UNIVERSITY OF NIGERIA, ENUGU CAMPUS,
SCHOOL OF POSTGRADUATE STUDIES, FACULTY OF LAW,
DEPARTMENT OF PUBLIC AND PRIVATE LAW

ANALYSIS OF GENOCIDE AND INSURGENCY IN NORTHERN NIGERIA

BY

NWABUILO, MAUREEN C.(MRS.)
PG/LLM/07/46642

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CERTIFICATION

This is to certify that NWABUILO, MAUREEN C., a Postgraduate Student of the Faculty of Law, University of Nigeria, Enugu Campus in the Department of Public and Private Law in with the registration Number PG/LLM/07/46642 has satisfactorily completed the Requirement for course and original research work for the Award of a Master of laws (LLM) degree.

_____	_____
NWABUILO, MAUREEN (Student)	PROF.CHUKWUNONSO OKAFO (Supervisor)
_____	_____
PROF. GEORGE NNONNA Head of Department	PROF.CHUKWUNONSO OKAFO Dean of Law

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EXTERNAL EXAMINER

DEDICATION

This work is dedicated to the knowing and ubiquitous God Almighty

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Finally I salute in no small measure the authors I quoted their works.

Nwabuilo Maureen(Mrs.)
(2015)

TABLE OF ABBREVIATIONS

ALL E. R.:	All England Law Reports
BBC:	British Broadcasting Corporation
District:	District Court
ECHRJ:	European court of Human Rights Judgments
ICTR:	The International Criminal Tribunal for Rwanda
ICTY:	The International Criminal Tribunal for the Former Yugoslavia
IT:	International Tribunal

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ABSTRACT

War is gradually taking the front burner in international politics. In some case peaceful resolution of a crisis is possible and fully exploited to achieve peace and order in a state. However, where such attempt to resolve crisis fails, skirmishes and clashes may snowball into war. The impact of war on human population has invariably been sanguinary, devastating and catastrophic. Sometimes, the population of a nation is completely extirpated through bloody massacre geared towards the complete extermination of a group in a state. Irrespective of the fact that such massacre occur in war situations, it is still considered to be a crime in the International Criminal Law. This is called genocide.In Nigeria, the Northern region has become a flashpoint of violent clashes. The region has been deeply enmeshed and suffused in political and ethno-religious conflicts characterized by genocidal attacks, bombing, maiming and killings of several persons, loss of business investments, and properties worth several billions of naira. Within the space of eleven years, several violent political ethno-religious conflicts have been reported in Northern Nigeria and all efforts to restore peace have not achieved the desired end. This dissertation examines the International Criminal Law on the crime of genocide with a view to establishing what significance, if any, the International Criminal Law on genocide has for Nigeria and other African countries. The methodology adopted in this work is descriptive, analytic and illustrative. The work describes what constitute the offence of genocide and analyses the principles of International Criminal Law on it. It also illustrates genocide by giving instances where genocide has occurred in the past. The main source of data for the work includes statute, case law, books and article written by pundits in the area of study. The result of the study shows that there is no serious commitment in International Criminal Law to ameliorate the commission of the crime of genocide. Worst still, there is no law of genocide in Nigeria and other African countries yet and recommends the need to fill this lacuna.

CHAPTER ONE: GENERAL INTRODUCTION

1.1. Background of the Study

Crime may be defined as an act, default or conduct prejudicial to the community, the commission of which by law renders the person responsible liable to punishment by fine or imprisonment in a special proceeding.[1] Crime can also be viewed as an act or omission which is rendered punishable by some legislative enactment.[2] It is simply an act in violation of the penal laws of a state. In encapsulation, crime is an act inconsistent with the norms acceptable in any society. The general characteristic of crime is that it affects the community as a whole, as distinct from evil wrong.[3] If the definition of any particular offence is thoroughly scrutinized, it will be deciphered that it nearly always consists of two sorts of elements ï physical and mental.[4] Succinctly, *mensrea* refers to the mental element of the offence that accompanies the *actusreus*. In some jurisdictions the terms *mensrea* and *actusreus* have been superseded by alternative terminology. In Australia, for example, the elements of all federal offences are now designated as ñfault elementò and ñphysical element.ò[5] This terminology was adopted in order to replace the obscurity of the latin terms with simple and accurate phrasing. Every crime is a violation of law but it is not every violation of the law that counts as a crime.

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[1] S. Bone, *Osborn's Concise Law Dictionary*, (9th edn., London: Sweet & Maxwell, 2001), p. 116.
[2] C. O. Okonkwo, *Okonkwo and Nash Criminal Law in Nigeria*, (2nd edn., London: Spectrum Law Publishing 1980), p. 43.
[3] S. A. N. Nweke, *Principles of Crime Prevention and Detection in Nigeria*, (Enugu: Ebenezer Productions Nigeria Limited, 2002), p. 3.
[4] This is usually expressed by the latinmaxin*actus non facitreum nisi mens sit rea.*
[5] That is *mensrea* and *actusreus* respectively.

It is also pertinent to point out that it is not every crime that is an international crime. In *Re List &ors*[6] the United States Military Tribunal at Nuremberg defined international crime thus:

> An International Crime is such act universally recognized as criminal, which is considered a grave matter of international concern and for some valid reason cannot be left within the exclusive jurisdiction of the state that would have control over it under ordinary circumstances.

Consequently, it is the international community of nations that determines which crime falls within this definition in the light of the latest developments in law, morality and the sense of criminal justice at the relevant time.[7] It is apt to contend that what acts should be characterized as international crime depends on the machinery by which such acts are to be dealt with. [8]

Generally, the terms *actusreus*and*mensrea* as developed in English law, are derived from principle stated by Edward Coke, namely, *actus non facitreum nisi mens sit rea* which means that ñan act does not make a person guilty unless the mind is also guiltyò. Hence the general test of guilt is one that requires proof of fault, culpability or blameworthiness both in behaviour and mind. Lord Halsham L. C. pointed out in *Haughton v. Smith*[9] that it is not the *actus* which is *reus* but the man and his mind respectively.

Genocide is a conspiracy aimed at the total annihilation of a group. It requires a concerted plan of action. The instigators and initiators of genocide are cool-minded

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[6]Hostages Trial, US Military Tribunal at Nurembreg, 19 Feb. 1948 (1953) 15 Ann. Dig.632 at 636.
[7] K. Kittichaisree, *International Criminal Law, (*Oxford: Oxford University Press, 2001), p. 1.
[8] M. M. Whiteman, *Design of International Law, XI*, (US Dept. of State, 1968), 835.
[9][1973] 3ALL E. R. 1109.

theorists and barbarians. The specificity of genocide does not arise from the extent of the killing, nor their savagery or resulting infamy, but solely from intention; the destruction of a group. This work sets out to examine the International Criminal Law on the crime of genocide with a view to establishing what significance, if any, the International Criminal Law on genocide has for Nigeria and other African countries.

1.2. Statement of the Problem

It is difficult and depressing to admit it, but Nigeria is fast assuming the character and attributes of a failed state. It is becoming increasingly ungovernable. Violence by all kinds of alienated social groups is never too far from the surface in Nigeria. The Nigerian state is too weak and fragile to contain this violence. Nigeria seems unable to protect its own citizens and enforce her own laws in most respects. The primary duty of a state is to offer its citizens protection and safety from violence and insecurity of lives. When a state is no longer able to fulfil this basic duty to its citizens and foreigners on legitimate business then it is deemed to have failed in the discharge of its basic responsibility. It could easily break up. Nigeria has witnessed mayhems in the Jos area which have led to the death of nearly five hundred people. There is conflict which is allegedly between Fulani herdsmen and the Berom farmers in which some four hundred people lost their lives in Plataeu State of Nigeria. There is also the Boko Haram insurgency which has claimed uncountable number of lives. These skirmishes are among bloodiest of the ethno-religious conflicts that have become widespread particularly in the Northern part of Nigeria. The authorities are no doubt

concerned about this ugly trend but appear helpless and unable to take the necessary security measures to halt the massive assault on law and order in the nation. Neither the police nor the armed forces have shown that they have the professional capability, diligence, and competence to bring the nation-wide violence under control. In January 2010, a similar eruption of violence took place in the region. Commissions of inquiry were set up to investigate the sources of the violence. But the security authorities have shown little or no diligence in beefing up intelligence gathering in the area so as to prevent or mitigate the consequences of any future clash between the Fulani herdsmen (the settlers) and the Beroms, the indigenes.[10] Thus both tribes that were entangled in the sanguinary skirmishes raised alarm claiming that there is an ongoing genocide campaign against them. This has prompted the need to examine the constituents or ingredients of genocide in the international legal framework.

1.3. Research Questions

This study will address the following research questions:

1. Are the claims by various groups that there is genocide campaign against them in the past or in the present sustained in Nigeria?
2. Have there has been any act of genocide in Nigeria?
3. What significance does the International Criminal Law on genocide have for Nigeria and other African countries?

[10] D. Fafowora, ñThe Rising Culture of Violence in Nigeriaò (18 March 2010), available at http://thenationonlineng.net/web2/articles/40000/1/The-rising-culture-of-violence-in-Nigeria/Page1.html (last accessed 13 March 2013).

1.4. Objectives of the Study

The objectives of this study is to examine the term ñgenocideò in the realm of International Law and review of historical instances of genocide. This will be done with an eye on Nigeria with particular reference on the various claims by various groups in Nigeria that there is a genocide campaign against them in the past or in the present. This work will lay bare whether there has been any act of genocide in Nigeria or not. In doing this, international treaties and conventions will be appraised to ascertain what precisely genocide under the International Law is. Again, the historical instances of genocide will be assessed to decipher the practical interpretation of the word genocide. The focal point of this work is to examine the International Criminal Law on the crime of genocide. This is done with a view to establishing what significance, if any; the International Criminal Law on genocide has for Nigeria and other African countries.

1.5. Significance of the Study

This work is significant because it attempts to lay bare the meaning, purport and constituents of the term ñgenocideò within the precincts of International Criminal law while at the same time evaluating the unfolding ethno-religious violence in Nigeria. This work advocates that the best way to respond to genocide is to stop genocide. The work also shows that the prosecution of the crime of genocide can go a long way to apply the needed restraint on the perpetrators of the crime of genocide.

1.6. Methodology

The study relied on the following primary source materials: observations, interviews and comments of international law pundits. The secondary source materials used are statutes, policies, case law, textbooks, journal articles, conference papers, the internet and other legal literatures. The methodology adopted is descriptive, analytical and doctrinal. It is descriptive and analytical because the work describes and analyses the position of International Criminal Law on the Crime of genocide as it relates to the area in focus. It is also doctrinal because relevant doctrines as they affect the crime of genocide are examined.

1.7. Literature Review

Many scholars have cast a deep intellectual glance at the execution of genocide; its purport and the reasons for its execution. However, there are still paucity of works on the best approach to respond to genocide within the international communities in order to forestall it or indeed stop genocide when it occurs again.

In the Encyclopaedia of Public Health[11] genocide is said to be the deliberate and systematic destruction of a group of people defined by their nationality, or by their ethnic, cultural, or religious background. Genocide may include a direct assault on public health as it did in Bosnia-Herzegovina. There, public health came face to face with genocide when acts were committed to destroy the public health of the population, thereby threatening to destroy people through inflicting serious harm to their health. Food, fuel, electricity, running water, and medical supplies were cut off

[11] ñGenocideò, *Encyclopedia of Public Health*, available at http://www.enotes.com/genocide-68599-reference/genocide-173162 (last accessed 17 March 2012).

from Sarajevo and its environs during the siege of that city. Since many things are essential to public health, including housing, nutrition, sanitation, and access to public health, any acts committed to destroy or seriously undermine the conditions needed for health are potentially acts of genocide if they are committed against a specific population. For instance, during the siege of Sarajevo, waterborne diseases such as hepatitis A increased because the sanitation systems no longer worked properly, 10 percent of the city's population was moderately malnourished, and the combined effects of malnutrition, cold, and lack of adequate medical care led to increased illness and deaths. In the case of Bosnia-Herzegovina, genocide disproportionately affected the most vulnerable Bosnians; very young, the elderly, women, the chronically ill, and the disabled.[12]

Genocide may also include indirect assaults on public health, as it did in Rwanda in 1994. There, massive displacement of persons from their homes created large-scale health risks to the internally displaced and refugees. While the high morbidity and mortality in the Rwandan refugee population was recognized as a public health crisis, it was also the product of genocide. Refugees from the genocide who were living in camps did not contract cholera solely because of the infectious agent, but also because they were forced to flee their homes and encounter grossly unsanitary conditions due to their status as members of an ethnic group (the Tutsi) and resultant attacks by the Hutu government.[13]

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[12]*Ibid.*
[13]*Ibiid.*

According to Schabas, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be the disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.[14]

Yecoubian noted that every tragedy whispers again of past tragedies. This affirmation is perhaps most germane to the matter of genocide. The 20th century had barely begun when, under cover of World War I, Armenians living under the Turkish yoke suffered massacres and deportations that eliminated over 1.5 million men, women, and children. Though the crime of genocide is ancient, the concept itself is relatively new.[15]

The word genocide comes from the ancient Greek word *genos*[16] and the latin*caedes*[17], the latter of these two also appearing in words such as tyrannicide[18], homicide[19], infanticide[20], etc.[21] The term 'genocide' was coined relatively recently by

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[14]W. Schabas, *Genocide in International Law*, (Cambridge: Cambridge University Press, 2000), p. 198.
[15] G. S. Yacoubian, *Injustice Studies*, vol. 1, No. 1, November 1997.
[16]Meaning race or tribe.
[17]Meaning killing.
[18]Killing of a tyrant.
[19]Killing of a human being.
[20]Killing of a child.
[21] R. Lemkin, *Axis Rule in Occupied Europe*, published in 1944.

the jurist Raphael Lemkin,[22] whose remarkable achievement initiated a one-man crusade for a genocide Convention. Early in 1933, he submitted a proposal to the International Conference for Unification of Criminal Law to declare the destruction of racial, religious or social collectivizes a crime (of barbarity) under the law of nations.

Although every mass killing involves unique circumstances, certain underlying conditions are common to most genocide acts. The offending nation, or perpetrator, is usually a non-democratic country that views the targeted group as a barrier or threat to maintaining power, fulfilling an ideology, or achieving some other goal.[23] Most genocide occurs during a crisis such as war, state breakdown, or revolution, and the crisis is blamed by the perpetrators on the victims. In addition, the governments of other countries that might have interfered with or kept silent about the genocide, may support the perpetrators directly or indirectly by their lack of action.

Perhaps the most difficult part of the definition of genocide is the intent. It is hard to prove and easy to deny. Usually genocidalists do not document their guilt, and evidence can be hard to find or prove. Some light can be shed on the definition of intent in the Genocide Convention by an examination of the discussion that took place during the drafting of the Convention that preceded its inclusion. Much of the refinement of the original version of the Genocide Convention that had been prepared

[22]RaphealLemkin is a Polish Jewish scholar who taught law at Yale and Duke Universities.
[23] L. Kuper, *Genocide : its Political Use in the Twentieth Century*,(London: New Haven, 1981), p. 22.

by Lemkin, Donnedieu de Vabres and Pella, was carried out by an ad hoc Committee of the United Nations Economic and Social Council.[24]

Article II of the Ad Hoc Committee's draft defined genocide as "deliberate acts committed with the intent to destroy a national, racial, religious or national political group on grounds of the national or racial origin, religious belief, or opinion of its members." The work of drafting the Convention was later referred by the United Nations General Assembly to the Assembly's (Legal) Sixth Committee. The Sixth Committee's Draft of the Convention was adopted without amendment by the General Assembly.[25] Commenting on some of the Sixth Committee's amendments from the Ad Hoc Committee's version, Lippman notes:

> In the end, there was uncertainty over interpretation of the phrase 'as such'. It was pointed out that the phrase 'as such' might mean either 'in that the group is a national racial religious or political group' or 'because the group is a national racial, religious, or political group'. It is clear that under Art II the requisite intent to commit genocide must be accompanied by proof of motive, however the motive requirement may be interpreted. Delegates feared that if intent was not linked with a motive requirement that situations such as 'bombing which might destroy whole groups ... might be called a crime of genocide; but that would obviously be untrue.[26]

'Grave breaches,' as defined in the Conventions, include wilful killing or inhuman treatment, causing great suffering or serious injury to body or health, and other serious violations of the laws of war.[27]

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[24] For a history of the drafting of the Convention, see M. Lippman, "The Drafting of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide", (1985) 3 *Boston University International Law Journal* 1.
[25] *Ibid.*
[26] *Ibid.,* p. 42.
[27] Fourth Geneva Conference, Art. 147.

A serious weakness in the Conventions is that they require the exercise of universal jurisdiction for offences committed only in international armed conflict, and not in internal armed conflict.[28] However, the Statutes of the International Criminal Court and the International Criminal Tribunals for former Yugoslavia and Rwanda do specifically give jurisdiction for these courts over violations committed in an internal armed conflict.[29]

Quigley[30] noted that the Genocide Convention is seen as potentially having greater significance as an instrument relating to wrongful acts of a state. Whereas in penal law alternative offenses are available, for genocide committed by a state there may be no other jurisdictional base if a state is to be brought to account. With international jurisdiction limited, genocide provides one of the few legal categories under which one state can gain jurisdiction over another that is committing genocide. Genocide may be of greater utility in the state-to-state context than in criminal prosecution. The Convention on the Prevention and Punishment of the Crime of Genocide defined genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group: (1) killing members of the groups; (2) causing serious bodily or mental harm to members of the groups; (3) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (4) imposing measures intended to

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[28] Geneva Convention, Art. 3.
[29] ICC Statute, Art. 8.2(c) and ICTR Statute, Art. 4.
[30] J. Quigley, ñThe Utility of Genocide as a Vehicle for the Prosecution of Individual Persons and Legal Action against a Stateò, *International Criminal Justice Review*, vol. 19 Iss. 2 June 2009, pp. 115-131 at 120.

prevent births within the group; and (5) forcibly transferring children of the group to another group.

1.8. Definition of Terms

1.8.1. International Criminal Law

International criminal law is the law that governs international crimes. It may be said that this discipline of law is where the penal aspects of international law, including that body of law protecting victims of armed conflict known as international humanitarian and the international aspects of national criminal law converge.[31] International criminal law is an autonomous branch of law which deals with international crimes and the courts and tribunal set up to adjudicate cases in which persons have incurred international criminal responsibility. It represents a significant departure from classical international law which was mainly considered law created by states for the benefit of state but tended to ignore the individual as a subject of the law. International criminal law is the sum of internationally recognized rules which civilized states have agreed to be binding on them in their dealings with one another.[32] Origins and sources of International Criminal Law include three out of the four sources of international law. The four sources of international law which are enumerated in Article 38 of the Statute of the International Court of Justice are as follows:

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[31] J. J. Paust, M. C. Bassiouni, S. A. Williams, M. Scharf, J. Gurule, and B. Zagaris, (eds), *International Criminal Law: Cases and Materials,* (Carolina: Carolina Academic Press, 1996), pp. 3-19.

[32] See *Trendex Trading Corporation v. Central Bank of Nigeria* (1977) ALL E. R. 881 @ 901-902

a. International Conventions whether general or particular establishing rules expressly recognized by the contesting States;
b. International Custom as evidence of a general practice accepted as law;
c. The general principles of law recognized by civilized nations; and
d. Judicial decisions and the teachings of the most highly qualified publicists of the various nations.[33]

According to Bassiouni,[34] only the first three of the sources apply to International Criminal Law since writings of the most distinguished publicists [35] and even surveys of national criminal laws cannot create supra-national binding laws in the same way that local legislative and adjudicatory bodies might do. The reasoning here seems to be that even the so-called *jus cogens* crimes [36] requires application by and through the cooperation of national states, even parties to a treaty. There are issues of notice, specificity and legality as recognized within individual criminal justice systems at stake and even the United Nations system is not yet one of international legislation except in so far as the treaty-making process might be looked at that way.[37] National cooperation is required to make any form of international criminal law effective and this principle will be recognized by member states under the Rome statute of the international criminal court as well.[38] In Nigeria, no treaty between the Federation and any other country shall have the force of law except to the

[33] They constitute the subsidiary means for the determinations of rules of law.
[34] M. C. Bassiouni, *International Criminal Law,* (2nd edn.,Ardsley, New York: Transnational Publishers, 1998)
pp. 4-5.
[35] That is judges or jurists, especially of international courts or tribunals.
[36] Meaning crimes well-established in customary law
[37]Bassiouni, *op. cit.*, p. 4.
[38]http://www.un.org/law/icc/statute/romefra.htm, UN Doc/A/CONF.183/9, as corrected by the process-verbaux of 10 November 1988 and 12 July, 1999.

extent to which any such treaty has been enacted into law by the national Assembly.[39] Since World War II, treaties have assumed a clear prominence as the primary source of law-making on the international plane especially multilateral treaties. Even so, international tribunals have clarified customary international law in ways which have developed the legal principles governing the laws applying to treaties. For example, the International Court of Justice has done a lot of clarifying the general rules for the interpretation of treaties.[40] With the increased focus on relation between States that comes with globalization, there has been greater pressure and demand to codify rules obtaining between those States. This codification has been done mainly through treaties because they are a relatively simple, clear and quick way of crystallizing existing international rules and developing new ones. Indeed, it is now common place for legal scholars to classify those treaties which lay down universal rules governing international society as law-making or normative treaties. The Hague Peace Conference of 1898 and 1907 are often cited not, only as a watershed in the institutionalization of international co-operation, but also as the first major international law-making conferences.[41] The so-called normative treaties are characterized metaphorically as international legislation and extolled as necessary to accommodate the urgent dynamics that are transforming international relations.

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[39] See Constitution of the Federal Republic, s. 12(1).
[40] C. G. Fitzmaurice, ñThe Law and Procedure of the International Court of Justice: Treaty Interpretation and other Treaty Pointsò 1951 BYBIL pp. 1-28.
[41] J., Hu, ñThe Role of International Law in the Development of WTO Lawò, *Journal of World Trade, vol. 7, No. 1.(2004) 143-167 at 167.*

1.8.2. Sovereignty

Sovereignty is the ultimate overseer or supreme authority in state.[42] It is the supreme authority in an independent political society.[43] Sovereignty is the quality of having supreme, independent authority over a territory. It can be found in the power to rule and make law that rests on a political fact for which no purely legal explanation can be provided. The source or justification, of sovereignty (by God or by people) must be distinguished from its exercise by branches of government. In democratic states, sovereignty is held by the people.[44] It may be exercised directly or indirectly through election of representatives to government.[45] The doctrine of sovereignty was first enunciated explicitly in 1576, by Jean Bodin in his treaties *De Republica* based on his observations of political facts in France at that time. Statehood as the unity of its government under *Majesta* (sovereignty) from which a stateôs law proceeded.[46] The essential manifestation of sovereignty was the power to make laws and as the sovereign made laws he is not bound by the laws made by him but bound only by the divine law of nature and reason.[47]

In international law, sovereignty is the legitimate exercise of power by a state. *De jur*e sovereignty is legal right to do so while *de facto* sovereignty is the ability in fact to do so. Consequently, a Sovereign State designates an independent State, a State which does not acknowledge any superior.Therefore, it must be stressed that

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[42]J. Wilson, ñWhat is sovereignty?ò available at http://www.rightstandwrng.com.au/html/sovereignty.html (last accessed 26th February 2012).
[43] Bone, *op. cit.*, p. 356.
[44] This is known as popular Sovereignty
[45] This is known as representative democracy
[46]Kittichaisree, *op. cit.,* p. 4.
[47] J. L. Brierly, *The Law of Nations: An Introduction to the International Law of Peace,* (6th edn.,Waldock: Clarendon Press, 1963) p. 7-10.

within anygiven State, the termñsovereignò designates that authority which has no superior, the ultimate legal authority, whether it is an individual person or a collegiate body.[48]

Fundamentally, no one man has sovereignty over another. The American Declaration of Independence dictates that:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights that among these are life, liberty and the pursuit of happinessé that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.[49]

The implication of the foregoing analysis is that sovereign States are independent from one another and are recognized as such. For example, in theory, both the Peopleôs Republic of China and the Republic of China consider themselves sovereign governments over the whole territory of mainland China and Taiwan. Though some foreign governments recognize the Republic of China as the valid State, most States now recognize the Peopleôs Republic of China. However, *de facto,* the Peopleôs Republic of China exercises its effective administration only over Taiwan and some outlying islands but not Mainland China. Since ambassadors are only exchanged between sovereign high parties, the countries recognizing the Peopleôs Republic of China often entertain *de facto* but not *de jure* diplomatic relationships with Taiwan by maintaining offices of representations such as the America Institute in Taiwan, rather than embassies there. Again the autonomous province in Kosovo in Serbia provides a

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[48] J. M. Elegido, *Jurisprudence,* (Ibadan: Spectrum Law Publishing, 1994) pp. 50-51.
[49] T. Jefferson, *The American Declaration of Independence* adopted by second Continental Congress on July 4 1776.

somewhat analogous illustration. The government of Serbia remains the *de jure* sovereign power but the United Nation has exercised *de facto* control since 1999. The province is still recognized as part of Serbia, though the Serbian government has no practical authority on the ground.

