded to them,<sup>122</sup> thereby showing intent to be legally bound by the treaties.<sup>123</sup> Therefore, whether or not the civil war *has* exceeded Sudan's borders and now may be considered an international conflict, Sudan is obligated to comply with at least the minimum protections of its citizens.<sup>124</sup> Sudan is in grave breach of its obligations.<sup>125</sup>

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<sup>120</sup> *Id.* at art. 4. The convention further specifies that one whose status under the convention is uncertain by default will enjoy the protections of the convention. *Id.* at art. 5. Furthermore, the rights granted by the conventions are irrevocable, regardless of consent. *Id.* at 7; *see generally* all 1949 Conventions, *supra* notes 112 & 113. The conventions also declare that provisions of the convention cannot be deemed to interfere with any impartial humanitarian assistance, such as from the International Committee of the Red Cross. *See e.g.*, art. 9 of POW Convention, *supra* note 112.

<sup>121</sup> *Situation of Human Rights in the Sudan*, U.N. CHR, 54th Sess., Agenda Item 116(c), at ¶¶45-46, U.N. Doc. A/54/467 (1999) [hereinafter A/54/467].

<sup>122</sup> *See* Saunders, *supra* note 13, at 727.

<sup>123</sup> Vienna Convention on the Law of Treaties, Art. 11, 15, adopted May 22, 1969, entered into force January 27, 1980, *available at* <http://www.un.org/law/ilc/texts/treaties.htm#top>. In accordance with Article 15(a) of the Vienna Convention, stating that a state shows consent to be bound by a treaty by accession when a treaty so provides for consent by accession, Sudan's accession is, in fact, binding. *Id.* at Art. 15(a). Articles 155 and 156 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, and Articles 139 and 140 of the Geneva Convention Relative to the Treatment of Prisoners of War provide that accession by any State will become effective within six months of the proper notification of accession. *See* Geneva Conventions, *supra* notes 112-113.

<sup>124</sup> Common Article 3 of the Geneva Conventions, *supra* note 114. There is confirmed documentation that the armed conflict in Sudan is being exacerbated by international conflict with Uganda, and certainly Sudanese refugees are fleeing across international borders to other States, thereby making this an international conflict. Mindy Belz, *The Road to Damascus*, 17

[33] The foregoing facts of government oppression of the black, tribal Christian civilians in southern Sudan demonstrate blatant violations of the Geneva Conventions by Sudan. Common Article 3 states that all persons not involved in the fighting are to be “treated humanely” without “adverse distinction founded on race, colour, religion or faith. . . .”<sup>126</sup> Government invasion of innocent villages, slash-and-burn war tactics against southern farmers, and bombing of civilian, particularly church and non-governmental, neutral humanitarian aid buildings is a breach of international law.<sup>127</sup> Those civilians who are captured from the south are often sold into

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WORLD MAGAZINE No. 36 (Sept. 21, 2002); 2001 REPORT - SUDAN, *supra* note 1. Common Article 3 of the Geneva Conventions is particularly relevant to discussion of Sudanese violations of international law, providing what is the minimum of Sudanese obligations toward victims of the armed conflict.

<sup>125</sup> Geneva Convention relative to the Protection of Civilian Persons in Time of War, Article 147 states:

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

*Id.* See also Geneva Convention relative to the Treatment of Prisoners of War, Article 130, *supra* note 112.

<sup>126</sup> Geneva Conventions, *supra* notes 112-113, at art. 3.

<sup>127</sup> Accounts of governmental attack on humanitarian aid vehicles and locations abound. Voice of the Martyrs (VOM) is a non-governmental organization which gives aid to persons persecuted for their faith in Christ. A 2002 report, *Full Sudan Country Report*, *supra* note 5, states:

slavery.<sup>128</sup> Most are threatened and/or tortured, including rape for women and girls, in order to convert to Islam, and often finally killed for their faith in Jesus Christ.<sup>129</sup> Men and boys are forcibly conscripted into the army and may be jailed, tortured, and/or executed, which may include crucifixion.<sup>130</sup> Sudan's Muslim government not only violates the human rights of its own people, as prohibited by international covenants and customary norms, it does so *based on racial and religious characteristics*.

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In March 1997, a VOM [Voice of the Martyrs] team traveled to the Nuba Mountains to deliver supplies to suffering Christians. While distributing the supplies, *government helicopters attacked the crowd of recipients*. Three villagers were killed in this raid and four others were wounded by shrapnel. Many others were injured as they fled for cover.

On July 26, 1997, the police bulldozed a church being built by the Africa Inland Church at Wad-Amara, a suburb of Khartoum. . .

In November 1998, Christian Solidarity International revealed it had redeemed more than 4000 slaves since 1995.

On November 16, 1998, the U.S. Committee for Refugees announced that the *government of Sudan had dropped bombs on a hospital in Yei*, in southern Sudan, killing two, injuring 11, and destroying a surgery ward. The USCR reported that in 1998 the Yei hospital had been attacked six times, and other clearly marked hospitals and humanitarian projects throughout south Sudan at least 40 times. A USCR delegation had visited the hospital just hours before the bombing.

*Id. emphasis added. See also* 1999 REPORT - SUDAN, *supra* note 5; Human Rights Watch, Civilian Devastation: Abuses by all Parties in the War in Southern Sudan, HUMAN RIGHTS WATCH AFRICA (June 1, 1994), *available at* <http://www.hrw.org/reports/1993/sudan/>. It must be noted that the forced displacement of civilians is against international law, pursuant to Protocol II to the Geneva Conventions. *See supra* note 113, Protocol II at art. 17(1). By burning farmland, bombing villages, destroying homes, obstructing food and medical aid, and causing famine and death, the government is intentionally displacing its own people in violation of the Protocol.

<sup>128</sup> *See supra*, notes 82-86 and accompanying text.

<sup>129</sup> Belz, *Road to Damascus*, *supra* note 124.

<sup>130</sup> *Full Sudan Country Report*, *supra* note 5.

