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THE CASE FOR INTERVENTION IN THE HUMANITARIAN CRISIS IN THE SUDAN

LEILANI F. BATTISTE*

I. INTRODUCTION

While many in the world have been focused on such tragedies as Hurricane Katrina in the United States or the 150,000 people that were killed in the tsunami that occurred in the Indian Ocean in December 2004, unfortunately another humanitarian crisis has continued to unfold since the beginning of 2003. In Sudan’s western Darfur region, a massive campaign of ethnic violence has claimed the lives of over 70,000 civilians, with another 1.85 million internally displaced or fleeing to neighboring Chad, since February 2003.¹

The humanitarian crisis in Darfur presents one of the greatest challenges to the international community since the coordinated massacre of over 800,000 people in Rwanda in 1994. The mass murder of national, ethnic and tribal groups at the hands of both the Sudanese Government and the pro-Arab, government-backed militias, known as the janjaweed,² is deemed responsible for the deaths of tens of thousands of black Sudanese in the region.

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² Originally referred to the nomadic Arab bandits who rode on horses and camels, enriching themselves by stealing livestock and attacking black Africans. “Jaam” means “evil” in Arabic, and “jawad” means “horse”, roughly translating “janjaweed” as “evil horseman.” Although there are numerous variations on the spelling of the word as it is a rough translation of Arabic, “janjaweed” will be used herein.
Despite the unmistakable tragedy that has occurred and continues to occur, the international community has utterly failed to respond. Debate over whether the term "genocide" should be used to describe the ethnic cleansing and displacement of nearly a quarter of a million people in Sudan has essentially deterred any type of humanitarian intervention from other nations that have signed or ratified the Genocide Convention.\(^3\) Although the U.S. Government has called the crisis a "genocide," the United Nations and the rest of the world has yet to do so, and has failed to respond in a timely manner that could have prevented countless deaths and ended the violence.

Recently, a report by a United Nations-appointed commission of inquiry into whether genocide occurred in the Darfur region has found that the Sudanese Government and the janjaweed militia are responsible for war crimes and crimes against humanity under international law, and strongly recommended referring the matter to the International Criminal Court. While this is indeed commendable, the Committee incredibly concluded that the Government had not pursued a policy of genocide despite such compelling evidence as the fact that Government forces (with the help of the government-backed militia) conducted "indiscriminate attacks," including killing civilians, torture, abductions, destruction of villages, rape, pillaging and forced displacement.\(^4\) The Commission further opined that although crimes "no less heinous than genocide" had been committed, nevertheless, the crucial element of "genocidal intent" appeared to be missing.\(^5\)

In February 2005, the UN Security Council announced that over 10,000 troops, as part of a United Nations peace support operation, would be deployed to the Sudan for monitoring and verification of the Comprehensive Peace Agreement between the Government of the Sudan and the Sudan People’s Liberation Movement ("SPLM"), a "rebel force," as signed on January 9, 2005.\(^6\) While this action is applauded, nevertheless, it appears to have been too little too late.

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5. Id.
It has been almost three years since the brutal attacks began, resulting in the deaths of tens of thousands civilians, and the displacement of almost two million more. Yet, the failure of the UN and the rest of the world to respond in that time raises both a moral and legal question: if the systematic and calculated murder of unarmed men and boys, the abduction and rape of women and girls, the destruction of villages as well as the destruction of food and water supplies, is not enough to warrant military and/or diplomatic intervention – what in the world will?

A. A BRIEF HISTORY OF THE INTERNAL STRIFE LEADING TO THE COORDINATED AND SYSTEMATIC ATTACKS BY THE SUDANESE GOVERNMENT AND “JANJAWEED” MILITIA UPON CIVILIANS IN THE DARFUR REGION

Sudan, the largest nation in Africa, has been mostly mired in civil war since it won its independence from Great Britain in 1956. The central conflict in the ongoing war has been between the Muslim government forces in the North, and rebels in the South, which began in 1955, declined in 1972, and resumed in 1983. Over the course of time, some two million people died as a result of the conflict, most of them Christians.

The Darfur region is Sudan’s largest region, located in the western part of the country. Darfur was an independent sultanate until 1917, when it was the last region to be incorporated into the Anglo-Egyptian Sudan. Since 1994, Darfur has been divided into South, West and North regions. Much of the current crisis has taken place in West Darfur, an ethnically mixed region of Africans and Arabs, though African groups predominate. The Masalit, Fur and Zaghawa communities are some of the most predominant ethnic groups of West Darfur, and have also been the principal victims of the government’s military campaign. All of these tribes are largely peasant farmers, but also engage in cattle raising. Both the Masalit and Fur have united in marriage with Arabs and other Africans.

The conflicts in the Darfur region have continued since the early 1980’s. Because Darfur is geographically isolated, it has been neglected by the central government in Khartoum. Much of the peace between the region’s ethnic groups have been destroyed due to environmental degradation from the spread of the Sahara desert as a result of ongoing drought,

8. HUMAN RIGHTS WATCH, DARFUR DESTROYED: ETHNIC CLEANSING BY GOVERNMENT AND MILITIA FORCE IN WESTERN SUDAN 16, No. 6(A), (May 2004).
9. Id.
10. Id.
coupled with "divide and rule" tactics of the central government and the influx of modern weaponry.\(^1\)

Early conflicts were predominantly clashes between Arab nomadic groups with these farming communities, over access to pasture and water for cattle, or outright theft of animals. Since the 1980’s, drought has driven these nomadic tribes to systematically occupy the land in the central part of the Darfur region, known as Jebel Marra massif. At one point, the conflict rose to the level of a civil war, with entire villages destroyed and thousands of lives lost on both sides. Despite attempts by these nomadic groups to survive as livestock herders by seizing land in the fertile central zone, the Fur - the predominant occupants - have fought back to retain what they have long-viewed as "their land."\(^12\) This resulted in the start of government-initiated hostilities against the Fur for resisting the nomads’ intrusion rather than seeking accommodation of them.

The Zaghawa were also among the people attempting to resettle in the central region and encountered hostility from the Fur farmers. Eventually, the Zaghawa would also become a target of government, pro-Arab hostilities against all "zurga" (a derogatory term for "black") and non-Arab groups of Darfur, which eventually prompted the Fur to form their own militias. Initially these militias were utilized for self-defense, but were later folded into the Sudanese Liberation Army/Movement ("SLA/M"), that sought equality for all Sudanese.

Between 1987 and 1989, the conflicts between Fur farmers and Arabs intensified so much that thousands of Fur were killed, tens of thousands more were displaced, and over 40,000 homes were destroyed.\(^13\) Instead of intervening in the conflicts to defuse tensions, Khartoum ignored them, allowing them to explode some fourteen years later.

