AN APPRAISAL OF THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE UNDER INTERNATIONAL LAW

BY

Nana Hadiza BAPPA
LL.M/LAW/16654/2010-2011

JULY, 2015.

AN APPRAISAL OF THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE UNDER INTERNATIONAL LAW

BY

Nana Hadiza BAPPA
LL.M/LAW/16654/2010-2011

BEING A THESIS SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF LAWS DEGREE - LL.M

DEPARTMENT OF PUBLIC LAW,
FACULTY OF LAW,
AHMADU BELLO UNIVERSITY, ZARIA

SEPTEMBER, 2015.

DECLARATION

I declare that this work in this Dissertation entitled AN APPRAISAL OF THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE UNDER INTERNATIONAL LAW has being carried out by me in the Department of Public Law. The information derived from the literature has being duly acknowledged in the text and a list of references provided. No part of this Thesis was previously presented for another degree or diploma at this or any other Institution.

Bappa, Nana Hadiza

_____	_____	_____
Name of Student	Signature	Date

CERTIFICATION

This Dissertation entitled: "*An Appraisal of the Prevention and Punishment of the Crime of Genocide under International Law"* by Nana Hadiza BAPPA, meets the regulations governing the award of the Master of Laws Degree of Ahmadu Bello University Zaria, and is approved for its contribution to academic knowledge and literary presentation.

_____ _____

Prof. M. T. Ladan Date
Chairman, Supervisory Committee

_____ _____

Prof. N. M. Jamo Date
Member, Supervisory Committee

_____ _____

Dr. K.M Danladi Date
Head of Department,
Public Law, A.B.U. Zaria

_____ _____

Prof. K. Bala Date
Dean School of Postgraduate Studies,
A.B.U. Zaria.

DEDICATION

I am dedicating this Dissertation to my Loving parents, Alh. Salihu Muhammad Bappa and Hajiya Aisha Salihu Bappa for their unending Love and support.

ACKNOWLEDGEMENTS

In the name of Allah, the most gracious and the most merciful, I am most grateful to Almighty Allah for granting me the life and health to write this thesis from its beginning to its completion. I pray for His continuous guidance and protection to him, I owe my life.

I am, as always, greatly indebted to my dear parents, Dr. Salihu Muh'd Bappa and Haj. Aisha Bappa, for their love, prayers, support and encouragement. They have been the pillar of my success in many ways. Also worth mentioning are my siblings in person of Aliyu, Muhammad Hayatudden, Fatima, Habiba, Aminu and Salamatu Bappa for their love and support especially Aliyu and Hayatu who were never tied of helping me in accessing materials from the net. I pray that almighty Allah grant you your heart desire, amin.

My sincere gratitude goes the chairman, supervisory committee of this research work in person of Professor M.T. Ladan who was an understanding teacher that guided me throughout my research work without getting tired of my numerous mistakes and inadequacies and he is also responsible for making this work a success. I am most thankful for the assistance rendered to me, may Almighty Allah grant him paradise.

My sincere gratitude also goes to the member supervisory committee in person of Professor N.M. Jamo who is also a pillar in the success of this research work I am most thank full for the assistance rendered to me May Almighty Allah grant him paradise amin.

Also worth mentioning are my lecturers in the Faculty of Law, Ahamadu Bello University, Zaria for generously assisting me in the course of my research work, they are: Professor Y.Y Bambale, Dr. A.M. Madaki, Dr.I.F. Akande, F.A. Kera E.sq, Professor. J.A Audi, Ishaq Abubakar E.sq, M.T Jibril E.sq, and also staffs of the Faculty of Law in persons of Mr. Isaac

Ameh E.sq, Mrs. Rashidat Kolowale, and Mrs. Basira Raji , I am very grateful to for your assistance rendered as mere words only cannot convey my profound gratitude.

My profound gratitude to also goes to my employer in person of A.H Bello E.sq who was also a backbone to the success of this research work, also worth mentioning are the entire staff of A.H. Bello and Associates in persons of Mallam Abdullahi, Musa M. Lawal E.s.q, Suleiman Sarki Sambo E.sq, Muslimat Yusuf and Mustapa Adamu. I am very grateful for your love and support.

My humble and deepest gratitude also goes to my friends and colliques who supported me throughout this research work they are Hauwa Mashina , Ibrahim Kalayi, Binta Musa, Zaharaldeen Sani, Mallam Abdullahi Bello, Tanko Ishaya and Abdulkadir Abdurrahaman. I am indebted to you.