1.8.3. Genocide

Genocide is distinguishable from other crimes by the motivation behind it. Towards the end of the World War II, when the full horror of the extermination and concentration camps became public knowledge, Winston Churchill sated that the world was brought face to face with ña crime that has no nameò[50].

The term genocide was coined by Raphael Lemkin[51] (1990-1995), a Polish-Jewish legal scholar firstly from the Latin *"Gens gentis",* Meaning birth, race, stock, kind or the Greek root *genos,* secondly, from the latin ñc*idium"* meaning cutting, killing via French *"-cide".* Therefore, genocide is the deliberate and systematic destruction, in whole or in part, of an ethnic, racial, religious or national group. Mass destruction of people took several times in the 20th century. Foremost in terms of notoriety were the destruction of Armenians by the Ottoman empire in 1915-1916 during World War I, the Holocaust of the Jews by Nazi Germany and the killing of millions of Cambodians by Khmer Rouge in Cambodia in the mid-1970s.[52]

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[50]Cited in A. Destexhe, *Rwanda and Genocide in the Twentieth Century,* (New York: New York University Press 1995), p. 10.
[51] R. Lemkin, *Axis Rule in occupied Europe: Laws of Occupation- Analysis of Government Proposals for Redress Chapter IX Genocide a New Term and New Conception for Destruction of Nations,* (Washington: Carnegie Endowment for International Peace, 1994), pp. 79-95.
[52] H. Fein (ed), *Genocide Watch,* (Yale: Yale University Press, 1992) p. 15.

Generally, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aimed at the destruction of essential foundations of the life, of national group with the intent to annihilate the groups themselves. The objectives of such plan will be the disintegration of the political and social institutions, of culture, language, national feelings, religion and economic existence of national groups and the destruction of personal security, liberty, health, dignity and even lives of the individuals belonging to such group.[53]

Since precise and concise definition of genocide varies among genocide scholars, a legal definition is found in Article 2 of the United Nations Convention on the Prevention and punishment of the Crime of Genocide thus:

> Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life, calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the groups; and forcibly transferring children of the group to another group.[54]

The International Court of Justice adumbrated the nature of crime of genocide thus:

> A crime under international law involving a denial of the right of existence of the entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity and which is contrary to moral law and to the spirit and United Nationsé The first consequence arising from this conception is that the principles which are recognized by civilized nations as bringing on states, even

[53]Lemkin, *op. cit.,* p. 79.
[54] This position is replicated inInternational Criminal Tribunal for Former Yugoslavia Statute, Article 2 of the International Criminal Court Statute, Art. 4(2).

> without any conventional obligation. A second consequence is the universal character both of the condemnation of genocide and of the cooperation required in order to liberate mankind from such an odious scourge.[55]

The definition of genocide as articulated by Article 2 of the 1948 United Nations Convention for the Prevention and the Punishment of Crime of Genocide is of remarkable significance. Some UN member States wanted to go further to include the notion of culture or economic genocide, others would have added political motivations. The French representative at that time noted that even if crimes of genocide were committed for racial or religious reasons in the past, it is clear that the motivation for such crimes in future will be mainly political.[56] Ironically and probably not without motives, the Soviet delegate gave the real reason for the exclusion of politically-defined groups arguing that their inclusion would be contrary to the scientific definition of genocide and would reduce the effectiveness of the Convention if it could then be applied to any political crime whatsoever.[57]

The final definition as it stands today is based on three constituent factors viz:

a. A criminal act

b. With the intention of destroying

c. An ethnic, national or religious group, either in whole or in part.

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[55] ICJ Rep. 1951, 15 23.
[56] Criminal Intention of Genocide http://www.pbs.org/wgbh/pages/fronline/shows/rwandi/reports/destexhe.html (Accessed: 23 march 2010).
[57] *Ibid.*

The question is, what amounts to either in part or in whole? It is not necessary for the perpetrators to have eliminated the entire group for there to be an act of genocide. It will suffice if only a section of the targeted group is destroyed. It is significant to always bear in mind that genocide is not committed against individuals, as individuals *per se*, but because the individual is member of a particular group. That is, the victim is selected as a result of his connection with that group. The poser becomes how many of that group must be destroyed in order for the words ñin partò to constitute an element of genocide?[58] The International Criminal Tribunal for the Former Yugoslavia (ICTY) found in *Prosecutor v. RadislavKristic*[59]that genocide has been committed. In that case, the accused was charged *inter alia,* with genocide in relation to the massacre of Bosnian Muslim men of military age in Srebrenica between July 11 and November 1, 1995. One of the key issues was whether the accused intended to kill all the Bosnian Muslim men of military age at Srebrenica and whether those events constituted genocide within Article 4 of the Statute of the International Criminal Tribunal for the Former Yugoslavia.[60]The population of the town of Srebrenica comprised some 40,000 inhabitants, 73 per cent of which were Muslim and 25 per cent Serb. As part of the Yugoslav policy to force Bosnia and Herzegovina by Military means from remaining independent, the town of Srebrenica represented an important strategic position in Eastern Bosnia. There existed overwhelming evidence that the Serb forces did indeed specifically target the Bosnian Muslim men

[58] C. Than, and E. Shorts, *International Criminal Law and Human Rights* (London: Sweet & Maxwell, 2003), p. 71.
[59] Trial Chamber I ï Judgment ï IT ï 98-33(2001) ICTY 8 (2 August 2001).
[60] Tribunalôs Statute, Art. 4. is the equivalent of the 1948 United Nations Convention for the Prevention and the Punishment of Crime of Genocide, Art. 2.

irrespective of their status and proceeded to kill those men in via mass execution, murders, beating and other acts which induced serious physical and mental harm on its victims. Based on the foregoing facts, the Trial Chamber I held that genocide had been committed. On Appeal[61], the Appeal Chambers addressed the issue of ñin partò thus:

> The part must be a substantial part of that group. The aim of the genocide Convention is to prevent the intentional destruction of entire human groups, and the part targeted must be significant enough to have an impact on the group as a whole.[62]

The determination of when the targeted part is substantial enough to meet this requirement may involve a number of considerations. The numeric size of the targeted part of the group is the necessary and important starting point, though not in all only cases the end point of the inquiry. The number of individuals targeted should be evaluated not only in absolute terms but also in relation to the overall size of the entire group. In addition to numeric size of the targeted portion, its prominence within the group can be a useful consideration. It a specific part of the group is emblematic of the overall group, or is essential to its survival, that may support a finding that the part qualifies as substantial within the meaning of Article 4 of the Tribunals Statute.[63]

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[61] See *Prosecutor v. RadislavKrstic*Appeal Chamber-Jedgment-IT-98-33 (2004) ICTY 7 (19)
[62]See Paragraphs 8, 9, 10 and 11 of the Appeal Judgment.
[63] See Statute of the International Tribunal for the Prosecution of Persons Responsible for Service Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991. U.N. Doc. S/25704@36, annex (1993).

1.8.4.*Actus Reus*

In order for *actusreusto* be committed, there has to be an act or omission. Various common law jurisdictions define act differently but generally, an act is a bodily movement whether voluntary or involuntary. In *Robinson v. California*[64] the U.S Supreme Court ruled that a California law making it illegal to be drug addict was unconstitutional because the mere status of being a drug addict was not act and thus not criminal. The *actusreus*of a crime consists of an act or more rarely of an omission or more rarely still of what might be described as a passive state of affairs.[65]

Therefore, an act comprises commission, omission and possession. Omission involves a failure to engage in a necessary bodily movement resulting in injury. As with commission acts, omission acts can be reasoned causally using the *but for* approach.*But for*not having acted, the injury would not have occurred. According to Prof. Okonkwo[66]:

> The law is reluctant to punish omission; the majority of crimes can be committed only by the doing of something. But there are some notable exceptions where it is felt essential to force people to act, and a duty to act is imposed, breach of which is an offence.[67]

Therefore, if legislation specifically criminalizes an omission through a statute or a duty that would normally be expected was omitted and cause injury, an a*cutsreus* has occurred. Possession occupies a special place in that it has been criminalized but

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[64]370 U. S. 660 (1962).
[65] Okonkwo, *op. cit.*, pp. 44-45.
[66]Okonkwo, *op cit.*, p. 46.
[67] In Nigeria, Criminal CodeAct, s. 199 imposes a duty on peace officers to suppress. Also ss. 346-348 impose duties on those in charge of railway trains or of ships and on ships engineers, to ensure safety of passengers.

under common law, it does not constitute an act. In *Regina v. Dugdale*[68]it was held that possession of indecent images with the intent to publish them was not a crime as possession did not constitute an act. Some countries like the United States have circumvented the common law conclusion in *Regina v. Dugdale* by legally defining possession as a voluntary act. As a voluntary act, it fulfils the requirement to establish *actusreus.*[69]

There is no gainsaying that voluntariness is one of vital points in establishing if an *actusreus* has been committed. A person suffering from a seizure who stabs somebody trying to help him has not committed an *actusreus*because it is an involuntary act. In *Commonwealth v. Pestinkas*[70]it was held that voluntariness does not exclude omission because it is implicit in omission that the actor voluntarily chose not to perform a bodily movement and thus caused an injury. Also in *People v. Steinbreg*[71] it was held the purposeful, reckless or negligent absence of an action is considered a voluntary action and completes the voluntary for *actusreus.*

1.8.5. *Mens Rea*

In criminal law, *mensrea* or guilt mind is usually one of the necessary elements of a crime.[72]*Mensrea* is a state of mind expressly or implied required by the definition of the offence charged. There is a presumption that it is an essential ingredient in every criminal offence, liable to be displaced either by the words of the statute or by the

[68] I. EL. & BL. 435, 439 (J853).
[69] See New York Penal Law, s. 15.00(2) and Model Penal Code.
[70]421 Pa. Super.371 (1992).
[71]79 N. Y. 2d 673 (1992).
[72] E. A. Martins, *Oxford Dictionary of Law, (*Oxford: Oxford University Press, 2003), p. 578.

subject ï matter with which it deals.[73] According to Okonkwo,[74]*mensrea* is used to refer to the mental element which required to be proved in respect of a particular crime. Secondly, it is used to refer to a general principle of statutory interpretation and of criminal responsibility.[75] There is hardly any difference between these two definitions because the first definition is merely a particular application of the general doctrine in the second definition.

Under the English Law, section 8 Criminal Justice Act 1967 provides a statutory framework within which *mensrea*is assessed. It states that:

> A court or jury, in determining whether a person has committed an offence,
> a. Shall not be bound in law to infer that he intended or foresaw a result of his actions by reason only of its being a natural and probable consequences of those actions, but
> b. Shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.

In both Australia and South Africa, the position as postulated by the courts is that the defect in the traditional analysis of intention is that the whole scheme presupposes a mind which is continually working out what may happen in the future, and which gives orders to the body after it has worked out the future with sufficient clarity.[76]

The test for the existence of *mensrea* may be:

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[73] S. Bone, *Osborn's Concise Law Dictionary*, (9th edn., London: Sweet & Maxwell, 2001), p. 250.
[74] Okonkwo, *op. cit.*, p. 49.
[75] This is said to run throughout English criminal law, namely that whenever a court is considering the definition of an offence it must presume, until the contrary is proved, that the definition requires proof of a guilty mind against the accused. See even the Criminal Code Act, s. 24 as applicable in Nigeria.
[76] See. *Vallance v. R* (1961) 35 A. L.J.R. 182 and *State v. Mini* (1963) 2 S. A. 188

i. Subjective, where the court must be satisfied that the accused actually has the requisite mental element present in his or her mind at the relevant time;
ii. Objective, where the requisite *Mensrea* element is imputed to the accused, on the basis that a reasonable person would have had the mental element in the same circumstances; or
iii. Hybrid, where the test is both subjective and objective.

Clearly, if there is an irrebuttable presumption of *doliincapax*,[77] then the requisite *mensrea* is absent no matter what degree of probability might otherwise have been present for these purposes. Therefore, where the relevant statutes are silent and it is for the common law to form the basis of potential liability, the reasonable person must be endowed with the same intellectual and physical qualities as the accused and the test must be whether an accused with these specific attributes would have had the requisite foresight and desire.

1.9. Organization of the Study

This dissertation is divided into six chapters. Chapter one is general introduction. Chapter two examines genocide as a crime bringing out the elements of the crime-both mental and physical. Chapter three takes a historical perspective of genocide around the globe, while chapter four examines genocide as a theme in criminology. Chapter five examines the prosecution of the crime of genocide across the world. Chapter six embodies the summary of findings and recommendations and conclusion.

[77] That is, that the accused does not have sufficient understanding of the nature and quality his actions

CHAPTER TWO: THE CRIME OF GENOCIDE

2.1. Introduction

Here the study will be geared towards evaluating genocide as a crime. The basic elements of genocide will be examined. Basic principles of criminal law that are relevant to the topic will be appraised too.

2.2.*Actus Reus* and *Mens Rea* of the Crime of Genocide

All crimes of genocide have a common structure: There must be an *actusreus*, *mensrea* and, in addition, a second subjective element, the intent to destroy, in whole or in part, a group as such. This so called ñgenocidal intent,ò is characterized by the fact that responsibility for completed genocide does not depend on the result, the perpetrator intended to achieve. The threshold of this intent is not higher than for the *mensrea* required in other criminal culpability; in particular, no special quality of the volitive side of this intent is required. *Doluseventualis*, therefore, is sufficient to commit the *actusreus* and to have, in addition, the particular ñintent to destroy [é].ò An inherent, additional and independent, contexual criterion, as proposed in The Draft Elements of Crimes is neither admissible nor advisable to limit the punishability of genocide or the jurisdiction of the Court for such crimes.[1]

Genocide does not necessarily mean the absolute extirpation of a group. In the case of *Prosecutor v. Jean Kambandan*[2] it was held that genocide can be committed

[1] O. Triffterer, ñGenocide, Its Particular Intent to Destroy in Whole or in Part the Group as Suchò, *Leiden Journal of International Law*, (2001), 14 : pp. 399-408 at 403.
[2] Case No. ICTR-97-23-S, ICTR. Ch., 4 September 1998, Para. 40 (1)-(4)

by acts or omissions. The facts of the case were that the accused was found guilty of genocide for his omission to fulfil his duty as Prime Minister of Rwanda to take action to stop on-going massacre which he had become aware of or to protect children and the population from possible pogrom, after he had been personally asked to do so and this omission resulted in massacre. In the case of *Prosecutor v. GoranJelistic*[3] the Trial Chambers held that: ñIt is in fact the *mensrea* which give genocide its specialty and distinguishes it from an ordinary crime and other crimes against international humanitarian lawò. In the case of *Prosecutor v. AfredMusema*[4] it was noted that in order to convict an accused of genocide, it must be proven that the accused had the specific intent (*dolusspecialis)* or a psychological nexus between the physical result and the mental state of the perpetrator, to destroy, at least in part, a national, ethnic, racial or religious group, as such, or that the accused had at least the clear knowledge (*conscience Claire)* that he was participating in genocide.[5]

Consequently to successfully prove the crime of genocide the following must be established:

2.2.1. Killing

Killing members of the group pinpoints the members of a particular group and not individuals. It must be determined whether killing refers to any act, howsoever caused which ultimately leads to the death of another or whether the act must involve the intentional taking of the life of another?

[3] Case No. IT-95-10, ITCY T. Ch. I, 14 December 1999, Para. 66.
[4] Case No. ICTR-96-13-T., 27 January 2000 Para. 166.
[5] See *Prosecutor v. Jean-Paul Akayesu*Case No. ICTR T. Ch 1, 2 September 1998.

The French version of killing in the case of genocide is ñ*meurtre"* which means an unlawful and intentional killing. The case of *Prosecutor v. Clement Kayishema and obedRuzindana*[6]reiterated the fact that genocide is by its very nature conscious, intentional or volitional acts which an individual could not usually commit without knowing the certain consequences are likely to result. It is not the type of act which will normally occur by accident for even as a result of mere negligence. In *Prosecutor v. Jean-pauAkayesu*[7]it was accentuated that killing is homicide committed with intent to cause death. In *Jorgic v. Germany*[8] it was held that: ñThere is no reported cases in which the courts of these states have defined the type of group destruction the perpetrator must have intended in order to be found guilty of genocideò.

Consequently, it is immaterial to consider the group aimed in the machination to annihilate. What counts most is that destruction has occurred and it wiped out a particular group. It must then be shown that the massacre was intended by the accused.

In *Krstić*,[9] in which the Trial Chamber suggested that the destruction of a distinct and identifiable group can replace ï or at least, reduce ï the requirement of ómassiveô scale. The Trial Chamber in that case distinguished genocide from extermination, pointing out that the latter crime lacked both the requirement for

[6] Case No. ICTR-95-1-T, ICTR T. Ch 11, 21 May 1999. Para. 103.
[7] *Op. cit.,*para. 501
[8] European Court of Human Right Judgment (Application No. 76413/01) paras.18, 36, 74.
[9] Krstiĺ Trial Judgement, para. 499.

discriminatory intent and the intent to destroy.[10] However, it suggested that the requisite scale for extermination could be replaced by the fact that a particular group was targeted:

The very term óexterminationô strongly suggests the commission of a massive crime, which in turn assumes a substantial degree of preparation and organisation. It should be noted, though, that óexterminationô could, theoretically, be applied to the commission of a crime which is not ówidespreadô but nonetheless consists in eradicating an entire population, distinguishable by some characteristic(s) not covered by the Genocide Convention, but made up of only a relatively small number of people. In other words, while extermination generally involves a large number of victims, it may be constituted even where the number of victims is limited.[11]

The view that the word óexterminationô connotes the eradication of an identifiable group may be the result of inaccurate or ambiguous use of that term, both at Nuremberg and after Nuremberg. During the Nuremberg trials, the term óexterminationô was used to describe acts that would now likely be characterised as genocide, such as the ñpersecution and exterminationò of religious or national groups, such as Jews and Poles.[12] Other post-World War II cases used the terms óexterminationô and ógenocideô interchangeably,[13] and suggest that extermination

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[10] *Ibid.*,para. 500.
[11] *Ibid.*,para. 501.
[12] See *the Justice Trial; Barbie*, cited in *Prosecutor v. Kupreskić*, Trial Chamber Judgement, Case No. IT-95-16, 14 January 2000, para. 602. See alsoPre-Nuremberg debate discussed in VasiljeviÍ Trial Judgement, para. 218.
[13] *Attorney-General v. Adolf Eichmann*, District Court of Jerusalem, Criminal Case No. 40/61, cited in VasiljeviÍ Trial Chamber Judgement, para. 224, p. 85, see also KupreskiÍ Trial Chamber Judgement, para. 602.

contains an element of total destruction or ñannihilationò.[14] Similarly, ICTY Trial Chambers have sometimes used the term óextinationô to describe the *actusreus* of genocidal killings.[15] Inevitably, such ambiguous uses of the word fuel the misconception that the obliteration or destruction of a particular group constitutes extermination, irrespective of the scale on which the killings occur.

Despite the popular connotation of the word óextinationô, however, its legal meaning includes no such element of destruction. The victims of an extermination need not be united by any particular characteristic: for example, the victims may comprise individuals that are not members of the political ruling party, or may be united by nothing more than their presence in a particular geographical area.[16] Indeed, not even this level of unity is required: an extermination would still be an extermination if all the victims killed had their identity as human beings.[17]What is necessary is that the crime is collective, rather than being directed against singled-out individuals.[18]

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[14]See VasiljeviÍ Trial Chamber Judgement, para. 224, noting that in Eichmann extermination was variously used to connote ñkilling on a vast scale, annihilation, extinction, death, elimination.ò

[15] See KupreskiÍ Trial Chamber Judgement, para. 602; JelisiÍ Trial Chamber Judgement, para. 82 in which it was held that: ñInternational custom admits the characterisation of genocide even when the exterminatory intent only extends to a limited geographical zone.ò See also ICTR jurisprudence, example *Prosecutor v. Kayishema*, Trial Chamber Judgement, para. 630 (ñthe terms extermination and destroy are interchangeable in the context of [the crimes of extermination and genocide].ò).

[16]*Prosecutor v. Stakić*, Trial Chamber Judgement, Case No. IT-97-24, 31 July 2003, para. 639.

[17] The Commentary on the International Law Commissionôs *Draft Code of Crimes against the Peace and Security of Mankind* (1996), although written post-1992, states that: ñExtermination covers situations in which a group of individuals who do not share any common characteristics are killedò. *SeeProsecutor v. Ntakirutimana*, Appeals Chamber Judgement, Case No. ICTR-96-17-A, 13 December 2004, para. 518.

[18]BrÐanin Trial Chamber Judgement, para. 390; StakiÍ Trial Chamber Judgement, para. 639-640 which held that: ñkillings need not be limited in place or timeò.

As there is no required ótarget groupô, it follows that there can be no requirement that any proportion of a particular group be destroyed.[19] It is the lack of both these elements that enables a single course of conduct to support cumulative convictions for genocide, persecution and extermination. Factually, of course, it is true that the lack of a discriminatory or destructive intent as a required element of the crime means that extermination will often catch the annihilation of a targeted group of people, either where intent to destroy the group cannot be made out,[20] or where the victims are united by a characteristic not covered by the Genocide Convention.[21]But this protection is incidental to the special value protected by the crime of extermination, which might be termed óthe right of humanity to existô.[22] As reflected by the actusreus, all that is necessary to violate this right is mass killing; and the killing may be indiscriminate, provided that the victims are predominantly civilian.

2.2.2. Bodily or Mental Harm

Serious bodily or mental harm which does not induce death ought not to constitute genocide since the substance of the offence is the intent to extirpate a group. However, it must be pointed out that causing serious bodily harm or mental harm will be determined on case-by-case basis. In the case of *Prosecutor v. Jean-Paul Akayesu,*[23]acts of rape and sexual violence were committed against Tutsi women many of whom were subjected to the worst public humiliation, mutilated and rape

[19]VasiljeviÍ Trial Judgement, para. 228.
[20]KrstiÍ Trial Chamber Judgement, para. 505.
[21]KrstiÍ Trial Chamber Judgement, para. 501.
[22]*See* UN General Assembly Resolution on the Crime of Genocide, 1946 96(1), 11 December 1946, stating that ñGenocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beingsò.
[23]*Op. cit.*

several times, often in public, in the bureau communal premises or in other public places and often by more than one assailant. These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and thereby contributing to their destruction and to the destruction of the Tutsi group as whole. The trial chambers were thus satisfied that on the facts of the case rape did indeed constitute genocide.

In *Attorney-General of the Government of Israel v. Eichmam,*[24] the District Court of Jerusalem stated that serious bodily or mental harm to members of a group includes such acts as:

> Enslavement, starvation, deportation and persecutioné . and by their detention in ghettos, transit camps and concentration camps on conditions which were designed to cause their degradation, deprivation of their rights as human being and so suppress them and cause them inhuman suffering and torture.

Forcing a victim to lie down in front of a vehicle and threatening to drive over her, forcing one victim to beat another victim and tying two victims together thereby causing one of them to suffocate have been held to constitute acts causing serious bodily or mental harm.[25]

Torture is also one of the acts that can constitute the crime of genocide. The definition adopted in the Genocide Convention of 1948 includes "causing serious

[24] Dis. Ct. Jerusalem, 11 December 1961 (1962) 56 AJIL 805 @ 238
[25] See *Prosecutor v. Clement kayishema and ObedRusindana Supra. Paras. 722-723*

bodily or mental harm".[26] This definition was intended to cover a range of acts of physical violence falling short of actual killing, as well as acts causing serious mental harm. The ICTR helped to clarify the meaning of this phrase in 1998 in the *Akayesu* case, finding that the definition of serious bodily or mental harm, includes acts of torture, be they bodily or mental, and inhumane or degrading treatment and persecution, and could include rape and other acts of sexual violence or death threats. The Rome Statute included a document that set out the physical and mental elements of each crime that needed to be proved in any given case brought before the ICC.[27] This conduct may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment.[28]

The absolute prohibition on torture is has been generally accepted as a part of customary international law, and is therefore binding on all states, not only those that become party to treaties prohibiting torture. This view has been upheld by international courts and tribunals, as well as by national courts. The prohibition has also been recognized as a norm of *jus cogens*, which is an overriding or superior principle of international law.[29]

Torture and other ill-treatment are also specifically prohibited in many national constitutions.[30] Even where a prohibition on torture is not specifically included in the constitution, it has been made into other provisions. For instance, by giving a wide interpretation to the right to life and personal liberty, the Indian

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[26] See Art. II(b).
[27] The document, titled "Elements of Crimes".
[28] F. Mckay, *Genocide and Crimes against Humanity*, (London: Gale Cengage, 2005), p. 90.
[29] *Ibid.,* p. 30.
[30] See The Constitution of the Federal Republic of Nigeria 1999 as Amended, s. 34.