In the 1990’s, hostilities resumed in West Darfur (among other places), particularly in 1998, when Arab nomads prematurely moved their flocks into land predominantly populated by Masalit farmers. During the 1998 conflict, more than sixty Masalit villages were destroyed, an Arab village was burned, both Masalit and Arabs were killed and more than five thousand Masalit were displaced.\(^14\) Despite a resolution of the conflict being reached, hostilities again broke out in 1999, with more than 125 Masalit

\(^2\) Id.
\(^3\) Id.
\(^4\) HUMAN RIGHTS WATCH, *DARFUR DESTROYED: ETHNIC CLEANSING BY GOVERNMENT AND MILITIA FORCE IN WESTERN SUDAN* 16, at 6(A), (May 2004).
villages partially or totally destroyed and hundreds killed, including local Arab tribal chiefs. The government brought in military forces to stop the violence. Yet, the violence that ensued from these attacks further polarized the pro-Arab government away from its black citizens.

The current humanitarian crisis essentially began early in the morning of April 25, 2003, when a blast followed by six rapid detonations shook a tiny one-runway airport in El Fasher, where Sudanese soldiers were stationed. The blasts roused sleeping soldiers out of their barracks only to be ambushed by machine-gun fire from the rebel SLA/M. With only two hundred sixty men, forty Toyota Land Cruisers and mostly small-arms, this “rag-tag” group managed to take over a vital military outpost of the Sudanese Army, and kidnapped the head of the Sudanese Air Force, whom they released forty-five days later.

The SLA/M emerged as an answer to Khartoum’s disregard for maintaining infrastructure and politically marginalizing blacks in the Darfur region. The government had refused to repair roads or maintain other public services, and engaged in a policy of awarding top government positions to local Arabs. Frustrated by political and economic isolation, the SLA/M sought to strike back against the Sudanese government while drawing the world’s attention to their political plight. At first Khartoum did not take the SLA/M seriously; but after the attack at El Fasher, the government determined that it had to treat the SLA/M as a major threat.

During conflicts with SLA/M rebels in the south of the country, the Sudanese military perfected a strategy to combat insurgents: air forces would attack from the sky while Arab tribesmen, armed by the government, would concurrently attack from the ground. These Arab militia, or janjaweed were particularly important in Darfur, since a majority of the Sudanese Army were from Darfur and could not be trusted to take up arms against former neighbors and kin. By July 2003, the government was appealing to Arabs in Darfur to protect their homeland from the “rebels.” It would be the first step to laying the groundwork for the series of coordinated attacks by the Sudanese Government and the janjaweed against its unarmed black citizens.

As a result of the history of violence, the Sudanese Government, together with the janjaweed, began targeting the Fur, Masalit and Zaghawa

15. Id.
17. Id.
18. Id.
through a combination of indiscriminate, deliberate and coordinated aero-
rial and ground attacks, denial of humanitarian assistance, and a cam-
paign of terror that has resulted in the displacement of over a million and
a half civilians. The Sudanese Government left almost no stones un-
turned in attacks upon anyone suspected of having any allegiance to the
rebel movement.

Since mid-2003, the coordinated attacks by the Sudanese Army and the
janjaweed have resulted in mass killings of mostly unarmed men and
boys. Mass killings of civilians in Fur, Masalit and Zaghawa areas have
taken three forms: (1) extrajudicial executions of men, by the army and
the janjaweed; (2) attacks in which government soldiers and janjaweed
have played an equal role fighting side by side and/or (3) attacks in
which government forces have played a supporting role to the janjaweed
- “softening up” villages with heavier weapons than those carried by the
janjaweed, providing logistical support, or giving the janjaweed protec-
tion as they leave.19

In almost all the reported attacks, the janjaweed have the imprimatur of
the government. Numerous witnesses and victims have described the
janjaweed arriving at the same time as and leaving with the government
forces, wearing uniforms similar to government uniforms, utilizing simi-
lar arms and equipment as that utilized by government soldiers, and
seeming to coordinate ground attacks with aerial bombardment by gov-
ernment aircraft.20 Eyewitnesses have also reported that during attacks,
the janjaweed have made such statements as “we are the government!”21
leaving no doubt as to the relationship between the government and the
janjaweed.

As to the attacks, eyewitnesses reported government soldiers and jan-
jaweed working in concert or coordinating their attacks on villages so as
to not only spread their destruction, but also to ensure that villages are
not reoccupied. The brutal attacks often started with government heli-
copters, flying at low levels, knowing that the probability of ground at-
tack was remote, and engaging in reconnaissance of villages prior to a
full-scale attack. Then, aerial barrages ensued, consisting of hurling ex-
plosives and/or other crude armaments such as barrels of nails, car chas-
sis, or old appliances from planes in order to crush people and property.22

19. HUMAN RIGHTS WATCH, DARFUR DESTROYED: ETHNIC CLEANSING BY GOVERNMENT AND
MILITIA FORCE IN WESTERN SUDAN 16, No. 6(A), (May 2004).
20. Id.
21. Id.
Concurrent with the aerial attacks, government soldiers and/or *janjaweed* went into the villages lacking security from rebel forces, and engaged in campaigns of looting, abductions, grisly murders, beatings, ethnic humiliation, and destruction of property and basic necessities. Fleeing villagers were targeted in aerial bombings and shootings. These ground assaults were often accompanied by attackers shouting racially derogatory terms and epithets as bullets sprayed their victims. In addition, both the government soldiers and *janjaweed* abducted women and girls who were not killed in the assault, taking them to nearby fields where they were repeatedly raped.

A few days after a village had been attacked, government helicopters would return to the “scoped out villages” to ensure that, in fact, the villages were empty and had not been reoccupied. If any villagers had returned, government soldiers and *janjaweed* would return to further attack the village, killing and burning who and what was left to ensure that the village was not reoccupied. Since the coordinated attacks began, many of the destroyed villages have been reoccupied by the *janjaweed* and their families, while over a million and a half black Sudanese have been displaced from their homes.

B. **The Current Situation – A Large-Scale Humanitarian Crisis With Mostly Women and Children As Its Victims**

1. Displacement of Over More Than One Million Refugees

Currently, over 200,000 displaced Darfur refugees have resettled in makeshift tents in refugee camps just across the Chad border. Some refugees, displaced from their homes and villages, have not been able to cross the Sahara Desert into Chad, and have set up refugee camps in the western portion of Darfur. The United Nations High Commission for Refugees (UNHCR) continues to set up camps, recently opening its twelfth camp. Many towns and villages in the Sudan, once occupied by

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23. The most common method of killing was execution-style shooting of men and boys. Victims have also reported incidents of *janjaweed* burning families alive in their homes, as well as tossing babies and small children into burning huts as their parents fled.


25. *Id*.