TABLE OF ABBREVIATIONS **PAGES**

1.CPPCG Convention on the Prevention and Punishment on the Crime of Genocide - 80

2. ECHR European Court of Human Rights- - - - - - -87

3. ICC International Criminal Court- - - - - - - -79

4. ICJ International Court of Justice- - - - - - - -87

5. ICTR International Criminal Tribunal for Rwanda- - - - - -85

6. ICTY International Criminal Tribunal for Former Yugoslavia - - - -83

7. JSC Justice of the Supreme Court- - - - - - - -51

8. LFN Laws of the Federation of Nigeria- - - - - - -39

9. MDR Movement Democratique Republican- - - - - - -27

10. R2P Responsibility to Protect- - - - - - - -25

11. PCICC Preparatory Committee on the establishment of an International Criminal Court 80

12. UN United Nations- - - - - - - - - -24

13. USSR Union of Soviet Socialist Republics- - - - - - -79

TABLE OF STATUTES **PAGES**

1. The United Nations Convention on the Prevention and Punishment on the Crime of Genocide 1948.- - - - - - - - - -1
2. The Rome Statute of the International Criminal Court 1998.- - - -103
3. Statute for the International Criminal Tribunal for Rwanda, UN Doc/S/RCS/955/1994:33TLM1598(1994).- - - - - - -53
4. Statute for the International Criminal Tribunal for Former Yugoslavia, 1993.- -53
5. The 1945 Charter of the United Nations- - - - - - -31
6. The United Nations Vienna Convention on the Law of Treaties,1969- - -31
7. Criminal Code Act, Cap C 38, LFN, 2004- - - - - - -39

TABLE OF CASES **PAGES**

Adams v. DPP of the Federation(1966) NSCC (Vol4) p.65- - - - -47

A.G Israel v. Eichmann,(1968) 36 ILR5 - - - - - - -64

Bosnia and Herzegonovia v. Serbia Montenegro- - - - - -64

ECHR Jorgic v. Germany, Judgment,(Application No. 74613/01)- - - -66

Prosecutor v. Bagaragaza (Case No. ICTR-2005-86-R11 bis,)- - - -65,87

Prosecutor v. Blagojevic et al. (Case No. IT-02-60-A)- - - - -65

Prosecutor v. Brdanin (Case No.IT -99-36-T)- - - - - -65

Prosecutor v. Jean Kambanda(Case No. ICTR 97-23-S)- - - - -93

Prosecutor v. Jean Paul Akayesu (1998), Case No. 96/4/T- - - -94

Prosecutor v. Kupreskic and others(IT-95-16-T)- - - - -87

Prosecutor v. Radislav Krsrtic (2001),Case No.IT-98-33-A- - - - -65,87

ABSTRACT

This thesis aimed at studying the roles played by the international community in the prevention and punishment of the crime of genocide under international law. In other words the research work deals with the roles of the international criminal tribunal/ courts in the prevention and punishment of the crime of genocide under international law. The justification of this research work arose out of the need to confront Genocidal crimes of recent times and also the ones committed in the past for deterrence purposes through investigation, prosecution and punishing of those responsible for such crimes. However in the course of this research a major finding (among others) is that the provisions of the Convention are far from being adequate to cure the challenges that arose in international practice posed to the Convention, in the course of the implementation of the convention coupled with fact that there is no clear, direct and effective judicial response to the prevention and punishment of the crime of Genocide, because there is no nexus between the Convention and the State parties in combating the crime of Genocide. This finding clearly constituted a major problem of this research work. In this regard therefore the objective is to identify the reasons accounting for the poor implementation of the Genocide Convention in practice vis a vis the adequacy or otherwise of the provisions of the convention in international law. Thus, in view of these events this research is concluded by recommending that in order to put an end to impunity for the perpetrators of these crimes and also in an attempt to prevent the crime of genocide there should be in place an effective legal mechanism to enforce implementation at all levels (i.e local and international). The sources of information relied upon for this research are relevant text materials, international instruments, Journals (both local and International), judicial authorities and internet materials.

TABLE OF CONTENTS

TITLE PAGE-- - - - - - - - - - -i

DECLARATION- - - - - - - - - - -ii

CERTIFICATION- - - - - - - - - - -iii

DEDICATION- - - - - - - - - - -iv

ACKNOWLEDGEMENT- - - - - - - - - - -vi

TABLE OF ABBREVIATIONS - - - - - - - - - -vii

TABLE OF CASES- - - - - - - - - - -viii

TABLE OF STATUTES - - - - - - - - - - -ix

ABSTRACT- - - - - - - - - - - -x

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of the Study- - - - - - - - - - -1