#### 4. *International Covenant on Civil and Political Rights*

[34] In 1966, the UN General Assembly adopted the International Covenant on Civil and Political Rights (CCPR).<sup>131</sup> Parties to the Covenant recognize “the inherent dignity and . . . the equal and inalienable rights of all members of the human family,” which rights are derived “from the inherent dignity of the human person.”<sup>132</sup> Furthermore, the CCPR contemplates that all UN States have the obligation, recognized even before codification in the Covenant, “to promote universal respect for, and observance of, human rights and freedoms.”<sup>133</sup>

[35] Under these premises, the CCPR delineates basic rights that should be upheld and protected. These rights include the right of self-determination,<sup>134</sup> the right of a people never to “be deprived of its own means of subsistence,”<sup>135</sup> the right to life of every human being,<sup>136</sup> the right to be free from “torture or cruel, inhuman or degrading treatment or punishment,”<sup>137</sup> the

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<sup>131</sup> G.A. Res. 2200 A, U.N. OHCHR-UNOG, 21st Sess., at 49-59, U.N. Doc. GA/Res/2200A (1966), available at [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm) (last visited June 4, 2004). The CCPR entered into force March 23, 1976. This landmark human rights treaty derived from what is now commonly known as the “International Bill of Rights” or the Universal Declaration of Human Rights (UDHR). *Id.* at pmb1.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at art. 1(1). “By virtue of that right they [all peoples] freely determine their political status and freely pursue their economic, social and cultural development.” *Id.*

<sup>135</sup> *Id.* at art. 1(2).

<sup>136</sup> *Id.* at art. 6(1). “This right shall be protected by law.” *Id.* Furthermore, in cases of genocide, the CCPR specifically refers to the States’ obligations under the Genocide Convention. *Id.* at art. 6(3).

<sup>137</sup> *Id.* at art. 7.

right not be held in slavery,<sup>138</sup> the right to “liberty and security of person,”<sup>139</sup> the right to move freely and choose residence,<sup>140</sup> the right to due process of law,<sup>141</sup> the right to “freedom of thought, conscience and religion,”<sup>142</sup> and the right to equal protection of the law.<sup>143</sup> These rights are to be respected and protected by parties within their territory and jurisdiction “*without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion . . .*”<sup>144</sup>

[36] The obligations in the CCPR are binding upon Sudan, as a Party to the Covenant by accession in 1986.<sup>145</sup> However, the Sudanese government is violating every right previously listed. This note has documented the arbitrary deprivation of life by government militia, rape and torture, slavery and slave trade, forced relocation, and systematic forced Islamization on

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<sup>138</sup> *Id.* at art. 8(1). The CCPR reiterates international law and the Slavery Convention prohibiting any form of slavery or slave trade.

<sup>139</sup> *Id.* at art. 9.

<sup>140</sup> *Id.* at art. 12.

<sup>141</sup> *Id.* at art. 14.

<sup>142</sup> *Id.* at art. 18(1). “This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” *Id.* “*No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*” *Id.* at art. 18(2) (emphasis added).

<sup>143</sup> *Id.* at art. 26.

<sup>144</sup> *Id.* at art. 2(1) (emphasis added). *See also* art. 26. The CCPR lists many other rights in its full 53 Articles. Of specific note are also the freedom of peaceful assembly (art. 21) and association, specifically with the right to form and join trade unions (art 22.), and rights of citizens to take part without discrimination, in public affairs (art. 25).

<sup>145</sup> *Status of Ratifications of the Principal International Human Rights Treaties*, UN HIGH COMMISSIONER FOR HUMAN RIGHTS, available at <http://193.194.138.190/pdf/report.pdf> (last visited Nov. 2, 2000).

Southern Sudanese. The reason for the atrocious human rights violations and violence against these southern citizens is their dark skin color, tribal heritage, and faith in Jesus Christ.

[37] Further, it should be noted that there can be no “public emergency” excuse by Sudan for its conduct toward southern Christian Sudanese citizens, under Article 4 of the Covenant.<sup>146</sup> Not only is the crisis, which constitutes a state of armed conflict (emergency), instigated and perpetuated by the Sudanese government itself, but it also purposely violates the human rights internationally recognized and specifically codified by the ICCPR *on the basis of race, colour, and religion*.<sup>147</sup>

##### 5. *Convention Against Torture*

[38] The 1984 Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention) defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is

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<sup>146</sup> CCPR at art. 4. The provision states

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

*Id.* at art. 4(1). Furthermore, obligations under Articles 6, 7, 8 ¶1-2, 11, 15, 16 and 18 cannot in any way be derogated, including human right to life, right to be free from torture, cruel and inhuman treatment, and slavery, and the right to freedom of religion. *Id.* at art. 4(2). Article 5 also reiterates the irrevocability of fundamental human rights and total lack of authority by States to abrogate any other rights beyond the narrow exception of Article 4. *Id.* at art. 5.

<sup>147</sup> See the “official policy” of Al-Bashir noted *supra* note 16 and accompanying text.

suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.<sup>148</sup>

Parties to the convention are obligated to take “effective” measures at all government levels to prevent torture.<sup>149</sup> This implies parties will take measures to prosecute and punish persons who engage in torture.<sup>150</sup> Due to the *jus cogens* nature of a prohibition on torture, torture may not be justified by any “exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency.”<sup>151</sup> The other articles of the treaty outline in detail the responsibilities of parties to prevent, criminalize, investigate, prosecute, and otherwise eliminate torture from within their borders.<sup>152</sup>

[39] Although Sudan has not ratified the Torture Convention, it is a signatory to the treaty.<sup>153</sup> Thus, despite the fact that Sudan is not specifically bound by the treaty provisions,<sup>154</sup> Sudan

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<sup>148</sup> Torture Convention, at art. 1(1), available at <http://www.unhchr.ch/html/menu3/b/h-cat39.htm> (last visited Nov. 2, 2003).

<sup>149</sup> *Id.* at art. 2(1).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at art. 2(2).

<sup>152</sup> *Id.*

<sup>153</sup> See *Status of Ratifications of the Principal International Human Rights Treaties*, supra note 145. June 4, 1986 Sudan signed the Torture Convention. For updated listing, see also *Report of the Committee Against Torture*, 27th Sess. (Nov. 2001) and 28th Sess. (May 2002), G.A. Res., U.N. GAOR 57th Sess., U.N. Doc. A/57/44 (2002), available at <http://193.194.138.190/tbs/doc.nsf> (last visited Nov. 2, 2003).

<sup>154</sup> Vienna Convention on the Law of Treaties, art. 12(1), United Nations, *Treaty Series*, vol. 1155, p 335. The conference was convened pursuant to General Assembly Resolutions 2166(CCI) & 2287 (XXII) and entered into force on January 27, 1980 available at [www.un.org/law/ilc/texts/treatfra/html](http://www.un.org/law/ilc/texts/treatfra/html) (last visited Nov. 18, 2003). Because the Torture

nevertheless has an obligation under international law to “refrain from acts which would defeat the object and purpose” of the Convention.<sup>155</sup> More importantly, since the prohibition on torture is a *jus cogens* norm in customary international law, it matters little whether Sudan is bound to all of the provisions of the Torture Convention for purposes of noting its human rights violations in torturing and maiming its own citizens, usually in the course of its forced Islamization program.<sup>156</sup>

[40] As with all its other international obligations to protect and promote the rights of its citizens, Sudan is in flagrant and heinous breach of the Torture Convention. Despite the fact that torture is prohibited in Sudan’s own Constitution,<sup>157</sup> Khartoum military have persistently arrested, detained, and tortured civilians.<sup>158</sup> Examples of this flagrant disregard for its

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Convention requires ratification or accession as intent to be bound, Sudan cannot be bound by its signature alone. *Supra* note 145 at art. 25, 27.