26. Such statements include, “Kill the Nuba! Kill the Nuba!” (a derogatory term for black Sudanese). note 19; see also, U.S. DEPT. OF STATE, PUB. NO. 11182, DOCUMENTING ATROCITIES IN DARFUR (2004).

27. *Id*.

28. *Id*.

tens of thousands of Darfurians are now essentially ghost towns numbering in the hundreds at best.

In any event, both western Darfur and eastern Chad are grim landscapes upon which anyone can hope to survive. The land is dry and the landscape is intensely hot. Refugees have nothing more than tents to protect them from the sun and sand. Food is scarce, and the wood for fire in the immediate surroundings of the refugee camps is even more scarce. In the Sudanese culture, wood gathering is a woman’s work. However, having to look for wood too far from these camps make women and girls prey to the government soldiers and *janjaweed* that continue to stalk the camps.30

2. A Vulnerable and Unprotected Population

The current situation is that refugees are not out of immediate danger for further attacks, nor are they completely out of harm’s way within the camps. First and most tragically, the UNHCR has grossly underestimated the scope of the tragedy in the Sudan, and thus the total number of refugees requiring assistance. As of January 2005, over 200,000 refugees have fled across the border into neighboring Chad, and another 1.6 million are displaced within Darfur.31 Not surprisingly, given the calculated and systematic approach to the attacks as described above, nearly 80% of the refugees that have fled to Chad are women and children.32 Unfortunately, those fleeing to Chad have found that it is a remote, desert region where natural resources like food or water, are scarce.33

Ironically, some of the refugee camps have proven to be not much in the way of “refuge” for the thousands that have fled the ongoing violence. Since August 2004, the UN has been able to intervene with some humanitarian assistance in the form of food, water, and makeshift shelter.34 However, many of the UN camps are grossly overcrowded, with camps designed for 6,000, actually holding three times that number.35 Many of the camps still lack clean water, sanitation, and food, although UN relief workers have been present for months. Infants and children are particularly at risk as they become severely malnourished and susceptible to disease from drinking water utilized by animals, causing many to be-
come sick. The World Health Organization has reported that as of September 2004, between 6,000 and 10,000 people in Darfur camps in die every month due to unsafe water and living in unsanitary conditions; many of them are aged 5 and under.\textsuperscript{36}

In addition to the unsanitary conditions of the camps, the refugees have literally no protection from the harsh elements of the Chad/Darfur border landscape – hard, arid, barren desert land subject to unrelenting heat and constant sandstorms. In many of the camps in Chad, four sticks in the ground constitute "home."\textsuperscript{37} Some make roofs or a shelter by draping or affixing a cloth to the sticks. On sunny days with no wind, such a makeshift shelter provides some respite from the heat; however, on days with wind and sandstorms, "home" may blow across the desert.

The UNHCR mobile monitoring teams have also monitored security in West Darfur and near the Chad border. As a result of attacks in some of the camps, as of late July 2004, the UNHCR has had to move over 140,000 refugees to safer camps deeper inside Chad,\textsuperscript{38} and another 65,000 as of early October 2004.\textsuperscript{39} The UNHCR teams also monitor movements of people and have found that as the violence continues in Darfur, so have the numbers of refugees fleeing towards the border.\textsuperscript{40}

3. How the Sudanese Government Has Contributed to the Crisis – And How It Continues To Perpetuate the Crisis

Despite the fact that over a million and a half people have been displaced as a result of the systematic attacks upon unarmed civilians, the Sudanese Government is doing little to offer anything in the way of aid to refugees. Sanitation in the camps is poor, raising worries among those providing humanitarian assistance of the possibility of an outbreak or cholera or measles. Some observers indicate that these may be the precise conditions that the Sudanese Government wanted, in order to eliminate displaced civilians naturally. As if the very real threat of disease was not enough, refugees living in the camps live under the continuing threat of attacks from the \textit{janjaweed}.

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\textsuperscript{36} Id.

\textsuperscript{37} Id.

\textsuperscript{38} UNHCHR, \textit{Chad/Darfur Emergency: UNHCHR Back in Chad's Violence-Hit Camps; Completes Transfer From Border Town} (Jul. 27, 2004) <www.unhchr.ch>.


\textsuperscript{40} UNHCHR, \textit{Chad/Darfur Emergency} (Feb. 2005) <www.unhchr.ch>. 
The UN reports that despite the numbers that have already fled, the attacks continue.\(^{41}\) Those who have been displaced have no real prospect of returning home to escape the threat, as the \textit{janjaweed} continue their assault on African villages. With the crisis gaining more prominence in the world’s eyes, the government has felt pressure to alleviate the crisis, though not in a way one would expect. In August 2004, there were reports of incidents in which masked gunmen swept into camps in the middle of the night, abducting village leaders. The leaders would return the next day, apparently injured, reporting that their assailants threatened to kill them if they did not take their people home.\(^{42}\)

In April 2004, the SLA and the Sudanese Government signed a temporary cease-fire, and the African Union (A.U.) agreed to send a hundred and twenty unarmed monitors to Darfur.\(^{43}\) These monitors were limited to investigating violations of the cease-fire and were not supposed to combat the biggest threat, namely, the continued attacks on Darfur civilians by the \textit{janjaweed} and the military.\(^{44}\) In late July 2004, the UN Security Council passed a resolution imposing an arms embargo on the \textit{janjaweed} and the SLA/M rebels, and threatening the Sudanese Government with “further action,” such as an asset freeze or travel ban, if it did not show substantial progress within thirty days in disarming the \textit{janjaweed} and bringing war criminals to justice.\(^{45}\) But the Sudanese Government made it clear that it had no intention of disarming Arab tribal leaders.\(^{46}\)

Further, as of January 2005, the African Union monitoring force has reported that the violence continues. There are also reports that the Sudanese Government continues to arm the \textit{janjaweed} militias and continues to bomb and attack civilians. Many of the refugees in Chad still face cross-border raids by the \textit{janjaweed}, and dangerous isolation during the rainy season, when aid deliveries are almost impossible. Women are under a constant threat of being raped while gathering wood for fire if forced to look for wood too far from the camps.\(^{47}\)

What is needed now in Darfur is an international peacekeeping and protection presence, precisely what the Sudanese Government wants to avoid most.\(^{48}\) Only recently, in February 2005, has the UN announced


\(^{42}\) Id.

\(^{43}\) Id.

\(^{44}\) Id.

\(^{45}\) Id.


\(^{48}\) Id.
that a peacekeeping force will be deployed in southern Sudan to monitor the Peace Agreement between the Government and the SPL/M. It is sorely needed, as there have been numerous reports of the Sudanese Government threatening to force refugees to go home. The refugees refuse, knowing full well that they face the threat of further attacks. Most refuse to return home until they know that it is safe to do so, that is, when the government rids the country of the janjaweed.