1.2 Statement of the Research Problem- - - - - - - - -4

1.3 Aim and Objectives of the Research- - - - - - - - -4

1.4 Scope of the Research- - - - - - - - - - -5

1.5 Justification- - - - - - - - - - -6

1.6 Research Methodology- - - - - - - - - -6

1.7 Literature Review- - - - - - - - - -7

1.8 Organizational Layout- - - - - - - - - -36

CHAPTER TWO

CONCEPTUAL CLARIFICATION OF KEY TERMS

2.1 Introduction- - - - - - - - - - -38

2.2 Concept of Crime - - - - - - - - -38

2.3 Meaning of International Crime- - - - - - - - -41

2.4 Concepts of Prevention and Punishment-- - - - - - -44

2.4.1 Concept of Prevention- - - - - - - - - -44

2.4.2 Concept of Punishment-- - - - - - - - -47

2.5 Nature and Scope of the Concept of Genocide- - - - - - -51

2.6 The Constitutive element of the Crime of Genocide- - - - - -54

2.6.1Relevant Protected Groups- - - - - - - - -55

2.6.2 Destruction of a Group in Whole or in part- - - - - - -56

2.6.3 Genocidal Intent- - - - - - - - - -60

2.7 The Rationale and Scope of the Genocide Convention- - - - - -62

CHAPTER THREE

HISTORICAL DEVELOPMENT OF THE CRIME OF GENOCIDE UNDER INTERNATIONAL LAW

3.1 Introduction- - - - - - - - - - -68

3.2 Development of the Concept of Genocide Pre- World War II- - - - -69

3.3 Genocidal incidences in the Ottoman Empire/Turkey- - - - - -70

3.4 Genocide in the Soviet Union- - - - - - - - - -74

3.5 Rise of Adolf Hitler and the Enactment of the Genocide Convention- - - -75

3.6 The Genocidal Wars Before 1997 - - - - - - - - -82

3.6.1 The Genocidal War of Former Yugoslavia Between 1991-1995- - - -82

3.6.2 The Genocidal War in Rwanda- - - - - - - - -83

3.7.0 Development of Genocide from 1997 to Date- - - - - - -86

3.7.1 First Conviction for Genocide- - - - - - - - -86

3.7.2 Genocide in Darfur Sudan- - - - - - - - -88

CHAPTER FOUR
THE ROLE OF INTERNATIONAL CRIMINAL TRIBUNALS/COURT IN THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

4.1 Introduction- - - - - - - - - - -91

4.2 The Role of the International Criminal Tribunals in Combating Genocide- -91

4.2.1 The International Criminal Tribunals for Rwanda (ICTR) and

the International Criminal Tribunal For former Yugoslavia (ICTY)- - - -92

4.2.2 U.N Special Court for Sierra Leone- - - - - - - -97

4.2.3 A Review of Jean Akayesu's Trial - - - - - - - -98

4.2.4 A Review of Jean Kambanda's Trial- - - - - - - -101

4.3 The Role of the Rome Statute on the Establishment of the International

Criminal Court in Combating the Crime of Genocide- - - - - -103

4.3.1 A Review of the Rome Statute- - - - - - - - -103

4.3.2 The Role of the ICC in Preventing Genocide- - - - - - -107

4.4. Present Situation of the Court- - - - - - - - -110

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Summary- - - - - - - - - - - -118

5.2 Findings- - - - - - - - - - - -121

5.3 Recommendations- - - - - - - - - -124

Bibliography- - - - - - - - - - - -128

CHAPTER ONE

1.1 Background of the Study

Genocide as an experience of human behavior throughout history is old, but our concern and understanding about it are relatively new. Humans have probably been committing genocide since the beginning of our species.[1] Killing in mass and committing crimes against other human groups is not new to human history. Human groups have considered, and unfortunately still consider genocide as a viable political course of action, contemplating the intentional destruction of other groups national, ethnic, racial or religious, in whole or in part, in such a way as defined by the UN Convention on the Prevention and Punishment of the Crime of Genocide.[2]

However, it is only in recent years that we have come to acknowledge genocide more systematically, trying to articulate understandings that were simply unavailable to our ancestors. There was a long delay in recognizing genocide as a crime despite its recurrence throughout human history. As a human race, we did not even have a name to describe genocidal violence before the World War II when Raphael Lemkin coined the term "genocide.[3]" Until then, it was a crime without a name in the words of Prime Minister Winston Churchill. The systematic mass murder of millions of people in the Holocaust, however, forced us to recognize that humans were killing other humans in systematic ways, with the intent to destroy groups in whole or in part, with terrifying results[4].

---

1 Kiernan, B (2007).Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur, New Haven: Yale University Press.

2 Convention on the Prevention and Punishment of the Crime of Genocide, (1951). Article II defines acts of genocide: 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 group; forcibly transferring children of the group to another group

3 Raphael Lemkin,(1944) Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress, (Washington: Carnegie Endowment for International Peace, Division of International Law,)

4 In a Radio Broadcast Delivered by Winston Churchill on August 24, 1941, After Germany invaded the Soviet Union, Bartoli A, Ogata T, and Stanton G.(2009), Emerging paradigms in Genocide Prevention, Genocide Prevention, Politorbis, No. 47, p.15 also available at www.eda.admin ch/politorbis, retrieved on 7/22/2007

The UN Genocide Convention of 1948 emerged as the legal response, stipulating a detailed and quite technical definition as a crime against the law of nations[5] which then engendered debates among scholars for decades to follow[6]. Yet wilful neglect prevailed in spite of numerous genocides in the later half of the 20th century, the world's leaders were mindful of what was unfolding and yet stood by and negligently let the crimes transpire. This indifference was partly justified by political calculations that made sense to the perpetrators and was tolerated by a desire to avoid intervention in violent strife by leaders of other countries who were desensitized by ideology to the Violence inflicted on the mass of victims and their communities. Genocide and mass atrocities also threaten the core of state interest. The reason of this research is to create an awareness of what happened in the past centuries and also what is obtainable presently. Some countries have witnessed violations of human rights which was premised on the fact that the perpetrators of such massive attacks were left unpunished. Also it is a sacred duty to be shared by all States to protect others from wanton destruction but this is impracticable as States shy away from their prerogatives to these violations.

