

Catholic University Law Review

Volume 51
Issue 3 *Spring 2002*

Article 3

2002

Human Dignity Denied: Slavery, Genocide, and Crimes against Humanity in Sudan

William L. Saunders Jr.

Yuri G. Mantilla

Follow this and additional works at: <https://scholarship.law.edu/lawreview>

Recommended Citation

William L. Saunders Jr. & Yuri G. Mantilla, *Human Dignity Denied: Slavery, Genocide, and Crimes against Humanity in Sudan*, 51 *Cath. U. L. Rev.* 715 (2002).

Available at: <https://scholarship.law.edu/lawreview/vol51/iss3/3>

This Article is brought to you for free and open access by CUA Law Scholarship Repository. It has been accepted for inclusion in Catholic University Law Review by an authorized editor of CUA Law Scholarship Repository. For more information, please contact edinger@law.edu.

HUMAN DIGNITY DENIED: SLAVERY, GENOCIDE, AND CRIMES AGAINST HUMANITY IN SUDAN

William L. Saunders Jr.⁺ & Yuri G. Mantilla⁺⁺

For more than ten years, the government of Sudan has waged war against its own citizens resulting in the greatest humanitarian and human rights catastrophe in the world. The war has claimed more than two million lives¹ and displaced an additional four million.² While all sides in Sudan's civil war have committed human rights abuses, the forces of the Sudanese government — which scholar Paul Marshall calls “the worst practitioner of religious persecution and the worst violator of human rights in the world”³ — bear the largest share of responsibility. As Macram Max Gassis, a Roman Catholic bishop in Sudan, states, “War is the cause of all our problems. And the cause of the war is the Islamic fundamentalist regime in Khartoum.”⁴

The government of Sudan has tried to break the spirit of its opponents. It has attacked civilians, used famine as a weapon, and countenanced the revival of slavery. Sudan has also sponsored international terrorism.⁵ Its

⁺ Mr. Saunders is senior fellow and counsel for human rights at the Family Research Council. He is a graduate of Harvard Law School. He previously taught at the Columbus School of Law of the Catholic University of America.

⁺⁺ Mr. Mantilla serves as counsel for human rights at the Family Research Council. He holds a law degree from the Washington College of Law of American University.

1. Millard Burr, *Quantifying Genocide in Southern Sudan and the Nuba Mountains, 1983–1998*, U.S. COMM. FOR REFUGEES, 74, 75 (Dec. 1998).

2. *Human Rights Reports for 1999 – Sudan*, U.S. DEPT. OF STATE (Feb. 25, 2000), available at http://www.state.gov/www/global/human_rights/1999_hrp_report/sudan.html.

3. PAUL MARSHALL WITH LELA GILBERT, *THEIR BLOOD CRIES OUT: THE UNTOLD STORY OF PERSECUTION AGAINST CHRISTIANS IN THE MODERN WORLD* 18 (1997).

4. Editorial, *Suffering in Sudan*, BOSTON GLOBE, June 5, 1999, at A18.

5. *Crisis in Sudan and Northern Uganda: Hearings Before the House Int'l Relations Comm. Subcomm. on Africa, and Subcomm. on Int'l Oper. & Human Rights*, 1998 WL 444536 (1998) (statement of Susan E. Rice, Assistant Sec'y of State for African Affairs). Sudan is involved in the promotion of international terrorism, which constitutes an international crime. The bombing of the U.S. embassies in Kenya and Tanzania in 1998, showed that Sudan protects and encourages the activities of Osama Bin Laden, one of the most dangerous terrorists in the world. Referring to the terrorist activities of Sudan, former Assistant Secretary of State for African Affairs, Susan E. Rice said: “Today, Sudan is the only state in sub-Sahara Africa that poses a direct threat to U.S. national security interests On a bilateral basis, the United States designated Sudan as a state sponsor of terrorism in August 1993 and imposed comprehensive economic sanctions in November 1997.” *Id.*

aim is to force the non-Arab, non-Muslim peoples of the south and other marginalized areas, such as the Nuba Mountains, to abandon their culture and religion. The Department of State called the effort, which remains strong, nothing less than forced Islamization and Arabization.⁶

While starvation of civilians and systematic ethnic cleansing attest to the existence of genocide in Sudan, the tragedy of Sudan does not end there — the crime of slavery is also present. The evidence gathered on the existence of slavery by the United Nations, Nongovernmental Organizations (NGOs) and the media are especially relevant to this case study. This evidence proves that the government of Sudan is violating the Slavery Convention and the Supplementary Convention on the Abolition of Slavery. The Sudanese regime is also violating the norms of international humanitarian law applicable to internal armed conflicts.

It is our hope that the implementation of universally accepted norms of international law in Sudan will help in the resolution of the conflict. Despite the tragedy and suffering of the Southern Sudanese people, they are a great example of endurance and faith for the rest of the world. As Pope John Paul II said, “Still, in this part of Africa, I see clearly a particular reproduction of the mystery of Calvary in the lives of the majority of the Christian people.”⁷

I. LEGAL BACKGROUND

The Nuremberg Trials set a precedent for the articulation and implementation of fundamental principles of international criminal law, by convicting and sentencing Nazi leaders for war crimes, for waging a war of aggression, and for crimes against humanity.⁸ The crimes

6. *Sudan Human Rights Report*, *supra* note 2.

7. Pope John Paul II, Address of the Holy Father to Priests, Religious, Seminarians and Catechists, *available at* <http://www.eglisesoudan.org/english/pope> (last visited Oct. 4, 2001).

8. Such a perspective is congruent with a Christian understanding of human rights. JOHN WARWICK MONTGOMERY, HUMAN RIGHTS AND HUMAN DIGNITY 188 (1986).

The Christian's revelational perspective not only keeps him from unjustified favoritism in human rights practice; it likewise protects him from myopia in his human rights theories. He is not forced, like the doctrinaire secularist, to cram all human rights thinking into the procrustean bed of a single ideology or methodology. . . . The Christian can 'hang loose': his anchor is in eternity, not in human ideology. He will, thus eclectically gather the best from the several schools of human rights theory and practice and try to apply their several insights as the needs of the human situation best dictate. Most importantly, he will have an absolute, revelational criterion for distinguishing the good from the bad in these diverse positions, so the results will not consist of the blind leading the blind.

Id.

committed by the Nazis are considered violations against the international public order, i.e., violations not only against one country or a group of countries, but violations against humanity in general. Since the Nuremberg trials, the international community has continued to develop international norms and mechanisms for the punishment of international crimes.