Supreme Court has incorporated freedom from torture among its schedule of constitutionally protected rights. Many states have made torture a specific criminal offence under their penal codes. Torture is also commonly criminalized in military codes and through legislation incorporating the war crimes provisions of the Geneva Conventions. After becoming party to the Rome Statute for the ICC, states have also incorporated torture as a crime against humanity, as genocide, and as a war crime in their domestic law.

The international norms in this array of treaties and customary international law impose a range of obligations on states. For instance, states must not only refrain from using torture, they must also take strong positive measures to prevent and punish torture. Article 2.1 of the Torture Convention obliges states to "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." Such measures include training law enforcement personnel and other public officials and reviewing rules and practices relating to the interrogation and custody of prisoners and detainees. States must also ensure that statements taken as a result of torture may not be used in court as evidence, except against a person accused of torture as evidence that the statement was made.[31]

In encapsulation, the concept of genocide is broader than simply mass killing. A group's identity can be destroyed without physically killing all members of a group. Genocide is not limited to killing. According to the Genocide Convention and subsequent international jurisprudence, genocide can involve such things as forced

[31] ñTortureò, available at http://www.enotes.com/torture-reference/torture (last acessed 18 March 2013).

birth control, rape and sexual assault, forced displacement, causing serious physical or mental harm on the group, deliberately aggravating surrounding living circumstances and forcibly removing children.[32] As a matter of customary law, rape and other forms of sexual violence are recognized as inflicting serious mental or physical harm on the victim and, in many situations as torture. In the *Akayesu case*[33], the ICTR interpreted serious bodily or mental harm "without limiting itself thereto, to mean acts of torture, be they bodily or mental, inhumane or degrading treatment, persecution". The role of rape and sexual violence was identified as the infliction of serious bodily and mental harm as follows:

> Indeed, rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways of inflicting harm on the victim as he or she suffers both bodily and mental harm. In light of all the evidence before it, the Chamber is satisfied that the acts of rape and sexual violence described above, were committed solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated, and raped several times, often in public, in the Bureau Communal premises or in other places, and often by more than one assailant. These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.[34]

[32] ñHow genocide Relates to Other Types of Mass Killingò, available at http://clg.portalxm.com/library/keytext.cfm?keytext_id=207 (last accessed 18 March 2013).
[33] *Op. cit.*, para. 504.
[34] *Ibid.*,para. 731.

2.2.3. Condition of Life Calculated to Bring About Physical Destruction

Condition of life calculated to bring about physical destruction may include deliberate deprivation of resources indispensable for survival, such as food or medical services or systematic expulsion from homes. Kittichasaree writes that:

> This act connotes methods of destruction not leading immediately to the death of members of the targeted group, but which seek ultimately their physical destruction. Examples of such conditions of life include starving the targeted group, depriving the targeted group of proper housing (including systematic expulsion from homes), clothing, hygiene and medical care for an extended period: subjecting the targeted group to a subsistence diet, compelling the targeted group to do excessive work or undergo excessive physical exertion.[35]

What differentiates the particular element of genocide from other elements is the process by which the destruction is executed. Basically under this element, that strategy adopted does not result in immediate destruction of a group but rather inflict slow torturous death on its victims. Deliberately inflicting conditions of life calculated to destroy a groupincludes the deliberate deprivation of resources needed for the group's physical survival, such as clean water, food, clothing, shelter or medical services. Deprivation of the means to sustain life can be imposed through confiscation of harvests, blockade of foodstuffs, detention in camps, forcible relocation or expulsion into deserts.[36]

The facts and circumstances surrounding the Holodomor in Ukraine point to the existence of such elements in this crime as the genocidal intent and knowing participation. There are a number of documents that confirm the government's awareness of the horrible condition of Ukrainian peasants. Dispatches of foreign

[35] K. Kittichaisaree, *op. cit.,* p.79
[36] ñWhat is Genocideò available at http://www.genocidewatch.org/genocide/whatisit.html (last acessed 18 March 2013).

consuls and reports of the GPUôs secret agents in the Ukrainian SSR describing the famine in various regions of Ukraine were published. For example, an informer reported to the GPUôs Odesa Oblast Department on June 9, 1932, that peasants had no bread left and a famine was raging. There is an abundance of evidence that the government knew about the murderous famine. The fourth element of the crime of genocide, that is, that the conditions of life were calculated to bring about the physical destruction of the group, in whole or in part. StanislavKosior and VlasChubar, among others, were granted the right to suspend product deliveries to Ukrainian villages until those villages met grain procurement quotas set for them. These quotas were obviously too high to meet, and thus suspending delivery meant famine. This regulation pertained only to Ukrainian villages. Among actions aimed at the physical destruction of their residents were the so-called ñblack boardsò introduced also specifically in regions populated by Ukrainians. All in all, collective farms in 82 districts of Ukraine were put on the black boards; this accounted for nearly one-fourth of Ukraineôs territory which held a population of five million people. The Bolsheviks put military units around such villages and removed all food and seed reserves from them, while at the same time banning trade and blocking any products from being brought in. In other words, being on the black board spelled death by famine.[37]

According to the Convention of Genocide elements of genocide, includes "causing serious bodily or mentally harm to members of the group; deliberately inflicting on the group conditions of life, calculated to bring about its physical

[37] M. Antonovych, ñHolodomor as a Genocideò, (27 April 2011) available at http://ukrainianweek.com/History/21538 (last accessed 18 March 2013).

destruction in whole or in part". What this means is that forcibly displacing over a million people such that they cannot access their land and thus their only means of sustenance and then relocating them to places that lack even basic sanitation does in fact, when intent is demonstrated, come under the definition of genocide.

The "in part" language of the Convention is deliberate and significant. A pattern of intent and activity does not have to have as its objective the elimination of *all* members of a particular ethnic group to qualify as genocide. Given that so many Acholi[38] were negatively and even lethally affected by NRM[39] policy, the "in part" clause may seem unnecessary, but it is important to keep it in view in anticipation of possible (and inaccurate) objections that only a few Acholi suffered. Once again, the UN mapping report cites cases and decisions from the International Criminal Tribunal for the former Yugoslavia as precedent.

The intention to destroy a named group, even in part**,** is sufficient to constitute a crime of genocide provided that it is the group or "a distinct fraction of the group" that is targeted and not a "multitude of isolated individuals belonging to the group." Furthermore, the section of the group targeted must be substantial and thus reflect both the mass nature of the genocide and the concern expressed in the Convention as to the impact that the destruction of the section of the group targeted would have on the group as a whole.[40]

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[38]The people of northern Uganda.
[39]National Resistance Movement.
[40]UNOHCHR, "Democratic Republic of the Congo, 1993-2003," 506. The report cites *Brdanin* decision, ICTY, Trial Chamber, No. IT-99-36-T, Sept. 1, 2004, 700; and *Kristic* arrest, ICTY, Appeals Chamber, No. IT-98-33-A, April 19, 2004, 8.

Finally, the UN mapping report highlights the fact that proof of intent to commit genocide is without doubt the element that causes the most difficulty.[41] For a decision of genocide, there needs to be proof of a specific intention, what is called in the legal literature a *dolusspecialis*. This requires direct proof of intent rather than, as is in most international law, indirect or inferential evidence of intent gathered from the various circumstances and facts of the case. The grave nature of genocide[42] requires the higher standard of proof.[43] This higher standard of proof is why, even though it identifies certain activities that the UPDF and other groups carried out in the DRC as "a campaign of ethnic cleansing,"[44] the UN mapping report is cautious in using the term "genocide." Rather than be determinative itself, the report calls for a judicial investigation into whether the above and other acts committed by various groups in the DRC constitute genocide.[45] Similarly, the difficulty of proving genocide is also part of why the International Criminal Court has charged the leaders of the LRA only with war crimes and crimes against humanity.

2.2.4. Imposing Measure Intended to Prevent Birth

Raphael Lemkin stated that: ñThe crime of genocide involves a wide range of actions, including not only the deprivation of life, but also the prevention of life and also devices considerably endangering life and healthò.[46] Thus, any action which taken with the intent to prevent birth within a particular group may be tantamount to

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[41] *Ibid.*, p. 508.
[42] what the ICTY called "the most abhorrent of all crimes".
[43] *Kristic* decision, ICTY, Appeals chamber, no. IT-98-33-A, April 19, 2004, 134.
[44] UNOHCHR, "Democratic Republic of the Congo, 1993-2003," 366.
[45] *Ibid.*, p. 522.
[46] R. Lemkin, ñ Genocide as a Crime under International Lawò AJIL (1947) Vol. 41(1): 145 ï 151.

committing genocide. Measures like sexual mutilation, the practice of sterilization, forced birth control, forced separation of the sexes, prohibition of marriage etc. amounts to measures imposed to prevent birth.[47]

Using Germany as an illustration, by the mid-1930s Germany asserted that only a subsection of Germans could be recognized as racially pure or Aryan. As a result in 1937, the genetic health courts, together with the Gestapo and state police, began to enforce the restrictive birth policy against mix-raced individuals. Under the *Rheinlandbastarde* policy, they secretly authorized the sterilization of some five hundred persons of mixed German and African ancestry. Reference to non-Aryans increasingly meant all Jews, even those who were German citizens. In 1938 a law provided for Jewish women to abort their pregnancies solely based on their new racial status.

By 1939 these sterilization policies ensured that over 400,000 Germans, either mixed-raced, Jewish, non-Aryan, or mentally or physically infirm underwent forced sterilization. The sterilization procedures included tubal ligation, vasectomy, x-ray exposure, or hysterectomy. The policies were a precursor to the Nazi euthanasia laws, which became law at the start of World War II. The euthanasia laws decreed that the outright killing of potential parents of undesirable offspring was preferable to regulating their ability to reproduce. Euthanasia was regarded as the ultimate means of ensuring racial and national purity.

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[47] K. Kittichaisaree, *op cit.,* p. 81.

The Nazi sterilization policies complemented another set of reproductive edicts that were collectively referred to as the Nuremberg Laws. In September 1935 the Reich Citizenship Law mandated that only full-blooded Germans were entitled to citizenship, whereas Jews would only be considered residents of Germany. Also in September of that same year the Law for the Protection of German Blood and German Honour proscribed marriages and sexual relations between Jews and non-Jews illegal. In October 1935 the Law for the Protection of the Genetic Health of the German People required couples to submit to premarital medical examinations to check for any of the illnesses sanctioned in the 1933 Sterilization Law; when deemed necessary, these marriages were prevented.

Whereas the sterilization policies mandated surgical interventions to stop reproduction, the Nuremberg Laws racially "declassified" individuals in declaring that they were not of German blood. They outlawed sexual contact between racially superior Germans and those termed racially denigrated. It is thus easy to understand why these measures, namely sterilization or compulsory abortions, segregation of the sexes, or obstacles to marriage, concerned the drafters of Article II(d) of the Genocide Convention.

A third set of reproductive policies introduced in the mid-1930s compelled German women considered to be racially Aryan to procreate, by offering pro-birth incentives. The German state awarded mothers of four or more children bronze, silver, or gold medals. It also provided loans of up to one year's salary to persuade women to leave the workforce and return home. Aryan women were encouraged to bear children out of wedlock. Infertility became recognized as grounds for divorce. A

system of disincentives discouraged Aryan types from remaining childless. A penalty tax was levied on Aryans who had married and not procreated within five years. Stiff fines and prison sentences were meted out to physicians or others who performed abortions on Aryan women.

These birth incentive policies purported to rectify "the disproportionate breeding of inferiors, decrease the rampant celibacy of the German upper classes and control the threat posed by working women, liberated from the household" that the state viewed as detrimental "to the reproductive performance of the family." Although Article II(d) of the Genocide Convention refers to measures that prevent births, these countermeasures, to stimulate births among the Aryan population, unambiguously illustrate the fact that the Nazi sterilization policies and Nuremberg Laws did function as measures imposed to regulate all births and thus satisfied the element of genocide against non Aryans.

Several international tribunals have included Article II(d) of the Genocide Convention verbatim in their statutes. The ad hoc International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR), as well as the Special Panels of East Timor, have jurisdiction over alleged acts of genocide that involve the imposition of certain measures to prevent births. As of 2003 cases tried before these international tribunals have not included prosecutions fort measures intended to prevent births. The *Akayesu* judgment[48] held that measures under Article II(d) "should be construed as sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages."

[48]Issued by the ICTR in 1998.

On another matter, the *Akayesu* judgment abruptly departed from Robinson's list of measures, which argued that forced births could not be viewed as a measure to prevent births.[49] The ICTR stated that in patriarchal societies, the rape of women during times of war could be construed as the enemy's attempt to impose their ethnic identity on any new-born children. The Trial Chamber opined that:

> A measure intended to prevent births within a group is a case where during a rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will not consequently belong to the mother's group.[50]

Similarly, in 1996, the ICTY had held, in a preliminary proceeding against former Bosnian Serb president Radovan Karadzic, that the "systematic rape of women in some cases is intended to transmit a new ethnic identity". The *Akayesu* judgment also observed that a psychological component to the prevention of birth could operate to violate Article II(d) safeguards:

> The Chamber notes that measures intended to prevent births within a group may be physical, but can also be mental. For instance, rape can be a measure intended to prevent births when the person raped refuses subsequently to procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate.[51]

The ICTR *Akayesu* judgment is considered *obiter dicta*, meaning that its interpretation lay outside of the relevant factual and legal issues in the actual case before the judges. In *Kayhishema and Rutaganda*[52], the second judgment issued by the ICTR, the Trial Chamber concurred, again in *obiter dicta*, with the interpretation

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[49] R. N. Proctor, *Racial Hygiene Medicine under the Nazis*, (Cambridge: Harvard University Press, 1988), p. 56.
[50] See Akeyasuôs Judgment, op. cit.
[51] *Ibid.*
[52] *Op. cit*.

of Article II(d) that had been voiced in the *Akayesu* case. Schabas acknowledged the potential absurdity of the judicial views that classify rape as a measure to prevent births; however, he also recognized that a sober reading of Article II(d) lends itself to the contemplation of any measures as long as the intent to prevent births is present.[53] Infliction of rapes, sexual mutilations, and any other actions that transfer the ethnic identity of the child to a group other than the mother's, or that intentionally discourage or restrict future procreation feasibly, lies within Article II(d).

2.2.5. Forcibly Transferring Children

The term ñForciblyò does not necessarily mean that there must be the use of force in the act of transferring children from one group to another. Thus forciblyò is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, of taking advantage of a coercive environment.[54] In *Prosecutor v. Jean-Akayesu*[55] the trial Chamber I of the International Criminal Tribunal for Rwanda held that the rationale behind criminalizing forcible transferring children is: ñNot only to sanction a direct act of forcible physical transfer, but also to sanction acts of threats or trauma which would lead to the forcible transferò. Kittichaisree argues that:

> Forced removal of children of the group to another group causes serious mental harm to these children as well as to their parents also close relatives, and that the perpetrator of such forced removal could

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[53] W. A. Schabas, *Genocide in International Law: The Crime of Crimes*, (Cambridge: Cambridge University Press, 2000), p. 109.

[54] Report of the Preparatory Commission for the International Criminal Court, Doc. PCNICC/2000/1/add.2.2 November, 2000.

[55] Supra para. 509.

> also be punished under the rubric of the genocide crime of causing serious bodily or mental harm to members of the group as well.[56]

The forcible transfer of children was added to the list of acts of genocide at the insistence of Greece after the UN General Assembly had rejected the inclusion of cultural genocide in the Convention. Its inclusion was achieved by a minority vote. Only twenty-five member states voted for its inclusion, whereas thirteen opposed it and thirteen abstained from voting.[57]

The lukewarm support for including the forcible transfer of children among the acts of genocide may be explained by the fact that it is out of harmony with the other listed acts, whose common denominator is the physical destruction of the protected groups. Forcibly transferring children from one group to another results in the dispersal of the original group's members. It weakens their cohesion as a group, but it does not take away their physical characteristics. An African or Chinese remains African or Chinese, wherever he or she may be. The transfer, however, does make the transferred members of the group lose their cultural or linguistic identity by forcibly assimilating them into other groups. If those other groups speak different languages, practice different religions, or possess different cultures, transferred children will be forced to do likewise. Strictly speaking, this would constitute genocide only if the purpose of the transfer were to subject the children to slave labour or other forms of physical or mental harm. Such treatment would weaken them physically and would

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[56] K. Kittichaisaree, *op. cit* p. 82

[57] ñForcible Transferò, available at http://www.enotes.com/forcible-transfer-reference/forcible-transfer (last accessed 18 March 2012).

amount to subjecting them to conditions of life calculated to bring about their physical destruction, in whole or in part.[58]

It must, however, be conceded that the forcible transfer and isolation of children from their original group frequently makes it difficult for them when they become of age to marry people of their original group, for they may no longer share the linguistic, religious, cultural, or social traditions with that group. They are thus unable to reproduce their own kind and to perpetuate their group. As a direct result, the group itself will gradually dwindle in number and ultimately become extinct. The inclusion of the forcible transfer of children as an act of genocide is designed to prevent this eventuality.[59]Forcible transfer of children may be imposed by direct force or through fear of violence, duress, detention, psychological oppression or other methods of coercion. The Convention on the Rights of the Child defines children as persons under the age of 14 years.[60]

2.3. The Difference between Genocide and Crime against Humanity

Crimes against humanity are particularly odious offences in that they constitute a serious attack on human dignity or grave humiliation or a degradation of one or more human beings. They are not isolated or sporadic events, but are part either of a government policy or of a wide practice of atrocities tolerated or condoned by a government or a *de facto* authority.[61] Crime against humanity is an act of persecution or any large scale atrocities against a body of people and is the highest level of

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[58] *Ibid.*
[59] *Ibid.*
[60] ñWhat is Genocideò, *op. cit.*
[61] As quoted by G, Horton, in ñDying Alive ï A Legal Assessment of Human Rights violation in Burmaò, April 2005.

criminal offence. Article 6 (c) of the Nurembreg Charter[62] outlines crime against humanity to include:

> é murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian populations, before or during the war; or persecution 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.

However, it must be accentuated that genocide is a crime on a different scale to all other crimes against humanity and implies an intention to completely exterminate the chosen group. Genocide is therefore, both the gravest and the greatest of the crimes against humanity.[63]

Simply put, genocide is the deliberate and systematic destruction, in whole or in part, of an ethnic, racial, religious or national group. In order to convict an accused of genocide, it must be proven that the accused had the specific intent (*dolusspecialis)* or a psychological nexus between the physical result and the mental state of the perpetrator.[64] It would have been easy for one to categorically state that the crime against humanity subsumes the crimes of genocide. But this is not the case because in *Prosecutor v. Jean-paulAkayesu*[65]and *Attorney-General of Israel v. Eichmam*[66]it was emphatically stated that crime against humanity differ from genocide in that no *dolusspecialis* (specific intent) to destroy members of a particular group is required in case of crimes against humanity. Consequently, the requirement of specific intent in

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[62]UK Treaty Series 27 (1946), d 6903.
[63] A. Destexhe, *op. cit.* p. 20
[64] See *Prosecutor v. Alfred Musema, op. cit.*
[65]*Op. cit.*
[66]*Op. cit.*

genocide cases is basically the difference between genocide and crime against humanity.

However, it must be pointed out that where the prosecution relies on the same elements and the same culpable conduct to prove both crime against humanity and an act of genocide whose victims are the same, a crime against humanity may be subsumed in the crime of genocide and punished as such, provided that the requisite elements of the crime of genocide are proven. In *Prosecutor v. Clement Kayishema and ObedRusindana,*[67] the accused were charged with several counts of crime against humanity for murder, extermination, and other inhuman acts. The chamber found it improper to convict the accused for both genocide and crime against humanity since, in the circumstances of the case; they amounted to the same offence.

It is clear that the definition of what constitutes a crime against humanity was established at the Nuremburg trials. However, despite the significance of this, the jurist at Nuremberg had invented nothing new. They were simply advancing Montesquieuôs ideas international law, which he described as ñuniversal civil law, in the sense that all people are citizens of the universeò.[68] Killing someone simply because he or she exists is a crime against humanity. It is a crime against the very essence of human beings. This is not an elimination of a person because he is a political adversary or because he holds to what is regarded as false beliefs or dangerous theories, but a crime directed against the person as a person, against the

[67] *Supra*.
[68] Cited in ñCriminal Intention available at http:/www.pbs.org/wgbh/pages/fronline/shows/Rwanda/reports/destxhe.html (Accessed. 23/3/10).

very humanity of the individual victim. Thus, it cannot be categorized as a war crime. It is quite a different thing to be regarded as an enemy than a particular species of victim to be systematically extirpated.

Ethnic cleansing as a concept has generated considerable controversy. Some critics see little difference between it and genocide. Defenders, however, argue that ethnic cleansing and genocide can be distinguished by the intent of the perpetrator: whereas the primary goal of genocide is the destruction of an ethnic, racial, or religious group, the main purpose of ethnic cleansing is the establishment of ethnically homogeneous lands, which may be achieved by any of a number of methods including genocide.[69]

Another major controversy concerns the question of whether or not ethnic cleansing originated in the 20th century. Some scholars have pointed to the forced resettlement of millions of people by the Assyrians in the 9th and 7th centuries BC as perhaps the first cases of ethnic cleansing. Among other examples cited are the mass execution of Danes by the English in 1002, attempts by the Czechs to rid their territories of Germans in the Middle Ages, the expulsion of Jews from Spain in the 15th century, and the forced displacement of Native Americans by white settlers in North America in the 18th and 19th centuries.[70]

Others argue that ethnic cleansing, unlike earlier acts of forced resettlement, is the result of certain uniquely 20th-century developments, such as the rise of powerful

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[69]ñ What is the Difference between Genocide and Ethnic Cleansingò (08 April 2006) available at http://sudanwatch.blogspot.com/2006/04/what-is-difference-between-genocide.html (last accessed 18 March 2012).
[70]*Ibid.*

nation-states fuelled by nationalist and pseudoscientific racist ideologies in conjunction with the spread of advanced technology and communications. Examples of ethnic cleansing understood in this sense include the Armenian massacres by the Turks in 1915-16, the Nazi Holocaust of European Jews in the 1930s and '40s, the expulsion of Germans from Polish and Czechoslovak territory after World War II, the Soviet Union's deportation of certain ethnic minorities from the Caucasus and Crimea during the 1940s, and the forced migrations and mass killings in the former Yugoslavia and Rwanda in the 1990s. In many of these campaigns, women were targeted for particularly brutal treatment - including systematic rape and enslavement - in part because they were viewed by perpetrators as the "carriers," biologically and culturally, of the next generation of their nations. Because many men in victimized populations left their families and communities to join resistance groups once violence began, women and children were often defenseless.

The precise legal definition of ethnic cleansing has been the subject of intense scrutiny within various international bodies, including the UN, the two ad hoc international tribunals created in the 1990s to prosecute violations of international humanitarian law in the former Yugoslavia and in Rwanda (the International Criminal Tribunal for the Former Yugoslavia [ICTY] and the International Criminal Tribunal for Rwanda [ICTR], respectively), and the International Criminal Court (ICC), which began sittings in 2002.

In 1992, in reference to the hostilities in Yugoslavia, the UN General Assembly declared ethnic cleansing to be "a form of genocide," and in the following year the Security Council, citing widespread and flagrant violations of international

humanitarian law within the territory of the former Yugoslavia, established a tribunal to investigate allegations of war crimes and crimes against humanity, including ethnic cleansing. In its examination of the capture of the town of Kozarac by Bosnian Serbs, the ICTY described the ethnic cleansing that took place there as the process of rounding up and driving "out of the area on foot the entire non-Serb population." In a subsequent case, the tribunal recognized similarities between acts of genocide and ethnic cleansing, noting that both involve the targeting of individuals because of their membership in an ethnic group. The significant difference between the two remains, however: whereas ethnic cleansing aims to force the flight of a particular group, genocide targets the group for physical destruction.