The perpetrators of genocide feed on and fuel other threats in weak and corrupt states, with dangerous spillover effects that know no boundaries. Engaging in an early prevention of these crimes will be the smart move to do, states inevitably bear greater costs in feeding millions of refugees and trying to manage long lasting regional crises. In addition, States' credibility and leadership are compromised when they fail to work with international partners to prevent genocide and mass atrocities. Preventing genocide is an achievable goal, genocide is not the inevitable result of "ancient hatreds" or irrational lead, it requires planning and is carried out

---

5 Schabas ,W. (2000) *Genocide in International Law: The Crimes of Crimes*, Cambridge, U.K: Cambridge University Press, , 14, Bartoli A, Ogata T, and Stanton G.(2009), Emerging paradigms in Genocide Prevention, Genocide Prevention, Politorbis, No. 47, p.15,also available at www.eda.admin ch/politorbis retrieved on 7/22/12

6 For Definitional Conundrum and the Illustration on the Debates and Inclusivist or Exclusivist Camps, see for example Jones, A.(2006) *Genocide: A Comprehensive Introduction*, London: Routledge. Bartoli A, Ogata T, and Stanton G.(2009), Emerging Paradigms in Genocide Prevention, Genocide Prevention, Politorbis, No. 47, p.15 also available at www.eda.admin ch/politorbis retrieved on 7/22/12

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. Preventing genocide is a goal that can be achieved with the right organizational structures, strategies, and partnerships. The Convention confirms that genocide, whether committed in time of peace or war, is a crime under international law which parties to the Convention undertake to prevent and to punish[7].

The primary responsibility to prevent and stop genocide lies with the State in which this crime takes place. Genocide often occurs in societies in which different national, racial, ethnic or religious groups become locked in identity related conflicts. However, it is not the differences in identity *per se* that generate conflict, but rather the gross inequalities associated with those differences in terms of access to power and resources, social services, development opportunities and the enjoyment of fundamental rights and freedoms. It is often the targeted group's reactions to these inequalities, and counter-reactions by the dominant group, that generate conflict that can escalate to genocide. Given that no country is perfectly homogeneous, genocide is truly a global challenge. Genocide may occur in times of peace, where groups are intentionally subjected to long term policies and practices affecting their ability to exist as an identity group, as well as in the context of both intra-State and inter-State conflicts. Decades after the World War II, several Tribunals were established to deal with various state sponsored crimes, part of these tribunals were the International Criminal Tribunal for Rwanda, International Criminal Tribunal for Former Yugoslavia which were established in the early nineties. However due to the inadequacies embedded in these International Criminal Tribunals the International Criminal Court was later created to deal with the inadequacies in these courts.,

[7] Article 1, of the Genocide Convention.

1.2 Statement of the Research Problem

Genocide forms part of the international crimes which is a crime that results to serious violations of Human Rights. Various Groups of different societies because of how vulnerable they need to be protected, it is now six decades since the Convention was enacted and all effort to prevent and halt systematic campaigns, massacres, forced displacements and mass rapes have proved abortive. All these problems are premised on the fact that we are still lacking the necessary institutions, policies and strategies in the prevention and punishment of the crime of Genocide.

After the World War II, it marked the turning point when finally the United Nations enacted the Convention on the Prevention and Punishment of Genocide of 1948.The provision of the Convention are far from being adequate to cure the challenges posed to the Convention, clearly there are inadequacies and weakness apparent in the Convention which could be seen as part of the problems faced by this research work as could be seen in ethnic crises as a result of which tribes annihilate other tribes as in the case of the Serbians and the Bosnian Muslims in Yugoslavia.

There is no clear, direct and effective judicial response to the prevention and punishment of the crime of Genocide. There is no nexus between the Convention and the State parties in combating the crime of Genocide. These problems have brought to the fore the imperativeness of an indepth research of this nature for Constructive and legal reforms.

1.3 Aim and Objectives of the Research

The aim of this research work is to critically analyze and appraise the contributions of the international community in the prevention and punishment of the crime of genocide. This research work aims at realizing the following objectives;

a. To critically examine the nature and scope of the concept of Genocide under International Law.
b. Establishing a significant Relationship between the crime of genocide and the works of International Criminal Tribunals in the prevention and punishment of the crime of Genocide.
c. To proffer viable and relevant suggestions on how best the problems, challenges and inadequacies of the 1948 Genocide Convention could be resolved.

1.4 Scope of the Research

The scope of this research is limited to an examination of the prevention and punishment of the crime of genocide under International Law. This work is centered on some genocidal experiences that have occurred in the past and also those that are ongoing presently. The research work will also cover some of the Statutes relating to Genocide e.g Statutes of the International Criminal Tribunal for former Yugoslavia, Rwanda which were time bound. Similarly, the research work will extend to the Rome Statute as it relates to the Crime of Genocide. Most importantly this research work will also revolve around the provisions of the Genocide Convention of 1948 which is the primary instrument regulating the crime of Genocide.