Despite the obligation of the members of the international community to obey international law, violations of that system of law are common.⁹ Since the Nazi regime tried to exterminate the Jewish people, other regimes with different ideologies have tried to exterminate groups of people because of their social, economic, political, ethnic and religious characteristics. Four million people were murdered in Stalin's purges; five million were killed in China's Cultural Revolution; two million were killed in Cambodia; thirty thousand disappeared in Argentina during the military dictatorships of the 1970s; two hundred thousand were massacred in East Timor; seven hundred and fifty thousand were killed in Uganda; one hundred thousand Kurds were gassed in Iraq; seventy five thousand died in El Salvador's civil war; in Bosnia-Herzegovina, more than two hundred thousand were killed; in Rwanda, between five hundred thousand and one million Tutsis were exterminated.¹⁰

Many of the above mentioned atrocities, some of which amounted to genocide, happened during the Cold War. Unfortunately, under the excuse of Cold War power politics, many crimes were ignored. Today, conflicts based on ethnic, linguistic and religious motives are increasing. Likewise, civil wars pose a significant threat to international peace and security. Sudan is suffering from a civil war, where genocide, slavery and violations of international humanitarian law are happening every day.

II. HISTORICAL BACKGROUND: RELIGION AND PERSECUTION IN SUDAN

In the first centuries, Egypt was a Christian land that strongly influenced Sudan's culture. Christian missionaries from Egypt played

9. *Id.* at 22, 23.

Human rights violations since the end of the Second World War have multiplied geographically and ideologically. National Socialism represented the extreme right politically-one of its most indefatigable enemies being Marxist Communism, at the far left of the political spectrum. Yet the U.S.S.R. and other Marxist states have produced one of the worst human rights records of modern times.

Id.

10. BURNS H. WESTON ET AL., INTERNATIONAL LAW AND WORLD ORDER 1 (1997).

the leading role in spreading Christianity throughout the country. However, when Islam engulfed Egypt in the seventh century, Nubia, or northern Sudan, was cut off from the rest of the Christian world. Despite increasing pressure from Arab Muslim forces, Christian kingdoms persisted within Sudan until at least the late 1500s, as did isolated pockets thereafter.¹¹

Western Christians – Catholic and Protestant – began to re-evangelize Sudan in the nineteenth century. One of these was Catholic priest Daniel Comboni, who founded a religious order dedicated to helping Africans evangelize Africa.¹² Western Christians also came to fight against the slave trade practiced by Arabs against the black tribes. The most famous of these Christians was Gordon of Khartoum, an English military officer who died fighting the slave trade in 1885.¹³

Sudan, the largest country in Africa and more than one-fourth the size of the United States, gained independence from Britain in the 1950s. At that time, approximately two-thirds of the population, occupying the northern two-thirds of the country, was Arab and Muslim.¹⁴ The remaining one-third of the population, located principally in the South, was composed of black African tribes, most of whom followed animism (traditional African religion). It is now estimated that more than half the southern Sudanese are Christians.¹⁵

Under the British Colonial rule, the definition of “South” Sudan was the area of the country below the twelfth parallel. This included the Nuba Mountains and Southern Blue Nile regions of Sudan. However, the National Islamic Front (NIF) government changed the definition of “South” Sudan. Southern Sudan now is the area below the eighth parallel. This is an attempt to exclude the Nuba Mountains and Southern Blue Nile from “Southern Sudan.”

Northerners and southerners had an uneasy coexistence from the first day of independence in 1956. Religious discrimination, though not persecution, by the North against the South became a fact of life after Sudanese independence. Immediately after independence, the teaching

11. AZIZ SURYAL ATIYA, A HISTORY OF EASTERN CHRISTIANITY 436–41 (Kraus Reprint 1991); CHRISTIANITY IN NUBIA, IN THE OXFORD DICTIONARY OF THE CHRISTIAN CHURCH (F. L. Cross & E. A. Livingston eds., 3d ed. 1998).

12. CHRISTIANITY IN NUBIA, *supra* note 11.

13. JOHN H. WALLER, GORDON OF KHARTOUM: THE SAGA OF A VICTORIAN HERO 301–441 (1988).

14. For an excellent historical overview of Sudan, see Abel Alier, Keynote Address for the Conference on Peace in the Sudan, Organized by the Evangelical Lutheran Church in Sudan (Aug. 5, 2001).

15. Nina Shea, *Genocide in Sudan*, in INSIDE THE VATICAN 16 (Mar. 1999).

of the Koran was required in southern schools, and the missionary schools were nationalized. In 1962, the Missionary Societies Act imposed discriminatory licensing requirements on Christian missions. Under President Jaafar Muhammad Nimeiri, the Ministry of Religious Affairs was staffed entirely by Muslims. In March 1964, the Sudan government expelled all foreign missionaries from the South.¹⁶

Though the Missionary Societies Act was amended after the visit of Pope John Paul II to Sudan in 1993, these cosmetic amendments did not lessen the discrimination to which churches and Christians were subjected.¹⁷ The present civil war was sparked in 1983, when President Nimeiri tried, unsuccessfully, to impose Islamic law, or *sharia*, on the country. Nimeiri had come under increasing pressure and influence from the Islamic radicals who would dominate NIF.¹⁸ After the NIF came to power through a military coup in 1989, it made religious persecution a centerpiece of its campaign against non-Muslims.

Christianity, seen by the current regime as a rival to Islam to win the allegiance of Africans, has been the government's target. Hassan al-Turabi, the former intellectual and spiritual leader of the Sudanese regime, remarked, "To be Sudanese is to be Muslim. Islam is the only religion for Sudan and for Africa."¹⁹ According to Anglican Bishop Daniel Deng, "Ten years ago the Muslims declared a jihad They have a plan to conquer the land of southern Sudan, to kill the people, or make slaves of them."²⁰ In January 1992, South Kordofan's governor, Lieutenant General al-Hussein, formally declared a holy war in the Nuba Mountains.²¹ On October 4, 2000, Sudan's Vice-President, Ali Osman Taha, renewed Sudan's call for jihad against non-Muslim black African communities.²²

Under *sharia*, only Muslim men enjoy equality under the law and rights of political participation. According to exiled Sudanese

16. Francis M. Deng, *Sudan: Civil War and Genocide*, MIDDLE EAST Q. (Winter 2001).

17. 1997 Report of United Nations Special Rapporteur, U.N. Doc. E/CN.4/1997/58/13 (1997).

18. ABDULLAHI A. AN-NA'IM & PETER N. KOK, FUNDAMENTALISM AND MILITARISM: A REPORT ON THE ROOT CAUSES OF HUMAN RIGHTS VIOLATIONS IN THE SUDAN 8 (1987).