II. INTERNATIONAL LAW AND POLICY ON INTERVENTION IN INTERNAL CONFLICTS – HUMANITARIAN INTERVENTION

A. INTERNATIONAL INTERVENTION – AN UNSETTLED PROPOSITION

While there are only two accepted legal bases for using force under the UN Charter, customary norms have allowed for a third -- the use of force for humanitarian purposes. However, while all member nations may recognize a need for some type of humanitarian intervention, the use of force as part of such an intervention has been a dubious proposition at best. In the case of civil war, many nations will not intervene, even if a humanitarian crisis is afoot. In other cases, humanitarian intervention has been used as a pretext for political and military intervention in another nation’s domestic affairs. In any event, recent history such as the intervention in Kosovo and the non-intervention in Rwanda have taught that a nation engaging in humanitarian intervention walks a fine line indeed.

1. The Intervention in Kosovo

When NATO forces intervened militarily in Kosovo to stop Slobodan Milosevic’s “ethnic cleansing” campaign waged against ethnic Albanians, such intervention faced severe international criticism until NATO’s bombing campaign proved successful. NATO’s use of force in Kosovo presented a legal dilemma in that its military action did not fit either of the two accepted legal bases for using force under the UN Charter.

49. Id.; see also, Reuters, Darfur Refugees Live Within Sight of Their Homes (Feb. 10, 2005).
51. The two accepted legal bases for using force under U.N. Charter Article 2(4) are the right of individual or collective self-defense in response to an armed attack, or authorization of force by the U.N. Security Council. Clearly, the situation in Darfur falls under neither of these categories as of yet.
52. Id.
NATO's chief justification for military intervention was that the Kosovo crisis had implications for stability in the entire region.53

The killings in Kosovo began in late February/early March 1998, in a small town of Prekaz, when Serb paramilitary units stormed through ethnic Albanian villages, killing scores of people. Whole families were burned alive in their homes; women, children and elderly were among the victims.54 In the coming months, more innocent Albanians would die and more refugees would flee as a result of the Serb offensives launched against rebellious Kosovar Albanians.

After the initial February/March attack, then-Secretary of State Madeleine Albright determined that Slobodan Milosevic had to be stopped immediately before more violence and deaths ensued.55 Unfortunately, it took over a year and a half, with numerous conferences and negotiations and the eventual NATO air strikes commencing, before Russia and China would agree to a Security Council resolution that would provide a framework for a military agreement between NATO and Yugoslavia, and allow a peacekeeping force in Kosovo.

On March 23, 1999, NATO initiated air operations. Before the bombing campaign began, the Serb offensive had already driven 100,000 Kosovars from their homes. Milosevic's apparent goal, not unlike that of the Sudanese Government,56 was to quash the opposition and reestablish an ethnic balance on a permanent basis.57 Despite the fact that there was no agreement from the Russians for the strikes or a Security Council authorization for NATO's use of force, UN Secretary General Kofi Annan was supportive of the strikes. The Secretary General recalled the atrocities that had taken place in Bosnia only a couple of years before, stating "[there] are times when the use of force may be legitimate in the pursuit of peace."58 Moreover, in a speech in Geneva to the UN Commission on Human Rights, the Secretary General also stated that "‘ethnic cleansers’ and those guilty of gross and shocking violations of human rights will find no justification or refuge in the UN Charter."59

54. Id.
55. Id.
59. Id.
2. Kosovo as a Roadmap for the Sudan?

The NATO air strikes lasted for eleven weeks, and during that time, Milosevic continued his murderous assault against Kosovar Albanians, sending another million fleeing from their homes. The strikes inflicted a great deal of damage on the infrastructure of Milosevic's government and forces. As such, on June 3, Milosevic accepted a deal the Russians could agree to, which would allow Milosevic to withdraw his troops and end the conflict. Shortly thereafter, a Security Council resolution was drafted that provided the framework for a military agreement between NATO and Yugoslavia, and determined the timing of the withdrawal of Serb forces. On June 9, Yugoslav forces began to withdraw. Once withdrawal was verified, NATO halted its military operations the next day. Once NATO halted its operations, Russia agreed to vote on the Security Council resolution authorizing a peacekeeping force. Thereafter, peacekeeping forces were deployed. And soon after that, refugees returned to their homes.

While the road to disarmament and peace was long, arduous and by no means perfect, because of the intervention by NATO forces the numbers of those killed and/or displaced were greatly reduced. While NATO forces may not have a direct interest in the affairs in African countries, nevertheless, a similar diplomatic negotiation among G8 nations could have taken place to curb the violence and the sheer numbers of refugees. In any event, the process to peace in Kosovo is an admirable effort that could have been duplicated to achieve peace in the Sudan, thereby avoiding needless deaths and the displacement of over a million refugees.

3. Absence of Intervention in the Rwandan Crisis

Only a few years before Kosovo, ethnic Hutus in Rwanda began murdering the minority Tutsi population (along with moderate Hutus). Not only was intervention non-existent, but a little more than two weeks after the killings began, the UN Security Council voted to cut the UN force in Rwanda from 2,500 to 800. Over 800,000 Rwandans were killed in

60. Id.
61. Id.
62. Id.
63. Id.
64. Id.
65. The resolution was drafted and negotiated by G8 foreign ministers in 12 hours time, on June 7-8, 1999. See, Albright, MADAM SECRETARY 420-21 (2003).
100 days.⁶⁷ To add insult to injury, like the current situation in Darfur, the UN was either reluctant or flatly refused to call it a "genocide."

Civil unrest between the Tutsis and the Hutus began during colonization of Rwanda by Belgium, and ensued over the next forty years. This was the result of Belgian colonists treating the Tutsis as being superior to the Hutus.⁶⁸ Attacks against the Tutsis over the years resulted in approximately 200,000 Tutsi refugees fleeing to Uganda,⁶⁹ and regrouping as a rebel force known as Rwandan Patriotic Front (RPF),⁷⁰ with the intent of taking on the increasingly corrupt Hutu government to achieve political equality for the Tutsis.⁷¹ The government seized the opportunity to denounce the Tutsis and blame them for any and all government setbacks.⁷² This resulted in one of the most virulent, anti-Tutsi hatred campaigns in Rwandan history.