The establishment of the ICC reinforced the links between ethnic cleansing and other offenses such as genocide, crimes against humanity, and war crimes. In its finalized text on the elements of the crimes in the court's jurisdiction, the Preparatory Commission for the International Criminal Court made it clear that ethnic cleansing could constitute all three offenses within the ICC's jurisdiction. Genocide, for example, was defined as an act that may include the systematic expulsion of individuals from their homes; the threat of force or coercion to effect the transfer of a targeted group of persons was recognized as an element of crimes against humanity; and the "unlawful deportation and transfer," as well as the displacement, of civilians were recognized as elements of war crimes.[71]

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[71] *Ibid.*

2.4. Right to Life and Crime of Genocide

Right of life is a phrase that elucidates the belief that a human being has an essential right to live, particularly that a human being has right not to be killed by another human being. In 1776, the United States Declaration of Independence declared that all men are endowed with certain inalienable rights and that among these are life, liberty and the pursuit of happiness.[72] Again, in 1948, the Universal Declaration of Human Rights declared in Article 2 that: ñEvery human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his lifeò.[73] The Catholic Church has issued a charter of the rights of the family in which it states that right to life is directly implied by human dignity.[74] Article 4 of the African Charter also secured right to life. Also under the Nigerian Constitution, every person has a right to life and not one shall be deprived intentionally of his life save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.[75]

Irrespective of all these provisions on protection of right to life, it is still controversial whether the life of an unborn foetus is protected? To answer this question, the pro-life group has argued that pre-natal humans are human persons and have the same fundamental right to life as humans have after birth. The right to

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[72] T. Jefferson, *op. cit.*
[73] See alsothe International Convention on Civil and Political Rights, Art. 6.1, adopted by the General Assembly on 16th December, 1966.
[74]Pontifical Council for the Family and Human Right 1998.
[75] See The Constitution of the Federal Republic of Nigeria 1999 as Amended, s. 33(1).

choice group maintained that pre-natal humans are not human persons and do not have the same fundamental right to life as humans after birth.[76]

It is a known fact that imposing measures intended to prevent birth is an element of the crime of genocide. The crime of genocide involves a wide range of action including not only the deprivation of life, but also prevention of birth and also devices considerably endangering life and health.[77] Consequently, if abortion is orchestrated within a particular ethnic group with the intention to suppress their population, genocide will be deemed to have occurred.

Therefore, threat to right to life of any ethnic group when it is occasioned by an individual or government will amount to genocide. So the first step towards eradicating the crime of genocide is commitment to preservation and protection of right to life. Flowing from the above, it will be right to contend that the final report of the Prevention of Genocide Task Force[78] is deficient since it did not recommend commitment to the enforcement of right to life in its recommendations. The Prevention of Genocide Task Force chaired by Madeline Albright was established on 08 December 2008. It was saddled with the responsibility of providing a blueprint that can enable the United States take preventive action in concert with international partners, to forestall all the spectre of future cases of genocide and mass atrocities. In its report, the task force recommended that:

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[76] See S. Dinan, ñObama, McCain Air Moral Ethical Viewsò *The Washington Times,* 17 August 2008.
[77] Lemkin, *op. cit,* p. 145.
[78] This Task Force was set up on 08 December 2008 and is co-chaired by Madeline Albright and William Cohen.

1. There should be a proactive role of the US President which would demonstrate to the US and the world that preventing genocide and mass atrocities is a national priority.
2. A body should be created within the United States National Security Council to analyse threats and consider preventive action.
3. A fund of $520 million should be set up for crisis prevention and response.
4. The US should help create an international network for the sharing of information and the coordination of preventive action.

From the foregoing recommendations, it is clear that the task Force did not consider the relevance of the protection of right to life as a practical clue to the prevention of the crime of genocide. This is considered a fundamental omission because if States are committed to the protection of right to life, every attempt to annihilate a particular group within a State will be vehemently resisted by the State, and if possible, by the global community without much procrastination. It may even be necessary to find a middle ground upon which the doctrine of sovereignty may be circumvented to ensure that life is protected. After all, *saluspopuliestsupremalex.*[79]Thus, to protect the people from extermination, the global community will mobilize its military forces and ensure the protection of the threatened group to give meaning to the right to life of every individual.

[79] The safety of people is the supreme law.

2.5. Commission of the Crime of Genocide

There must be certain pre-conditions before genocide can b committed. Foremost among them is a national culture that does not place high value on human life. A totalitarian society, with its assumed superior ideology, is also a precondition for genocidal acts.[80] In addition, members of the dominant society must perceive their potential victims as less than fully human: as ñpagansò, ñSavagesò, ñUncouthò, Barbariansò, ñUnbelieversò, Effete degeneratesò, ñRitualò ñoutlawsò, ñRacial Inferiorò, ñClass antagonistsò, Counter Revolutionariesò[81]etc. these conditions, in themselves, are not enough for the perpetrators to commit genocide. To commit genocide, the perpetrators need a strong, centralized authority and bureaucratic organization as well as the pathological individuals and criminals. Also a campaign of vilification and dehumanization of the victims by the perpetrator is usually organized. It must be stressed that there are international sanctions for the crime of genocide. Article 3 of the United Nation Convention for the Prevention and Punishment of Crime of Genocide dictates that:

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

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[80] M. H. Kakar, *Afghanistan: the Soviet Invasion and the Afghan Response, 1979-1982,* (California: University of California Press, 1995), p. 14.
[81] *Ibid.*, p. 15.

Flowing from the above provisions, it is a crime to plan or incite genocide, even before killing starts, and to aid or abet genocide. Therefore, conspiracy, direct and public incitement, attempt to commit genocide and complicity in genocide are all criminal acts vis-à-vis the crime of genocide. Complicity in genocide is a stand-alone crime, ripe for prosecution. Complicity is all acts of assistance or encouragement that have substantially contributed to, or have had a substantial effect on, the completion of a crime. In international criminal law, the three essential elements of complicity are:

1. The commission of a crime
2. The accomplice's material contribution to the commission of that crime; and
3. The accomplice's reckless disregard for the potential of its commission.

Although complicity is a separate offence, it is inseverably intertwined with the main offence. Thus, in the case of crime of genocide, there must be the crime of genocide and a principal offender. In *Prosecutor v. Alfred Musema*[82] the Trial Chamber noted that: "Complicity can only exist when there is a punishable, principal act committed by someone the commission of which the accomplice has associated himself with".

The implication of this extract is that there cannot be complicity in the crime of genocide unless there is the actual commission of the crime of genocide. With utmost respect, this position seems to be erroneous. This is because the crime of complicity captures a class of perpetrator broader than those implicated by aiding and abetting

[82] Case No. ICTR-96-13-T, 27 January 2000 Paragraph 171.

the crime of genocide. One found guilty of aiding and abetting the crime of genocide must have heightened *mensrea of the genocidaire*[83] but one who commits the crime of complicity in genocide need not have this intense *mensrea*. Instead, a lesser *mensrea*[84] should suffice to attach guilt.

Consequently, an offender who is guilty of aiding and abetting the crime of genocide had as his very purpose the facilitation of the commission of genocide. The perpetrator of crime of complicity in genocide may not have had genocide as his purpose. Genocide may merely be the foreseeable result of his actions. The failure of the Trial Chamber in *Prosecutor v. Alfred Musema*[85]to appreciate that complicity in genocide is a stand-alone crime whereas aiding and abetting is merely a form of liability for the crime of genocide creates a gaping loophole, providing unwarranted sanctuary to those who commit the crime of complicity in genocide.

[83] This term *genocidaire* comprises specific intent an specific motive nexus.
[84]Such as malice evidence by reckless disregard or specific intent without specific notice.
[85]Supra.

CHAPTER THREE: GENOCIDE AS HISTORICAL CRIME

3.1. Assyrian Genocide (1914-1920)

The Assyrian genocide[1] was committed against the Assyrian/Syrianpopulation of the Ottoman Empire during the First World War. The Assyrian population of Northern Mesopotamia[2] was forcibly relocated and massacred by Turkish and Kurdish forces between 1914 and 1920. According to Hannibal Travis[3]: ñIn 1918é . Ambassador Morgenthau confirmed that the Ottoman Empire had massacred fully 2,000,000 Greeks, Assyrians, Armenians; fully 1,500,000ò.

The Assyrian-Chaldean National Council stated in a December 4, 1922 memorandum that the total death was unknown, but it estimated about 500,000 before the genocides and 100,000 to 250,000 after the genocide.[4] The Assyrian genocide took place in the same context and time period as the Armenian and Greek genocides. Thus scholars[5] insisted that: ñThe Ottoman campaign against Christian minorities of the empire between 1914 and 1923 constituted genocide against Armenians, Assyrians, Pontians and Anatolian-Greeksò.

The genocide as orchestrated when Mussulmans attacked and plundered seventy of Umiaôs villages in January 1915. Many villagers were massacred in the plains. There was absolutely no human power to protect these people from the savage

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[1] This is also known as the sayfo or seyfo.
[2] The TurAbdin, Hakkari, Van and Siirt regions of present day Southeastern Turkey an theUrmia Region of Northwestern Iran.
[3] H. Travis, ñNative Christian, Massacred: The Ottoman Genocide of the Assyrian during World War 1ò, *Genocide Studies and Prevention*, vol. 1, No. 3, 2006, p. 327.
[4] D. Gaunt, *Massacres, Resistance, Protector: Muslim-Christian Relation in Eastern Anatolia during World War I*, (New Jersey: Gorgias Press, 2006), p. 21-28.
[5] Genocide Scholars Association officially recognizes Assyrian Greek Genocides on 16 December 2007.

onslaught of the invading hostile forces. The veracity of the Assyrian genocide is that the exact number of the people massacred is unknown, but very large number of people died between 1914-1918.[6]

Numerous activities in the American press documented the genocide of Assyrian by the Turks and their Kurdish allies. By 1918, the Los Angeles Times carried a story of a Syrian or most likely an Assyrian merchant from Urmia who stated that his city was completely wiped out, the inhabitants massacred, 200 surrounding villages ravaged, 200,000 of his people dead, and hundred of more starving to death in exile from their agricultural lands.[7] Packard[8], in his own account, revealed that in April 1915, after a number of failed Kurdish attempts, Ottoman troops invaded Gawar, a region of Hakkari and Massacred the entire population. Prior to this, in October 1914, 71 Assyrian men of Gawar were arrested and taken to the local government centre in Bashkala and killed.[9] Also in April Kurdish troops surrounded the village of Tel Mozilt and imprisoned 475 men. The following morning the prisoners were taken out in rows of four and shot. Argument arose between the Kurds and the Ottoman officials on what to do with the women and orphans left behind. On 11 March 2010, the genocide of the Assyrian was officially

[6]J.Yacoub la question assyro-chaldeenne, les puisances Europeans et la (1908-1938). 4 Vol.,these Lyon, 1985, p. 156
[7] H. Travis *op. cit*
[8] H. P Packar, ñThe Plight of Assyria,ò *New York Times,* 18 September 1916 (Retrived: (02-02-2010)
[9] J. Bryce, British Government report on the Armenian Massacre of April- December 1915

recognized by the parliament of Sweden alongside that of the Armenians and Pontic Greeks.[10]

The Assyrian genocide is recognized by the New South Wales Local Government in Australia.[11] The genocide has also been recognized by the last three governors of the State of New York.[12] The recognitions accorded to Assyrian genocide as genocide is limited. The can be attributed to the small number of Assyrian survivors, whose leader Mar Shimum XIX Benjamin was killed in 1918.

Many discussions have taken place about the Assyrian, Armenian Genocide of 1915-18 by Turkey.[13] Not only Turkey denies the Armenian/Assyrian/Greek Genocide of 1915, also Mr. N. Bicici[14] doubts that such genocide ever happened. This is irrespective of tens of thousands of eyewitness accounts, thousands of books written about this subject and thousands of reports to the world press as the genocide was unfolding.

Facts prove that hundreds of thousands innocent people were brutally slaughtered without any mercy. Not even women and children were spared. Many were thrown alive into water wells, which were sealed. Hundreds of thousands were marched into the desert to slowly die from hunger, thirst and exhaustion. Others were put on boats and thrown into the deep sea as food for fish. Women were raped;

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[10] ñMotion 2008/09: U332 Genocide of Armenians, Assyrians/Syriacs/Chaldeans and Pontiac Greeks in 1915ò Stockholm: Riksdag, 11 March 2010.

[11] Visit www.fairfieldcity.nsw.gov.an/upload/hutxy 19692/INAL_Assyrian_memorial_constationpaper.pdf.

[12] Governors David Peterson and George Pataki on 4th April and 5th May 2004 respectively.

[13] Some opinions by members of local political parties arguing the Assyrian and Armenian question were published in the Dutch newspaper *De Twentsche Courant Tubantia* on the 27th of April 2005.

[14] A local government member of the CDA Party of Holland.

parents were butchered in the presence of their children. Every form of torture known to humanity was practiced on the Christian population of Turkey.

Prior to the First World War, the population of Turkey was fourteen million. About thirty three percent Christians. The total number of all the Christians in Turkey today amounts to 0.1 percent. Turkey and Mr. N. Bicici need to answer these questions: What happened to these people? Where are they? What happened to the Assyrians, Armenians and Greeks of Turkey? Where did they disappear to? Wasn't this diversity a great wealth to Turkey? If so what happened to Turkey's greatest asset, its ethnic diversity?

The annihilation of this mosaic of colors and diversity was deliberate and strategically accomplished. Genocide against the Assyrians and other Christians by Turkey was planned, designed and systematically carried out. More than two million people were massacred and over two million people were forced to migrate into the desert How can anyone who has witnessed the horrors of wars, massacres and tortures taking place in many parts of the world down play the appeal for the recognition of a supposedly forgotten genocide even if it happened long time ago. It may have been forgotten by the rest of the world but not by history. History lives every day with its memory and consequences. The Assyrian people are still scattered around the world with no hope to return to their former land and their culture is gradually dying

because it has been uprooted from its historic homeland where it survived for thousands of years.[15]

3.2. Armenian Genocide (1915-1923)

In April 1915 the Ottoman government embarked upon the systematic decimation of its civilian Armenian population. The persecutions continued with varying intensity until 1923 when the Ottoman Empire ceased to exist and was replaced by the Republic of Turkey. The Armenian population of the Ottoman state was reported at about two million in 1915. An estimated one million had perished by 1918, while hundreds of thousands had become homeless and stateless refugees. By 1923 virtually the entire Armenian population of Anatolian Turkey had disappeared.

The Ottoman Empire was ruled by the Turks who had conquered lands extending across West Asia, North Africa and Southeast Europe. The Ottoman government was centered in Istanbul (Constantinople) and was headed by a sultan who was vested with absolute power. The Turks practiced Islam and were a martial people. The Armenians, a Christian minority, lived as second class citizens subject to legal restrictions which denied them normal safeguards. Neither their lives nor their properties were guaranteed security. As non-Muslims they were also obligated to pay discriminatory taxes and denied participation in government. Scattered across the empire, the status of the Armenians was further complicated by the fact that the territory of historic Armenia was divided between the Ottomans and the Russians.

[15] ñWhy Should Turkey acknowledge the Assyrian Genocide, 1915-1918 ?ò, available at http://www.christiansofiraq.com/recognize.html (last accessed 19 March 2012).

In its heyday in the sixteenth century, the Ottoman Empire was a powerful state. Its minority populations prospered with the growth of its economy. By the nineteenth century, the empire was in serious decline. It had been reduced in size and by 1914 had lost virtually all its lands in Europe and Africa. This decline created enormous internal political and economic pressures which contributed to the intensification of ethnic tensions. Armenian aspirations for representation and participation in government aroused suspicions among the Muslim Turks who had never shared power in their country with any minority and who also saw nationalist movements in the Balkans result in the secession of former Ottoman territories. Demands by Armenian political organizations for administrative reforms in the Armenian-inhabited provinces and better police protection from predatory tribes among the Kurds only invited further repression. The government was determined to avoid resolving the so-called Armenian Question in any way that altered the traditional system of administration. During the reign of the Sultan Abdul Hamid (Abdulhamit) II (1876-1909), a series of massacres throughout the empire meant to frighten Armenians and so dampen their expectations, cost up to three hundred thousand lives by some estimates and inflicted enormous material losses on a majority of Armenians.

In response to the crisis in the Ottoman Empire, a new political group called the Young Turks seized power by revolution in 1908. From the Young Turks, the Committee of Union and Progress (CUP), *IttihadveTerakkiJemiyeti,* emerged at the head of the government in a coup staged in 1913. It was led by a triumvirate: Enver, Minister of War; Talaat, Minister of the Interior (Grand Vizier in 1917); and Jemal,

Minister of the Marine. The CUP espoused an ultra nationalistic ideology which advocated the formation of an exclusively Turkish state. It also subscribed to an ideology of aggrandizement through conquest directed eastward toward other regions inhabited by Turkish peoples, at that time subject to the Russian Empire. The CUP also steered Istanbul toward closer diplomatic and military relations with Imperial Germany. When World War I broke out in August 1914, the Ottoman Empire formed part of the Triple Alliance with the other Central Powers, Germany and Austria-Hungary, and it declared war on Russia and its Western allies, Great Britain and France.

The Ottoman armies initially suffered a string of defeats which they made up with a series of easy military victories in the Caucasus in 1918 before the Central Powers capitulated later that same year. Whether retreating or advancing, the Ottoman army used the occasion of war to wage a collateral campaign of massacre against the civilian Armenian population in the regions in which warfare was being conducted. These measures were part of the genocidal program secretly adopted by the CUP and implemented under the cover of war. They coincided with the CUP's larger program to eradicate the Armenians from Turkey and neighboring countries for the purpose of creating a new Pan-Turanian empire. Through the spring and summer of 1915, in all areas outside the war zones, the Armenian population was ordered deported from their homes. Convoys consisting of tens of thousands including men, women, and children were driven hundreds of miles toward the Syrian Desert.

The deportations were disguised as a resettlement program. The brutal treatment of the deportees, most of whom were made to walk to their destinations, made it

apparent that the deportations were mainly intended as death marches. Moreover, the policy of deportation surgically removed the Armenians from the rest of society and disposed of great masses of people with little or no destruction of property. The displacement process, therefore, also served as a major opportunity orchestrated by the CUP for the plundering of the material wealth of the Armenians and proved an effortless method of expropriating all of their immovable properties.

The genocidal intent of the CUP measures was also evidenced by the mass killings that accompanied the deportations. Earlier, Armenian soldiers in the Ottoman forces had been disarmed and either worked to death in labor battalions or outright executed in small batches. With the elimination of the able-bodied men from the Armenian population, the deportations proceeded with little resistance. The convoys were frequently attacked by bands of killers specifically organized for the purpose of slaughtering the Armenians. As its instrument of extermination, the government had authorized the formation of gangs of butchersð mostly convicts released from prison expressly enlisted in the units of the so-called Special Organization, *TeshkilâtiMahsusa*. This secret outfit was headed by the most ferocious partisans of the CUP who took it upon themselves to carry out the orders of the central government with the covert instructions of their party leaders. A sizable portion of the deportees, including women and children, were indiscriminately killed in massacres along the deportation routes. The cruelty characterizing the killing process was heightened by the fact that it was frequently carried out by the sword in terrifying episodes of bloodshed. Furthermore, for the survivors, their witnessing of the murder of friends and relatives with the mass of innocent persons was the source of serious

trauma. Many younger women and some orphaned children were also abducted and placed in bondage in Turkish and Muslim homes resulting in another type of trauma characterized by the shock of losing both family and one's sense of identity. These women and children were frequently forbidden to grieve, were employed as unpaid laborers, and were required to assimilate the language and religion of their captors.

The government had made no provisions for the feeding of the deported population. Starvation took an enormous toll much as exhaustion felled the elderly, the weaker and the infirm. Deportees were denied food and water in a deliberate effort to hasten death. The survivors who reached northern Syria were collected at a number of concentration camps whence they were sent further south to die under the scorching sun of the desert. Through methodically organized deportation, systematic massacre, deliberate starvation and dehydration, and continuous brutalization, the Ottoman government reduced its Armenian population to a frightened mass of famished individuals whose families and communities had been destroyed in a single stroke.

Resistance to the deportations was infrequent. Only in one instance did the entire population of an Armenian settlement manage to evade death. The mountaineers of Musa Dagh defended themselves in the heights above their villages until French naval vessels in the eastern Mediterranean detected them and transported them to safety. The inhabitants of the city of Van in eastern Armenia defended themselves until relieved by advancing Russian forces. They abandoned the city in May 1915, a month after the siege was lifted, when the Russian Army withdrew. The fleeing population was hunted down mercilessly by Turkish irregular forces. Inland

towns that resisted, such as Urfa (Edessa), were reduced to rubble by artillery. The survival of the Armenians in large part is credited not to acts of resistance, but to the humanitarian intervention led by American Ambassador Henry Morgenthau. Although the Allied Powers expressly warned the Ottoman government about its policy of genocide, ultimately it was through Morgenthau's efforts that the plight of the Armenians was publicized in the United States. The U.S. Congress authorized the formation of a relief committee which raised funds to feed "the starving Armenians." Near East Relief, as the committee was eventually known, saved tens of thousands of lives. After the war, it headed a large-scale effort to rehabilitate the survivors who were mostly left to their own devices in their places of deportation. By setting up refugee camps, orphanages, medical clinics and educational facilities, Near East Relief rescued the surviving Armenian population.

In the post-war period nearly four hundred of the key CUP officials implicated in the atrocities committed against the Armenians were arrested. A number of domestic military tribunals were convened which brought charges ranging from the unconstitutional seizure of power and subversion of the legal government, the conduct of a war of aggression, and conspiring the liquidation of the Armenian population, to more explicit capital crimes, including massacre. Some of the accused were found guilty of the charges. Most significantly, the ruling triumvirate was condemned to death. They, however, eluded justice by fleeing abroad. Their escape left the matter of avenging the countless victims to a clandestine group of survivors that tracked down the CUP arch conspirators. Talaat, the principal architect of the

Armenian genocide, was killed in 1921 in Berlin where he had gone into hiding. His assassin was arrested and tried in a German court which acquitted him.

Most of those implicated in war crimes evaded justice and many joined the new Nationalist Turkish movement led by Mustafa Kemal. In a series of military campaigns against Russian Armenia in 1920, against the refugee Armenians who had returned to Cilicia in southern Turkey in 1921, and against the Greek army that had occupied Izmir (Smyrna) where the last intact Armenian community in Anatolia still existed in 1922, the Nationalist forces completed the process of eradicating the Armenians through further expulsions and massacres. When Turkey was declared a republic in 1923 and received international recognition, the Armenian Question and all related matters of resettlement and restitution were swept aside and soon forgotten.

In all, it is estimated that up to a million and a half Armenians perished at the hands of Ottoman and Turkish military and paramilitary forces and through atrocities intentionally inflicted to eliminate the Armenian demographic presence in Turkey. In the process, the population of historic Armenia at the eastern extremity of Anatolia was wiped off the map. With their disappearance, an ancient people which had inhabited the Armenian highlands for three thousand years lost its historic homeland and was forced into exile and a new diaspora. The surviving refugees spread around the world and eventually settled in some two dozen countries on all continents of the globe. Triumphant in its total annihilation of the Armenians and relieved of any obligations to the victims and survivors, the Turkish Republic adopted a policy of dismissing the charge of genocide and denying that the deportations and atrocities had constituted part of a deliberate plan to exterminate the Armenians. When the Red

Army sovietized what remained of Russian Armenia in 1920, the Armenians had been compressed into an area amounting to no more than ten percent of the territories of their historic homeland. Armenians annually commemorate the Genocide on April 24 at the site of memorials raised by the survivors in all their communities around the world.[16]

It is thus glaring that Armenian genocide was planned by Ottoman Turkhish government and executed under its orders from 1915 ï 1923. The aim was to extirpate Armenians from their lands in order to create a homogeneous pan-turanianState extending into central Asia. It was characterized by the use of massacres and the use of deportations involving forced marches under conditions designed to lead to the death of the deportees, with the total number of Armenian deaths generally held to have between one and one million five hundred thousand people.

Other ethnic groups were similarly attacked by the Ottoman Empire during this period including Assyrians and Greeks and some scholars consider those events to be part of same policy of extermination.[17] The starting date of the genocide is conventionally held to be 24 April 1915, the day the Ottoman authorities arrested some 250 Armenian intellectuals and community leaders in Constantinople.[18] Therefore, the Ottoman military uprooted Armenians from their homes and forced

[16]R. P. Adalian, ñArmenian Genocideò available at http://www.armenian-genocide.org/genocide.html (last accessed 19 March 2012).