19. Cited by Bishop Macram Max Gassis in interview with author William Saunders (July 1999).

20. Sarah Meyrick, *Sudan Bishops Bring Sober Message to Lambeth '98*, CHURCH TIMES (July 17, 1998).

21. Burr, *supra* note 1, at 25.

22. *Sudan Sticks to Jihad in Civil War*, AGENCE FRANCE PRESSE, Oct. 4, 2001.

intellectuals Abdullahi An-Na'im and Peter Kok, "Muslim women and non-Muslim believers are disqualified from holding high ranking executive and judicial offices since this would entail the exercise of authority over Muslim men."²³ Accordingly, the NIF has moved to "cleanse" the judicial system of non-Muslims; since 1989, no new non-Muslim judges have been appointed to the judiciary.²⁴

According to the Department of State, a Muslim man may marry a non-Muslim in Sudan, but a Muslim woman cannot marry a non-Muslim unless he converts. Furthermore, while non-Muslims may convert to Islam, the 1991 Criminal Act makes apostasy (including conversion to another religion) by a Muslim punishable by death. As detailed in the State Department report:

Muslims may proselytize freely in the north, but non-Muslims are forbidden to proselytize Children who have been abandoned or whose parentage is unknown — regardless of presumed religious origin — are considered Muslims and can be adopted only by Muslims. Non-Muslims may adopt only other non-Muslim children. No equivalent restriction is placed on adoption by Muslims of orphans, or other abandoned children.²⁵

The NIF has also harassed northern Muslims who do not embrace its extremism.²⁶ Christian Solidarity International has called attention to the plight of the Islamic Beja tribe in northeast Sudan: "The NIF has . . . confiscated the Beja's fertile ancestral agricultural lands . . . selling it to its wealthy supporters, amongst whom is the exiled Saudi Islamist financier and 'Godfather' of the international Islamist terrorist network, Osama bin Laden."²⁷

23. AN-NA'IM & KOK, *supra* note 18, at 23.

24. *Beset by Contradictions: Islamization, Legal Reform and Human Rights in Sudan*, LAWYERS COMMITTEE FOR HUMAN RIGHTS, 43 (July 1996).

25. *Sudan Human Rights Report*, *supra* note 2.

26. AN-NA'IM & KOK, *supra* note 18, at 18. The NIF does not represent the views of most Muslims in Sudan. As Abdullahi and Kok note:

Although about 70 percent of the population profess Islam nominally, Sudanese Muslims subscribe to a wide diversity of beliefs and practices. More significantly, the experience of Islam in the Sudan has been largely social rather than political. To the extent that Islam had a political role in the country [before 1989], it was characterized by toleration and peaceful coexistence.

Id.

27. Gunnar Wiebalck, *The Persecution of Minorities in Sudan: Statement to the U.N. Commission on Human Rights, Subcommittee on the Prevention of Discrimination and Protection of Minorities 2* (Aug. 1998).

III. DIMENSIONS OF THE WAR AGAINST SOUTHERN PEOPLE IN SUDAN

The NIF's war machine has been directed mainly against the people of the South and those in other marginalized areas where black tribes are resisting Arabization and Islamization, such as the Nuba Mountains in the center and southern Blue Nile to the east. As has been extensively documented, the Sudanese government bombs civilian targets, including hospitals.²⁸ Villages that harbored international non-governmental aid agencies have also been special bombing targets.²⁹ The Sudanese Government has intensified its aerial bombardment of civilian targets, including U.N. humanitarian aid centers, since the U.N. Security Council lifted sanctions against Sudan in the aftermath of the jihad-terrorist attack on the World Trade Center and the Pentagon.³⁰

Churches have been targeted as well. One visit by an Episcopal delegation witnessed the bombing of Episcopal and Catholic churches despite the absence of resistance forces in the vicinity.³¹ One member of the team, a former Navy bombardier, said that it was clear that the bombing raid intentionally targeted the churches.³² One of the latest destructions of churches was of Anglican Bishop Bullen Dolli's cathedral. According to Uwe Siemon-Netto, UPI religion correspondent:

Bullen's diocese straddles the frontline in the civil war between northern and southern Sudan. Wistfully, he remembers that until Dec. 29, 2000, he had a proper see (official center of authority)— the brick Frazer Memorial Cathedral named after an early 20th century missionary. But then, soon after last Christmas, Soviet-built Antonov planes of the Sudanese air force roared in and flattened the building with five bombs — of

28. Kiernan Murray, *Sick and Wounded Find No Safe Haven in Sudan Hospital*, REUTERS, June 11, 1999. The author writes of repeated bombings of a hospital in Yei despite clear hospital markings on the roof. *Id.*

29. BURR, *supra* note 1, at 12-20; *Annan Concerned Fighting in Sudan Will Hamper Aid*, REUTERS, May 17, 1999.

30. *Jihad Bombings Kill 16 Black African Civilians 15 Children Dead, 8 Children Wounded*, ASSOCIATED PRESS, Oct. 9, 2001.

31. Alison Barfoot, *As I See It*, KANSAS CITY STAR, Apr. 15, 1999.

32. Statement of Scott Field, Associate Director, Sharing of Ministries Abroad, Press Conference, March 31, 1999.

The cathedral in Madrid was the first, and therefore, the primary target. It is the largest brick structure in the area, and sits on the top of a hill. It is, like most Anglican cathedrals, built in the shape of a cross. In broad daylight, it cannot possibly be mistaken for anything other than what it is — a church.

Id.

56 dropped on little Lui (pop. 5,000) since the beginning of the millennium.³³

According to Brenda Barton, spokeswoman for the UN World Food Programme, during the month of October 2001, an Antonov bomber struck the village of Mangayath. This village was bombed before a UN plane flew over to drop food.³⁴ And according to Bishop Caesar Mazzalori, six people, including a mother and her baby, were killed and several others injured when a government bomber hit the southern Sudanese town of Raga on June 3, 2001. He said that “the Sunday air strike took place in the afternoon and involved between seven and nine bombs, which were dropped along a straight line on strictly civilian section of the town.”³⁵

Victor Akok, a County Commissioner in Sudan, stated that on the afternoon of Sunday, October 7, 2001, the Government of Sudan killed fifteen Black, non-Muslim children and one elderly woman in bombing raids on the villages of Gukic and Mayom Deng Akol, in the Mangok district of Aweil East County, northern Bahr El Ghazal. Eight children were also wounded in the aerial assaults. Sudanese Government Antonov aircraft dropped six bombs on each village. Note that many of these attacks happen on Sundays — days of worship for Christians who are gathered in large numbers, and, hence, easy targets.³⁶ The Sudanese government also poisons water supplies and destroys crops — and there are credible reports that it uses chemical weapons.³⁷

The aim of all these actions by the government is to demoralize the people, causing them to abandon their homes. A huge internally displaced population has been created. Many refugees are sent to “peace camps” which are “little more than death traps.”³⁸ Refugees often must convert to Islam in order to receive food.³⁹ Some refugees migrate to the North and settle in shantytowns around Khartoum, where the government often destroys the churches and schools they build. The *Washington Post* reported in 1998 the “routine . . . bulldozing — thirty

33. Uwe Siemon-Netto, *Slave Tree's Shadows Cathedral*, UPI, Oct. 16, 2001.

34. *Khartoum Bombs South Sudan Village Amid WFP Food Drop*, AGENCE FRANCE PRESSE, Oct. 8, 2001.