By 1994, tensions between the government and the RPF were at an all-time high. Violence was continuing to escalate. By late March, there were reports of weapons being distributed to Hutu civilians.⁷³ The situation boiled over on April 6, 1994 when Rwandan President Juvenal Habyarimana’s plane was shot down by two surface-to-air missiles.⁷⁴ Rwandan authorities immediately seized on the tragedy as an opportunity to blame the RPF.⁷⁵ Militia and army units were deployed, and roadblocks were set.⁷⁶ For the next 100 days, a genocidal fury ensued that would result in over 800,000 people being hacked,⁷⁷ shot, strangled, clubbed and burned to death. A majority of these were unarmed civilians, predominately Tutsis, though some moderate Hutus also perished.

a. Lack of Intervention in the Massacre

Despite the extreme circumstances presented by the massacre, the U.S. response was utterly lacking. Though the Clinton administration followed the situation closely, it failed to use the word "genocide." The Defense Department established a task force that collected and forwarded information on the situation, including the numbers killed, and

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69. Id.
70. Id.
71. Id.
72. Id.
73. Id.
74. Id.
75. Id.
76. Id.
77. The weapons of choice for many civilian attackers were machetes.
U.S. Marines were deployed to assist with the evacuation of U.S. citizens, but that was the extent of U.S. military intervention. The U.S. did not intervene or engage in peacekeeping in Rwanda. The question of sending US troops as part of either a unilateral or multilateral force was raised but there was no call for Congress to send troops, as the tragedy in Somalia was fresh in the minds of many members of Congress.

At one point, the Organization of African Unity (OAU) volunteered to contribute forces, but funding for those forces would have to be provided. No funding was forthcoming, as there was little public support for involvement in Rwanda. Although UN troops were present when the massacre began, eventually they were withdrawn for safety reasons, and reinforcements were denied.78

While no urgent need to intervene was perceived at the time, there has been quite a bit of handwringing since. Almost twelve years have passed, and Rwanda is still considered one of the worst massacres in history. In 1999, President Clinton stopped in Rwanda to apologize for his “hands-off” policy and pledged that never again would the U.S. fail to act in the face of such compelling evidence.

Many have criticized the Clinton administration for its failure to act and rightly so. The compelling evidence of genocide required that other nations as well as the UN take action. The former head of the UN peacekeeping mission in Rwanda, Retired General Romeo Dallaire has written and spoken extensively on the subject,79 and opines that action was not taken in Rwanda due to the self-interests of nations, that the gain was not there and the risks were too high.80

b. The Racism of Intervention – Are the Standards for Intervention Applied Consistently?

While the massacres in Kosovo were certainly enough to grab the world’s attention, the number of total deaths is not anywhere near the estimated total of those that have perished in either Darfur, or in the Rwandan massacre of 1994. Tens of thousands have been killed in Darfur, while it is well known that 800,000 Rwandans were killed in that government-orchestrated massacre. As late as November 1999, the esti-
mated number of total dead in Kosovo was between 10,000 and 20,000.81 This raises yet another ethical and moral question: whether intervention in government-sponsored genocide is in fact based on race. In the midst of criticism leveled at the lack of intervention in both the crises in Rwanda and Darfur is the question of the difference between the Bosnia and Kosovo conflicts, in which U.S. and NATO forces intervened, and the Rwanda and Darfur crises, where the U.S. and other nations refuse to use the “genocide” label, let alone intervene to stop it.

Many critics have placed the difference squarely upon the issue of race. The former head of UN security forces for Rwanda attributes the intervention in Kosovo to the residual influence of the colonial era; Yugoslavia is white, located in Europe and is closer to home. Whereas in Africa, there is a tendency to trivialize Africans as always engaging in “tribalism,” leaving an impression that some count whereas others do not.82 Unfortunately, this also raises an ethical and moral dilemma, as genocide is neither race nor gender specific.

During the Rwandan massacre, the Congressional Black Caucus was surprisingly silent on whether the U.S. should intervene to stop the massacre. President Clinton specifically sought out the Congressional Black Caucus’ level of interest in the issue, but it had not called for intervention. Again, it is believed that the political and military dimensions that were presented with the tragedy in Somalia would not be repeated, thus making even the CBC wary of intervening in another African civil war.

As to the crisis in Darfur on the other hand, the Congressional Black Caucus has been quite vocal. In June 2004, ranking members of the CBC took part in a joint press conference in which they brought attention to the crisis by seeking 10,000 signatures to deliver to then-Secretary of State Colin Powell, to compel the U.S. to intervene militarily to stop the genocide.83 Since that time, members of the CBC have continually called for the Bush administration to take action on the crisis in Darfur, so as to avoid a repeat of what occurred in Rwanda.84 Thus far, no

82. Id.
83. AFRICA ACTION, CONGRESSIONAL BLACK CAUCUS JOINS AFRICA ACTION IN CALL FOR US INTERVENTION TO STOP GENOCIDE IN DARFUR (Jun. 23, 2004).
action has been taken by the Bush administration. However, most interesting is the fact that the CBC has not made any allegation that the failure to intervene in Rwanda was due to racism. As recent press conferences indicate, the CBC makes only passing references to Rwanda, but no comparison to Kosovo. 85

III. THE DARFUR CRISIS: MULTIPLE VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS CONVENTIONS

A. THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Genocide is defined in the Convention on the Prevention and Punishment of the Crime of Genocide, 86 passed by the United Nations General Assembly in December 1948, as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group" by various means, 87 that seek as its end, the annihilation of a people. The Genocide Convention states that not only is the act of genocide a punishable act, but it also includes as punishable offense conspiracy to commit genocide, incitement to commit genocide, attempt to commit genocide as well as complicity in genocide. 88 The Convention further provides that punishment for the crime of genocide not only applies to government rulers and officials, but also to private individuals. 89

The Genocide Convention came about largely through the efforts of one man, Ralph Lemkin, a Polish Jew who first began to warn the world

85. Id.
86. Known in short as the "Genocide Convention."
87. The full text of Article II of the Convention reads as follows:
   In the present Convention, genocide 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.
88. The full text of Article III of the Convention reads as follows:
   The following acts shall be punishable:
   (a) Genocide;
   (b) Conspiracy to commit genocide;
   (c) Direct and public incitement to commit genocide;
   (d) Attempt to commit genocide;
   (e) Complicity in genocide.
89. The full text of Article IV of the Convention reads as follows:
   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.
about Adolf Hitler's plan to attack Jews in Europe as early as 1933. Lemkin was inspired by a speech by British Prime Minister Winston Churchill that had described what Germany was doing as "a crime without a name." 

In 1944, Lemkin published a long, scholarly account of the Holocaust that included copies of Hitler's anti-Jewish decrees in his book, *Axis Rule in Occupied Europe*. In *Axis Rule*, Lemkin coined a new phrase, "genocide," to describe the crime that went beyond murder to the annihilation of a people. Within a week of its publication, the Roosevelt administration seized upon the term to describe what was happening in Europe. Not long after that, "genocide" gained widespread usage when the media began using the word in its news coverage.

In the years after World War II, the newly created United Nations declared the Nazi atrocities as "crimes against humanity," and set out to create new standards on the laws and customs of war. After the Nuremberg judgment, the UN General Assembly declared genocide an international crime. Through the intense lobbying efforts of Ralph Lemkin, in 1948 the UN General Assembly drafted and unanimously adopted the convention aimed at the prevention and punishment of genocide, which was ratified on January 12, 1951.