<sup>155</sup> *Id.* at art. 18. *See also* E/CN.4/1994/48, *supra* note 3, at I(A), ¶ 20, *available at* <http://www.ch.huridoca.nsf/testFiane/acc416e1d880d96680256737005f824a?Opendocument.htm> (last visited Nov. 2, 2003).

<sup>156</sup> 2001 REPORT - SUDAN, *supra* note 1, at §c. and 1.b. The most recent published report (2003) notes that torture, as well as amputations and beatings, continue. 2003 REPORT – SUDAN, *supra* note 81. However, even as late as 1997, it was internationally known that torture was a “fairly extensive problem.” *Id.* MARSHALL, *supra* note 84, at 20.

<sup>157</sup> Constitution of the Republic of Sudan, June 30, 1998 at pt. II, ch. 1, § 20, *available at* Ministry of External Relations at the Sudanese Embassy in Canada [http://www.sudanca.com/press/constitution\\_tocs.html](http://www.sudanca.com/press/constitution_tocs.html) (last visited Nov. 14, 2003).

<sup>158</sup> *See generally Country Reports – Sudan*, US STATE DEP’T, especially between 1990-2000. The State Department reports UN Special Rapporteur Biro’s findings “that security forces tortured persons in “ghost houses, places where security forces tortured and detained government opponents incommunicado under harsh conditions for an indeterminate time with no supervision by the courts or other independent authorities with power to release the detainees. The use of ghost houses increased in the first part of the year, then as a result of increased international scrutiny, generally declined due to increased government control, which reduced the incidence of such abusive measures.” *Id.* at §1.c. *See also Situation of Human Rights in Sudan*, UN

constitution are abundant: young boys are abducted and beaten into a confession of allegiance to Allah and into a militia for the government;<sup>159</sup> many Christians in displacement camps are denied food and water until they convert to Islam;<sup>160</sup> those who do not convert are often left to die;<sup>161</sup> many clergy in the south are abducted and tortured, and there have been reports of crucifixions of Christians by government military in remote areas.<sup>162</sup> Notably, attempts to alert the international community by citizens has been met with arrest, detention, no due process, fraudulent trial, and cruel punishment for both the convicted and their defense counsel.<sup>163</sup>

## B. United Nations Policy Toward the Blue Nile

### 1. *UN Understanding of the Situation*

[41] It is clear by any account that the United Nations Human Rights Commission is aware of the grave violations of human rights, laws of war, and the discrimination and persecution of persons in Sudan on the basis of race and religion.<sup>164</sup> Due to the ongoing civil war in Sudan, and

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Commission on Human Rights, 49th Sess., 65th mtg., at ¶1, UN Doc. E/CN.4/RES/1993/60, (1993) [hereinafter E/CN.4/RES/1993/60]; E/CN.4/1994/48, *supra* note 3, at II(A)(3), ¶ 41.

<sup>159</sup> SHEA, *supra* note 82 at 31.

<sup>160</sup> *Id.* at 32.

<sup>161</sup> MARSHALL, *supra* note 84 at 21.

<sup>162</sup> *Id.* at 22, SHEA, *supra* note 82, at 31.

<sup>163</sup> See E/CN.4/1994/48, *supra* note 3, at II(A)(1), (3), ¶¶ 28, 42-44. See 1997 report on 50 women that attempted to bring a petition to the UN offices in Khartoum. Ultimately, of thirty six women arrested, thirty five were fined and one was beaten with forty lashes. *Id.* The male defense attorney received a fine of three hundred dollars and the other women attorneys received ten lashes. COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES – SUDAN, 1997 U. S. DEP'T OF STATE, §2.a., [http://www.state.gov/www/global/human\\_rights/1997\\_hrp\\_report/sudan.html](http://www.state.gov/www/global/human_rights/1997_hrp_report/sudan.html) (Jan. 30, 1998) [hereinafter 1997 REPORT – SUDAN].

<sup>164</sup> See generally *Special Rapporteur of the Commission on Human Rights on the situation of human rights in Sudan*, *supra* note 10. The fact that this website exists with links to various reports shows no lack of information for the Security Council upon which to act.

the coup in 1989 that has continued the conflict, the UN began confidential discussions in 1991 on the situation in Sudan.<sup>165</sup> Finally, in 1993, the UN Commission on Human Rights was determined to take a public role in monitoring the “[s]ituation on human rights in Sudan” under resolution 1993/60.<sup>166</sup> The resolution was made pursuant to the General Assembly resolution the previous year<sup>167</sup> that outlined Sudan’s egregious conduct in light of the international community’s responsibility to stop human rights atrocities committed under the numerous Human Rights conventions in place.<sup>168</sup> The General Assembly was aware, according to the report, at least as early as 1992, of “grave human rights violations” including “particularly summary executions, detentions without trial, forced displacement of persons and torture” as well as impediments by civilians to medical and humanitarian aid.<sup>169</sup> Furthermore, the General

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<sup>165</sup> E/CN.4/1994/48, *supra* note 3, at ¶ 1.

<sup>166</sup> *Id.* See E/CN.4/RES/1993/60, *supra* note 158.

<sup>167</sup> *The Situation in the Sudan*, G.A. Res. 142, U.N.G.A., 92d plenary mtg., U.N. Doc. A/Res/47/142 (1992), <http://www.un.org/documents/ga/res/47/a47r142.htm>.

<sup>168</sup> *Id.* at pmb1.

Guided by the principles embodied in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination,

Reaffirming that *all Member States have an obligation to promote and protect human rights and fundamental freedoms* and to comply with the obligations laid down in the various instruments in this field, . . .

*Id.* (emphasis added).