35. Information sent by Sudan Catholic Information Office to Agenzia Internazionale Fides, June 21, 2001.

36. *Jihad-Bombings Kill 16 Black African Civilians*, CSI PRESS RELEASE, Oct. 15, 2001, available at http://www.csi-int.ch/csi-prl/csi-press_releases.htm.

37. *Sudanese Army Uses Chemical Arms Against Rebel Troops*, NAT'L CATH. REG., Jan. 17, 1999.

38. BURR, *supra* note 1, at 27.

39. *Sudan Human Rights Report*, *supra* note 2, at 17.

times in the last eight years — of sanctuaries and schools by earthmovers guarded by truckloads of Sudanese soldiers.”⁴⁰ Still others enter southern refugee camps, which may also be bombed by the government.⁴¹

The systematic destruction of food and water and bombing of villages has placed the population in the South and the Nuba Mountains at continuous risk of famine.⁴² While the United Nations has organized relief efforts through a consortium of non-governmental organizations, called Operation Lifeline Sudan (OLS), the Sudanese government has often denied OLS permission to deliver food, thereby using food as a weapon against its own citizens, even at the height of famine. As recounted by Harvard professor Mary Ann Glendon, a particularly flagrant incident occurred in 1998: “Sudan used this veto to ban relief to rebel-controlled areas for weeks on end, while simultaneously raiding farmlands. For half a year, the world averted its eyes from this use of food as an instrument of war, until 2.6 million Sudanese suffered from famine.”⁴³

The government appears to be using similar tactics against its opponents in the southern Blue Nile district in the vicinity of the oil fields.⁴⁴ Furthermore, since 1989, the government has denied all food aid to those portions of the Nuba Mountains not under its control. Though the regime promised in May 1998 that it would permit a humanitarian assessment by the United Nations of the Nuba Mountains, it delayed permission until June 1999.⁴⁵ When the assessment team arrived, sources report, government forces shelled it.

Furthermore, the government has taken actions that have led to the revival of slavery and the slave trade. It created and armed political militias under the Popular Defense Act of 1990.⁴⁶ It also accelerated the practice begun a few years earlier of arming Muslim tribesmen, called

40. Karl Vick, *Priests in Sudan Could Face Crucifixion*, WASH. POST, Dec. 3, 1998, at A35.

41. BURR, *supra* note 1, at 15-16.

42. Antonio Namburete & Gus Constantine, *Humanitarian Groups Seek Food Aid in Sudan*, WASH. TIMES, July 4, 1998, at A9.

43. Mary Ann Glendon, *Sudan's Unpunished Atrocities*, N.Y. TIMES, Dec. 8, 1998; see also BURR, *supra* note 1 at 74-75.

44. *WFP Fears Humanitarian Crisis in Southern Sudan*, PANAFRICAN NEWS AGENCY, July 27, 1999.

45. *U.N. Visiting Nuba Mountains for First Time Since Early 1980s*, AGENCE FRANCE PRESSE, June 23, 1999.

46. Peter Verney, *Slavery in Sudan*, SUDAN UPDATE & ANTI-SLAVERY INT'L 14 (1997).

murahleen.⁴⁷ As NIF Minister of Health Mahdi Babo Nimer admitted, “the regime has made a decision to arm the Arabs and to command them to destroy the Dinka.”⁴⁸ According to two Sudanese Muslim scholars, these actions transformed traditional tribal conflicts and allowed the Muslim tribes to take Dinka slaves on a grand scale. As a result, “slavery, in its classical and known sense . . . reemerged in Sudan.”⁴⁹ In some cases, militias accompany military trains that travel to Wau, raiding along the way and returning with slaves.⁵⁰

Though the government continues to deny publicly that slavery is practiced in Sudan, the evidence is undeniable.⁵¹ Some have tried to shift the focus to the efforts by Christian Solidarity and others to redeem slaves (charging that these efforts only make the problem worse). However, the redemption of slaves is a secondary issue. Whatever the morality and/or prudence of redeeming slaves, the taking of slaves — not the freeing of them — is the problem.⁵² That problem exists because of actions of the Sudanese government. United Nations Special Rapporteur Gaspar Biro (who ultimately resigned in frustration over United Nations inaction) noted that years of inaction on the part of the government, after it was fully informed of the facts surrounding the practice of slavery, have demonstrated the government’s approval and support of the practice.⁵³

One of the main sources of financial support for the government of Sudan is oil. There is increasing evidence that the oil revenues are used to buy weapons to continue the ongoing genocide against the Southern

47. AN-NA’IM & KOK, *supra* note 18, at 12-13.

48. Bona Malwal, *War and Politics*, SUDAN DEMOCRATIC GAZETTE, May 1999, at 4; BURR, *supra* note 1, at 73.

49. USHARI AHMAD MAHMUD & SULEYMAN ALI BALDO, HUMAN RIGHTS VIOLATIONS IN SUDAN—AL DIEIN MASSACRE: SLAVERY IN SUDAN, 24-25 (Eng. trans., 1987).

50. BURR, *supra* note 1 at 68. The reality of trainloads of enslaved children being taken north has entered the popular vernacular. The author was told a grim joke while in Nairobi—the Sudanese train heading north has three classes: first class, second class, and “kiddie class.”

51. *Anti-Slavery Group Divides U.N. and Sudan*, AGENCE FRANCE PRESSE, Mar. 17, 1999. The article details the Sudanese Government’s furious reaction to UNICEF’s conclusion that there is “irrefutable” evidence that slavery exists in Sudan. *Id.*

52. Macram Max Gassis, *West Ignores Slaughter in Sudan*, BOSTON GLOBE, July 19, 1999, at A15.

53. *Report of U.N. Special Rapporteur*, U.N. Doc. E/CN4/1994/48 (1994).