[17] Schaller, J. Dominik, & J. Zimmerer, ñLate Ottoman Genocides: The Dissolution of the Ottoman Empire and the Young Turkish Populations and Extermination Policies ï Introductionò *Journal of Genocide Research,* 10(1): 7-14(2008).

[18] H. Chisholm (ed.),*TheEncyclopedia Britannica,* vol. 7, (1911), p. 3. When the Republic of Turkey was founded in 1923, the capital was moved from Ankara and Constantinople was officially renamed Istanbul in 1930.

them to march for hundreds of miles, depriving them of food and water, to the desert of what is now Syria. Massacres were indiscriminate of age or gender, with rape and other sexual abuse being a recurring decimal.

Major General Otto Von Lossow[19] spoke about Ottoman intention as follows:

> The Turks here embarked upon the total extermination, of the Armenians in Transcaucasia. The aim of Turkish policy is ---- taking of possession of Armenians, not just in Turkey but also outside Turkey. On the basis of all the reports and news coming to me here in Tiflis there hardly can be any doubt that the Turks systematically are aiming at the extermination of the few hundred thousand Armenians whom they left alive until now.[20]

It is believed that 25 major concentration camps existed under the command of Sukru Kaya, one of the right hand-men of Talat Pasha.[21]Lale, Tefridge, Dipsi, Del-El and Raôs al-Ain camps were specifically for those who had a life expectancy of a few days.[22] It is widely acknowledged to be one of the first modern genocide. On 15 September 2005, United States Congressional Resolution on the Armenian Genocide noted that:

The Armenian Genocide was conceived and carried out by the Ottoman Empire from 1915 to 1923, resulting in the deportation of nearly 2,000,000 Armenians, of whom 1,500,000 men, women and children were killed, 500,000 survivors were

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[19] He was the acting attaché an head of the German Military Plenipotenople was officially Empire.
[20] Speech made in a Conference held in Batum in 1918.
[21]Kotek, Joel and Pierre Rigoulot, *Le sisclees* camps: Detention, Concentration. Extermination: *cent and de mal raica.* 2000.
[22]*Ibid.*

expelled from their homes and which succeeded in the elimination of the over 2,500 ï years presence of Armenians in their historic homeland.[23]

Also, the British Broadcasting Corporation (BBC) reported that:

> The Swiss lower house of parliament has voted to describe the mass killing of Armenians during the last years of the Ottoman Empire as genocideé fifteen countries have now agreed to label the killings as genocide. They include France (in 2001), Argentina and Russia.[24]

On 12 October 2006, French legislators approved a bill making it a crime to deny that mass killings of Armenians in Turkey during and after World War 1 amounted to genocide.[25] It must be pointed out that the Armenian genocide is attracting attention in response to the clarion call by the Armenian national Committee of Canada. The Committee has demanded that in the spirit of humanity and equal justice, Armenian massacre should unambiguously be declared to be genocide.[26]

In Turkey, description or recognition of the Armenian massacre as a genocide attracts severe sanctions. OrhanPamuk, a Turkish writer, stated that: ñThirty thousand Kurds and a million Armeniansò were killed in these lands and nobody but me dares to talk about itò[27] and charges were brought against him. He was convicted. Consequently, the Turkish government has consistently and persistently insisted that

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[23] 1915 Affirmation of the United States Record on the Armenian Genocide Resolution (Introduced in House of Representative) 109th Congress 1st session H. RES 316, June 14, 2005, 15 September 2005 House Committee/subcommittee on International Relations Actions, Status: the Years and No: 40-7.

[24]Swiss Accept Armenia Genocide, BBC 16 December 2003 monitored in Enugu Nigeria.

[25]Associated Press Report, ñFrench Lawmakers Approve Bill on Armenian Genocideò in the *International Herald Tribune,* 01 October 2006.

[26] See ñShort History of the Armenian Genocide of 1915ò available at http://armgenocie.bolgspot.com/2008/12/historical-background.html (last accessed 20 January 2011).

[27] S. Rainsford, ñAuthorôs Trial Set to Test Turkeyò BBC 14 December, 2005 monitored in Enugu, Nigeria.

what happened was that the war was a two sided battle in which the Armenians has also massacred many Turks with Russian support. Based on this, the Turkish Prime Minister, Erdogen challenged U. S. President on 10 April 2005, to establish a joint group consisting of historians and other pundits in the archives of all relevant third countries and to share their findings with the international public.[28]

3.3. The Holocaust/Nazi Germany Genocide (1939-1945)

It began with a simple boycott of Jewish shops and ended in the gas chambers at Auschwitz as Adolf Hitler and his Nazi followers attempted to exterminate the entire Jewish population of Europe. In January 1933, after a bitter ten-year political struggle, Adolf Hitler came to power in Germany. During his rise to power, Hitler had repeatedly blamed the Jews for Germany's defeat in World War I and subsequent economic hardships. Hitler also put forward racial theories asserting that Germans with fair skin, blond hair and blue eyes were the supreme form of human, or master race. The Jews, according to Hitler, were the racial opposite, and were actively engaged in an international conspiracy to keep this master race from assuming its rightful position as rulers of the world.

Jews at this time composed only about one per cent of Germany's population of 55 million persons. German Jews were mostly cosmopolitan in nature and proudly considered themselves to be Germans by nationality and Jews only by religion. They

[28] Prime Minister Erdoganôs Letter dated 10 April 2005.

had lived in Germany for centuries, fought bravely for the Fatherland in its wars and prospered in numerous professions.

But they were gradually shut out of German society by the Nazis through a never-ending series of laws and decrees, culminating in the Nuremberg Laws of 1935 which deprived them of their German citizenship and forbade intermarriage with non-Jews. They were removed from schools, banned from the professions, excluded from military service, and were even forbidden to share a park bench with a non-Jew. At the same time, a carefully orchestrated smear campaign under the direction of Propaganda Minister Joseph Goebbels portrayed Jews as enemies of the German people. Daily anti-Semitic slurs appeared in Nazi newspapers, on posters, the movies, radio, in speeches by Hitler and top Nazis, and in the classroom. As a result, State-sanctioned anti-Semitism became the norm throughout Germany. The Jews lost everything, including their homes and businesses, with no protest or public outcry from non-Jewish Germans. The devastating Nazi propaganda film *The Eternal Jew* went so far as to compared Jews to plague carrying rats, a foreshadow of things to come.

In March 1938, Hitler expanded the borders of the Nazi Reich by forcibly annexing Austria. A brutal crackdown immediately began on Austria's Jews. They also lost everything and were even forced to perform public acts of humiliation such as scrubbing sidewalks clean amid jeering pro-Nazi crowds.

Back in Germany, years of pent-up hatred toward the Jews was finally let loose on the night that marks the actual beginning of the Holocaust. The Night of Broken Glass (Kristallnacht) occurred on November 9/10 after 17-year-old Herschel

Grynszpan shot and killed Ernst vomRath, a German embassy official in Paris, in retaliation for the harsh treatment his Jewish parents had received from Nazis. Spurred on by Joseph Goebbels, Nazis used the death of vomRath as an excuse to conduct the first State-run pogrom against Jews. Ninety Jews were killed, 500 synagogues were burned and most Jewish shops had their windows smashed. The first mass arrest of Jews also occurred as over 25,000 men were hauled off to concentration camps. As a kind of cynical joke, the Nazis then fined the Jews 1 Billion Reichsmarks for the destruction which the Nazis themselves had caused during Kristallnacht.

Many German and Austrian Jews now attempted to flee Hitler's Reich. However, most Western countries maintained strict immigration quotas and showed little interest in receiving large numbers of Jewish refugees. This was exemplified by the plight of the St. Louis, a ship crowded with 930 Jews that was turned away by Cuba, the United States and other countries and returned back to Europe, soon to be under Hitler's control.

On the eve of World War II, the Führer (supreme leader) publicly threatened the Jews of Europe during a speech in Berlin:

> In the course of my life I have very often been a prophet, and have usually been ridiculed for it. During the time of my struggle for power it was in the first instance only the Jewish race that received my prophecies with laughter when I said that I would one day take over the leadership of the State, and with it that of the whole nation, and that I would then among other things settle the Jewish problem. Their laughter was uproarious, but I think that for some time now they have been laughing on the other side of their face. Today I will once more be a prophet: if the international Jewish financiers in and outside Europe should succeed in plunging the nations once more into a world war, then the result will not be the Bolshevizing of the earth, and thus

> the victory of Jewry, but the annihilation of the Jewish race in Europe!.[29]

Hitler intended to blame the Jews for the new world war he was soon to provoke. That war began in September 1939 as German troops stormed into Poland, a country that was home to over three million Jews. After Poland's quick defeat, Polish Jews were rounded up and forced into newly established ghettos at Lodz, Krakow, and Warsaw, to await future plans. Inside these overcrowded walled-in ghettos, tens of thousands died a slow death from hunger and disease amid squalid living conditions. The ghettos soon came under the jurisdiction of Heinrich Himmler, leader of the Nazi SS, Hitler's most trusted and loyal organization, composed of fanatical young men considered racially pure according to Nazi standards.

In the spring of 1940, Himmler ordered the building of a concentration camp near the Polish city of Oswiecim, renamed Auschwitz by the Germans, to hold Polish prisoners and to provide slave labor for new German-run factories to be built nearby.

Meanwhile, Hitler continued his conquest of Europe, invading Belgium, Holland, Luxembourg and France, placing ever-increasing numbers of Jews under Nazi control. The Nazis then began carefully tallying up the actual figures and also required Jews to register all of their assets. But the overall question remained as to what to do with the millions of Jews now under Nazi control - referred to by the Nazis themselves as the Judenfrage (Jewish question).

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[29]ñThe History Place: Genocide in the 20th Centuryò, available at http://www.historyplace.com/worldhistory/genocide/holocaust.htm (last accessed 20 March 2012).

The following year, 1941, would be the turning point. In June, Hitler took a tremendous military gamble by invading the Soviet Union. Before the invasion he had summoned his top generals and told them the attack on Russia would be a ruthless "war of annihilation" targeting Communists and Jews and that normal rules of military conflict were to be utterly ignored. Inside the Soviet Union were an estimated three million Jews, many of whom still lived in tiny isolated villages known as Shtetls. Following behind the invading German armies, four SS special action units known as Einsatzgruppen systematically rounded-up and shot all of the inhabitants of these Shtetls.Einsatz execution squads were aided by German police units, local ethnic Germans, and local anti-Semitic volunteers. Leaders of the Einsatzgruppen also engaged in an informal competition as to which group had the highest tally of murdered Jews.

The Holocaust refers to the killing of approximately 6 million European Jews during World War II, as part of a program of deliberate extermination planned and executed by the National Socialist German Workers Party in Germany led by Adolf Hitler.[30]Niewyk defined holocaust as: ñThe murder of more than 5,000,000 Jews by the Germans in World War IIò.[31] Holocaust has also been defined as the systematic state-sponsored killing of six million Jewish men, women and children and millions of others by Nazi Germany and its collaborators during World War II. The Germans called this ñThe final solution to the Jewish questionò.[32]

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[30] D. L. Niewyk, *The Columbia Guide to Holocaust,*(Columbia: University Press, 2000), p. 45.
[31]*Ibid.,* p. 45.
[32] See ñThe Holocaustò,*EncyclopediaBritanica*, 2007.

The Holocaust was executed in stages. First legislation to remove the Jews from civil society was exacted years before the outbreak of World War II. Secondly, concentration camps were established in which inmates were used as slave labour until they died of exhaustion or disease. Where the third Reich conquered new territory in Eastern Europe, specialized units called *Einsatzgruppenn* murdered Jews and political opponents in mass shooting. Jews and Romani were crammed into ghettos before being transported hundreds of miles by freight train to extermination camps where, if they survived the journey, the majority of them were killed in gas chambers. Every arm of Germanôs bureaucracy was involved in the logistic of the mass murder, turning the country into what one Holocaust scholars called ña genocide nationò.[33] The Nazi mass murder was targeted at the slaves, Romani people, mentally ill, homosexual and sexual deviants, Jehovahôs witnesses and political opponents. Rummel[34] noted that 16,315,000 people died as a result of genocide. He attempted a breakdown of the figure thus: ñé Just over 10.5 million Slavs, just under 5.3 million Jews, 258,000 Romani and 220,000 homosexuals.ò[35]

Niewyk suggested that the broadest definition would produce a death toll of 17 million.[36] In other genocides, pragmatic considerations such as control of territory and resources were central to the genocide policy. The basic motivation of the holocaust was purely ideological, rooted in an illusionary word of Nazi imagination, where an international Jewish conspiracy to control the world was opposed to a

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[33] M. Berenbaum ñThe World Must Knowò *United States Holocaust Museum* 2006, p. 103.
[34] R. J. Rummel, *Death by Government* (New Jersey: New Brunswick Press, 1994), p. 48.
[35] *Ibid.,* p. 7.
[36] Niewyk, *op. cit.*, p. 45.

parallel Aryan quest. No genocide to death had been based so completely on myths, hallucinations, abstract, non-pragmatic ideology-which was then executed by very rational and pragmatic means.[37]

The German philosopher Ernst Nolteôs claimed that the Holocaust was not unique.[38] Ernst Nolteôs claim triggered off controversy on whether Holocaust was unique or not. Consequently, EberhardJackel wrote in 1986 that:

> The National Socialist killing of the Jews was unique in that never before had a State with the authority of its responsible leader decide and announced that a specific human group, including its aged, its women and its children and infants, would be killed as possible and then carried through this resolution using every possible means of State power.[39]

The slaughter was systematically conducted in virtually all areas of Nazi-occupied territory in what are now 35 separate European countries. It was at its worst in Central and Eastern Europe which had more than seven million Jews in 1939. About five million Jews were killed there including three million in occupied Poland and over one million in the Soviet Union. Hundreds of thousands died in the Netherlands, France, Belgium, Yugoslavia and Greece. The Wannsee Protocol makes clear that Naziôs also intended to carry out their ñfinal solution of the Jewish questionò In England and Ireland.[40]

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[37] Y. Bauer*, Rethinking the Holocaust,* (New Haven, Conn: Yale University Press, 2002), p. 48.
[38] Nolte cited in M. Marus. *The Holocaust in History* (Dennys: Hanover University Press, 1987), p. 38.
[39] C. Maier, *TheUnmasterable Past*, (Cambridge: Harvard University Press, 1988), p. 53.
[40] D. Ian. The Oxford Companion to World War II (Oxford: Oxford University Press, 2001) p. 56

3.4. Burundi Genocide (1972 and 1993)

In the spring of 1972 the small (10,747 sq miles), overpopulated (7 million), poverty-stricken State of Burundi experienced massive bloodletting. Burundiôs agonies did not begin nor end with what is sometimes referred to in Burundi as*ikiza*[41]. Nonetheless, there is nothing in the countryôs turbulent history comparable to the scale of the 1972 killings. Although the number of victims will never be known, estimates range between 150,000 to 300,000. To reduce a complicated drama to its simplest common denominator, the vast majority of those killed were of Hutu origins, representing approximately 80 per cent of a total population then numbering approximately four million; the perpetrators were drawn overwhelmingly from the Tutsi minority, accounting for some 15 per cent of the population, its representatives holding full control over the armed forces and the government.[42]

Not all Tutsi were perpetrators, however, nor were all of the victims Hutu. Hutu and Tutsi were both victims and perpetrators ð but each at separate time intervals and with very different scales of involvement. The triggering factor behind the bloodbath was a Hutu-led rural insurrection aimed at seizing power from the ruling Tutsi minority. The fulcrum of the rebellion was in the southern province of Bururi, its leadership consisting of a small group of radicalized Hutu intellectuals, most of them operating from neighboring Tanzania. To the extent that it claimed an ideology, its overtones were militantly anti-Tutsi. In a matter of days, hundreds (possibly

[41]The ñscourgeò.
[42]ñCase Study: Burundi Killings of 1972ò, (07 December 2008), available at http://www.massviolence.org/The-Burundi-Killings-of-1972 (last accessed 20 March 2012).

thousands) of Tutsi lives were lost. The ensuing repression, however, went far beyond the province most directly affected by violence; its avenging furor swept across the entire country and lasted for months after it had been brought under control.[43]

Since Burundiôs independence in 1962, there have been two events called genocides in the country. The 1972 mass killing of Hutu by the Tutsi army [44] and the 1993 killing of Tutsi by the Hutu population that is recognized as a genocide in the final report of the International Commission of Inquiry for Burundi presented to the United Nations Security Council in 2002.[45] On 07 April 1972, a rebellion led by some Hutu members of the gendarmerie broke out in the lakeside towns of Rumonge and Nyanza Lac and declaring the Martyazo Republic.[46] Countless atrocities were reported by eyewitnesses and the armed Hutu insurgents proceeded to kill every Tutsi in sight, as well as the Hutu that refused to join the rebellion.[47] It was estimated that during this initial outbreak, anywhere from 800 to 1200 people were killed. President Michael Micombero (Tutsi) proclaimed martial law and systematically proceeded to slaughter Hutus en masses.[48] The initial phase of the genocide was clearly orchestrated, with lists of targets including the Hutu educated, the elite and the military trained. Once this been completed, the Tutsi controlled army moved on to the

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[43] *Ibid.*
[44] M. Bown, *Passing by: the United States and Genocide in Burundi 1972*,(Washington D. C.: Carnegie Endowment for International Peace, 1973), p. 49.
[45] *International Commission of Inquiry for Burundi: Final Report (*United National Security Council. S/1996/682; received from Ambassador Thomas Ndikumana, Burundi Ambassador to the United States. Dated received: 7 June 2007) Paragraph 496.
[46] R. Lemarchan, *Burundi Ethnic Conflict and Genocide*, (New York: Woodrow Wilson Center and Cambridge University Press, 1996), p. 89.
[47] S. Totten, *Century of Genocie Council Essays and Eyewitness Account,* p. 325.
[48] Lemarchan, *op. cit.*, p. 97.

larger civilian populations. Estimates of Hutus massacred hover between two figures: 80,000 and 210,000.[49]

In 1993, the Hutu party, *Front pours la Democratic au Burundi* (FRODEBU) and its presidential candidate, Melchior Ndadaye won the election following the first Hutu government in Burundi. Tensions began to escalate almost immediately. Small bands of Hutu and Tutsi ñGangsò consistently fought both in and around the capital Bujumbura, often growing into larger groups armed with matches and attacking each other. This got to the summit in October 21, 1993 when President Ndadaye was assassinated throwing the country into a period of civil strife. Some FRODEBU structure responded violently to Ndadayeôs assassination killing possibly as many as 25,000 Tutsi.[50]

It was the Burundi genocide that enabled the trial Chamber to decide that ñcausing serious bodily or mental harm to members of a groupò[51] does not necessarily mean physical harm. Thus, in the case of *Prosecuor v. Jean Paul Akayesu*[52] the Trial Chamber stated that the systematic rape of Tutsi women in 1994 was a step to achieve the destruction of the Tutsi group by destroying their spirit, will to live or will to procreate.

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[49] M. White, *Death Tolls for the Major Wars and Atrocities of teTwenthieth Century:* C. Burundi (1972-73).
[50] Totten, *op. cit*., p. 331.
[51] Which is one of the elements of the crime of genocide.
[52] *Op. cit.*, para. 7322.

3.5. Cambodian Genocide (1975-1979)

Cambodia is a country in South East Asia. Once it was the centre of the ancient kingdom of the Khmer, and its capital was Angkor, famous for its 12th century temples. The present day capital is Phnom Penh. In 1953 Cambodia gained independence after nearly 100 years of French rule. In the 1960s the population was over 7million, almost all Buddhists, under the rule of a monarch, Prince Sihanouk.

In 1970 Prince Sihanouk was deposed in a military coup. The leader of the new right-wing government was Lieutenant-General Lon Nol, who was made president of the 'Khmer Republic'. Prince Sihanouk and his followers joined forces with a communist guerrilla organisation founded in 1960 and known as the Khmer Rouge. They attacked Lon Nol's army and civil war began. Cambodia was also caught up in another country's war. Cambodia's neighbour to the east is Vietnam, which had also fought against the French to gain independence. When the French were defeated in 1954, Vietnam was bifurcated into: Communist North Vietnam and Pro-Western South Vietnam (backed by the USA). Civil war immediately broke out. The Viet Cong, a group of Vietnamese communist guerrillas (backed by North Vietnam and China), based themselves in the jungles of South Vietnam and fought against the South Vietnamese army from there. In 1964, the USA entered the Vietnam war, with airpower, firebombs and poisonous defoliants, but found they could not budge the determined Vietnamese communists. The inconclusive war in Vietnam cost many American and Vietnamese lives, devastated the country, and achieved nothing but misery for anyone caught up in it, including the Cambodians.

Under Prince Sihanouk, Cambodia had preserved neutrality during the Vietnamese civil war by giving a little to both sides: Vietnamese communists were allowed to use a Cambodian port to ship in supplies, the USA were allowed to bomb - secretly and illegitimately - Viet Cong hideouts in Cambodia. When US-backed Lon Nol took over, US troops felt free to move into Cambodia to continue their struggle with the Viet Cong. Cambodia had become part of the Vietnam battlefield. During the next four years, American B-52 bombers, using napalm and dart cluster-bombs, killed up to 750,000 Cambodians in their effort to destroy suspected North Vietnamese supply lines.

The Khmer Rouge guerrilla movement in 1970 was small. Their leader, Pol Pot, had been educated in France and was an admirer of Maoist (Chinese) communism; he was also suspicious of Vietnam's relations with Cambodia. The heavy American bombardment, and Lon Nol's collaboration with America, drove new recruits to the Khmer Rouge. So did Chinese backing and North Vietnamese training for them. By 1975 Pol Pot's force had grown to over 700,000 men. Lon Nol's army was kept busy trying to suppress not only Vietnamese communists on Cambodian territory but also Cambodia's own brand of communists, the Khmer Rouge.

In 1975 North Vietnamese forces seized South Vietnam's capital, Saigon. In the same year Lon Nol was defeated by the Khmer Rouge. It's estimated that 156,000 died in the civil war - half of them civilians.[53]

[53]ñCambodia 1975ò, available at http://www.ppu.org.uk/genocide/g_cambodia.html (last accessed 22 March 2012).

The Communist Party of Kampuchea led by Pol Pot, Ta Mok and other leader, organized the mass killing of ideologically suspect groups ethnic minorities like the ethnic Vietnamese, Sino-Khmers, Chams and Thais former civil servants, former government soldiers, Buddhist monks, secular intellectuals and professionals, and former city dwellers. The victims of the decimation were estimated to be approximately one million seven hundred thousand Cambodians within 1975-1979 including deaths from slave labour[54]

This was considered to be genocide. Consequently, in 1997, the Cambodian Government asked the United Nations assistance in setting up a genocide tribunal. It took nine years to agree to the shape and the structure of the court before the judges were sworn in 2006. The investigating judges were presented with the names of five possible suspects by the prosecution on 18 July 2007.[55]NuonChea, second in command of the Khmer Rouge and it most senior surviving member, was charged with war crimes and crimes against humanity.

3.6. Soviet Invasion of Afghanistan (1979-1982)

Genocide is defined as:

> Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical racial or religious group, as such,; killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life, calculated to bring about its physical destruction in whole or in

[54]*Cambodian Genocide Program, Yale University's* MacmillamCenter for International and Area Studies.
[55] K. Doyie, ñPutting the Khmer Rouge on Trialò *Times,* July 7,2007.

> part; imposing measures intended to prevent births with the group; and forcibly transferring children of the group to another group.[56]

Kakar presents an argument that the international definition of genocide is too restrictive.[57]Kakar insisted that the definition of genocide should include political groups or any group so defined by the perpetrator. He proceeded to accept the definition of genocide as presented by Chalk and Jonassohn thus:

> Genocide is a form of one-sided mass killing which a state or other authority intends to destroy a group, as the group and membership in it are defined by the perpetrator.[58]

Having established a broader definition of genocide, Kakar goes on to claim that during the Soviet war in Afghanistan (1979-1989), the mass killing has political undertone. According to him:

> The Afghans are among the latest victims of genocide by a superpower, large numbers of Afghans were killed to suppress resistance to the army of the Soviet Union, which wished to vindicate its client regime and realize its goal in Afghanistan. Thus, the mass killing was political.[59]

Apart from the Kakarôs contentions on the invasion of Afghanistan by the Soviet Union, there is less discussion of the invasion within the international community with respect to whether it qualifies as genocide or not. However, that attempt by the Soviet Union to suppress resistance had led to the killing of large

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[56]The United Nations Convention on the Prevention and Punishment of the Crime of Genocide, art. 2.
[57] M. H. Kakar, *The Soviet Invasion and the Afghan Response 1979-1982,* (California: University of California Press, 1995), p. 5.
[58] F. Chalk and K. Jonassohn, *The History and Case Studies,* (Yale: Yale University Press, 1990), p. 5.
[59]Kakar, *op. cit.*, p. 6.

number of Afghanistan. Thus it may be safe to conclude that the invasion and killing of the Afghans amount to genocide.