For over forty years after World War II, the Genocide Convention was relegated to obscurity as human rights focused on more modern violations such as apartheid, torture and disappearances. With the events in Bosnia, Kosovo and Rwanda, the Convention was brought back into the limelight once more. The humanitarian crisis in Darfur should be added to the list of events of worldwide significance demanding immediate interpretation and application of the Genocide Convention, and all the acts that fall under its jurisdiction.

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91. Id.
94. Id.
95. Id.
96. Id.
1. Genocide

Because genocide is a crime of intent, the crucial question is the purpose of the offender, not the result.97 Even if the numbers of those killed are relatively low, the crime can be considered genocide if the intent is to destroy a group "in whole or in part."98 Whereas there are large numbers of victims, the intent is relatively easy to prove, and can be easily deduced from the given facts.99

In the case of the crisis in Darfur, there is little question that what occurred was genocide. Large numbers of victims, estimated in the tens of thousands, have been subject to a pattern of coordinated atrocities: killings, rapes and destruction of property, all due to their ethnicity. The facts indicate that the predominantly Arab government and its militias committed genocide by targeting non-Arabs100 in its campaign of mass murder of national, ethnic and tribal groups, and in forcing those groups into such adverse conditions so as to bring about their destruction naturally.

Yet, there has been much debate as to whether or not Khartoum had genocide specifically in mind, giving rise to the reluctance of the world and the UN to refer to the crisis in Darfur as such. In July 2004, both houses of Congress unanimously passed concurrent resolutions calling the crisis genocide.101 Former Secretary of State Colin Powell testified before the Senate foreign relations committee that the pattern of atrocities and displacement of people in Darfur lead to the conclusion that genocide had in fact occurred.102 Nevertheless, despite the Bush administration's conclusion that the crisis is in fact genocide, no intervention has been offered by the United States.

A UN appointed commission of inquiry into the crisis recently concluded that while the Sudanese Government and the janjaweed militia are in fact responsible for the indiscriminate attacks on unarmed civilians that constitute war crimes, the Government nevertheless did not pursue a policy

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97. Id.
98. Id.
99. Id.
100. Because the only other race of people in the Sudan aside from Arabs are black Sudanese, though belonging to various tribes, it is presumed that the intended targets by the Government and its militias were of one race – black. See also Power, supra note 16.
101. Id.
of genocide.\textsuperscript{103} The Commission concluded that two elements of genocide may be deduced from the gross violations of human rights by the Government and the \textit{janjaweed} militia: first, the \textit{actus reus}, consisting of the killing, or the act of causing serious bodily or mental harm, or deliberately inflicting conditions of life most likely to bring about the destruction of a group of people; second, the existence of a protected group being targeted for criminal conduct. Unfortunately, the Commission further concluded that the essential element of genocide, the intent to commit genocide, was missing, as it appeared that intent of the government and the \textit{janjaweed} militia in attacks on unarmed civilians and villages was primarily for the purposes of counter-insurgency warfare.\textsuperscript{104}

This is a tragically erroneous conclusion. The overwhelming evidence indicates that the calculated and coordinated attacks were primarily targeted against unarmed civilians.\textsuperscript{105} In addition, the manner in which attacks were carried out strongly suggests otherwise.\textsuperscript{106} The aerial attacks focused on food, water supplies and shelters, not armory sites.\textsuperscript{107} Ground attacks were indiscriminate and did not appear to seek out rebel insurgents, or those that were armed.\textsuperscript{108} Victims and witnesses alike assert that the Government and the \textit{janjaweed} acted together to randomly kill, rape, attack and maim, without any evidence of the presence of insurgents,\textsuperscript{109} and with the stated intent to kill black Sudanese.\textsuperscript{110}

In addition, the facts of the Darfur crisis are virtually identical to those present in the Kosovo conflict, where there was international intervention. Neither the UN nor the United States had any trouble whatsoever in referring to Slobodan Milosevic's campaign of murder, rape, beatings, burning of villages, and intentional displacement of ethnic Albanians as “ethnic cleansing,” and therefore enough to warrant intervention.

While the two terms “ethnic cleansing” and “genocide” are not entirely synonymous,\textsuperscript{111} they seek similar ends: to rid a territory of a population.


\textsuperscript{104} \textit{Id}. at 4.

\textsuperscript{105} \textit{Id}.

\textsuperscript{106} \textit{Id}.

\textsuperscript{107} \textit{See supra} note 24.

\textsuperscript{108} \textit{Id}.

\textsuperscript{109} \textit{See supra} note 19; \textit{see also}, Save Darfur, \textit{supra} note 22; \textit{U.S. DEPT. OF STATE, PUB. NO. 11182, supra} note 24.

\textsuperscript{111} The term “ethnic cleansing” refers to the intent to “cleanse” or “purify” a territory of one ethnic group by use of terror, rape and murder in order to convince the inhabitants to leave. “Genocide” seeks to destroy the group.
While the Commission may have erroneously concluded that the Sudanese Government and its militias merely intended to rid Darfur of tribes inhabiting the area, numerous victims and witnesses to the attacks have attested that the *attackers themselves* expressed in intent to kill the blacks in Darfur. 112 This stated intent during initial attacks, coupled with follow-up attacks of villages after initial air and ground assaults, attacks upon villagers who return to villages, attacks upon refugees in camps in both Darfur and Chad, as well as the intended disruption of relief operations, all evidence the intent not just to displace a people, but to completely annihilate it. 113

2. Rape

As stated above, reports of the crisis in Darfur include rape of women and girls that were not killed during an initial assault, as well as the rape of women and girls in the refugee camps in both Chad and Darfur. 114 The law of war has prohibited rape by soldiers for centuries. 115 During armed conflict, the role of rape has been utilized as both an attack on the individual victim and as a method of ethnic cleansing, intended to humiliate, shame, degrade and terrify an ethnic group. 116 In World War II, rape was treated as an instrument of policy; the Nazi and Japanese practices of forced prostitution and rape on a large scale is an egregious example of such policies. 117

Although rape is specifically prohibited in the Fourth Geneva Convention 118 and the Additional Protocols, 119 these instruments do not treat rape as a grave breach subject to universal jurisdiction. 120 Both the Nurem-
berg and Tokyo Tribunals largely ignored gender-based crimes.\textsuperscript{121} It was only recently that the International Criminal Tribunal in The Hague, in its indictment of Bosnian Serb military and police officers in connection with rapes of Muslim women in the Bosnian war, declared that rape is a war crime.\textsuperscript{122} More recently, both the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) have surmounted reluctance and other obstacles to address and prosecute individuals committing this crime.\textsuperscript{123}