Sudanese.⁵⁴ Oil fuels the war against innocent civilians and has been widely condemned.⁵⁵

IV. THE INTERNATIONAL LEGAL OBLIGATIONS OF SUDAN

Sudan has international legal obligations under positive law and customary international law including the following international treaties, among others: the Convention on the Prevention and Punishment of the Crime of Genocide; the Slavery Convention, as amended; the four Geneva Conventions of 1949; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the International Covenant on Civil and Political Rights; and the African Charter on Human and Peoples' Rights.⁵⁶

The fact that Sudan has ratified neither Protocol II of the Geneva Conventions nor the Genocide Convention does not mean that this body of law does not apply to Sudan. Certain fundamental norms of international law are recognized by the international community as *jus cogens*.⁵⁷ These norms constitute the foundation of the international

54. *Khartoum Using Cheap Oil to Expand its Clout*, AGENZIA INTERNAZIONALE FIDES (Aug. 7, 2001) available at <http://www.zenit.org/english/visualizza.phtml?sid=8915>. The Fides News Agency reported, "[o]il profits are used by Khartoum to increase its military potential. Recently, thanks to Chinese aid, three new arms and ammunitions factories were built near Khartoum China has considerable oil interests in Sudan. The China National Petroleum Company expects to triple oil production abroad by 2005, thanks to oil extraction in Sudan." *Id.*

55. According to a letter sent by Rev. Bill Phipps, former moderator of the United Church of Canada, president of the World Conference on Religion and Peace, Ms. A. J. Finlay, Anglican Church of Canada, Rev. Arthur Van Seters, former moderator of the Presbyterian Church in Canada, Rev. Donal Theriault, Military Ordinary of Canada, and Ms. Janet Somerville, general secretary, Canadian Council of Churches:

It is clear that oil revenues have emboldened the Government of Sudan into thinking it can win the war militarily; that it need not make peace at the cost of real and painful compromise. But military victory is not a tolerable solution to this intolerable war Clearly, oil development has become a major disincentive for peace. It is undermining the very peace process Canada is supporting.

(on file with authors).

The Catholic Church in South Africa also strongly criticized the agreements between South African oil companies and the Khartoum government. According to that Church: "Oil is key to the war in the Sudan. During our visits to Sudan, we saw for ourselves the results of the forced removal and displacement tens of thousands of Southern Sudanese to make the oil fields and pipeline safe from attack. Thousands more have killed or have died of hunger and disease." AGENZIA INTERNAZIONALE FIDES (July 20, 2001).

56. AMNESTY INTERNATIONAL, *THE TEARS OF ORPHANS* 131-32 (1995).

57. WESTON, *supra* note 10, at 415-16. According to Article 1(2) of the Geneva Protocol I: "In cases not covered by this Protocol or by other international agreements,

legal order. They are imperative and nonderogable norms of international law; every state must obey them. The Genocide Convention and the Geneva Conventions are recognized as peremptory norms of international law.⁵⁸ Sudan has international legal obligations to respect these norms independent of its formal participation in those agreements. By summarily executing its own people and by using cruel and inhuman punishments such as amputations, Sudan is also violating numerous international human rights conventions, such as the International Covenant on Civil and Political Rights, which Sudan has ratified.

According to Professor Cherif Bassiouni, a leading expert on international criminal law and Chairman of the U.N. Commission to Investigate International Humanitarian Law violations in the former Yugoslavia: “[t]he criminal aspects of international law consist of a body of international proscriptions containing penal characteristics.” Professor Bassiouni defines international crimes as: “those international criminal law normative proscriptions whose violation is likely to affect the peace and security of humankind or is contrary to fundamental humanitarian values, or which is the product of state action or state-favoring policy.”⁵⁹ Most international crimes are part of “*ius cogens*.”⁶⁰ The violations contained in this category include the ones that are happening in Sudan: genocide, crimes against humanity, war crimes, slavery, and slave related practices, and international terrorism.⁶¹

civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.” *Id.* This means that there are norms that are fundamental for the existence of civilized relations among nations and those norms are binding independently of the subjective acknowledgement of the parties members of the international community.

58. See CHERIF BASSIOUNI, INTERNATIONAL CRIMINAL LAW CONVENTIONS AND THEIR PENAL PROVISIONS (1997).

59. *Id.* at 34.

60. See THOMAS BUERGENTHAL & HAROLD G. MAIER, PUBLIC INTERNATIONAL LAW IN A NUTSHELL 108 (1985). According to Thomas Buergenthal’s book on Public International Law, the Vienna Convention on the Law of Treaties defines “peremptory norms” (*ius cogens*) as follows: “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” *Id.*

61. Referring to the involvement of Sudan in international terrorism, the Australian newspaper *The Courier Mail* informed:

As intelligence services try to prove who was behind the New York and Washington attacks, the evidence is mounting that a secret pact was forged between Osama bin Laden, Iraq and Sudan to wage a terrorist war against the U.S. The pact, forged in 1998, led to Iraqi experts helping to build a chemical

V. GRAVE BREACHES OF INTERNATIONAL HUMANITARIAN LAW

Since the father of modern international law, Hugo Grotius, wrote "The Law of War and Peace,"⁶² there have been many efforts to develop a system of protection of civilians in times of war. Grotius showed to the international community the importance of the laws of war, *jus in bello*. Today that branch of international law is known as international humanitarian law. The protection of civilians constitutes one of the most important functions of international humanitarian law. In the post-Cold War era, the resolution of internal conflicts that threaten international peace and security should become a priority for the international community. Because of this, the provisions of common Article 3 and Protocol II of the Geneva Conventions (which will be discussed below) are very important. One of the biggest challenges for the international community is to make sure that violators of international humanitarian law are punished.⁶³

Sudan acceded to the four Geneva Conventions of 1949 and by doing so has expressed its will to be legally bound by, and to apply and respect the laws of, armed conflict. However, the reality is that those laws of war are violated every day in Sudan. Common Article 3 of the Geneva Conventions is specially relevant. This Article applies to internal armed conflicts. All parties to the conflict in Sudan, the government and the Sudan Peoples Liberation Army (SPLA), are obligated to respect the provisions of Article 3 which has the main objective of protecting the civilian population. Both parties to the conflict have violated the Geneva Conventions. However, considering who the main victims are, how many civilians in the South have been killed, and that the war results from the government's desire to destroy the religions and culture of the South, it is clear that the government of Sudan has to assume the main responsibility for the violations of the laws of war in the region.

The four Geneva Conventions apply to the Sudanese situation because the conflict in Sudan is an armed conflict and Sudan acceded to the four

weapons factory especially for Bin Laden's terrorists in Sudan and Bin Laden and Saddam Husein's Iraq co-operating to build several others. In a paper for the US Congress's Task Force on Terrorism and Unconventional Warfare, its chairman Yossef Bodansky said the chemical weapons factory, in Soba, south-west of Sudan's capital Khartoum, was built with Iraqi know-how for Islamic terrorist affiliated mainly with Bin Laden.

Chris Griffith, *COURIER MAIL (AUSTRALIA)*, Sept. 24, 2001.

62. HUGO GROTIUS, *THE LAW OF WAR AND PEACE* (Francis W. Kelsey trans., reprint ed. 1925).

63. BASSIOUNI, *supra* note 58, at 285.

Geneva Conventions on September 1957. According to Common Article 3:

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 had 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 any place whatsoever with respect to the above-mentioned persons:

violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; 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.⁶⁴

The Sudanese Government's military forces have been violating these norms. Bishop Gassis's testimony underlines the violation:

Aerial bombardment is another arrow in the quiver of Khartoum to destroy the people. Last December alone, in one month alone, nearly 200 bombs were dropped by government bombers on civilian targets in southern and central Sudan.