1.5 Justification

There are Justifications for conducting a research work of this nature with a view to making an analysis of the legal problems relating to combating impunity particularly on the prevention and punishment of the crime of genocide which is prevalent in our societies today. The target group of this research work are the vulnerable groups in a given society. They are subject of an attack in an arm conflict situation or non conflict situation based on their race, religion, ethnicity,

gender. The duty to prevent and halt genocide lies first and foremost with the State, but the individual subjects of the State also have a role that cannot be blocked by the invocation of sovereignty. Individuals also carry the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement. So also individuals have the responsibility to encourage and assist States in fulfilling this responsibility.

This research work can be justified towards its aim in the prevention of mass atrocities and Genocide, as well, it demands also the efforts of the subjects of other states in particular to protect target groups and also promote peace building, not just relying on state efforts in the areas of human rights, humanitarian affairs, peacekeeping and political affairs. This research work will embark on a voyage in contributing how best it can to see that it recommends and proffer solutions to help such group of persons aimed at promoting the prevention and punishment of the crime of Genocide. This research can be justified for its uniqueness and its tremendous contribution to legal institutions as stated below:

That is the research work will therefore attempt to breach the gap in the existing literatures in the area of Genocide, which will dwell on the origin of the crime of genocide, taking us back to Pre- World War I by conventionally tracing the history of ancient genocide through dwelling on the historical and political turmoil, underwent by genocidal victims up till the period when a convention to regulate the crime was enacted and also dwell on the possibility of how well this instrument has contributed in the prevention and punishment of the crime of genocide.

1.6 Research Methodology

Doctrinal method is adopted whereby an analysis of relevant laws, review of articles, journals, and books relating to the subject matter of this research work were consulted. Visits

shall be made to Law libraries, and some public libraries for collection of relevant laws to be analyzed. Websites of existing criminal Tribunals namely Former Yugoslavia, and Rwanda shall also be consulted, so also others like International Criminal Court and Sierra-leone Court among others.

Accordingly, all books, journals, law reports, internet references and materials, consulted were sufficiently acknowledged. Finally the bibliography of all references, writers, scholars and materials consulted was provided for at the end of the research work.

1.7 Literature Review

There are increasing numbers of materials and analysis in the area of the crime of genocide, yet as far as these materials exist more are still emerging on the same subject matter. This research work wholly depends on textbooks, internet materials journal articles, which the researcher has reviewed below. Elihu and Gregory [8]submit that dictionaries describe 'ethnic cleansing' as genocide. They made a comparison of the accepted United Nations definition of genocide with a suggested definition for 'ethnic cleansing' they pointed out the differences. Genocide is defined as Any of following acts committed with intent to destroy a national racial, or religious group, as such;

Killing members of group, Causing serious bodily or mental harm to the group, Deliberately inflicting on the group conditions calculated to bring its physical destruction in whole or in part, Imposing measures to prevent births within the group Forcibly transferring children of the group to another group.[9]

[8] Richter E.D, and Stanton G.H,(2008), Comment on 'Ethnic Cleansing' and 'Genocide', The European Journal of Public Health, Oxford University Press, 18: 210-211.http://www.Genocidewatch.org/images/Arties.29/07/12

[9] ibid

While 'ethnic cleansing' is defined as [10]*Murder, Extrajudicial killing, sexual assault, Torture, confinement of civilians to ghetto areas, initiation of attacks or threats or threats of attacks on civilians and civilian* areas *deliberately*.[11]

They argued that proof of genocide does not depend on the number of victims but on evidence of "the intent to destroy, in whole or in part" by the perpetrators. It is hard to see how the genocidal outcomes of 'ethnic cleansing' can occur without similar perpetrator intent. They equally submit that in the International Court of Justice's ruling there was no proof of genocidal intent by the Serbian leadership was a result of its failure to obtain and examine evidence that might have pointed to inference of intent.[12]

Accordingly, they analyzed Tabeau and Bijak's view in estimating 'war related deaths, described their estimates as conservative based on minimum number of unique records, incomplete, and interim and they further submit that all war related deaths, including disturbances in the reproduction process should be considered as components of war-related distortions of population development. They argued that it is not clear whether their estimates include deaths from morbidity and injuries not directly from war as well as premature mortality among Bosnian émigrés.