Further, Pierre-Richard Prosper, U.S. ambassador-at-large for war crimes, helped to expand the definition of genocide to include organized violence against women as rape. After spending significant time as a prosecutor at the International Criminal Tribunal for Rwanda (ICTR), Ambassador Prosper concluded that rape and mutilation had to be considered crimes so traumatizing to its victims that it made them, for all practical purposes, no longer able to contribute to humanity.\textsuperscript{124} While in Arusha, Tanzania, Ambassador Prosper looked at the Genocide Convention and argued to the court that the Convention envisioned acts which fall short of death, but also caused “serious bodily harm.” Ambassador Prosper further argued that the systematic rape of Tutsi women fell into that category. In the end, the court found that rape was a part of the act of genocide.\textsuperscript{125}

There is no question that systematic rapes of women and girls occurred during the initial attacks in Darfur, and continue to occur against women and girls in refugee camps in and outside Darfur. In the totality of the circumstances, it appears that rape, which was sometimes accompanied by murder, was intended to destroy the ethnic tribes that inhabited Darfur. This is only further evidence that genocide in fact occurred in Darfur, and that the UN Commission was incorrect in its assessment as to the intent of the Sudanese Government and its militia. As the crisis in Darfur in fact amounts to genocide, it is now time for the UN to mete out punishment for these blatant criminal acts.


\textsuperscript{122} Simons, \textit{For First Time, Court Defines Rape as War Crime}, NEW YORK TIMES, Jun. 28, 1996.


\textsuperscript{125} \textit{Id.}
B. **Violations of Other Important Conventions and Covenants that Demonstrate that Intervention in the Darfur Crisis Was Warranted**

While the following conventions do not have the same enforcement requirements as the Genocide Convention, nevertheless, these conventions are important instruments in the international law of human rights. Further, these documents lend credence to the argument that the situation in Darfur has given rise to a number of human rights violations, and that intervention was required to stop the killings, rapes and displacements, and is still needed to prevent further human rights violations.

1. **The Universal Declaration of Human Rights, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights – “The International Bill of Rights”**

The international law of human rights includes numerous international agreements and other instruments, as well as an extensive body of principles of customary law that seeks to establish minimum international standards for national human rights as international norms that states are required to respect and ensure. Of course, the international law of human rights begins with the United Nations Charter, which has at its core the recognition of and respect for the principle of equal rights and self-determination of peoples. The three principal instruments of human rights, the Universal Declaration of Human Rights (Declaration), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) have collectively, acquired the designation “the International Bill of Rights.”

The Universal Declaration was adopted on December 10, 1948. Like the Charter of the United Nations itself, it was drafted as a result of Hitler’s

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127. Article 55 of the United Nations Charter reads as follows:
   With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: a. higher standards of living, full employment, and conditions of economic and social progress and development; b. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.
   
   Article 56 of the Charter reads as follows:
   All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.
policies towards Jews and other atrocities that occurred during World War II. Today, more than half a century after its adoption, no state or government that has come into existence could question or express reservations to the Universal Declaration, and it continues to be cited with unanimous approval or acquiescence in resolutions of international bodies.\textsuperscript{129} Though the Universal Declaration was not originally intended to be law, there has been an increased propensity to attribute a legal character to many of its provisions, given its universal acceptance.\textsuperscript{130} This has led many experts and scholars to argue that the provisions of the Universal Declaration in fact, have the force of customary law.\textsuperscript{131}

In 1966, the Universal Declaration was bifurcated into the two distinct Covenants, the ICCPR and the ICESCR. Both Covenants begin with the recognition of the inherent dignity of the human person, and that all members of the human family are entitled to the equal and inalienable rights of freedom, justice and peace in the world.\textsuperscript{132} But the two Covenants then diverge. The ICCPR obligates states to respect and ensure the rights recognized by the Covenant for all persons subject to their jurisdiction, and to enact laws and adopt any other measures necessary to that end.\textsuperscript{133} The ICESCR obligates states to recognize and achieve progressively a number of rights,\textsuperscript{134} most notably, the right to adequate food, clothing and housing (Article 11), and the right to protection and assistance to the family, mothers and children (Article 10).

However, as worldwide events indicate, many nations have not strictly and faithfully adhered to the principles of the International Bill of Rights. Unlike the Universal Declaration, both of the Covenants were designed to transform the provisions of the Universal Declaration into binding treaties. Both Covenants have measures of enforcement by the establishment of Committees,\textsuperscript{135} which requires states to report periodically to the Committees on measures that they have taken to adhere to the Covenants. In addition, member states may consent or agree to the optional

\begin{footnotes}
\item[129.] Id. at 593.
\item[130.] Id. at 594.
\item[131.] Id.
\item[132.] U.N. Office of the High Commissioner for Human Rights <www.unhchr.ch>.
\item[134.] Other rights include the right to work (Article 6); the right to just and favorable working conditions (Article 7); to social security (Article 9); to the highest attainable standard of physical and mental health (Article 12); to education (Article 13); and to the right to take part in cultural life, to enjoy the benefits of scientific progress and its application, and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which a person is the author (Article 15). See, U.N. Office of the High Commissioner for Human Rights <www.unhchr.ch>.
\item[135.] The ICCPR has a Human Rights Committee, and the ICESCR has a Committee on Economic, Cultural and Social Rights.
\end{footnotes}
procedure of individual complaints being lodged against them by or on behalf of private individuals claiming to be victims of violation.\textsuperscript{136}

Sudan is a party to both Covenants. As well documented herein, the Sudanese Government has committed innumerable gross violations of human rights. Under the enforcement mechanisms of both Covenants, the Government of Sudan could be held accountable for its violations, and subject to the obligations of adherence to the Covenants if either individuals or other states file complaints. However, because the number of complaints against the Sudanese Government for violations of both the ICCPR and the ICESCR (and other Human Rights Conventions) could number into the thousands, the most practical vehicle for handling such claims of violations, in addition to existing tribunals, could be the establishment of an international criminal tribunal, as discussed below.

2. The International Convention on the Elimination of All Forms of Racial Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) was adopted by the UN General Assembly in December 1965 and entered into force January 1969. Its basic tenet is that, considering that the UN Charter is based on the principles of dignity and equality inherent in all human beings, all members should take steps to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.\textsuperscript{137} It further recognizes that every nation shall fully and faithfully observe the provisions of the Universal Declaration of Human Rights.\textsuperscript{138}

While many nations have ratified the Convention, observance and enforcement of its tenets has been problematic. Numerous human rights violations based on race, sex, language and religion have occurred since the Convention’s entry into force in 1969: the Vietnam war, Bosnia, Kosovo, Rwanda, the apartheid in South Africa, torture and kidnappings in South America. The actions of the Sudanese Government and the government-sponsored militia against black Sudanese are a direct violation of the Convention.