Let me make this clear: These are not military targets, or the results of so-called collateral damage — accidental "hits." The

64. Geneva Convention (No. I) For the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949 (entered into force Oct. 21, 1950); Geneva Convention (No II) For the Amelioration of the Conditions of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949 (entered into force, Oct. 12, 1950); Geneva Convention (No III) Relative to the Treatment of Prisoners of War, Aug. 12, 1949 (entered into force Oct. 21, 1950); Geneva Convention (No IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949 (entered into force Oct. 21, 1950). Note: Articles 1-3 of Part I of the Conventions mentioned above are identical.

regime of Khartoum, flying Russian-made Antonovs at high altitudes, deliberately bombs civilian targets: Primary schools, churches, aid compounds, medical clinics, open-air markets.

Late last November, my primary school, founded by the diocese, in Panlit in northern Bahral-Ghazal, for war orphans and women and children redeemed from slavery, was attacked. Fourteen bombs were dropped on the village On February 8, 2000, on the feast of St. Bakhita, the first Sudanese saint, and herself a former slave, an Antonov bomber, without warning, dropped five bombs on a schoolyard in Kauda in the Nuba Mountains, Holy Cross Catholic School, where more than fifty students were studying under the trees. Nineteen students and a teacher were either killed on the spot, or died later of their wounds. Many were maimed by the shrapnel.

When one of Khartoum's officials was confronted with evidence about the bombing, he said, "The bombs landed where they were supposed to land."⁶⁵

One of the clearest examples of the violations of the laws of war in Sudan is the indiscriminate aerial bombardment of refugee and displaced persons camps. For example, according to Human Rights Watch: "The result of the government's 1994 dry season campaign and indiscriminate aerial bombardment in Equatoria was to kill and injure civilians and to so terrorize the surviving inhabitants of three large displaced persons camps, Ame, Atepi, and Mundri, that they deserted the camps."⁶⁶

Violations of international humanitarian law produce humanitarian catastrophes that affect mainly civilian populations. In congressional testimony, the U.S. Committee for Refugees executive director Roger Winter declared that: "[t]he civil war has forced more than 4 million people to flee their homes, and caused 300,000 to become refugees in neighboring countries. The government's scorched-earth military tactics and blockage of international relief aid last year triggered a famine that killed 100,000 or more people, according to one estimate."⁶⁷ Such actions by the government of Sudan are in clear violation of Protocol II, Article 17(1) of the Geneva Conventions, which states that:

The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the

65. Bishop Max Macram Gassis, *The Pope John XXIII Lecture, Sudan: Country of Terrorism, Religious Persecution, Slavery, Rape, Genocide, and Man-Made Starvation*, 50 CATH. U. L. REV. 905, 916-17 (2000).

66. *Civilian Devastation: Abuses by all Parties in the War in Southern Sudan*, HUMAN RIGHTS WATCH AFRICA 80-84 (1994).

67. AFRICA NEWS SERVICE, Mar. 23, 1999.

civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.⁶⁸

VI. GRAVE BREACHES OF THE SLAVERY CONVENTIONS

According to the Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1957: "Slavery means, as defined in the Slavery Convention of 1926, the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, and slave means a person in such condition or status."⁶⁹ Article 6 states that:

The act of enslaving another person or of inducing another person to give himself or a person dependent upon him into slavery, or of attempting these acts, or being accessory thereto, or being a party to a conspiracy to accomplish any such acts, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to punishment.⁷⁰

In addition to the evidence presented above about slavery, the recent evidence presented by NGO's, such as Christian Solidarity International (CSI), is a clear example of the existence of slavery in Sudan. In the month of September 2001, CSI, in cooperation with Southern Sudanese community leaders and Arab retrievers, redeemed 4,041 Black slaves during a seven-day visit to Sudan. According to the same report, "the slaves, mostly women and children, were freed from their Baggara-Arab masters and returned to their home areas in northern Bahr El Ghazal, Southern Sudan through the CSI-sponsored Underground Railroad." According to CSI:

Preliminary analysis of over 500 interviews reveal that approximately 75 percent of female slaves over the age of twelve had been gang-raped. Over 90 percent had been otherwise physically abused while in bondage. Many of the returning slaves bore scars from such violence. Over 80 percent

68. Protocol Additional (No. II) to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977 (entered into force Dec. 7, 1978).

69. Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 18 U.S.T. 3201, 266 U.N.T.S. 3 (entered into force Apr. 30, 1957).

70. *Id.* at Art. 6.

reported that they had witnessed the execution of at least one slave by their *mujahadeen* captors or by their domestic masters. Again, over 80 percent of those interviewed said that they were forced to convert to Islam.⁷¹

Bishop Gassis has first-hand knowledge of the existence of slavery in his country. In a compelling new film, "The Hidden Gift," he takes us to meet children, who have been enslaved, beaten, raped, and branded like animals. In his lecture to the Catholic University of America, Columbus School of Law, Bishop Gassis stated:

Even Sadiq El Mahdi, former Prime Minister of Sudan, admitted to the existence of slavery when a direct question was put to him here in Washington. At the Missionaries of Africa Center in D.C., El Mahdi replied that whenever Jihad, or 'holy war' is declared, slavery is involved, because it is part and parcel of holy war.⁷²

VII. GRAVE BREACHES OF THE GENOCIDE CONVENTION

The accepted definition of genocide was adopted by the UN General Assembly in 1948, in the Convention on the Prevention and Punishment of the Crime of Genocide. According to Article II of that document:

[G]enocide means 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. All of these acts of genocide are occurring in Sudan.⁷³

The International Court of Justice expanded the original definition of genocide to include such contemporary practices as ethnic cleansing, mass rapes, and repeated patterns of forced disappearances directed against national, racial, ethnic, or religious groups.⁷⁴

The people bearing the brunt of the Sudanese regime's assault do not doubt that it is genocidal. At the 1998 Lambeth Conference, Sudanese

71. *Black Sudanese Slaves Liberated Jihad-Terrorists Execute and Torture Women & Children*, CSI Press Release, Oct. 4, 2001.

72. Bishop Gassis, *supra* note 65, at 913.

73. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948 (entered into force Jan. 12, 1951).