3.7. Sabra-Shatila Massacre (1982)

It is still controversial whether Sabra-Shatila Massacre should be accorded recognition as an act of genocide. This pogrom was carried out in September 1982, against Palestinians in the Sabra and Shatilarefugee camps by Lebanese maronite Christian/phalange militias. The number of victims of the massacre is estimated at 700-3500. On December 16, 1982, the United Nation General Assembly condemned the massacre and declared it to be all act of genocide.[60] Some scholars have described the categorization of the massacre as genocide by UN as vindictive. The reluctance of United Nations to response or take action in actual cases of genocide for most egregious violations was condemned. Kuper writes that:

> This availability of a scapegoat State in UN restores members with a record of murderous violence against their subjects a self-righteous sense of moral purpose as principal members of the community of nationsé Estimates of the numbers in the Sabra-Shatila massacres range from about four hundred to eight hundred-a minor catastrophe in the contemporary statistics of mass murder. Yet a carefully planned UN campaign found Israel guilty of genocide, without reference to the role of the phalangists in perpetrating the massacres on their own initiative. The procedures were unique in the annals of the United Nations.[61]

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[60] A/RES/37?123(A-F) adopted at the 108th UN General Assembly Plenary meeting 16 December 1982 and the 112th plenary meeting, 20 December, 1982.

[61] L. Kuper, ñTheoretical Issue Relating to Genocide: Uses and Abusesò in G. J Andreopouols (ed.), *Genocide: Conceptual and Historical Dimensions*, (Pennsylvania: University of Pennsylvania Press, 1997), pp. 36-37.

The contentions of Kuper had not in any way swayed the decision of the United Nations General Assembly as the massacre remained in their estimation an act of genocide. It must be stressed that nobody has been prosecuted for the genocide up till date.

There is no doubt that Kuperôs contention that the massacre of 400-800 individuals cannot qualify as a crime of genocide is tenable. If we are to accept United Nations General Assemblyôs decision as correct, then the list of instances of genocide will be interminable. The Nigerian Civil War[62] will also qualify as act of genocide. Even the recent Massacre of the people of DogoNahawa by Fulani herdsmen in Northern Nigerian [63] will also be eligible to be termed act of genocide. This, surely, is not the intendment of the crime of genocide.

3.8. Rwandan Genocide (1994)

The Rwandan genocide was the 1994 mass killing of hundreds of thousands of Rwandanôs Tutsis and Hutu political moderates by the Hutu dominated government under the Hutu power ideology. Over the course of approximately 100 days or more, from the assassination of Juvenal Habyarimana on 06 April through mid-July, at least 500,000 people were massacred.[64] The death toll was estimated to be between 500,000 and 1,000,000.[65]

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[62] The War started in 1967 and ended in 1970.
[63]Plateau State to be Precise.
[64] Des Forges Alison (1999), ñLeave None to Tell the Story: Genocide in Rwandanò, *Human Rights Watch.*(Accessed: 12/01/007).
[65] See example, ñRwandan: How the Genocide Happenedò, BBC, April, 2004 which gives an estimate of 800,000 and ñOAU sets inquiry into Rwandaò *Africa Recovery VOL.*

In 1990, the Rwandan Patriotic Front dominated by Tutsi refugees assailed Northern Rwanda from Uganda. The Rwanda civil war fought between the Hutu regime, with support from francophone countries in Africa and France itself[66] and the Rwandan Patriotic Front, with support from Uganda, vastly escalated the ethnic tensions and suspicions in Rwanda and led to the rise of Hutu power, an ideology that asserted that the Tutsi intended to enslave Hutus and thus must be resisted at all costs. Despite continuing ethnic strife, including the displacement of large numbers of Hutu in the North by rebels and periodic localized extermination of Tutsi to the south, pressure on the government of Juvenal Habyarimana resulted in a cease-fire in 1993 and the preliminary implementation of the Arusha Accords.

The straw that broke the Carmelôs back was the assassination of Habyarimana in April 1994. After the assassination, there was the mass killing of Tutsi and pro-peace Hutus. The killing was well articulated and executed[67] and by the time it had started, the Rwandan militia numbered around 30,000 was conscripted nationwide representing every neighbourhood. Some of those militia members acquired Ak-47 assault rifles on their own; other weapons such as grenades were widely distributed without much ado.

During trial, Rwandan Prime Ministers Jean-Kambanda revealed that genocide was discussed freely. According to him: ñOne cabinet minister said she was personally in favour of getting rid of all Tutsi, without the Tutsi she told ministers; all

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12 (August 1998). P. 4 which estimates the number at between 560,000 and 1,000,000 out of every 10 Tutsi were killed.

[66] M. Bowen, *Passing By: The United State and Genocide in Burundi, (*Washington D. C: Carnegie Endowment for International Peace, 1973), p. 49.

[67] Des Forges Alison, *op.cit.*

of Rwandaôs problems would be overò.[68] During that sanguinary annihilation of Tutsi, Tutsi men, women and children were separated from the general population and sometimes forced to be Hutu slaves. As for the Tutsi women, they were mostly called ñgypsiesò and frequently fell victim to sexual violence.

3.9. Bosnian Genocide (1995)

Bosnian genocide refers to the genocide committed by Bosnian Serba forces in Srebrenica in 1995, or to ethnic cleansing that took place during the 1982-1995 Bosnian war.[69] The act of genocide occurred in July 1995 when 8000[70]Bosnain men and boys were executed. It also subsumes the annihilation of 25000-30,000 refugees in the area of Srebrenica in Bosnia and Herzegovina, by units of the Army of RepublikaSrpska (VRS) under the command of General RatkoMiadic during the Bosnian war. A paramilitary unit from Serbia known as the scorpionsô, officially participated in the massacre.[71] The pogrom that occurred in Europe had been held to be the largest mass murder in Europe since World War II. [72]

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[68]Quoted by Mark Doyle, ñEx-Rwandan PM reveals Genocide Planningò BBC News on-line posting March 26, 2004.
[69] J. R. Tackarh, *TheRoutledge Companion to Military Conflict Since 1945,* (Routledge: Taylor Francis, 2008) pp. 81, 82.
[70]Potocari Memorial Center Preliminary List of Missing Persons from Srebrenica 1995.
[71] Paramilitary get 15-20 years for Kosovo. Crimes-Balkan insight available http://www.balaninsight.com/en/main/news/0364.html (last accessed 11 March 2010).
[72] Institute for War and Peace Reporting, Tribunal Update: Briefly Noted (TU No. 398, March 18, 2005).

3.10. Darfur, Sudan (2003 till Date)

The on-going conflict in Darfur, Sudan started in 2003. It has been controversial whether the conflict in Darfur, Sudan is eligible to be tagged genocide. The then United State Secretary of State, Colin Powel on September 9, 2004 while testifying before the Senate Foreign Relations Committee declared the Darfur conflict ña genocide.[73] In January2005, an International Commission of Inquiry on Darfur, authorized by United National Security Council Resolution 1564 of 2004, issued a report to the Secretary-general stating that the government of the Sudan has not pursued policy of Genocide. The Commission however, noted that:

> The conclusion that no genocide policy has been pursued and implemented in Dufar by the Government authorities, directly or through the militias under their control, should not be taken in any way as detracting from the gravity of the crimes perpetrated in that region. International offences such as the crimes against humanity and war crimes that have been committed in Darfur may be no less serious and heinous than genocide.[74]

In March 2005, the Security Council officially referred the situation in Darfur to the prosecutor of the International Criminal Court, taking into account the Commissionôs Report but without mentioning any specific crimes.[75] The prosecutor found reasonable grounds to believe that the individuals identified in the United Nations Security Council Resolution 1593 have committed crimes against humanity

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[73] ñPowell Declares Killing in Dufar Genocideò The News Hour with Jim Lehrer, BBC, September, 9, 2004 monitored in Enugu Nigeria.
[74] Report of the International Commission of Inquiry on Dufar to the United Nations Secretary General, January 25, 2005, p. 4.
[75] Security Council Resolutions, 1593 (20050)

and war crimes, but did not have sufficient evidence to prosecute them for genocide.[76] In April 2007, the Judges of the International Criminal Court issued warrants against the former Minister of State for the Interior, Ahmad Harun and a militia Janjaweed leader, Ali Kushayb for crimes against humanity and war crimes.[77] On July 14, 2008 prosecutor of the International Criminal Court filed ten charges of war crimes against Sudanôs President Omar al-Bashir, three counts of genocide, five of crimes against humanity and two of murder. On March 4, 2009, the International Criminal Court issued a warrant for al-Bashirôs arrest for crimes against humanity and war crimes, but not genocide.[78] It has to be noted that the warrant of arrest issued against president Omar al-Bashir has not been executed. The President has won the presidential election of Sudan held from 5th to 12th April 2010. This implies that the arrest warrant may not be executed soonest. However, the unfolding events will be closely monitored to decipher the enforceability of such warrant against serving presidents.

3.11. Nigerian Genocide/Insurgency in the North

The Nigerian civil war which started in 1967 was an attempt by the eastern part of Nigeria dominated by the Igboôs to respond to the unsolicited attacks and hostility of the tribes particularly Northern Nigeria dominated by Hausas against them. The war

[76] Four Report of the prosecutor of the International Criminal Court to the Security Council pursuant to UNSC 1593 (2005), office of the prosecutor of the international criminal court 14 December, 2006.
[77] Statement by Mr. Moreno Ocampo, Prosecutor of the International Criminal Court to the United Nation Security Council pursuant to UNSCR 1593 (2005), International Criminal, 5 January 2008.
[78] This warrant was the first ever issued by International Criminal Court against a sitting head of State.

was fought almost entirely in the eastern region of Nigeria. The war resulted in the death of millions of unarmed civilians and massive destruction of property. A combination of military operation, economic blockage against Biafra and the destruction of its agricultural life by the Nigerian Federal Government led to the starvation, mass death and displacement of Igboôs. Biafra alleged genocide, thereby securing international sympathy. Although, a team of observers found considerable evidence of famine and death as a result of the war, it uncovered no proof of genocide.[79] However, it has been estimated that 14000 people died each day in Biafra during the period.[80]

Meanwhile, the invasion of Odi town in Bayesla State was declared to be genocide by the leader of Human Rights and Civil Society Groups.[81] The killing was triggered off by the abduction and murder of six policemen by unidentified person in early November 1999. The Obasanjo-led Federal Government embarked on ñOperation Hakuri IIò[82] in which Odi town was invaded by Nigerian troops. Inhabitants of the town ruthlessly massacred.

There is also recent massacre of villagers in DogoNahawa, Birom, Ratsat and Jeji by the Fulani herdsmen in Jos South Local Government Area of Plateau State, Nigeria. No fewer than 500 people made up of children and adults were killed. The attack was in commando-like operation and carried on a well-organized manner.

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[79] Biafra/Nigeria: Genocide and Crimes Against Humanity downloaded from http://www.enotes.com/genocide-encylopeida/biafra-bigeria,html (Accessed: 12/3/10)
[80] The Report of the International Committee of the Red Cross (ICRC) December 1968.
[81] ñGenocide in Odiò, text of a Press Conference by Leaders of Human Rights and Civil Society groups, Wednesday December 8, 1999.
[82] This was what the them Minister of Defence Gen. T. Y. Danjuma (rtd) called the operation in Odi.

These attacks could only be deemed to be reprisal attack. It was reported in the Tribune that: ñIt will be recalled that a Northern based Newspaper published an advertorial listing the names of Fulani that were killed in the recent Jos crisis, fueling the belief that the latest incident was a reprisal attackò.[83]

The attack that is giving the Nigerian government the greatest headache presently is the Boko Haram.[84] The group has killed innumerable Nigerian citizens in its entire raid. The attacks took an international dimension when the movement attacked the UN Building in Abuja on 26 August 2011. The Christmas day bombing of 25 December 2011 embellished the attacks with the most vivid religious undertone.

In its latest deadly attack on February 2014,[85] the group massacred 29 students with scores seriously injured. The Islamic sect had killed hundreds of people in the orgy of violence unleashed on Gwoza, Izge and Bama in Borno State this month alone.[86] The level of lawlessness and rascality prompted the Federal Government to declare State of Emergence in some North-Eastern States. The Governors in those states are no longer finding the heartrending lawlessness funny. Order has completely vanished in those States. Governor Shettima of Borno State insisted that Boko Haram is better armed and better motivated than the Nigeria Military.[87] This is even as the promise of Chief of Defence Staff that Boko haram would be wiped out by April this

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[83] ñGenocide in Odiò, Text of a Press Conference by Leaders of Human Rights and Civil Society Groups, Wednesday December 8, 1999.
[84] Meaning western Education is evil.
[85] That is the 24th day of February 2014.
[86] ñBoko Haram Massacres 29 Students in Yobe Schoolò, *Daily Sun*, Wednesday, February 26, 2014, p. 5.
[87] A. Obi, ñShettima and the Politics of Terrorò, *Daily Sun*, Thursday, January 27, 2014, back page.

year[88] is still subsisting. Why is it then, that every time the military boasts of winning the war or putting timeline to ending the war that the insurgents step up their attacks? Nwosu writes: ñThe strangest thing for me in all this is the issue of motivation. What motivation can be behind these seeming mindless attacks? Is it the motivation of hoisting an Islamic State and running it? If it is that, what then is the motivation to kill yourself to hoist such a regimeò.[89]

Boko Haram changed pattern of operation and started annexing territories and creating kingdom for itself. However, there has been massive military offensive against Boko Haram in 2015. The military has continued to record great successes in the operation to flush out Boko Haram in Borno, Adamawa and Yobe States. Presently over eleven communities have been recaptured by the Nigerian military from Boko Haram.[90] The recapture of those communities was closely followed by the airstrikes on the SambisaForest , the training camp of Boko Haram and Gwoza before ground troops moved in.[91]

The successes recorded by the Nigerian military recently emboldened the military to issue an order for the capture of anybody who bears the name, Imam AbubakarShakau.[92] Irrespective of all these onslaught against the Boko Haram, there is no hope in sight that they are retreating from the violence. In March 2015, security operatives issued security alert to Nigerians urging them to be vigilant as Boko

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[88] *Ibid.*
[89] S. Nwosu, ñStrange Things are Happeningò, *Daily Sun*, Wednesday, February 19, 2014, back page.
[90] ñMilitary Recaptures 11 Borno Communitiesò, *Daily Sun*, Thursday 19, February 2015, p. 13.
[91] ñMilitary Invades Sambisa Forest Gwozaò, *Daily Sun*, Friday, February 20, 2015, p. 6.
[92] ñCapture Shekau Alive, Military Orders Soldiersò, *Daily Sun*, Monday, February 23, 2015, p. 5.

Haram has resorted to the use of suicide bombers inside the cities, following its routing in communities in Borno, Adamawa and Yobe States.[93]

All these attacks have not been shown to be targeted on a group with the intent to exterminate the group in whole or in part. Therefore, it is not genocide. It will only amount to genocide irrespective of the number of people killed once it is shown to be for absolute elimination of a group. Otherwise it will only be a crime against humanity not genocide.

[93] ñMilitary Issues Security Alert on Suicide Bombing Plotò, *Daily Sun*, Monday March 2, 2015, p. 5.

CHAPTER FOUR: GENOCIDE AS A SUB-THEME IN CRIMINOLOGY

4.1. Meaning of Criminology

Criminology is the scientific study of non-legal aspects of crime, including its causes and prevention.[1]It is also the scientific study of crime, criminal behaviour and corrections.[2] The scientific study and investigation of crime and criminals is criminology. Criminology is the study of crime from social and individual perspective. Criminology is the scientific study of the nature, extent, causes, and control of criminal behaviour in both the individual and in society. Criminology is an interdisciplinary field in the behavioural sciences, drawing especially upon the research of sociologist, psychologists and psychiatrists, social anthropologists as well as on writings in law. Areas of research in criminology include the incidence, forms, causes and consequences of crime, as well as social and governmental regulations and reaction to crime. For studying the distribution and causes of crime, criminology mainly relies upon quantitative methods.[3]

As a social science, criminology is not only concerned with the causes and preventions of crime, as well as the criminals themselves. The term criminology was coined by an Italian Law Professor named RaffaeleGarofao.[4] Criminologists often

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[1]Westôs Encyclopedia of American law available http://www,answers.com/toptic/criminoogy.htm.(Accessed: 12/3/10).
[2]The Free Dictionary.com available http://.thefreedictionary.com/-ictaspz? Word+
[3]D. Mathieu, *Sociological Theory and Criminological Research: Views from Europe and the United States*. (Washington: Elsevier, 2006), p. 279.
[4] ñWhat is Criminologyò, available http://www.wisegeek.com/what-is-criminology.htm (Accessed: 25th March 2010).

study what, exactly; goes on in the criminalôs mind to make him or her decide to act in a criminal manner. Criminologists can work in law enforcement agencies, either on the local level or national level, to come up with certain profiles they see in some crimes.

Criminology encompasses the study of causation, correction and prevention of crime. As subdivision of larger field of sociology, criminology draws on psychology, economics, anthropology, psychiatry, biology, statistics and other disciplines to elucidate the causes and prevention of criminal behaviour. More importantly, criminology has played a reforming role in relation to criminal law and the criminal justice system.

4.2. Theories of Crime

In this sub-heading, attention will be paid to only those theories of crime that influence the commission of the crime of genocide in one way or the other.

Fein[5] clarified that:

> Genocide is viewed theoretically as a strategy that ruling elites use to resolve real solidarity an legitimacy conflicts or challenges to their interests against victims decreed outside their universe of obligation in situations in which a crisis or opportunity is caused by or blamed on the victim and the perpetrators believe that they can get away with it.

Therefore, genocide is not extreme war or conflict. It is extreme exclusion. Exclusion may start with name-calling, but may end with a group of people being excluded from a society to the point where they are destroyed.[6]

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[5] H. Fein, (ed), *Genocide Watch* (Yale: Yale University Press, 1992), p. 20.

Conflict theory is based upon the view that the fundamental causes of crime are the social and economic forces operating within a society. The criminal justice system and criminal law are thought to be operating on behalf of rich and powerful social elites with resulting policies aimed at controlling the poor.[7] There is no doubt that in the event of any revolt by the poor that are being used by the rich and powerful people in the state, such powerful people may deploy the state machinery to quell such uprising. In the process, a large number of people might be annihilated. Thus, conflict theory contributes in no small measure in providing the needed atmosphere for the commission of the crime of genocide.

The conflict theory assumes that every society is subjected to a process of continuous change and that this process creates social conflicts. Hence, social change and social conflict are ubiquitous. Individuals and social classes, each with distinctive interests, represent the constituent elements of a society. As such, they are individually and collectively participants in this process but there is no guarantee that the interests of each class will coincide. Indeed, the lack of common ground is likely to bring them into conflict with each other. From time to time, each element's contribution may be positive or negative, constructive or destructive. To that extent, therefore, the progress made by each society as a whole is limited by the acts and omissions of some of its members by others. This limitation may promote a struggle for greater progress but, if the less progressive group has access to the coercive power

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[6] J. T. Janani, ñSri Lanka: The Blind Spot in Genocide Theoryò available at http://www.tailguarian.com/article.asp?ariceid=1758 (last accessed 24 March, 2012).
[7] ñThe Conflictò available at http://www.ciminology.fsu.edu/critheory/conflict.htm (last accessed: 01 March 2012).

of law, it may entrench inequality and oppress those deemed less equal. In turn, this inequality will become a significant source of conflict. The theory identifies the state and the law as instruments of oppression used by the ruling class for their own benefit.[8]

There are various strands of conflict theory, with many heavily critiquing the others. Structural Marxist criminology, which is essentially the most 'pure' version of the above, has been frequently accused of idealism, and many critics point to the fact that the Soviet Union and such states had as high crime rates as the capitalist West. Furthermore, some highly capitalist states such as Switzerland have very low crime rates, thus making structural theory seem improbable. Instrumental Marxism partly holds to the above, but claims that capitalism in itself cannot be blamed for all crimes.

Among the varieties of conflict theory is the peacemaking criminology. Peacemaking criminology sought to expand the role of the discipline by looking at international issues such as war and genocide.[9] In the main, peacemaking criminology contends that crime is connected to suffering and that to end crime, we must end suffering. This means that poverty, racism, sexism, alienation, abuse within families, harassment, and all other forms of suffering must be dealt with if crime is to be reduced. Additionally, peacemaking criminology holds that the state itself perpetuates crime (and violence) through repressive policies of social control such as the death penalty, lengthy prison sentences for offenders, and the criminalization of non-violent drug offenses. Peacemaking criminology further asserts that the focus on individual

[8] A. Turk, *Criminality and Legal Order*, (Chicago: Rand McNally, 1969), p. 40.
[9] *Ibid.*

offenders has been at the neglect of certain institutional arrangements in society that contribute to our high crime rate, and that criminology should concern itself with promoting a greater amount of social equity across social class lines. Lastly, peace-making criminology argues that the most significant change to be made by the criminal justice system is to move away from *criminal* justice to *restorative* justice.

Peace-making criminology is certainly not mainstream criminology. It is not positivist in its orientation and is not obsessed with detailed statistical analysis of the cause of criminal behaviour. This is not to say that peace-making criminology is not interested in the causes of crime; rather, it approaches the etiology issue in non-traditional means.[10]

There is also the Hirschôs self-control theory. This theory argues that common crimes as well as upper world crimes are amenable to an explanation based on impulsiveness.[11] The ability of the offender to control such impulsive desire to commit an offence determines the level of the offenderôs involvement in the crime. Where the offender cannot withstand the impulsion to commit crime, the offender goes on to commit the crime. This theory may also subsume the kleptomaniacôs impulsive desire to steal at any given opportunity. Likewise, there are people whose hatred for another group or tribe has imbued in them the unquenchable desire to exterminate people from such group or tribe. If this desire is brought into life, there is no doubt that it will amount to genocide.

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[10] R. C. Barnes, ñPeacemaking Criminology: Challenges and Possibilitiesò available at http://www.nssa.us/journals/2007-29-1/2007-29-1-05.htm (last accessed 25 March 2012).

[11] Both Hirschôs and Gibbon were quoted in ñCriminology and the Holocaust: Xenophobia, Evolution and Genocideò available at www.accessmylibrary.com/article-IGI-2049629/criminology-and-holocause-xenopnobia.html(last accessed: 12 March 2012).

The self-control theory of crime, often referred to as the General Theory of Crime, is a criminological theory about the lack of individual self-control as the main factor behind criminal behaviour. The theory was originally developed by criminologists Travis Hirschi and Michael Gottfredson,[12] but has since been subject to a great deal of theoretical debate and a large and growing empirical literature.[13]

Based on the empirical observation of the strong, consistent connection between criminal behaviour and age,[14]Hirschi and Gottfredson theorized the single most important factor behind crime is individual lack of self-control. Individual self-control improves with age as a result of many factors: changing biology through hormonal development, socialization and increasing opportunity costs of losing control. In addition, criminal acts are often markedly non-controlled; they are both opportunistic and short-sighted.

However, Gibbon has insisted that there is relatively little in the way in overarching theory of racial-ethnic conflict.[15] Theory of racial-ethnic conflict can also contribute to the commission of the crime of genocide. Racial discrimination means:

> Any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or the effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social and cultural or any other field of public life.[16]

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[12] M. R. Gottfredson, and T. Hirschi, *A General Theory of Crime,* (Stanford, CA: Stanford University Press, 1990), p. 80.
[13] C. Hay, "Parenting, Self-control, and Delinquency: A Test of Self-control Theory", *Criminology*39 (3): 707ï 734, (2001).
[14] T. Hirschi and M. R. Gottfredson, "Age and the Explanation of Crime", *American Journal of Sociology***89** (3): 552ï 584, (1983).
[15]*Ibid.*
[16] United Nations International Convention on the Elimination of all Forms of Racial Discrimination, New York, 7th March 1966.