They questioned earlier estimates as suggesting a "political motivation" and have reservations concerning their reliability. They equally agreed that minimization of numbers of victims is one of the most common tactics of genocide denial.[13]

They pointed out many atrocities directed against ethnic Serbs in the Krajina region of Croatia and ethnic Albanians in Kosovo and that Bosnian Muslims suffered the greatest losses in

[10] Suggested definition of 'Ethnic Cleansing': (1992): Expert Advisory Committee to Security Council
[11] ibid
[12] Richter E.D, and Stanton G.H, Op cit
[13] ibid

absolute numbers. The writers argued that acts of genocide were restricted to Srebrenica and ignored the evidence of Serbian intentions going back to 1991–1992. In 1991, Serbian forces were compiling lists of Bosnian and Croatian intellectuals, and began rounding up, beating, and executing non-Serbs, and Radovan Karadzic by annihilating the Bosnian Muslims, warning that Sarajevo will vanish and there will be 500 000 dead, Muslims will disappear from Bosnia and their leadership be killed in hours. The fact that acts of genocide occurred during a civil war does not diminish their genocidal character. [14]

Regarding Kosovo, David Scheffer used the term indicators and precursors of genocide, when deaths numbered under 10 000, precisely to carry out the purpose of the Genocide Convention to prevent genocide, rather than wait until it was too late, they equally submit that the outcome does not absolve Serbian perpetrators from responsibility for their genocidal choices, but does state the case for earlier precautionary non-violent interventions before the tipping point is reached, i.e., when the killing starts such as prompt indictments for incitement to genocide.[15]

The writers concluded that the term 'ethnic cleansing' is an euphemism for genocide, its official use creates a climate favouring inaction to stop genocide and therefore it should be expunged from use.

Madeleine and William [16]described victims of genocide as some seen, others remain invisible to them. Some have names and faces. These are the victims of genocide and mass atrocities, their numbers too staggering to count. They pointed out that it has been 20 years since the United States became a party to the treaty. The writers assert that despite six decades of

[14] Richter E.D, and Stanton G.H, Op cit
[15] ibid
[16] Albright, M. K. and Cohen W.S, Never Again, for Real, op-ed Contributors | transitions, December 21, 2008. http://www.genocidewatch.org/images/Arties.29/07/12

efforts to prevent and halt systematic campaigns of massacres, forced displacements and mass rapes, such atrocities persist. They also lament on why are we still lacking the necessary institutions, policies and strategies in the Prevention and Punishment of the Crime of Genocide.

They argued that it is not because the public doesn't care. There has been a surge in interest in America, galvanized by the crisis in Darfur and driven in large part by students and faith based organizations. They state that it is not because their leaders do not care. They equally submit that over the years, many champions in Congress and successive administrations have demanded more action to stop genocide.

They tried to compare the Clinton administration, which experienced firsthand, the challenges of responding to such crises, sometimes because the political will was lacking, but more often because the American government simply does not have an established, coherent policy for preventing and responding to mass atrocities.

They argued that, a lack of dedicated resources for prevention and the absence of bureaucratic mechanisms allowing rapid analysis and response have impeded timely action. They suggested that a National blueprint to prevent genocide and mass atrocities is needed. They outlined three recommendations.

Firstly, they tried to explain how genocide fuels instability usually in weak, undemocratic, corrupt states. It is in this states that we find terrorist recruitment and training, human trafficking and civil strife.

Secondly, genocide and mass atrocities have long lasting consequences that go far beyond the states in which they occur. They explained the effect of refugees flow into bordering

countries and then across the globe. The need for humanitarian aid can quickly exceed the capacities and resources of a generous world. The international community, including the United States, is called on to absorb displaced people and to undertake relief efforts.

Finally, they suggested that America's standing in the world is eroded as it is perceived as a bystander to genocide. Preventing mass killings may eventually require military intervention, but this is always at the end of the list of intervention options, not the beginning. Also to recognize the early warning signs of genocide and move quickly to marshal international cooperation, to bring diplomatic and economic pressure to bear against those who violate the norms of civilized behavior.

They concluded by saying that preventing genocide and mass atrocities is not an idealistic addition to core foreign policy agenda. It is a moral and strategic imperative.[17]

John Heilprin's[18] well reasoned argument on the responsibility of nations to fellow nations that find themselves sliding towards anarchy usually borne out of a government's inadequacy or direct collusion with a particular group to cause particular distress, prejudicial harm or embark upon genocidal killings against a part of its people needs to stop.[19]

His aptly titled essay draws on the disastrous handling by the UN of the Rwandan Genocide that was allowed to degenerate into a bloodbath against a particular ethnic group (The Tutsis) and their sympathizers who expressed chagrin and disgust were also slaughtered in one of the worst post World War II human disasters ever to plague the African Continent.[20]

---

[17] Albright, M.K and Cohen W.S, op cit
[18] Heilprin, J. Un Debate on Genocide Asks : Protect or Intervene? Derived from http://www. Genocide watch.org/images/ Articles 29/7/12
[19] ibid
[20] ibid

As rightly proposed by the former UN Secretary General Kofi Anan , the UN member states have a duty to protect, or intervene in another country's rising state of apathy or brutality when it shows itself averse to protecting and safe guarding any particular group from the harmful practices of another group which is intent upon killing fellow humans due to a preconceived racial, economic or cultural slight and given a partial or full rein by the central government to carry out such dastardly acts that contravene the UN's rights charter for every human being on this planet.[21]

He submits that this sacred duty to protect others from wanton destruction is shared by all member nations, but who shy away from actually implementing a clear prerogative that will lessen, protect and shield the helpless from the harm wreaked by its evil machinations and bloodletting the other side clearly intends to visit upon them. Faced with the eternal foot dragging that is a permanent feature of International politics, thousands and hundreds of thousands could face rapid extinction from a rabid mob of racially inflamed extremists who have no qualms in dispatching innocents to gruesome ends better imagined than actually seen or even given a chance to be carried out.