<sup>169</sup> *Id.*

Assembly was “alarmed” by the massive number, even twelve years ago, of internally displaced persons in Sudan, as well as the “mass exodus of refugees” across the borders into neighboring countries.<sup>170</sup> This statement proves that the General Assembly acknowledged the scope and burden of this armed conflict on the international community as early as 1992.<sup>171</sup>

[42] In establishing the special commission on surveillance of the situation in the Sudan, the Commission for Human Rights Resolution 1993/60 further observed the conditions in Sudan.<sup>172</sup> The Special Rapporteur’s mandate was to establish communication and access for investigations and relief of the situation through diplomatic channels.<sup>173</sup> Finally, as with the General Assembly resolution 47/142, the Human Rights Commission resolution “call[ed] upon the government of Sudan to comply with applicable international human rights instruments,”<sup>174</sup> noting in particular its obligations under CCPR, CESC, CEDAW, UN Charter, and Geneva Conventions.<sup>175</sup>

[43] Since the appointment of the first Rapporteur, Gáspár Bíró, to the position of Special Rapporteur on Sudan,<sup>176</sup> all three Rapporteurs<sup>177</sup> have filed a total of twelve reports; the

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<sup>170</sup> *Id.*

<sup>171</sup> *Situation of Human Rights in Sudan*, U.N. Commission on Human Rights, 48th Sess., Agenda Item 114(c), at ¶ 35-36, UN Doc. A/48/601, (1993) [hereinafter A/48/601].

<sup>172</sup> E/CN.4/RES/1993/60, *supra* note 158, at p.mbl. The resolution states that “grave human rights” violations are documented in “the reports submitted to the Commission on Human Rights at its forty-eighth session by the Special Rapporteur on the question of torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions, and at its forty-ninth session by the Special Rapporteur on the question of religious intolerance.” *Id.*

<sup>173</sup> *Id.* at ¶ 4-5.

<sup>174</sup> *Id.* at ¶ 8.

<sup>175</sup> *Id.* at ¶ 8-9; A/Res/47/142, *supra* note 167, at ¶2-4.

<sup>176</sup> E/CN.4/RES/1993/60, *supra* note 158; *see also* E/CN.4/1994/48, *supra* note 3.

Commission has passed six resolutions; the General Assembly has passed eight resolutions; and the Commission has issued eight decisions - on the human rights violations in Sudan.<sup>178</sup>

Furthermore, there are other documents, press releases from the UN, and communications between governments on the subject of Sudan since 1991.<sup>179</sup>

[44] The reports are detailed descriptions of the atrocities carried out by the government in Khartoum.<sup>180</sup> Beginning in 1993, the UN Commission on Human Rights has recorded the level of extrajudicial killings and summary executions.<sup>181</sup> Persons in opposition to the current regime are arrested and subject to no trial; trial without counsel or due process; or summary execution

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<sup>177</sup> The latest commissioned Rapporteur, Mr. Gerhard Baum's term was discontinued in 2003 (ostensibly due to the 2002 Memorandum of Understanding signed by the parties in conflict). OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, *Special Procedures of the Commission on Human Rights – Country Mandates*, at <http://www.unhchr.ch/html/menu2/7/a/cm.htm>; 2003 REPORT – SUDAN, *supra* note 81.

<sup>178</sup> *Documents on Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in Sudan*, at <http://www.unhchr.ch/huridocda/huridoca.nsf/FramePage/Sudan+En?OpenDocument>, last visited June 5, 2004.

<sup>179</sup> *Id.*; *News on Special Rapporteur to the Sudan*, <http://www.unhchr.ch/huricane/huricane.nsf/FramePage/Sudan?OpenDocument> (last visited June 5, 2004). *See also* US State Department Country Reports, *supra* notes 1, 5, 81.

<sup>180</sup> Note also that violations are reported to be committed by the Sudan People's Libertarian Army. *Id.* and *see generally* 2001 REPORT - SUDAN, *supra* note 1. This paper is concerned with the sitting government's actions because it is held to be the official government of Sudan, is a Member of the UN and represented therein and is the responsible actor in the forced Islamization programme as well as the obstruction to humanitarian aid to victims of the conflict.

<sup>181</sup> *Situation of Human Rights in Sudan*, U.N. Commission on Human Rights, 49th Sess., Agenda Item 100(c), ¶ 20-22, UN Doc. A/49/539 (1994) [hereinafter A/49/539]. "Previously reported and well documented cases of extrajudicial killings by Sudanese security, army and paramilitary units under the Government of the Sudan's control were never clarified or investigated, although the Government committed itself to this." *Id.* at ¶ 20. *See Situation of Human Rights in Sudan*, UN Commission on Human Rights, 50th Sess., Agenda Item 112(c), ¶ 8-9 UN Doc. A/50/569 (1995) [hereinafter A/50/569].

within days of arrest.<sup>182</sup> Government aerial bombing is also reported by the Special Rapporteur,<sup>183</sup> and torture resulting in death during detention.<sup>184</sup> Humanitarian relief is obstructed on a regular basis.<sup>185</sup> Noted in a 1994 report,

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<sup>182</sup> E/CN.4/1994/48, *supra* note 3, at II(A)(1), ¶ 27-28, 31; A/48/601, *supra* note 171, at ¶ 35, 36, 51, 53-54.

<sup>183</sup> E/CN.4/1994/48, *supra* note 3, at II(A)(1), ¶ 34-35; A/48/601, *supra* note 171, at ¶ 37-39, 44-54. “There has been [i]ndiscriminate and deliberate aerial bombardment by governmental forces on civilian targets.” A new development has been the bombardment of densely inhabited areas. A/50/569, *supra* note 181, at ¶ 10.

<sup>184</sup> E/CN.4/1994/48, *supra* note 3, ¶ 29, 38, 41-51. “Large numbers of well-documented cases of torture and ill-treatment have been received by the Special Rapporteur.” *Id.* at ¶ 41. “In the overwhelming majority of cases torture is reportedly used immediately after arrest in order to extract confessions. In some cases torture seems to have been applied as a punishment for alleged opposition.” *Id.* at 42. *See* A/48/601, *supra* note 171, at ¶ 39-50.

The methods of torture and ill-treatment which are reportedly used include kickings; beatings with truncheons, plastic tubes and whips; pouring of hot and cold water on the body; burnings; electric shocks, also on sensitive parts of the body; deprivation of food, water and rest; denial of medical care; threats of disappearance; and mock executions. Some of the persons interviewed said that they had been severely kicked and beaten in front of their family members before being taken away.

a/48/601 at ¶ 43; A/49/539, *supra* note 181, ¶ 21-29. A/50/569, *supra* note 181, at ¶ 14-16. One written testimony from a torture victim in this report states:

I was arrested on 10 January 1995 and released in March 1995. That was after a long period of torture. The torture was applied to many parts of my body, including the head, the eyes and the genitals. During [my] detention my wife was compromised by members of the Sudanese security, then she became pregnant. I was continuously moved from one 'ghost house' to another while blindfolded. I was able to recognize one of the detention centres which is near the General Command of the National Armed Forces in Khartoum. This centre is supervised by foreign elements trained in the various methods of torture for political reasons. They have used many instruments, such as electric chairs.