74. BASSIOUNI, *supra* note 58, at 46.

Bishop Deng stated simply, "Genocide is taking place now."⁷⁵ According to Paul Marshall, "The word *genocide* is . . . thrown around too frequently In the case of Sudan, however, it is simply a factual description."⁷⁶ The United States House of Representatives also recognized that the actions of the Sudanese Government amount to genocide.⁷⁷

Despite the efforts of the United Nations, through its OLS to provide food relief for the Southern Sudanese people, the Sudanese Government's actions make this task impossible. The government manipulates OLS relief efforts to accomplish its own political and criminal objectives. The Sudanese government denies access to OLS flights into the Southern part and the Nuba Mountains. According to a recent Freedom Now World News article:

In May 2001 a humanitarian team found thousands of starving Sudanese people in a hilly, tropical area of Sudan. In this corner of the Upper Nile province, approximately 64,000 people live on less than 400 calories per day (eating only tree leaves and plant roots) because the Government of Sudan (GOS) soldiers burned their fields and food stores.⁷⁸

As Senator Sam Brownback stated: "How can we permit this government to continue to dictate the terms of food distribution under OLS? Why does this rogue government have free reign to starve its own people, when U.S. food aid sits waiting for distribution?"⁷⁹

In order to conclude that the actions of the Sudanese Government constitute genocide,⁸⁰ it is necessary to find intent to commit those crimes. Representative Chris Smith, Chairman of the Subcommittee on

75. Meyrick, *supra* note 20.

76. Marshall, *supra* note 3, at 20.

77. H.R. 17, H. Res. 62, H.R. 1175, & H. Con. Res. 75: Markup Before the House Committee on International Relations, 106th Cong. 13 (1999) (statement of Rep. Royce).

78. FREEDOM NOW WORLD NEWS, Oct. 13, 2001 ("In Sudan, Fundamentalists starve out innocent villagers; Servant's Heart offers much needed assistance to a people otherwise forgotten.").

79. Federal Document Clearing House. (NEED MORE INFO)

80. Protocol Additional (No. II) to the Geneva Conventions, op. cit., Art 14. In addition to furthering the crime of genocide, these actions are also in violation of international humanitarian law. According to Article 14 of Protocol II of the Geneva Conventions: "Starvation of civilians as a method of combat is prohibited. It is prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works." *Id.*

International Operations and Human Rights explains that such intent exists:

So the only . . . question is whether there is genocidal intent 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 Khartoum 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?⁸¹

Following the provisions of the Genocide Convention we can conclude that the individuals responsible for the crime of genocide in Sudan must be held responsible for their actions. According to Article III of that convention the following acts shall be punished: “(a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide.”⁸² And Article IV states that: “Persons committing genocide or any of the other acts enumerated in Article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.”⁸³

According to Raphael Lemkin, a lawyer who coined the term “genocide” in 1944, genocide has two phases. One is the destruction of the national pattern of the oppressed group.⁸⁴ The other is the imposition of the national pattern of the oppressor.⁸⁵ In Sudan, the government, as we have shown, is trying to destroy the national pattern of minority groups such as the Dinka people by forced starvation, Islamization, and imposition of Sharia laws on those who reject the system and the culture of the government. Islamization and Arabization (the national pattern of the oppressor) is the goal of the government of

81. 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.

82. Genocide Convention, *supra* note 73, at Art. 3.

83. Genocide Convention, *supra* note 73, at Art. 4.

84. See Raphael Lemkin, *Genocide as a Crime Under International Law*, 41 AM.J.INT'L L. 145 (1947), reprinted in NICHOLAS N. KITTRIE, INTERNATIONAL CRIMES AND PUNISHMENT (1999).

85. *Id.*

Sudan without respect for the African culture and Christian religion in the South.

VIII. CRIMES AGAINST HUMANITY

The category of crimes against humanity was established in Article 6(c) and Article 5(c) of the Charters of the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East. According to Article 6(c) of the London Declaration, which lead to the establishment of the Nuremberg Tribunal,⁸⁶ crimes against humanity are perpetrated by a state against its own citizens. These crimes include:

Murder, extermination, enslavement, 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 the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.⁸⁷

General Telford Taylor, author of the final report of the Army on the Nuremberg War Crimes Trials, defines crimes against humanity as: "those acts which are part of a campaign of discrimination and persecution, and which are crimes against international law even when committed by nationals of one country against their fellow nationals or against those of other nations irrespective of belligerent status."⁸⁸

The Statute of the International Tribunal for the Former Yugoslavia establishes, in Article 5, the power of the Tribunal to prosecute persons responsible for crimes against humanity committed in armed conflict, whether international or internal in character, and directed against any civilian population. These crimes are: "(a) murder; (b) extermination; (c) enslavement; (d) deportation; (e) imprisonment; (f) torture; (g) rape; (h) persecutions on political, racial and religious grounds; (i) other

86. The London Declaration signed by the countries that defeated Nazi Germany lead to the establishment of the Nuremberg Tribunal. According to the London Declaration, crimes against humanity are perpetrated by a state against its own citizens. See *Trial of the Major War Criminals Before the International Military Tribunal*, 1 Official Docs. 27, 66 (Nuremberg 1947).

87. Agreement by the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic, and the Government of the Union of Soviet Socialist Republics for the Prosecution and Punishment of the Major War Criminals of the European Axis and Charter of the International Military Tribunal, August 8, 1945 (entered into force, August 8, 1945).

88. See KITTRIE, *supra* note 84, at part A.

inhumane acts.”⁸⁹ The Rwanda tribunal uses exactly the same language as the tribunal for the former Yugoslavia in this respect and in others.

If the definition of crimes against humanity is applied to the situation in Sudan, it is clear that the government is responsible for crimes against humanity. The fact the government is using means (military, ideological, political and social) to try to weaken and exterminate as many Southern Sudanese as they can, shows the existence of crimes against humanity.

IX. INTERNATIONAL LEGAL REMEDIES FOR SUDAN

The problems in Sudan can be remedied in different ways, including mechanisms for the implementation of international criminal law in Sudan. Political considerations will influence the type of remedy that is chosen.

A. UNIVERSAL JURISDICTION

The norms Sudan is violating are clearly established by treaty obligations or by customary international law. The Geneva Conventions, the Genocide Convention and the Convention against Slavery are considered clearly established *jus cogens* or imperative norms of international law. This shows that there are not *ex post facto* laws that apply in the case of Sudan.

The gravity of the breaches of international law committed by the government of Sudan, raises a *prima facie* case for the application of “universal jurisdiction.” Because of the magnitude of those crimes, the international community and the individual member states have an obligation to prevent the commission of more crimes in Sudan and prosecute the perpetrators of the atrocities in that country. If the government of Sudan is unwilling to resolve the humanitarian crisis in its territory, then the international community can intervene to resolve that situation.⁹⁰

B. UNITED NATIONS INTERVENTION

Under Chapter VII of the U.N. Charter, the United Nations can impose international sanctions against governments that violate fundamental imperative norms of international law. The South African precedent, in which U.N. sanctions helped to end apartheid, points to the

89. Statute of the International Criminal Tribunal for the Former Yugoslavia, 32 I.L.M. 1159 (1993), reprinted in KITTRIE, *supra* note 84.