He asserts that after the unfortunate slaughter of over five hundred thousand ethnic Tutsis and moderate Hutus in Rwanda two decades ago the UN seems to be rising to its responsibility by actually passing abiding resolutions which promises to ensure that such human tragedy will never occur, it is internal disagreements between the big five (US,UK, France, China and Russia) who unfortunately possess the power to set things in motion that seems to stall real progress to forestall and ensure such never occurs.

Conclusively, he suggest that the United Nations owes it to the memory of the victims of the Rwandan Genocide to never allow such to occur, by refusing to be mired with the incessant

[21] ibid

squabbling the five permanent nations are always locked in, by setting aside funds, a structure and offices that will deal with such problems whenever they arise by empowering nations within the context of the resolutions to protect and intervene under the direct supervision of the United Nations so that nations partaking in such actions don't get carried away and abuse their mandate bestowed upon them by the world.[22]

In the same vein, Akper[23]opined that the world witnessed some of the most gruesome attacks on humanity by totalitarian and authoritarian regimes leading to murder of innocent peoples to such alarming propositions that the international community could not ignore. Global incidences of crime lead to concerted efforts under ages of the United Nations to make Genocide an international crime and bring its perpetrators to justice.[24]

He stated that the United Nations General Assembly adopted a resolution, which inter alia declared genocide as a crime under International law, invited member states to enact necessary legislation for its prevention and punishment and requested the Economic and Social Council to undertake necessary studies with a view to drawing up a draft convention for the crime of genocide. Consequently the Genocide Convention on the prevention and punishment of the crime of Genocide was promulgated to end impunity around the globe as evidenced. The Convention provided the impetus for setting up the various adhoc Military Tribunals to hold accountable those who have carried out crimes, which could be described as war crimes, crimes against humanity and genocide after the World War II.

He states that the use of the term genocide to refer to mass killing or murder with intent to destroy a defined group of people is relatively recent. Although, mass killing or murders took

[22] ibid
[23] Akper, P.T. (2005),The Crime of Genocide under the International Criminal Court, In: An Introduction to the Rome Statute and the International Criminal Court, Nigerian Institute of Advanced Legal Studies Lagos., 66-90
[24]ibid

place in the past, the world choose to describe these atrocities with such words as massacre mass, murder, put to the sword barbarism or inhumanity rather than define them. Consequently attempts to develop humanitarian law is directed at developing jurisprudence as it relates to war crimes against humanity.

Genocide is defined by Article 6 of the Rome statute "as any of the following acts committed with intent to destroy in whole or in part a national, ethnic, racial or religious group":

a- Killing members of the group

b- Causing serious bodily or mental harm to members of the group

c- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part

d- Imposing measures intended to prevent births within the group

e- Forcibly transferring children of the group to another group[25]

This definition is a wholesome adaptation of the definition contained in Article II of the 1948 Convention of the Prevention and Punishment on the Crime of Genocide. He argued that many of the words and phrases used to describe genocide in the Rome Statute have not been judicially defined by the ICC, recourse to interpretation given by the various ad hoc Tribunals to similar provision of the Genocide Convention can provide valuable guide to the ingredients of the crime.

The general definition is any intentional killing (murder) of unarmed and helpless people by the government .This definition is meant to cover instances of mass murder of people for reasons other than that of group membership, such as mass murder of prisoners of war, political critics and violators of draconian rules; killings or furtherance of the process of ideological

[25] Article 6 of the Rome Statute of the ICC

purification; In order to fulfill a government death quota(as in the Soviet Union under Stalin in the 1930s) etc. None of such murders as already noted are genocide according to the legal and common meaning. He argued that the problem with the generalized meaning of genocide is that to fill one void it creates another.[26]

Jurgen and Domink [27] assert that Italian government in order to right its wrongs made a visit to Libya at the end of August 2008. Italian Prime Minister Silvio Berlusconi promised Libya's financial investments of 3.4 Billion over the next 25 years as compensation for Italian atrocities committed during occupation and war in Libya between 1911 and 1942. In a document handed to Libyan leader Muammar al-Gaddafi, Italy formally apologized for colonial injustices, bringing to an end a dispute from which Italian –Libyan relations had suffered for more than four decades.[28]

They were of the view that Italy is quite an unlikely candidate for this kind of apology, since Italian colonialism had been a rather short- lived affair and for that of colonialism generally. They also pointed out that the Italian example is also the last in the series of apologies that touched upon the issues of colonial mass violence and genocide, although without *expresis verbis* accepting this claim. This seems to be the trend so far, where governments are forced to accept colonial guilt and apologies, they try to circumvent the issue of genocide.