[w]ith regard to ill-treatment, the Special Rapporteur received testimonies that prisoners were often kept in overcrowded, dirty rooms and denied food for several days. Medical care was said to be lacking. One testimony describes a situation where prisoners in an overcrowded cell, who were all regularly tortured, had to urinate in a plastic bottle. If somebody spilled urine over the bottle all the prisoners would be beaten.<sup>186</sup>

The UN Rapporteur also reports continued slavery, slave trade, abduction of children and women, often for sexual purposes, all of which is flatly denied by the government, but in fact, is perpetrated by government forces themselves.<sup>187</sup> Finally, the reports prove the government's

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*Id.* at ¶ 14. The report states that the Special Rapporteur could clearly see puncture wounds, "caused by nails being driven into his arms and the soles of his feet." *Id.*

<sup>185</sup> A/49/539 ¶ 69-73., *supra* note 181. "A succinct analysis of reports issued by the organizations affected, including United Nations agencies and NGOs providing humanitarian assistance in southern Sudan, reveals that looting of humanitarian convoys or goods stored in different locations in the south has become the order of the day." *Id.* at ¶ 69. Both SPLA and government militia are responsible for the damage. *Id.* at ¶ 72. "While the different factions of SPLA must bear responsibility for the lootings committed by local commanders, the Government of the Sudan is responsible for an arbitrary policy of denying access, including flight clearance, to areas that have a clear and incontestable need for humanitarian assistance." *Id.*

<sup>186</sup> E/CN.4/1994/48, *supra* note 3, at II(A)(3), ¶ 48.

<sup>187</sup> E/CN.4/1994/48, *supra* note 3, at II(A)(6), ¶ 62-65.

In the reply of the Government of the Sudan to the preliminary observations of the Committee on the Rights of the Child (CRC/C/3/Add.20), the Government argues in essence that the phenomena of slavery, slave trade, forced labour and similar institutions do "not exist" in the Sudan (para. 35). The Sudanese Criminal Act of 1991 provides as crimes: abduction (art. 161), kidnapping (art. 162), forced labour (art. 163), unlawful confinement (art. 164) and unlawful detention (art. 165). In its written reply to the Committee on the Rights of the Child (CRC), the Government underlines that:

"The essence of the reply is that situations which are completely different from slavery have been wrongly depicted as enslavement. In reality, however, they involve tribal disputes and arguments over pasture and water resources in some areas where there is an

ongoing forced Islamization regime and the abuses and violations of rights to free speech, conscience, and religion perpetrated by the government.<sup>188</sup> For example, the Rapporteur reported:

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overlap between tribes. As a result each tribe involved in a dispute captures members of the other tribe or tribes while waiting for the conflict to be settled according to tribal conditions and customs".

On the other hand, as is pointed out in section 9 on the rights of the child in the present report, abduction of children, as well as of women, from southern Sudan and the Nuba Mountains is routinely practised by members of different armed units, such as the Popular Defence Forces or Mujahedin.

....

[T]he Special Rapporteur considers that the explanations of the Government of the Sudan concerning this issue are not satisfactory. The argument that these practices occur on a tribal basis does not change the fact that they seem to fall under article 1 of the Slavery Convention (1926) and articles 1 and 7 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), to which the Sudan is a party. Also, the fact that these practices occur on a tribal basis does not exonerate the Government from its responsibility of assuring the right to life, security and freedom of its citizens. In addition, the reported involvement of the Popular Defence Forces and other paramilitary units in these practices appears to be an aggravating circumstance which must be clarified without any delay by the Government.

*Id.* ¶ 62, 65. In 1995, the Rapporteur noted an “alarming increase” in the number of reports of slavery in just the time since February 1994, and the government completely ignored all such reports or its promises to investigate. A/50/569, *supra* note 181, at ¶ 28.

<sup>188</sup> E/CN.4/1994/48, *supra* note 3, ¶ 66-85.

[I]n Wau conversion to Islam in order to obtain relief is the order of the day. Many people who convert are also renamed and even circumcised, but most of them continue to go to church on Sunday . . . it is considered to be the only way to survive. The same practice was reported in the government-controlled towns of Torit and Kapoeta.

*Id.* at ¶ 66. Sudan has committed the following violations:

During the last four years a large number of cases of harassment - mainly by the security organs - of ordinary Christian citizens, as well as church personnel, the clergy and nuns, and even the leaders of various Christian denominations in the Sudan were reported and well documented. All the cases brought to the attention of the Special Rapporteur revealed that the cause of the harassment and violation of human rights was the fact that the persons concerned belonged to non-Islamic denominations.<sup>189</sup>

## 2. UN Policy and Action

[45] Despite the knowledge by the UN - the General Assembly and the Security Council - of the atrocities and human rights violations in Sudan, the UN took a purported neutral stance toward parties in the conflict, until only the last year.<sup>190</sup> It has, at least, taken the steps to assign a Special Rapporteur to the region,<sup>191</sup> as well as set up Operation Lifeline Sudan (OLS) in 1989

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the stopping of any Christian preaching in the area of Damazin, the expulsion of the parish priest from Damazin and the attempted confiscation of church land and property in Damazin town; the closure and destruction of church centres for displaced citizens in Al-Obeid and Khartoum; the repeated refusal in many areas to issue building permits for churches and church centres; the closing of the church and the Sudanese Caritas in Al-Nahud; the order to demolish a church in Kenana; the denial of travelling permits even to Sudanese priests to prevent them from evangelizing.

*Id.* at ¶ 74; *See* A/48/601, *supra* note 171, at ¶ 95-96;

<sup>189</sup> E/CN.4/1994/48, *supra* note 3, at II(A)(7), ¶ 71.

<sup>190</sup> Commission on Human Rights procedures are, by their nature, “neutral” between/among parties. In recent months, however, UN officials besides the Special Rapporteurs, are speaking out about the atrocities in Sudan. Oddly, they do not address the Christian component of citizens who have suffered the most (see all the facts in this article), but focus on problems in Darfur since the late 2002 MOU. *See e.g.* High Commissioner for Human Rights, Bertrand Ramcharan, statement to High-Level Donors’ Meeting on Darfur, *Tragedy in Darfur is Manmade and Can be Stopped, Acting High Commissioner Tells High-Level Geneva Meeting*, (June 3, 2004), <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/346F9C0F5C555194C1256EA8002C402D?opendocument>. *See also* referenced report, E/CN.4/2005/3, (May 7, 2004), [http://www.unhchr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/863d14602aa82caec1256ea80038e268/\\$FILE/G0414221.pdf](http://www.unhchr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/863d14602aa82caec1256ea80038e268/$FILE/G0414221.pdf).

<sup>191</sup> E/CN.4/RES/1993/60, *supra* note 158, at ¶ 3.

to alleviate the worst suffering by civilians in the war-torn country.<sup>192</sup> Also, it is clear that the UN has reported on the problems in the country, and at least has apprised the General Assembly in a series of resolutions by that body over the last fourteen years.