90. ROGERS S. CLARK & MADELEINE SANN, THE PROSECUTION OF INTERNATIONAL CRIMES 274-75 (1996).

importance of international action in cases of systematic violations of principles of international law. Genocide and slavery are international crimes that Sudan is committing. This means that the United Nations, under Article 7, has the authority to impose international sanctions on Sudan.

Some may argue that the U.N. Charter does not allow the intervention of this organization in internal conflicts, such as the one in Sudan. Under Article 2(7) of the Charter, the United Nations is clearly directed to stay out of internal conflicts, except in cases that are a threat to international peace and security. We agree with the fact that the use of force in international law is not unlimited. The just use of force or *jus ad bellum* puts limits in the legality of the use of force. The U.N. Charter prohibits intervention in the internal affairs of countries based upon the principle of respect of territorial integrity and national sovereignty. However, there are exceptions to the principle of nonintervention. According to Chapter VII, the U.N. Security Council may use its authority to enforce international law and authorize military intervention in cases that threaten or breach international peace and security. David Wippman, author of *Change and Continuity in Legal Justifications for Military Intervention in Internal Conflict*, states that, historically, “[c]ivil wars, unlike interstate conflicts, were not understood in and of themselves to constitute threats to international peace.”⁹¹ One exception to this was the conflict in Indonesia in 1947, when the Security Council determined that that internal conflict was a threat to international peace. The case of Rhodesia in 1965, illustrates the possibility of United Nations intervention in cases of regimes that violate fundamental norms of international law.⁹²

In recent years, the Security Council has authorized military intervention to end repression of Kurds in Iraq, famine in Somalia, ethnic cleansing in Bosnia, genocide in Rwanda, and to restore democracy in Haiti.⁹³ In the past the United Nations has considered genocide among the reasons for a military intervention in internal conflicts. The scale of killing in Sudan is worse than in Somalia, Bosnia and Rwanda combined. Therefore, it appears to meet the United Nations’ criteria for humanitarian intervention.⁹⁴

91. David Wippman, *Change and Continuity in Legal Justifications for Military Intervention in Internal Conflict*, 27 COLUM. HUM. RTS. L. REV. 435, 466 (1996) (citing Charter of the United Nations 609 (Bruno Simma ed. 1994)).

92. *Id.*

93. *Id.* at 461.

94. *Id.* at 437. According to Wippman:

C. THE ORGANIZATION OF AFRICAN UNITY

The Organization of African Unity is a proper forum to deal with the violations of international law committed by Sudan. According to the African Charter on Human and Peoples' Rights, individuals and NGO'S can submit written complaints to the Commission for actions committed by state parties that are in violation of the principles of the African Charter.⁹⁵ Article 4 of the African Charter states that: "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."⁹⁶ Article 5 of the African Charter provides that: "Every individual shall have the right to respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."⁹⁷ In Sudan, this provision is violated daily. The Shari'a law of Sudan violates the prohibition against cruel and inhuman punishment; it allows inhuman punishments such as amputations and stoning to death. Unfortunately, little has been done by the Organization for African Unity to resolve the humanitarian crises in Sudan.

D. INTERNATIONAL CRIMINAL TRIBUNAL FOR SUDAN

The International Criminal Tribunals for the former Yugoslavia (ICTY) and for Rwanda were established by the Security Council based upon its powers under Chapter VII of the U.N. Charter.⁹⁸ Following those precedents, a similar mechanism could be used in Sudan.

The main features of an international criminal tribunal in Sudan would be similar to the ones created for the former Yugoslavia and Rwanda. The tribunal would have the power to prosecute persons responsible for

The scope for collective intervention has widened. Through an expansive interpretation of what constitutes a threat to international peace, the United Nations (acting through the Security Council, but with the support of the General Assembly) has included human rights catastrophes amounting to genocide or induced famine among the circumstances that may prompt it to authorize military intervention.

Id. at 438.

95. See EVELYN A. ANKUMAH, *AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS* (1996).

96. African Charter on Human and People's Rights, June 26, 1981 (entered into force, Oct. 21, 1986) O.A.U. Doc. CAB/LEG/67/3 Rev. 5, *reprinted in* 21 I.L.M. 59 (1982).

97. *Id.* at Art. 5.

98. For an excellent analysis on the International Criminal Tribunal for the former Yugoslavia, see MICHAEL P. SCHARF, *BALKAN JUSTICE* (1997).

serious violations of imperative, non-derogable norms of international criminal law committed in the territory of Sudan since the beginning of the conflict. Following Article 2 of ICTY, the Sudan tribunal would have the power to prosecute persons committing or ordering others to commit grave breaches of the Geneva Conventions.⁹⁹ The tribunal would also have the power to prosecute persons committing genocide, and to prosecute persons responsible for the crimes against humanity as defined in the ICTY and the Nuremberg Charter.¹⁰⁰ Following article 5 of ICTY, the Sudan tribunal should have the power to prosecute persons responsible for murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial and religious grounds, and other inhumane acts committed in Sudan. It should also have the power to prosecute persons responsible for the crime of slavery, and have jurisdiction over natural persons. The individual criminal responsibility provisions of Article 7 can also serve as a model for the Sudan tribunal. The territorial jurisdiction of the tribunal should extend to the territory of the republic of Sudan, including its land surface, airspace and territorial waters. The temporal jurisdiction of the tribunal would depend on the situation in Sudan. The jurisdiction of the tribunal and national courts should be concurrent.

X. CONCLUSION

Throughout history different ethnic groups have claimed superiority. The most horrendous example of this attitude in modern times was in Nazi Germany. The Nazi regime posited the superiority of the “Aryan Nation.” The horrors of the Nazi regime forced the international community to recognize the existence of a law higher than positive law, higher than international law. This higher law has a central concept — the protection of human dignity.

Sudan is violating positive norms of international law, norms of customary international law, and norms of international morality recognized by all the peoples of the world. Because of the grave violations of international criminal law, Sudan constitutes a threat to international peace and a threat to the national security of the United States and other democratic countries.

Because of genocide, crimes against humanity, war crimes, and slavery committed by the government of Sudan, there are legal, political and moral imperatives to punish the individuals responsible for those

99. See generally *id.*

100. *Id.*

violations and to end the atrocities in that country. It is the legal and moral obligation of the international community to stop the international crimes in Sudan and prosecute those guilty of grave breaches against international law.

The situation in Sudan has the same characteristics as the Holocaust of the Jewish people and others in Germany. It is the intent of the Sudanese government to exterminate and enslave people based on their racial and religious characteristics. The international community did not hesitate to bring universally agreed principles of natural law to bear on the perpetrators of the Holocaust. Likewise, it should bring those same principles to bear in the case of Sudan.

To utilize any part of this article, please contact Family Research Council at (202) 393-2100.