\textsuperscript{137} Id.
\textsuperscript{138} Id. at 593.
3. The Convention Against All Forms of Discrimination Against Women and the Convention on the Rights of the Child

The Convention Against All Forms of Discrimination Against Women (Women's Convention), is a special treaty dealing specifically with gender-based discrimination. It was adopted in 1979 by the UN General Assembly, and entered into force two years later. However, the Women's Convention has attracted numerous reservations, reflecting deeply ingrained historical, cultural and religious attitudes. 139

The aim of the Women's Convention is to eliminate all forms of discrimination against women. Article 1 defines discrimination as "any distinction, exclusion or restriction made on the basis of sex."140 While the overall goal of the Convention is to ensure the enjoyment of rights in every sphere on a basis of equality between men and women, the Women's Convention is nevertheless textually silent about violence against women, except in the Convention's reference to the trafficking of women. To remedy this, in 1992 the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) adopted General Recommendation No. 19, on violence against women. The essence of Recommendation No. 19 is to point out that the Convention applies to violence against women perpetrated by public officials, and points out that discrimination is not restricted to acts by or on behalf of Governments.141

Given the nature of the crimes committed against women as indicated herein, it is apparent that there have been gross violations of the Convention, in particular, Recommendation No. 19. However, as of 2000, only 165 nations have fully ratified the Women's Convention, which makes its universal application as a standard on the treatment of women and the rights of women somewhat moot. The gruesome accounts of mass rape and mutilation of women in war and conflicts such as Bosnia, Kosovo, Rwanda and now Darfur cry out for a universal ratification and adoption of the Women's Convention. However, having attracted the greatest number of reservations with the potential to modify or exclude most, if

139. Id. at 675-676.
140. The full text of Article I of the Convention reads as follows:
   For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.
not all the terms of the treaty,\textsuperscript{142} the Convention has almost no power to prevent such atrocities from continuing in the future. Given the number of reservations filed, it is not likely to be seriously applied any time soon.

The Convention on the Rights of the Child was adopted in November 1989 and entered into force in January 1990. The Convention recognizes that in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance, and that in order to achieve a full and harmonious development of a child, it is in the best interests of children to grow up in a family environment. The Convention further recognizes that in order for the child to be fully prepared to live an individual life in society, a child should be brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, in particular in the spirit of peace, dignity, tolerance, freedom and equality.\textsuperscript{143}

The Convention further obligates states to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind, as to the child or his or her parent or legal guardian on the basis of race, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Like many other Conventions drafted in the spirit of the International Bill of Rights, the Convention on the Rights of the Child have been egregiously violated over time, without much enforcement against states to curb their human rights violation practices against children. As with other Conventions and the International Bill of Rights discussed herein, the Government of Sudan is in gross violation of the Convention on the Rights of the Child by creating the crisis in Darfur, and in continuing to perpetuate the crisis by forcing thousands of displaced women and children to live in fear for their safety in makeshift homes in refugee camps.

4. Convention on Refugees

The United Nations Convention on Refugees was adopted 1951, in response to the large number of Jewish people who had to leave Germany during World War II. The Convention on Refugees defines a refugee as "a person who has crossed an international border due to a well-founded fear of persecution for reasons of race, religion, nationality, membership


\textsuperscript{143} U.N. Office of the High Commissioner for Human Rights <www.unhchr.ch>.
in a particular social group, or political opinion.” It was the first interna­tional agreement to guarantee protection to refugees.144

As noted above, the continued attacks against displaced Sudanese in Chad is in clear violation of the Convention. By the fact that displaced persons are now in a protected status, the Sudanese and Chad Governments are both under an obligation to protect refugees. While those displaced persons still trapped in Darfur do not technically fall under the definition of refugee, nevertheless, it is arguable that the spirit of the Convention creates an obligation for governments not to engage in acts that effectively cause harm or allow harm to come to such displaced persons.

IV. SHOULD AN INTERNATIONAL CRIMINAL TRIBUNAL FOR THE SUDAN BE CREATED?

Given the number and types of human rights violations that have been committed in the conflict in the Sudan, an argument can be made that a special tribunal should be established to adjudicate the countless claims of victims of human rights violations. The Sudanese Government and its government-backed militia have violated a number of Human Rights Conventions, including the International Bill of Human Rights.

The UN Security Council has the power to adopt a resolution creating such an ad hoc tribunal. It acted quickly when it established the ICTY in May 1993 and the ICTR in November 1994. Like Yugoslavia and Rwanda, the humanitarian crisis in Darfur presents similar circumstances in which the Security Council can and should establish an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the Sudan.

Both the ICTY and the ICTR were created in response to the mass killings, widespread and systematic rape, “ethnic cleansing,” and genocide being practiced in both the former Yugoslavia and in Rwanda on a scale and of a ferocity not seen since the end of World War II. Like both Yugoslavia and Rwanda, the United Nations Security Council should consider that the situation in the Darfur region of the Sudan and now, in Chad, constitute a threat to international peace and security. As such, the Security Council should establish another International Tribunal for the Sudan as a subsidiary judicial organ, with the purpose of halting and redressing previous and continuing violations.

The idea of the creation of a new international tribunal for the Sudan has been met with mixed support. The U.S., vehemently opposed to the creation of the International Criminal Court, in January 2005 lobbied UN Security Council members to create a new court for perpetrators of atrocities in Darfur. However, the four European nations and most of the other nations on the 15-member Security Council oppose the creation of a new tribunal, and instead have (successfully) pushed for the utilization of the International Criminal Court (ICC) to bring perpetrators to justice.

Ironically, Ambassador Pierre-Richard Prosper, who worked to have rape deemed a crime of genocide during his tenure as a prosecutor in Rwanda, (and a Bush administration spokesman), has opposed use of the ICC, indicating that the U.S. did not wish to be a party to legitimizing the ICC. However recently, the U.S. has had to acquiesce in the use of the ICC to prosecute crimes against humanity in Darfur. As of March 31, 2005, the UN Security Council passed resolution 1593 referring the situation in Darfur since 2002 to the Special Prosecutor of the ICC. Not surprisingly, Khartoum has indicated that it will not cooperate in the prosecution of these cases.

While this is not as potent as the creation of a special tribunal, for the victims of past and ongoing atrocities in Darfur, this may prove to be the best vehicle available to deal immediately with past human rights violations and the ongoing crisis. It is hoped that the ICC can bring justice for the crimes in the Sudan and Chad before countless others are killed or displaced. No tribunal, whether it is the ICC or a special tribunal for Sudan can change the fact that the world failed to intervene and stop the crisis. However, such a tribunal can intervene at long last to put an end to the suffering.

146. Id.  
147. Id.  