[46] Several problems plague the policy of the UN with regard to the Sudan. The UN is aware that the government of Sudan, although at some points in the last fifteen years cooperating with and/or requesting humanitarian aid, is blocking the work of those very aid organizations, terrorizing and bombing humanitarian centers, and killing aid workers as well as civilians.<sup>193</sup>

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<sup>192</sup> G.A. Res. 12, U.N. GA 37th Plenary Meeting, 44th Sess., U.N. Doc. A/RES/44/12 (1989). OLS was set up as a result of high-level negotiations with UN personnel, notably extensive work on the part of the Secretary-General, and Khartoum in March of 1988. *Id.* The international community, at least to some degree, was mobilized in this effort, and it should be noted that OLS is a joint effort of two UN operatives: UNICEF and World Food Programme contributed with more than thirty five other no-governmental organizations. *Id.*; *Operation Lifeline Sudan – The Work of UNICEF and the World Food Programme*, UN Dept. of Public Info., Photo Library, at <http://www.un.org/av/photo/subjects/sudan.htm>, (2002-2003 copyright UN).

<sup>193</sup> *Situation of Human Rights in Sudan*, UN Commission on Human Rights, 56th Meet., UN Doc. E/CN.4/RES/1998/67, (1998) [hereinafter E/CN.4/RES/1998/67]. The resolution “[Notes] with deep concern continuing reports of grave human rights abuses . . . [and is] greatly disturbed by reports that these practices have frequently been carried out by agents under government authority or taken place with the knowledge of the Government of the Sudan . . . .” *Id.* at pmb1. (alteration in original). The report further

Expresses its outrage at the use by all parties to the conflict of military force to disrupt or attack relief efforts, and calls again upon the Government of the Sudan and all parties to the conflict to permit international agencies, humanitarian organizations and donor Governments to deliver humanitarian assistance to all war-affected civilians and to cooperate with initiatives of the Office for the Coordination of Humanitarian Affairs and Operation Lifeline Sudan to deliver such assistance.

*Id.* at ¶ 3. See also Adams, *supra* note 16, at 13 (“One of the Sudanese government’s most powerful weapons is food, which it withholds from the south to compel migration and even Islamization. . . . In addition, the government loots and destroys predominantly Christian and animist villages, burns crops, tortures and rapes villagers and abandons Sudanese in the desert without food or water.” also citing Bill Berkeley, *The Longest War in the World*, N.Y. TIMES

The International Committee of the Red Cross hospitals, OLS, and other organizations are among those deterred from aiding in hunger relief, giving medical services, and treating refugees.<sup>194</sup> Currently, the government is often the perpetrator of the famine conditions, forced displacement, and need for medical attention.<sup>195</sup> Yet the UN still continues to attempt to provide aid through diplomatic means channeled through the Khartoum government.<sup>196</sup> Particularly, the UN relied on the ability of a mutual Sudan Peace Agreement signed in April of 1997 to end the

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Mag., Mar 3, 1996 at 61; Mindy Belz, *Blue Nile Blackout*, WORLD MAGAZINE, (June 10, 2000) 22. U.N. Doc. E/CN.4/RES/1995/77; E/CN.4/1994/48, *supra* note 3

Thereafter, increased aerial bombardments by the Government were reported, endangering the lives of civilians and relief workers. In the second week of August the area near Kirewa was said to have been bombed. Many of those who had fled the bombardments on the camps near Kaya had gone to Kirewa and came under attack again. On 12 November 1993 government airplanes reportedly dropped 14 bombs next to the airstrip of Thiet, where a large group of civilians had gathered at a feeding centre run by a non-governmental organization. Three civilians were injured. In Loa, three persons were reportedly killed, including two children, and at least 15 injured when two bombs were dropped on the marketplace in the morning of 23 November 1993. Two other bombs exploded close to a Christian mission and a relief centre, but there were no casualties.

*Id.* at ¶ 34.

<sup>194</sup> *Government of Sudan Denies Access to Operation Lifeline Sudan*, U.S. Committee for Refugees, at [http://www.refugees.org/news/sudan\\_denial\\_of\\_access.cfm](http://www.refugees.org/news/sudan_denial_of_access.cfm), (2001) (citing World Food Programme Nairobi [part of OLS coalition] news and statistics regarding fifteen cites that the government closed to OLS aid.); A/57/326, *supra* note 104, at 4-5.

<sup>195</sup> *See supra* note 193.

<sup>196</sup> Generally, A/52/510, *supra* note 187, sums up UN efforts up to 1997, including a 1996 ineffectual peace agreement, culminating in a Khartoum Agreement in 1997, the “Sudan Peace Agreement” signed by the parties to the conflict, chiefly, southern “rebel” factions and the government in Khartoum. *Id.* at ¶ 4-5. Also, this report succinctly outlines all the governmental and other party violations of human rights in paragraph 3 of the report.

war and begin the humanitarian effort unimpeded to mend the effects of the war.<sup>197</sup> Even in 1997, however, the Agreement did not end the fighting. Skirmishes continued only a few months after the Agreement,<sup>198</sup> and continued reports into 2004 reveal that the war has not ceased, despite recent peace talks.<sup>199</sup> The new constitution of 1998 is still suspended by Al-Bashir,<sup>200</sup> and human rights violations, famine, and forced displacement continue on a wide scale.<sup>201</sup> Furthermore, the UN knows oil revenues to Sudan's government with Swedish Lundin Oil and Canadian Talisman, in particular, up through 2002, fuel Khartoum's interests in depopulating oil fields.<sup>202</sup> Yet, despite these facts, the UN continues to work through Khartoum

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<sup>197</sup> *Id.* at ¶ 12.

<sup>198</sup> *Id.* at ¶¶ 10, 12, 14.

<sup>199</sup> 2003 REPORT – SUDAN, *supra* note 81; *Situation of Human Rights in Sudan*, UN Commission on Human Rights, 54th Sess., Agenda Item 116(c), ¶ 32, UN Doc. A/54/467, (1999) [hereinafter A/54/467]; A/57/326, *supra* note 104, at 4, ¶ 15; *see id.* at 3, ¶ 10 (noting that an agreement was signed in July of 2002; *see also* *World Food Programme* (WFP), stating that the recent signed peace agreement between the government and SPLA seems to note change in conflict *available at* <http://www.wfp.org/index.asp?section=3> (2003); Press Release, Amnesty Int'l, Feb. 2003, *at* <http://web.amnesty.org/ai.nsf/recent/AFR540072003!Open> (last visited Nov. 15, 2003). However, the government of Sudan has made many such promises before (*see* notes *supra* and accompanying text, from UN Special Rapporteur's reports on government denial and failure to instate commissions or investigations per requests from UN and other NGOs. January 2003 continued to have armed conflict even after October 2002 MOU. Amnesty, *at* <http://web.amnesty.org/ai.nsf/recent/AFR540042003!Open> (last visited Nov. 18, 2003);.