The definition does not make any difference between prosecutions of genocide based on ethnicity and race, or religious belief, political background etc. this is in part because; the distinction between ethnicity and race remains debatable among anthropologists.[17] According to British law, racial group means: ñAny group of people who are defined by reference to their race, colour, nationality (including citizenship) or ethnic or national originò.[18]

As an ideology, racism existed during the 19th century as ñscientific racismò which attempted to provide a racial classification of humanity.[19] Although, such racist ideologists have been widely discredited after World War II and the Holocaust, racism and racial discrimination have remained widespread all over the world. Undubitably, racism has been a motivating factor in social discrimination, racial segregation, hate speech and violence such as pogrom, genocide, and ethnic cleansing.

There are also the biogenic, psychogenic and sociogenic theories. According to Nweke:

> In biogenic situation, the factor that leads people to commit crime is found inside the human body; such factor is genetic and thus transmissible genetically through biological process..in other words, this Theory supports the school which says that the act of killing people by another is hereditary.[20]

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[17] A. Metraux, ñUnited Nations Economic and Security Council Statement by Experts on problems of Raceò in *American anthropologist*, 53(1): 142-145(195).
[18] The CPS: Racist and Religious Crime ï CPS Prosecution Policy.
[19] Pierre-Ander Taguieff, la force u prejudge, 1987 (French).
[20] S. A. N. Nweke, *Principles of Crime Prevention and Detection in Nigeria* (Enugu: Ebenezer Productions Nig. Ltd., 2002), p. 12.

Psychogenic postulates that the factors that cause one person to exterminate others are located within the human psyche. But the sociogenic theory is to the effect that the tendency to commit crime can be found in the social environment. This theory lends credence to the saying that the environment of a personôs upbringing moulds his personality.[21]

There is no gainsaying that these theories of criminology accounts for some leadersô irrepressible penchant to commit the crime of genocide. The lust for blood seems to be inherited from their cradle as they massacre human beings without any atom of respect for the sanctity and sacredness of human blood. Conflict theory for instance, factionalized human beings based on social strata. Consequently, it becomes the parameter with which annihilation of human lives may be determined.

The theory that has been linked directly to be accountable for genocide is the blind spot theory. The theory, according to, Chalk,[22] is anchored on the premise that genocides have been committed by perpetrators who acted in the name of absolutist or utopian ideologies. Also Dirk discussing blind spot theory explains further that: ñIn its initial incarnation, then genocide studies was really a version of totalitarianism theory because by definition a genocide-at least a true one can only be committed by a totalitarian or at least authoritarian stateò.[23] Dirk calls this attitude a conceptual blockage arising from the cold war background in which many of these studies took place.

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[21] *Ibid.*
[22] S. Chalk, *A Blind Spot Liberal Genocide Theory* cited in Janani, *op. cit.*
[23] M. Dirk, ñTowards a Theory of Critical Genocide Studiesò cited in Janani, *ibid.*

There is also the doctrine of psychological hedonism which is the theory that all human choice is motivated by a desire for pleasure (or an aversion to pain).[24] It is also the doctrine that a person actually pursues nothing but her own pleasure or happiness.[25] Under this doctrine, the perpetrator of a crime plans his criminal behavior before carrying out his actions. The individual creates the basis for their departure from socially, morally or legally sanctioned aspects of behavior. The individual calculates the pain versus the pleasure of an act, or the gain minus the risk of doing a certain thing.

It is after these permutations that a perpetrator proceeds to commit an offence. Therefore, it will not be awry to contend that the crime of genocide entails even greater permutation and calculation of the gain minus the risk. It is usually carried out to enhance political, social or economic gains by the perpetrators. If the attempt to exterminate a group is successfully resisted by that group there is no doubt that the group will most likely execute the genocide as a vengeance against the group that initiated it.

4.3. Factors that Influence the Commission of the Crime of Genocide

The factors responsible for the commission of the crime of genocide are numerous. The discussion hereunder will not be exhaustive but attempt will be made to touch as many factors as possible.

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[24]ñPsychological Hedonismò available at http://www.abdn.ac.uk/philosophy/guie/glossary.shm (last accessed 17 March 2012).
[25]Psychological Hedonism available at http://www.abdn.ac.uk/philosophy/guie/glossary.shm (last accessed 17 March 2012).

4.3.1. Type of Government

The degrees to which people are not democratically free increase the likelihood of some kind of domestic genocide. This is illustrated with the totalitarian Staliôs Soviet Union. Hitlerôs Germany and Maoôs Communist China of Facist Chiang Kai-shekôs China Franoôs Spain, and AmiralMiklos Horthyôs Hungary. There is also the dictatorial government of Saddam Hussein in Iraq, Idi Aminôs Uganda and Mustafa Kemal Ata Turkôs Turkey. Consequently, the major determinant factor in the commission of genocide is the type of government in a state.

4.3.2. Threat to the Ruling Power

One of the major motives behind the total extermination of a group of people is where there is perceived threat to the ruling power by that group. This was the situation in 1970 parliamentary elections in Pakistan that showed the political power of East Pakistan and threatened the control over it by West Pakistan and the power of the military government. They, thus, militarily seized East Pakistan and murdered over a million Bengali leaders, intellectuals, professionals and any Hindus that the military were able to capture.

The situation was not different when the Rwanda Hutu majority government executed the massacre of all Tutsi within their reach at the time when there was turmoil resulting from a major 1991 incursion of the Tutsi expatriate Rwanda patriotic Front the northern part of the country.

4.3.3. War

The possibility of genocide is intensified by the involvement of a country in international or domestic war. The holocaust is a typical illustration of this. There was the mass murder of Jews before 1939, but not as a government policy to murder all Jews wherever they were or came under German hegemony. The policy to massacre all Jews under German hegemony did not come into operation until German delved into the execution of World War II. Analogous to the foregoing, was the murder of Armenians by the Young Turk government. During World War I, the Turkôs alliance with Germany and the Prussian invasion of Eastern Turkey provided the Young Turkôs with the excuse to purify Turkey of Armenians and Christian once and for all.

4.3.4. Religious/Ethnic Hatred

The act of extermination of the Jews throughout History and in particular the Holocaust was fundamentally an act of religious and ethnic hatred mixed with envy and resentment over their disproportionate economic and professional achievements. Also the Armenian genocide was carried out because the Armenians were hated as Christians in a Moslem society.

4.3.5 Elimination of perceived Alien Beliefs, Cultures and Practices

Genocide is also committed in an attempt to purify the society of alien beliefs, cultures and practices. A typical illustration of this is the systematic attempt of Moa Tse-tung and Stalin to eliminate disbelievers from communist societies. There is also attempt to do the same by Christians during the Middle Ages; the elimination of

Christian groups and Moslem blasphemers in many current Islamic countries such as in Iran, Saudi Arabia and even in some northern parts of Nigeria like Jos, Plateau State.[26]

4.3.6. Economic Gain

Another factor influencing the commission of crime of genocide is the consideration of economic gains. Consequently, rapacious and avaricious colonial powers or individuals like King Leopold of Belgium who personally owned the Congo Free State massacred tens of millions in Belgium colonies who got in the way, resisted the rape of the colonyôs wealth or were worked to death.

However, irrespective of the identified factors, for genocide to occur, there must be certain preconditions foremost among them is a national culture that does not place a high value on human life. A totalitarian society with its assumed superior ideology is also precondition for genocidal acts.[27] In addition, members of the dominant society must perceive their potential victims as less than fully human: as ñpagansò, ñsavagesò ñUncouth barbarianò, ñritual outlawsò, racial inferiorò, ñclass antagonistsò, counterrevolutionariesò and so onò.[28]

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[26] Even though the crisis in Plateau State Nigeria is being attributed to ethnic differences one cannot easily rule out its religious blend. Since crises were being executed by Fulani herdsmen who are predominant Muslims against the indigenous inhabitants who are predominantly Christians. There is even the allegation that an army General who is a Muslim is giving the Fulani herdsmen strategic support in the execution of the onslaught just because the said army General is a Muslim too. An allegation which has since been denied by the army General is issue.

[27] Kakar, *op. cit.,* p. 14.

[28] *Ibid,* p. 14.

4.4. Stages of Genocide

There are stages through which the causes and conditions for genocide develop and gradually manifest in genocide. In 1996, Gregory Stanton[29] presented a brief paper in which he suggested that genocide develops in eight stages[30] which will be taken in pairs in this work. The stages are:

4.4.1. Classification and Symbolization of People

People are divided into ñus and themò. This classification or division may be tailored in line with race (whites and blacks), religion (Christians or Muslims), or politics (communist, leftists or rightists) etc.

In symbolization, different groups are given names like Jews, Hindus or Marxists. Classification and symbolization are common to all societies and while necessary for genocide to occur, do not foretell that it will, or that the next stages will follow. In order to tackle the problem symbolization, hate symbols can be legally forbidden.

4.4.2. Dehumanization and Organization

One group denies the humanity of the other group. Members of the group are equated with animals, vermin, insects or diseases. This can be controlled if local and international leaders condemn the use of hate speech and make it culturally

[29] The President of Genocide Watch.
[30] G. H Stanton, *The Right Stages of Genocide,* (Washington D. C.: Forthcoming, 1996), p. 15.

unacceptable. Leaders who invite genocide should be banned from international travels and have their foreign accounts frozen.

On organization, it must be admitted that genocide demands high level of organization. Special army units or militias are often trained and armed. It is, however, necessary for the United Nations to impose arms embargoes on governments and citizens of countries involved in genocide massacres and create Commissions to investigate violations.

4.4.3. Polarization and Preparation

Officials, extremists, propagandists or demagogues undertake a systematic campaign to maximize the social, psychological and moral distance between ñus and themò. In this stage, moderate intellectuals and leaders are silenced either through intimidation, beating, arrests and outright assassination.

Prevention may mean security protection; security protection for moderate leaders or assistance to human rights groups. *Coups d'etat* by extremists should be antagonized by international sanctions. At the preparation stage, all is ready and the final step is to tag those to be killed. They may be compelled to be putting identification marks, wear identifying cloths, or be confined to ghettos. Lists of those to be killed may be prepared for killing squads, and the out-group may be systematically deprived by law and weapon roundups of any weapons. Those who might lead the resistance to genocide may be conscripted into the military and segregated execution in future or be incarcerated. The option open at this stage to

contain or stifle the attempt to commit genocide will be to declare a genocide emergency.

4.4.4. Genocide and Denial

The final decision is made to massacre those in the out-group. The massacre may be justified as a righteous campaign to exterminate vermin or cleanse the society of filth, to recover ancient race or to avenge past wrongs. It is extermination to the killers because they do not believe that the victims are human beings. Consequently, only rapid and overwhelming armed intervention can stop genocide. Real safe areas or refugee escape corridors should be established with heavily armed international protection.

At the denial stage, the perpetrators of the crime of genocide deny that they committed the crime of genocide. They may destroy the relevant evidence; incinerate the dead bodies or even give reasons for the justification of the pogrom. The most far reaching official denial presently is the denial by the Turkish government that the murder of over a million Armenians during the World War I was not genocide. According to Turks, the Armenians died as a result of a civil war, especially the invasion by Russia and the attempt of the Young Turk government to deport potential and actual hostile Armenians to a different part of the country for their own protection.[31] The response to denial is punishment by an international tribunal or national courts.

[31] Stanton, *op. cit.,* p. 16.

CHAPTER FIVE: PROSECUTION OF THE CRIME OF GENOCIDE

5.1. Principle of Legality

The principle of legality is the legal ideal that requires all law to be clear, ascertainable and non-retrospective. It requires decision makers to resolve disputes by applying legal rules that have been declared certain and not to alter the legal situation retroactively by discretionary departures from established law. Inherent in this principle are the requirements of specificity and the prohibition of ambiguity in criminal law; its retroactive application or its application by analogy.[1] In the case of *Prosector v. ZejnilDelalic, ZdravkoMucic, HazimDelic and EsadLandzo*[2] it was noted that the principle of legality aims at preventing the prosecution and punishment of an individual for acts which were lawful at the time of their commission.

Principle of legality, in its criminal aspect, is a principle of international human rights law and is in incorporated into the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Convention of Human Rights. However, the imposition of penalties for offences illegal under international criminal law, according to the principles of law recognized by civilized nations, are normally excluded from its ambit. As such the trial and punishment for genocide, war crimes and crimes against humanity do not breach international law.

This exception is, however, still controversial. Some people would argue that it is a derogation or an infringement of the principle of legality. Others argue that

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[1]Kittichaisree, *op.cit.,* p. 43.
[2] Case No. IT-96-21-T,ICTY. T. Ch Quarter, 16 Nov. para. 313.

crimes such as genocide are contrary to natural law and as such are always illegal and always have been. Thus, imposing punishment for them is always legitimate. The exception and the natural law justification for it can be seen as an attempt to justify the Nuremburg Trials and the trial of Adolf Eichmann both of which were criticized for applying retrospective criminal sanctions. The International Criminal Tribunal for the Former Yugoslavia considered it undisputed that acts as murder, torture, rape and inhuman treatment are criminal according to general principles of law recognized by every legal system and those who commit these acts cannot escape prosecution before an international criminal tribunal by hiding behind the principle of legality.[3]

The principle of legality prevents government from abusing its enemies using the criminal justice system. It maximizes personal freedom by minimizing the risk that someone can break the law without being aware of it. The legality principle also assures fair warning of what conduct is considered criminal and what punishment may be enforced against such conduct. Fair warning is important of both retributive and utilitarian justifications of the criminal justice system.[4]

5.2. The Principle of Universal Jurisdiction

The principle of universal jurisdiction is a principle in international law whereby States claim criminal jurisdiction over persons whose alleged crimes were committed outside the boundaries of the prosecuting State regardless of nationality, country of residence or any other relation with prosecuting country. The State usually backs its

[3] See *Prosecutor v. ZejnilDelalic, ZdravkoMucic, HazimDelic an EsadLandzo*, *op. cit.*
[4]The Charter of Fundamental Rights of the European Union, art.49(1).

claim on the grounds that the crime committed is considered a crime against all, which any state is authorized to punish, as it is too serious to tolerate jurisdictional arbitrage.[5] According to Kittichaisree:

> Universal jurisdiction is asserted in certain circumstances to prosecute offences irrespective of where these offences were committed, the nationality of the offenders, or any connection with the State asserting this jurisdiction.[6]

Human right abuses widely considered to be subject to universal jurisdiction include genocide, crimes against humanity, war crimes and torture.[7] In *Attorney-General of the Government of Israel v. Eichman*[8] the District Court of Jerusalem upheld universal jurisdiction as a source of its jurisdiction to try the accused for crimes against humanity and war crimes committed against the Jewish people during the Nazi regime when the state of Israel did not exist. According to the court: ñUniversal source pertaining to the whole mankind vests the right to prosecute and punish crimes of this order in every States within the family of nationsò. The concept of universal jurisdiction is closely linked to the idea that certain international norms are *ergaomnes*[9]as well as the concept of *jus cogens* ï that certain international law obligations are binding on all states and cannot be modified by treaty.

It is clear that the principle justifies a unilateral act of wanton disregard of the sovereignty of a State or the freedom of an individual concomitant to the pursuit of a

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[5] J. J. Paust, M. C. Bassioui et al, *International Criminal Law: Cases and Materials*, (Carolina: Carolina Academic Press, 1996), pp. 95-180.
[6]Kittichaisree, *op. cit.,* p. 39.
[7] E. Nixkor ñThe Princeton Principles on Universal Jurisdictionò available at http://www.derechos.org/nizkor/icc/princeton.html (last accessed 18 March 2012).
[8] Dist. CT. Jerusalem, 11 December 1961 (1962) 56 AJIL 805, para. 30.
[9]Owned to the entire world community.

vendetta or other ulterior motives with the obvious assumption that the person or State thus disenfranchised is not in a position to bring swift retaliation to the State applying this principle.

The concept received a great deal of prominence with Belgiumôs 1999 Law of Universal Jurisdiction which was amended in 2003 in order to reduce its scope following a case before the International Court of Justice regarding an arrest warrant issued under the law, in *Democratic Republic of Congo v. Belgium*.[10]Proponents of universal jurisdiction[11] argue that certain crimes pose so serious a threat to the international community as a whole that states have a logical and moral duty to prosecute an individual responsible for it. They insisted that no place should be safe haven for those who committed genocide, crimes against humanity, extrajudicial executions, war crimes, torture and forced disappearances. Opponents contend that universal jurisdiction is a breach on each Stateôs sovereignty as affirmed by United Nations Charter. According to Kissinger:[12]

> Widespread agreement that human rights violation and crimes against humanity must be prosecuted has hindered active consideration of the proper role of international courts. Universal jurisdiction risks creating universal tyranny ï that of judges.[13]

[10] Cited in H. Kockler, ñThe Judgment of the International Court of Justice (2002) and its Implication for the Exercise of Universal Jurisdiction by National Courts: The Case of Belgiumò in *Global Justice or global Revenge? International Criminal Justice The Crossroads*, (Vienna & New York: Springer, 2003), pp. 85-101.

[11]See Amnesty International, Policy Research, ñBrief Primer on Genocideò available at http://www.ihl.lhlresearch.org/inex.cnm?fuseaction=page,viewpage&pageid=1638 (last accessed 15 April, 2012).

[12] K. Hissinger, (July/August 2001) ñThe Pitfalls of Universal Jurisdiction Foreign Affairsò.

[13] Roth Kenneth (September/October 2001) The case for Universal Jurisdiction, Foreign Affairs.

Certainly, the safety of the people should be the supreme law. Thus, Latin maxim *saluspopuliestsupremalex* should be justified. It is necessary to accept the principle in other to preserve and protect the sanctity and sacredness of human blood. People or groups should not be allowed to decimate other groups just because sovereignty is being observed. Such principles can be abandoned to serve the greater purpose of protecting lives.

Consequently, the United Nations Security Council Resolution 1674 adopted by the United Nation Security Council on 28 April 2006, reaffirmed the provisions of paragraphs 138 and 139 of the 2005 Word Summitoutcome document regarding the responsibility to protect population from genocide, war crimes, ethnic cleansing and crimes against humanity and commits the Security Council to action to protect civilians in armed conflicts.[14]

5.3. Genocide under the Nigerian Law

It is the constitutional right of every Nigerian to be alive. This is because section 33(1) of the 1999 Constitution as Amended provides that: ñEvery person has a right to life and no one shall be deprived intentionally of his life, save in the execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeriaò. The right to life is obviously that most fundamental of all human rights. This is because other human rights can only be exercised by a person who is

[14] Security Council Passes Landmark Resolution-World has Responsibility to Protect People from Genocide, Oxford Press Release, 28 April 2006.

alive.[15] It is glaring that section 33(1) of the 1999 Constitution as Amended expressly permit killing in execution of a sentence of a court. This, of course, remains the lifeline for death penalty in Nigeria.[16] Any form of decimation of human life is referred to as homicide. Coke CJ defined homicide as:

> When a man of sound memory and of the age of discretion, unlawfully killeth within any county of the realm any reasonable creature *in rerumnaturae* under the kingôs peace with malice aforethought, either expressed by the party or implied by law so as the party wounded or hurt, etc, die of the wound or hurt etc within a year and a day after the same.[17]

It was the revered view of Okonkwo[18] that unlawful homicide may be murder, manslaughter, suicide or infanticide as the case may be. The consent by a person to the causing of his own death does not affect the criminal responsibility of any person by whom such death is caused.[19] In *State v. Okezi*[20] the accused, a native doctor, prepared some charms for the deceased. The deceased then invited the accused to test the charms on him by firing a shot at him. The accused shot him in the chest and killed him. He was convicted for murder irrespective of the deceased consent.

However, it must be stated that the various categories of unlawful homicide are of less magnitude both in gravity and depravity when compared to the offence of genocide. Even the Terrorist Act enacted just three months before the October 1,

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[15] O. N. Ogbu, *Human Rights Law and Practice in Nigeria: An Introduction*, (Enugu: CIDJAP Press, 1999), p. 83.
[16] Thus in *Kalu v.The State* [1998] 13 NWLR (Pt. 509-689) 31 and *Okoro v. The State*[1998] 12 SCNJ 84 where the Supreme Court of Nigeria held that the death penalty is not inconsistent with The 1979 Constitution, s. 30(1) equivalent of The 1999 Constitution as Amended, s. 33(1).
[17] Cited in S. Bone, *Osborn's Concise Law Dictionary*, (London: Sweet & Maxwell, 2001), p. 193.
[18] Okonkwo, *op. cit.,* p. 231.
[19] See The Criminal Code Act, s. 299.
[20] [1972] 2 ECSLR 419.

2010, bombing in Abuja and the subsequent bombings could not even be deemed to be an Act for the purpose of checking the offence of genocide.

It is necessary to quickly re-iterate that the pocket killings, skirmishes and sanguinary communal hostilities in Nigeria have not been declared genocide. The closest act of genocide in Nigeria would have been the Nigeria Civil War when the Igboôs [21] alleged that the Federal government of Nigeria was leaving no stone unturned in its effort to extirpate the ethnic group from Nigeria. Still those pocket clashes are usually the starting point for the commission of the crime of genocide. As it is today, Nigeria has no extant law to take care of genocidal wars or clashes if any should occur. The existing criminal laws are dead silent on the offence of genocide.

5.4. The Frame Work of International Criminal Tribunal

Jurisdiction over criminal matters is primarily territorial. Territorial jurisdiction subsumes the power to enact law, the power to interpret and apply the law. States also exercise extraterritorial jurisdiction on the ground that the conduct affects the security of the States exercising the jurisdiction. Universal jurisdiction may also be adopted to prosecute offences irrespective of where these offences were committed, the nationality of the offenders or any connection with the state exercising the jurisdiction.[22]

Consequently, for a state to exercise extraterritorial jurisdiction, the offender must be in their custody. If the offender is in the custody of another country, such country

[21]The dominant tribe in the Biafra territory.
[22]Kittichaisree, *op. cit.,* p. 39.

may be requested to extradite the offender. However, before extradition request will be granted, the following conditions must be satisfied:

1. The offence in question must be an offence in the requested State;
2. The offence in question must be a political offence;
3. The person extradited will be prosecuted only for the offence stipulated in the request or extradition.[23]

Many countries used the absence of any of the foregoing conditions to refuse request to extradite German Emperor Kaiser Wilhelm II to stand trial for his roles in the initiating and waging World War I, arguing that his crime fall within political offences.[24] Also in 1962, the United Kingdom refused to accede to the Genocide Convention of 1948 because article VII of the Convention stipulating that offences of genocide shall not be considered as political crimes for the purpose of extradition would compel United Kingdom to derogate from its trading to grant political asylum.[25]

There is no gainsaying that the prosecution of the crime of genocide will be stultified if there is no urgent way to carefully circumvent the obstacles posed by these conditions in the exercise of extra territorial jurisdiction. Besides, how can system work effectively and efficiently if the States having custody of the perpetrator of a crime does not prosecute or extradite him? The international community has effectively devised a means of dodging the shortcomings of the existing frame work

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[23] R. Y. Jennings and A. Watts (eds.), *Oppenheim's International Law*, (9th edn., London: Longman, 1992), pp. 948-971.
[24]Kittichaiaree, *op. cit.,* pp. 39-40.
[25] Per Lord Privy Seal Edward Heath, 663 House of Commons Debate (5th ser.) Col.423-4 (18 July 1962), in Whiteman, *Digest of International Law*, 871-2.

for the prosecution of international crimes. According to Kittichaisaree: ñThe international community has endeavored to circumvent difficulties inherent in the usual bases of criminal jurisdiction by resorting to multilateral or bilateral agreementsò. These arguments, therefore, constitute the basis of the various tribunals and courts for the prosecution of the crime of genocide.

5.5. Ad hoc Tribunal

All signatories to the Convention on the Prevention and Punishment of the Crime of Genocide are required to prevent and punish acts of genocide both in peace and wartime. In 1951, only two of the five permanent members of the UN Security Council were parties to the Convention on the Prevention and Punishment of the Crime of Genocide[26] the Convention was ratified by the Soviet Union in 1954, the United Kingdom in 1970, the Peopleôs Republic of China in 1983[27] and the United States in 1988. Other signatories now include Bahrain, Bangladesh, India, Malaysia, the Philippines, Singapore, the United States, Vietnam, Yemen, Yugoslavia, Cyprus and Norway.

The major barrier is that some signatories signed the Convention with a proviso that no claim of genocide could be brought against them at the International Court of Justice without their consent.[28] Despite official protests from other signatories on the ethics and legal standing of these reservation, the immunity from prosecution, the proviso grants, has been invoked by the United States when United

[26] i.e France and Republic of China.
[27] Having replace the Taiwan-based Republic of China on the UN Security Council in 1971.
[28] United Nations Treaty Collection (As of 9 October 2001): Convention on the Prevention and Punishment of the Crime of Genocide available at www.ohchr.org (last accessed 18 March 2012).