<sup>200</sup> 2001 REPORT - SUDAN, *supra* note 1, at 1. *See also* UNDP-POGAR, *at* <http://www.undp-pogar.org/countries/sudan/> (last visited Nov. 15, 2003).

<sup>201</sup> 2001 Report – Sudan, *supra* note 1; *see generally*, A/54/467, *supra* note 121; A/57/326, *supra* note 104.

<sup>202</sup> A/57/326, *supra* note 104, at 5-6. The Rapporteur reported “scorched earth tactics used by air and ground forces to clear oil-rich areas, chase people out of their villages and ensure that they would not return, including by planting anti-personnel landmines around watering points and along pathways to areas where wild food is available and in emptied villages.” *Id.* at ¶39.

whose fact-finding missions deny many violations such as slavery and the slave-trade.<sup>203</sup> The UN itself has obstructed humanitarian aid to southern regions by declaring large portions of the south as “no-go” regions as well as allowing Khartoum to determine other regions undeserving of aid.<sup>204</sup>

[47] The UN Special Rapporteur’s actions exacerbate the suffering of the civilians in Sudan. This was definitely not anticipated by those since 1993 who have been appointed as the Special Rapporteur to the Sudan. The government has harassed civilians who have spoken with the Rapporteur, even with the knowledge of the UN.<sup>205</sup> Gaspar Biro, Special Rapporteur reported:

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<sup>203</sup> A/52/510, *supra* note 187, at ¶¶24-38, et seq.

<sup>204</sup> Mindy Belz, *Politics of Starvation*, 22 WORLD MAGAZINE, (July 28, 2001); Saunders, *supra* note 13, at 722-23. An annual 2001 report on WFP activities noted the increased need for food to Eritreans fleeing to the Sudan, but it did not note the already millions starving in Sudan. World Food Programme, *supra* note 199, at 23, [http://www.wfp.org/index.asp?section=7\\_1](http://www.wfp.org/index.asp?section=7_1) (last visited Nov. 18, 2003).

<sup>205</sup> A/49/539, *supra* note 181, ¶ 29.

Another case of torture is of Father Aliaba James Surur, a veteran southern politician living in Khartoum, who met the Special Rapporteur during his visits to the Sudan in 1993. Following these meetings he was subjected to arbitrary arrest for short terms and to harassment by the security forces, . . . . Father Surur is a fragile, elderly man who described his case in a signed letter to the Special R a p p o r t e u r a s f o l l o w s :

‘We arrived at the security office at the military headquarters at 6.30 a.m. on 18 May 1994 ... [sic] I waited for the officer-in-charge from 6.30 a.m. to 9.45 a.m. A certain young man, probably a major by rank, entered the room and locked the door ... He insisted that I should tell him all that the United States Ambassador said and the American plans against the Sudan. I replied to him that we had not discussed anything against the Sudan. He grew angry and started to hit me severely . . . . After having tortured me enough to his satisfaction for nearly 3 1/2 hours, he decided to stop beating me because I had bruises on my face . . . . [I] arrived at my house at 1.30 p.m.’

At 1.30 p.m. on 23 September 1993, four women who had just communicated information to the Special Rapporteur were arrested by members of the police in front of the United Nations office at Khartoum. The Special Rapporteur witnessed two women being dragged on the street and forced into a police vehicle. A few minutes later, the police arrested, in the view of many witnesses, a group of about 25 persons, mainly women, who had been waiting in front of the United Nations office to meet the Special Rapporteur. Several were reportedly beaten up by police officers. The arrests took place despite reported assurances from government authorities that the peaceful assembly of the petitioners would not be interfered with.<sup>206</sup>

[48] The Sudan conflict is truly more than an “internal conflict” into which the international community should be reticent to investigate and act. Amnesty International has noted Ugandan armed forces and conscription as well as subsequent torture and abuse of children from the Sudan in the conflict.<sup>207</sup> The US State Department notes in its 2001 report, that “[b]etween 3,000 and 10,000 Ugandan children have been forced to become soldiers or sex slaves for the LRA, a Ugandan armed opposition group in the south, which is supported actively by the Government.”<sup>208</sup> Similarly, refugees from the Sudan are displaced in other countries as well as refugees from neighboring Eritrea, Chad, and Uganda fleeing into war-torn Sudan.<sup>209</sup> The

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*Id.*

<sup>206</sup> A/48/601, *supra* note 167, at ¶ 58.

<sup>207</sup> Annual Report 1998 – excerpt Sudan, Amnesty Int’l, *available at* <http://www.amnesty.org/ailib/aireport/ar98/afr54.htm> (1998).

<sup>208</sup> 2001 REPORT - SUDAN, *supra* note 1.

<sup>209</sup> A/56/336 at 13 ¶ 99. *See also* 1998 Amnesty Int’l Report, *supra* note 207; WFP report, *supra* note 199; UNHCR *Global Operations*, *available at* <http://www.unhcr.ch/cgi-bin/texis/vtx/home?page=search> (2000).

majority of the world's internally displaced persons are in the Sudan,<sup>210</sup> and the country “exports” ten percent of the world's refugees, (internationally displaced persons).<sup>211</sup> The UN Convention Relating to the Status of Refugees<sup>212</sup> and Protocol thereto<sup>213</sup> provide that these persecuted Sudanese who are shipped out of the country or who flee are “refugees” for the purposes of the protections of the international community.<sup>214</sup> Nevertheless, situations arising in

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<sup>210</sup> *Id.*

<sup>211</sup> Mindy Belz, *Road to Damascus*, *supra* note 124.

<sup>212</sup> Adopted July 28, 1951, GA Res 429(V), entered into force April 22, 1954, [http://193.194.138.190/html/menu3/b/o\\_c\\_ref.html](http://193.194.138.190/html/menu3/b/o_c_ref.html) (last visited Nov. 18, 2003). Sudan has acceded to the treaty as of Feb 22, 1974. *Id.*

<sup>213</sup> entered into force October 4, 1967, GA Res 2198 (XXI), [http://193.194.138.190/html/menu3/b/o\\_p\\_ref.htm](http://193.194.138.190/html/menu3/b/o_p_ref.htm) (last visited Nov. 15, 2003)(Sudan acceded to the Protocol in May 23, 1974). The Convention on Refugees in Article 1(2) provides that,

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

The Protocol then makes the Convention applicable to refugees post 1951 in its Article 1(2).

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countries to which these Sudanese are taken place them in grave danger of being sent back to Sudan for persecution, torture, and other human rights violations causing them to live in fear and unrest.<sup>215</sup> The UN does not appear to address these problems within its own Commission for Refugees, and is allegedly perpetrating religious animus through its employees.<sup>216</sup>

#### IV. CONCLUSION

[49] The foregoing discussion seeks to compare the policies and actions by the UN and its respective departments regarding the nineteen year conflict in the Sudan, particularly from the coup of 1989, with UN policies and actions in at least two other armed “internal” conflicts – Rwanda and the former Yugoslavia. The UN and the international community, as a whole, condemned the human rights violations and violent atrocities committed in these two States, and in the first instances since the Nuremburg trials, the international community has also set up ad hoc tribunals to prosecute the criminals responsible in both situations.

[50] The Rwandan conflict had just begun when the UN was apprised of the situation and began negotiations leading to hard resolutions within the same year calling for force to end the

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<sup>215</sup> See eg., Belz, *Road to Damascus*, *supra* note 124.

UNHCR is currently approving only about one in 10 applications. In addition to facing those hurdles, Sudanese refugees say they cannot overcome a bias among the UN agency's Arab officers against Christians from south Sudan. Most plead not to be returned to Sudan. But without UNHCR approval, they cannot resettle elsewhere, including the United States.

*Id.*

<sup>216</sup> *Id.* See also *Trends in Refugee Status Determination January – September 2002*, UNHCR, Population Data Unit, Population and Geographic Data Section, 5, (2002). The report details refugees to all countries assisted by UNHCR. Syria recognition rate was 11%, in other words, of 1427 applications both pending and new since Jan 1, 2002, only 152 were granted refugee status for protection and ability to relocate without fear of summary expulsion. *Id.*

conflict.<sup>217</sup> The total length of the conflict was only months, but resulted in genocide of between 500,000 and one million Rwandans.<sup>218</sup>

[51] In the former Yugoslavia (SFYR), the conflict lasted much longer and resulted in further atrocities, including genocide, and displacement of persons.<sup>219</sup> According to many sources, the conflict really lasted over a decade, and over one million people were displaced, likewise with over one million dead.<sup>220</sup> Despite similar “delay,” at first in SFYR as in Sudan, the Security Council was nevertheless fairly active in comparison, invoking Chapter VII authority, and actively evacuating civilians in danger, setting up the UNPROFOR, and sending other military groups into the conflict.<sup>221</sup> Furthermore, the Security Council acknowledged its failures in Srebrenica.<sup>222</sup>

[52] With regards to the Sudan, however, the conflict has been ongoing for nearly two decades, resulting in over 2 million dead, over 1 million starving in a partially governmentally induced famine, and approximately 4 million displaced internally and externally as refugees with no international protection.<sup>223</sup> The conflict is not only racial, as was a primary issue in both Rwanda and SFYR, but also religious. Not only is genocide, mass rape, forced labor, and discrimination the norm in the Sudan as in Rwanda and SFYR, but slavery and the slave trade

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<sup>217</sup> See *supra* text accompanying notes 32-38.

<sup>218</sup> See *supra* text accompanying notes 7, 9.

<sup>219</sup> See *supra* text accompanying notes 9, 46-50.

<sup>220</sup> *Id.* Particularly note 50.

<sup>221</sup> See *supra* text accompanying notes 53-60.

<sup>222</sup> See *supra* text accompanying note 61.

<sup>223</sup> 2001 REPORT - SUDAN, *supra* note 1; and *supra* note 127 and accompanying text.

have also resurrected in the country.<sup>224</sup> Yet, in ten years of the Special Commission to the Sudan from the UN Office for Human Rights, only reports and resolutions enumerating the atrocities and deliberate breaches of international obligations by the government and other parties to the conflict are issuing from the UN.<sup>225</sup> To date, any international attempt, including by the UN, to broker a peace agreement has been largely unsuccessful, despite the most recent agreement in 2003.<sup>226</sup> The UN also continues to work through OLS and other humanitarian programs with the Khartoum government, which is the major perpetrator of the gross massacres, torture, and slavery of its own citizens.<sup>227</sup> Furthermore, in 2000, the UN would have allowed Sudan a seat on the Security Council, if several other States had not worked to sway the vote for Mauritius instead.<sup>228</sup> Why, when the UN banned South Africa from the General Assembly for acts of apartheid, does the UN say nothing regarding Sudan's opportunity for election to the Security Council? Why in over a decade has no resolution come from the Security Council asking for stronger force to end these atrocities?<sup>229</sup> In 2002, Gerhard Baum, Special Rapporteur on the Sudan, began his report, stating

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<sup>224</sup> See *supra* text accompanying notes 82 - 87.

<sup>225</sup> Note the recent exception of the newest release from the High Commissioner for Human Rights, May 7, 2004, *see supra* note 190; However, the Commission still cannot act with any reasonable force or with troop strength without a mandate from the Security Council, but must resort to recommendations only. See UN Charter, *supra* note 99, at Art 39.

<sup>226</sup> See 2003 REPORT – SUDAN, *supra* note 81; Human Rights Watch, Sudan: Darfur Destroyed, *supra* note 6.

<sup>227</sup> See *supra* note 187, and accompanying text.

<sup>228</sup> Roger Winter, *U.S. Efforts Successfully Block Sudan Seat on UN Security Council*, USCR, Press Release, (October 11, 2000), at [http://www.refugees.org/news/press\\_releases/2000/101100.htm](http://www.refugees.org/news/press_releases/2000/101100.htm) (last visited Nov. 14, 2003).

<sup>229</sup> Website links to Security Council Resolutions shows that none have issued from the UNSC regarding Sudan from 1989-2003, except in unrelated matters, including terrorism (S/Res/1044,

In view of the links between peace and democracy and human rights, peace talks should be more comprehensive and include all stakeholders in what is not simply a North-South conflict. Confidence-building and reconciliation need democracy. Overall, the situation of human rights has not improved. Civil society structures need to be strengthened. Implementation of the peace agreement is key: international monitoring is necessary. The United Nations should play a stronger role, particularly in the post-conflict scenario, both in monitoring implementation of peace and strengthening the civil society.<sup>230</sup>

[53] I truly hope that the newest peace agreement will end the war and begin to end the suffering of the people of Sudan, particularly southern, black Christians targeted for the pigment in their skin and the faith in their hearts. Will the UN “play a stronger role” and treat with equal dignity those denied their human rights in Sudan?

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Jan. 31, 1996; S/Res/1054, Apr. 26, 1996; S/Res/1070, Aug. 16, 1996).  
<http://www.un.org/documents/scres.htm> (last visited Nov. 14, 2003).

<sup>230</sup> A/57/326, *supra* note 104, at 2.