States refused to allow a charge of genocide to be brought against it by Yugoslavia following the 1999 Kosovo War.[29]

5.5.1 Tokyo Tribunal

The International Military Tribunal for Far East also known as the Tokyo Tribunal was established by the United States Supreme Commander-in-Chief in Japan, Mac Arthur on 19 January 1946. On 25 April 1946 in accordance with the provisions of Article 7 of the Charter of the International Military Tribunal for the Far East, the original rules of procedure of the International Military Tribunal for the Far East with amendments were promulgated.[30] Twenty-eight offenders were charged comprising mostly military officers and government officials. The suspects were classified as:

1. ñAò suspects under ñclass Aò allegingò ñCrimes against peaceò
2. ñBò suspects under ñclass Bò charges alleging ñConventional war crimesò and
3. ñCò suspects under ñclass Cô charges alleging ñCrimes against humanityò.[31]

The Tokyo Tribunal prosecuted only the ñAò suspects leaving ñBò and ñCò suspects to be tried before military court in various states.

Following months of preparation, the Tokyo Tribunal first convened on April 29, 1946. The trials were held in the War Military Office in Tokyo. On May 3, the prosecution opened its case, charging the defendants with ñconventional war crimesò, ñcrimes against peaceò, and ñcrimes against humanityò. The trial continued for more

[29] See for example the submission by Agent of the United States, Mr. David Andrews to the ICJ Publics sitting. 11 May, 1999.
[30] See Charter of the International Military Tribunal for the Far East.
[31] Kittichaisree, *op. cit.,* p. 19.

than two and a half years, hearing testimony from 419 witnesses and admitting 4,336 exhibits of evidences including depositions and affidavits from 779 other individuals. Joseph Keenan the Chief Prosecutor representing the United States at the trial issued a press statement stating that: ñWar and treaty-breakers should be stripped of the glamour of national heroes and exposed as what they really areé . Plan ordinary murderersò.

The evidentiary standard was greatly relaxed. Evidence against the accused could include any document without proof of its issuance or signature as well as dairies, letters, press reports and sworn or unsworn out of court statement relating to the charges.[32] In fact, article 13 of the Charterprovides that the tribunal shall not be bound by technical rules of evidence and shall admit any evidence which it deems to have probative value. The recollection of a convention with a long dead man was admitted. Also letters alleged written by Japanese citizens were admitted with no proof of authenticity and no opportunity for cross examination by the defense. Finally the Tribunal embraced the ñBest Evidence Ruleò once the prosecution had rested.[33]

Clearly, the Tribunal cannot operate a double standard. Relaxed rules of evidence apply to the prosecution while the defence had to comply with the best evidence rule. It is accentuated that illegality in whatever form should not be tolerated in the administration of justice so that streams of justice would flow in purity.[34] These trials by the Tokyo Tribunal were criticized because it dispensed victorôs justice and violated the principle of legality. According to Kittichaisree:

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[32]Brackman cited in *ibid.*
[33]*Ibid.* The best evidence rule dictates that the ñbestò or most authentic evidence must be produced.
[34] See *Ikechukwu Okpara v. AlhajaBalaGusau*[2009] 13 WRN 21 at 78.

> In terms of victorôs justiceé Japan was not permitted to accuse the US before the Tokyo Tribunal of the US atomic bombings of Hiroshima and Nagaski or to accuse the Soviet Union of its violation of the neutrality agreement of 13 April 1941.[35]

This preferential treatment is a profanity of what the tribunal professes. The tribunal did not ensure that villains are prosecuted. If the tribunal meant business, it would not have immuned US from prosecution. Justice must not only be done but must be manifestly seen to be done.

5.5.2 International Criminal Tribunal for Yugoslavia (ICTY)

The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law committed in the territory of the former Yugoslavia since 1991 most commonly referred to as the International Criminal Tribunal for the Former Yugoslavia (ICTY) is a body of the United Nations established to prosecute serious crimes committed during the wars in the former Yugoslavia and to try their perpetrators. The Tribunal is an Ad hoc court which is located in The Hague the Netherland.[36]

The court was established by Resolution 87 of the United Nations Security Council which was passed on 25 May 1993. It has jurisdiction over four clusters of crime committed on the territory of the former Yugoslavia since 1991. Grave breaches of the Geneva Conventions, violations of the laws of customs of war, genocide and crime against humanity.

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[35] *Ibid.,* p. 19.

[36] The current President of the Court is Patrick Lipton Robinson. He was appointed on 17 November 2008 and his term ends this 2010. Robinson is a Jamaican.

The maximum sentence it can impose is life imprisonment. Historically, the tribunal was originally proposed by German Foreign Minister KlasuKinkel.[37] The indicted persons were housed in private cells which have toilet, shower, radio, satellite TV, personal computer with internet access and other comforts. ICTY detention facilities have been referred to as the ñHague Hiltonò because the cells are more akin to a standard university residence[38] instead of jail.[39] It has sufficient luxury. The reason for this luxury relative to the prisons is that the first president of the court[40] wanted to accentuate that indictees are innocent until proven guilty.[41] The accomplishments of the ICTY are encapsulated as follows:

1. Spear heading the shift from impurity to accountability. This is attributable to the fact that until very recently, it was the only court trying crimes committed as part of the Yugoslavia conflict.
2. Establishing the facts, highlighting the extensive-gathering and lengthy fining of fact that tribunal judgment produced.
3. Bringing justice to thousand of victims and giving them voice as evidence by the large number of witnesses who testified before the ICTY.

[37] P. Hazan, *Justice in a Time of War: The True Story Behind the International Criminal Tribunal for the former Yugoslavia,* (Texas: College Station, 2004), p. 49.
[38] A typical Nigerian University Hostel is not an example of such university resident contemplated in this work.
[39] J. Evans, *Redovan Karadzic Cell Life,* (London: The Times, 2009), p. 17.
[40] Antonio Cassese of Italy (1993-1997).
[41] ñMilosevic Jail under Scrutinyò BBC News 13 March 2006 monitored in Enugu Nigeria.

4. The accomplishment in international law especially the fleshing out of several International Criminal Law concepts which had not been ruled on since the Nurembreg Trials.[42]
5. Strengthening the Rule of Law with the particular reference to the tribunalôs role in promoting the use of international standard in war crimes prosecutions by former Yugolsavia Republics.[43]

The violation of international humanitarian law within the territory of the former Yugoslavia was considered by the UN Security Council as a threat to international peace and security. Consequently, the Security Council wielded its powers to set up the ICTY as its subsidiary in order to contribute to the restoration and maintenance of peace in the former Yugoslavia. The ICTY judged that the 1995 Srebrenica massacre was genocide.[44] In a unanimous ruling in the case of *Prosecutor v. Krstic,*[45] the Appeal Chamber of the ICTY, located in The Hague, reaffirmed that the Srebrenica massacre was genocide. According to the presiding Judge.Meron Theodor:

> By seeking to eliminate a part of the Bosnian Muslims, the Bosnian Serb forces committed genocide. They targeted for extinction the forty thousand Bosnian Muslim living in Srebrenica, a group which was emblematic of the Bosnian Muslims in general. They stripped all the male Muslim prisoners, Military and civilian, elderly and young of their personal belongings and identification and deliberately and methodically killed solely on the basis of their identity.

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[42] See *Prosecutor v. Krstic*Trial Chamber I-judgment-IT-98-33(2001), para. 560 for instance.
[43] See ñThe Tribunalôs Accomplishments in Justice and Lawò available at http://www.icty.org/x/file/outreach/view-from-hague/jitaccomplishments-en.pdf (last accessed 3 April 2011).
[44] This was in the case of *Prosecutor v. RadislavKrstic* trial Chamber I ï Judgment-IT98-33 (2001) para. 560.
[45] Appealôs Chamber-Judgment-IT-98-33 (2004) ICTY (19 April, 200).

The former Bosnian Serb leader MomciloKrajisnik was, in September 2006, found guilty of multiple instances of crimes against humanity. The ICTY judges found that even though there were evidence that crimes committed in Bosnia constituted act of genocide (*actusreus)*, they did not establish that the accused possessed genocide intent or was part of a criminal enterprise that had such an intent (*mensrea).*[46]

5.5.3. International Criminal Tribunal for Rwanda (ICTR)

The ICTR is a court under the United Nations for the prosecution of offences committed in Rwanda during the genocide which occurred there during April 1994. The ICTR was set up on Noveber 8, 1994 by the United Nations Security Council in order to try those responsible for the acts of genocide and other serious violations of the international law carried out in Rwanda, or by Rwanda citizens in neighbouring states, between January 1, and December 31, 1994. In 1995, the ICTR was located in Arusha Tanzania under Resolution 977.[47] The ICTR has jurisdiction over genocide, crimes against humanity and war crimes which are defined as violation of article 3 an Additional Protocol II of the Geneva Conventions.[48]

The ICTR has successfully completed 19 trial and convicted 27 accused persons. On 14 December 2009 two more men were accused and convicted for their crimes. Another 25 persons are still in trial, 21 are awaiting trial in detention, 2 more

[46]MomciloKrjisnik was convicted of crimes against humanity but was acquitted of genocide and complicity in genocide, A Press Release by the ICTY in The Hague, 27 September 2006 JP/MOW?1115e.
[47] United Nations Security Council Resolution 955 S-RES-955 (1994) On November 8, 1994.
[48] Dealing with war crimes committed during internal conflict.

added on 14 December 2009. Ten are still at large.[49] The first trial was the case *Prosecutor v. Jean-Paul Akayesu.*[50]The *Prosecutor v. Jean-Paul Akayesu*established the precedent that rape is a crime of genocide. The trial Chamber held that the rapes of Tutsi women in Taba were accompanied with the intent to kill those women. In this respect, it appears clearly to the Chamber that the acts of rape and sexual violence, as other acts or serious bodily and mental harm committed against Tutsi, reflected the determination to make Tutsi women suffer and to mutilate them even before killing them, the intent being to destroy the Tutsi group while inflicting actual suffering on its members in the process. This judgment sends out a strong message that rape is no longer a trophy of war. This is because from time immemorial, rape has been regarded as spoils of war. In the case of *Prosecutor v. Jean Kambandan,*[51] the accused was found guilty of genocide for his omission to fulfill his duty as Prime Minister of Rwanda to take action to stop on-going massacres which he had become aware of or to protect children and the population from possible pogrom, after he had been personally asked to do so and this omission resulted in massacre. This was the second case to be tried by ICTR.

5.6. International Criminal Court (ICC)

The International Criminal Court was established by the Rome Statue of the International Criminal Court, so called because it was adopted in Rome, Italy on 17th

[49] These figures need revising. They are from the ICTR page which says www.ictr.org.
[50] Case No. 1 ICTR-96-4-T, ICTR Y. Ch. 1, 2 September, 1998.
[51] Case No. ICTR-94-23-S, ICTR.Ch, 4 September, 1998.

July 1998 by the United Nations.[52] The Rome Statute is an international treaty binding only on those States which formally expresses their consent to be bound by its provisions. These States then become ñpartiesò to the Statute. In accordance with its terms, the Statute becomes operative on 1st July 2002, one 60 States had become parties to the Rome Statutes. The State-parties meet in the Assembly of States Parties which has the management oversight and the legislative body of the court.

Following the adoption of the Rome State, The United Nation convened the Preparatory Commission for the International Court. As with the Rome Conference, all States were invited to come and participate in the preparatory commission. Among the achievements of the commission are:

1. Reaching consensus on the Rules of Procedure, Evidence and Elements of Crime.
2. Setting out its structure, jurisdiction and functions.[53]

The international Criminal Court is a permanent tribunal to prosecute individuals for genocide, crimes against humanity, war crimes and the crime of aggression.[54] The official seat of the Court is The Hague, Netherlands but its proceedings may take place anywhere.[55] As at March 2010, one hundred and eleven States are members of the Court[56] and a further thirty eight countries have signed but have not ratified the

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[52] In a treaty called Rome Statute of the International Criminal Court.
[53] ñICC-Establishment of the Courtò available at http://www.icc.int/menus/icc/about+the+court/icc+at+a+gance/establishment+of+that+court.htm (last accessed 12May 2011).
[54] Although it cannot currently exercise jurisdiction over the crime of aggression
[55] Amnesty International, 11 April 2002, The International Criminal Court ï A Historic Development in the Fight for justice.
[56] United Nations Treaty Collections; Rome Statute of the International Criminal Court.

Rome Statute.[57] However a number of States including China, India, Russia and the United States are critical of the court and have not joined.

The ICC can generally exercise jurisdiction[58] only in cases where the accused is a national of a State-party, the alleged crime took place in the territory of a State party or a situation is referred to the court by the United Nations Security Council.[59] The primary obligation to investigate and punish crime is left to individual States but ICC can exercise its jurisdiction only when national courts are reluctant or unable to investigate and prosecute such crimes.[60] Presently the court has opened investigation into five situations namely:

a. Northern Uganda
b. The Democratic Republic of Congo
c. The Central African Republic
d. Dafur (Sudan)
e. The Republic of Kenya

The ICC trial of the Congolese militia Leader Thomas Lubanga began on 26 January 2009. On 24 November 2009 the second trial started against Congolese Militia Germain Katanga and Mathieu Ngudjolo Chui. The need to establish ICC arose from the desire to establish an international tribunal to judge political leaders accused of war crimes by the Paris Peace Conference in 1919. The issue was addressed again at a conference held in Geneva under the League of Nations on

[57] *Ibid.*
[58] See The Rome Statute, art. 5.
[59] *Ibid.*, arts. 12 and 13.
[60] *Ibid.,arts. 17 and 20.*

November 1-16, 1937, but no practical results followed. In 1948 following the Nuremburg and Tokyo tribunals. The United Nations General Assembly recognized the need for a permanent international court to deal with atrocities of the kind committed in the World War II.

At the request of the General Assembly, the International Law Commission drafted two Statutes by the early 1950s but these were shelved as the cold war made the establishment of the International Criminal Court politically unrealistic.[61] World War II and the Chief Prosecutor for the United State Army at the *Einsatgruppen Trial,* one of the twelve military trials held by the US authorities at the Nuremburg, later became a vocal advocate of the establishment of an international rule of law and of an international criminal court.

Also the idea for ICC was further strengthened in 1989 when A.N.R. Robinson, the then Prime Minister of Trinidad and Tobago proposed the creation of a permanent international court to deal with the illegal drug and trade.[62] While work began on a draft statute, the international community established ad hoc tribunal to try war crimes in the former Yugoslavia[63] and Rwanda[64] further highlighting the need for a permanent international criminal court.

Following years of negotiations, the General Assembly convened a conference in Rome in June 1998 with the aim of finalizing a treaty. On 17 July 1998, the Rome Statute of the International Criminal Court was adopted by a vote 120 to 7 with 21

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[61] T. D. Gary, Reasonable Double: The Case against the Proposed International Criminal Court (The Cato Institute, 1998).
[62] *Ibid.*
[63] The International Criminal Tribunal for the Former Yugoslavia established in 1993.
[64] The International Criminal Tribunal for Rwanda established in 1994.

countries abstaining.[65] The international Criminal Court has been playing an indispensable role in the prosecution of the crime of genocide. Since 2002, the ICC can exercise its jurisdiction if national courts are unwilling or unable to investigate or prosecute genocide. It is thus a court of last resort, leaving the primary responsibility to exercise jurisdiction over alleged criminals to individual states. Due to the United States concerns over the ICC, the United States prefers to continue to use specially convened international tribunals for such investigations and potential prosecution.

In April 2007, the Judges of the ICC issued warrants against the former Minister of States for the Interior, Ahmad Harun and militia Janjaweed leader. Ali Kushayb, for crimes against humanity and war crimes.[66] Also, on 04 March 2009, the ICC issued a warrant of arrest for the arrest of Omar al-Bashir, President of Sudan as the ICC pre-trial Chamber I concluded that his position as head of State does not grant him immunity against prosecution before the ICC. The warrant was for war crimes and crime against humanity. It did not include the crime of genocide because the majority of the chamber did not find that the prosecutor provided sufficient evidence to include such a charge.[67]

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[65] The countries that voted against the treaty are: China, Iraq, Israel, Libya, Qatar, the United States and Yemen.

[66] Statement by Mr. Luis Moreno Ocampo, Prosecutor of the International Criminal Court, to the United Nations Security Council pursuant to UNSCR 1953 (2005) International Criminal Court, 5 June 2008.

[67] ICC issues a warrant for Omar al-Bashir, President of Sudan, (ICC-CPI-20090304-PR394), ICC Press Release, 4 March 2009.

CHAPTER SIX: SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

6.1. Summary of Findings

The following are the findings of this study:

1. That the fight against genocide is being marred by discriminatory or preferential prosecution of offending states or persons.
2. That there have been several instances of crime of genocide in history.
3. That the crime of genocide has long gestation period before its actual execution.
4. That the major cause of genocide is the believe in tribal or religious superiority over others.
5. That the basis for determining which acts amount to genocide is not usually consistent.
6. That there is no recognized specialized and centralized genocide tribunal because of the particularization of each tribunal like ICTY, ICTR.
7. That the principle of sovereignty sometimes effectively impedes the effective execution of the crime of genocide.
8. There is no task force for the prevention of genocide.
9. There has not been any act of genocide in Nigeria even though allegations of crime against humanity may be credible and verifiable.
10. Nigeria completely depends on international treaties and case law vis-à-vis issues of genocide.

6.2. Recommendations

States are admonished to be committed and sincere in their various determinations to wipe out or mitigate the frequency of the commission of crime of genocide. It will be absurd and smack of insincerity for some countries to have the privilege of trying others for genocide while they cannot be subjected to such trial where they have acted in a manner compatible with the elements of genocide. A situation where Japan would not be permitted to accuse America for the latter's act of bombing Hiroshima and Nagasaki or to accuse Soviet Union of its violation of the neutrality agreement of 13 April, 1941[1] is an indication of double standard. Therefore, the United Nations is encouraged to ensure that there is level playing ground in the prosecution of the crime of genocide. Every complainant should be entitled to complain against any State or person and such complainant should be motivated to come forward with evidence to back up such allegations.

Furthermore, the United Nations is advised to set up a genocide prevention task force. This task force will be drawn from various States and bound into a military unit. Saddled with the responsibility of stultifying any attempt by anybody or group to commit genocide against any other group. Already US is headed in this direction. On 08 December 2008, the Prevention of Genocide Task Force released its report stating that US government can prevent genocide and mass atrocities in the future.

Also, an International Genocide Court (IGC) should be established by the United Nations. This will help to harmonize the prosecution of the crime of genocide globally. It will also lead to the articulation of a uniformed rule and determination of

[1]Kittichaisaree, *op. cit.,* p. 19.

what amounts to the crime of genocide. Groups should be made to understand that humanity is one and equal since there are no human being with two heads. Therefore, tolerance, forgiveness and compassion should be preached among nations.

Totalitarianism which is a fertile ground of the crime of genocide should be discouraged by continental blocs and pursued with more vigour by the United Nations. This is imperative because the degree to which people are not democratically free increase the likelihood of some kind of domestic genocide. Also, more researches should be sponsored on the stages of genocide by UN. This will enable the UN to determine when genocide is about to be orchestrated and nip it in the bud. This will warrant the creation of an international network for the sharing of information and the co-ordination of prevention action. Funds should be earmarked for the prevention of genocide programme, which will play a proactive role in demonstrating to the world that preventing genocide and mass atrocities are UNôs priorities.

The best way to respond to genocide is to stop genocide. States should abstain from the nonchalant attitude and the observance of rigid principle. The guiding principle should be *saluspopuliestsupremalex* meaning that the safety of the people is the supreme law. Consequently, any bureaucracy, which notoriously insulate individuals from nations of personal responsibility, amplify the propensity of denial and entrench inaction, should be discarded.

Also the United Nations can create safe areas and patrol those refugees from the sky with NATO or US air power that is prepared to retaliate against those who disobey UN Security Councilôs demands on how to entrench harmonious co-existence. The prosecution of the crime of genocide can go a long way to apply the

needed restraint on the perpetrators of the crime of genocide. Many aid workers and diplomats in Sudan suffered panic attack when the Chief Prosecutor of the International Criminal Court sought an arrest warrant against President Omar al-Bashir of Sudan, for committing genocide. Kristof[2] noted that application for the warrant of arrest of Omar al-Bashir of Sudan compelled China to suspend transfer of weapons used to slaughter civilians in Darfur.

6.3. Conclusion

Crime is an act or omission which is rendered punishable by a law. It is also trite that crime is made up of the synchronization of *actusreus* and*mensrea* before it can be deemed to have being committed. The sovereign states have the right to dictate the pace of political events in their respective states without the interference of any other state or organization. However there are circumstances where such sovereignty can be derogated from. One of such is where the sovereign state has entered into a bilateral or multilateral agreement with other states or organization permitting such state or organization to interfere with its independence.

Consequently, crime of genocide which is the deliberate and systematic destruction in whole or in part, of an ethnic, racial, religious or national group can be prosecuted and the offender get convicted where the *actusreus* and*mensrea* of the offence is established. It is therefore, strenuously excruciating to establish *mensrea* of genocide

[2]N. D. Kristof, ñStopping Genocideò available at http://www.inytimes.com/2008/17/opinion/17iht-edkristof./.14574305.html (last accessed 04 March 2012).

Throughout, the various history of genocide assessed in this work, it is also deciphered that malice, over ambitious leaders, desire for revenge and jealousy are the major factors contributing to the commission of the crime of genocide. Besides, it was glaring that the various focal points have always been to prosecute the offenders after commission of the crime of genocide. Thus this is an earnest call for a paradigm shift in which acts of genocide must be arrested before the completion of the genocide is feasible.

The principle of legality and universal jurisdiction have been portrayed as essential in the successful prosecution of the crime of genocide, in international criminal law. Genocide is perceived as being the most barbaric, heinous and abominable of all the inhuman acts man is capable of committing against his fellow man. The reasons for the commission of the crime of genocide are numerous. Among them are:

i. Attempt by a state to purify own society. This was the case in the massacre and deportation of about two million Armenians by the Turkish government 1915.

ii. Using a group considered to be inferior as originator or cause of problems invading a state. It was this utopic idea that formed the crux of Nazi Germanyôs final solution to the Jewish Question during the World War II.

iii. A state trying to overhaul the structure and ideology of a society as it happened in Cambodia between 1975 and 1979.

iv. A state stifling the right of self-determination of a particular group, as in the case of East Timor in the 1990s.

v. Promotion of a specific culture within a state as in the case of Kosovo in 1994.

vi. Attempt by a state to eliminate groups which are perceived as a threat against the existing rules. This was the scenario in Rwanda in 1990s.

Preventing Genocide is an achievable goal; genocide is the inevitable result of ancient hatreds or irrational leaders. It requires planning and is carried out systematically. There are ways to recognize its signs and symptoms and viable options to prevent it at every turn if we are committed and prepared.

A treatment of the Armenian Genocide in Germany throughout the twentieth century was heavily influenced by political considerations, concerns about responsibility and complicity and varying historical and ethical moods. Despite the similarities of factors in all periods discussed in this study, one cannot find strong threads of continuity in the treatment of the genocide with the exception of the fairly continuous pattern of official silence on the issue. The treatment of the genocide appears to be sporadic and discussion-oriented at other times. Nevertheless, the treatment of the Armenian Genocide corresponded to the political reality in Germany at any given time. Even though there was lack of continuity in the treatment of the genocide across the four eras, each period created a particular view of the genocide that influenced the perception and treatment of the genocide during the following epoch. A clear example of that is an increasingly conservative and negative view of

the Armenians and the genocide in the late 1920s, which contributed greatly to Naziôs earlier views and polices towards the Armenians. Whatever the case, genocide can never be a justifiable answer to any problem.[3]

The insurgency of Northern Nigeria is not genocide. This does not mean that the insurgency should be left uncontrolled. The Nigerian military is doing its best. But there is urgent need to quickly stop the insurgency especially in this circumstance that they have started killing even their own wives. Report has it that to avoid leaving their wives behind for unbelievers Boko Haram insurgents were said to have been murdering their spouses asking them to wait in heaven for later reunion.[4] This is indeed crime against humanity that calls for immediate prosecution.

[3] C. De Than, and E, Shorts, *International Criminal Law and Human Rights (*London: Sweet & Maxwell, 2003)

[4]ñEscaping Boko Haram Terrorists Slaughter Wivesò, *Punch Newspaper*, available at www.punchng.com (last accessed 20 March 2015).

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