The writers argued that the question of colonial genocide is particularly disturbing since it calls into the question the Europeanization of the globe as a modernizing project which

[26] Akper, P.T, Op cit
[27] Zimmerer, J. and Schaller, D.J, Settlers, (2008),Imperialism, Genocide. Introduction: Apologies and the Need to Right Historical Wrongs, Journal of Genocide Research, Routledge Taylor and Francis Group, December, p. 475-77
[28] ibid

undermines the moral justification of the West as such. They argued further that recognition of colonial genocide undermines the image of the past on which national identity is built.[29]

They went on further to criticize the apologies made by Italy as opposed to the one made by Germany as the only apology sofar for colonial genocide coming from Germany as it relates to the attempted murder of the Herero people between 1904 and 1908 in German Southwest Africa(Namibia). It was as a result of these admissions that fuelled the Herero's demand for reparations which lead to questions as to why Germany admitted one genocide, the Holocaust and paid reparations and then finally admitted to a second one yet refused reparation, Obviously, continuing racism was the answer. The matter of reparation is still unsolved.[30]

Conclusively they opined that historical reconstruction and analysis is the answer and only after one knows exactly what has happened will one be able to assess and debate forms of acknowledgement, commemoration and righting the historical wrongs.[31]

Tracy [32] focuses on yet a poorly recognized site of settler colony against indigenous people. Rather than engaging in what she argues is ultimately a fruitless peoples diversionary debate over whether the killings, massacres, disappearances and structural elimination of West Papuans amount, conceptually, to genocide, she focuses on the kinds of discursive and epistemic violence that provide the backbone and camouflage for genocidal practices. She does not see reason why people remain so reluctant to detect the crime of genocide and what it is that popularly divert their attention.[33]

She submits that in the modern era when a body of international human rights law maintains some, if largely ineffectual, global scrutiny, it is not only the acquiescent consent of

[29] ibid
[30] ibid
[31] ibid
[32] Banivanua Mar, T. A (2008)Thousand mind of Cannibal Lands; Imagining Away Genocide in the Recolonisation of West Paupa, Journal of Genocide Research, Routledge Taylor and Francis Group, p.583-603.
[33] ibid

settlers on the scene that needs manufacturing for structural genocide and genocidal events to occur.

She also argues that bringing debates about genocide back from the brink of over analysis. As has been well advanced to date dimensions of genocide crimes and a concept that is severed from the blunt physicality of determined and sustained attempts at mass extermination. She argues further it is temporized genocide, one which therefore opens crucial space in debates for re-engaging precisely the kinds of colonial discourses that enable, excuse and even naturalize genocide in the first place.[34]

She points out one of the striking benefits of interrogating settler-colonial, and indeed colonial formations of genocide, as Patrick Wolfe put it, settler-colonialism is an indicator of the kinds of social, political, economic and ideological conditions that enable and perpetuate genocidal processes. He is of course not alone in arguing that colonialism shares an intimate, genealogical, structural, and social, affinity with genocide, but his analysis of the logic of elimination is an important reminder that genocide is produced by a far-reaching structural context. It is these contextual mechanisms that she will attempt to unpick. [35]

She disagrees with this formula, as she emphasized the ways in which, in the cases of colonial genocides, deals with cold killing that is, with either a cultivated state blindness towards the massacres and atrocities of private individuals and corporations, or the structural policy-driven, day-by-day genocide of settler-state replacement of indigenous populations.

She submits that as definitions of genocide multiply, genocide also increasingly resemble an amorphous and malleable concept, occasionally removed from the blunt physical attempts to eliminate the physical, political or cultural existence of a group.

[34] ibid
[35] ibid

She went further to state that genocide after all is a crime defined for the purposes of prevention as well as punishment or justice and when it comes to prevention it is surely preferable to err if at all, on the side of over-diagnosis. Moreover, a characteristic of colonialism, and settler colonialism in particular, is that genocide is often a means rather than an end. She further argues that colonial genocides are frequently passive in their aggression and state actions of neglect, omission, silence and inaction accumulate to knowingly inflict destruction on indigenous peoples. Analyses of genocide that centre on the impact on victims not only enable the detection of inferred or passive intent necessary in the legal concept.[36]

She went further to explain how the 19th century Europe found ways to exploit the Islands of the Pacific by representing them, British, French, Dutch, German and American accounts peopled the black Island of West Pacific from Fiji to West Paupa (branded "Melanesia" in the 1860s) with ferocious cannibals. In the past, the idea of cannibalism and violence from which it distracted attention were so mutually productive. Not only did the promise of its existence compel explorers and missionaries ever unward and inward beyond the frontiers of conquered and civilized territory. In addition, the cry of cannibalism also provided the moral authority for this expansion and for whatever violence accompanied it. During the 19th Century, the violence of punitive raids from Queensland to Island of the Torres Strait and the Paupan coast. The atrocities of some of the Queensland's most violent raids into the Islands of the West Pacific and the suppression of the upsprings such as those in the interior of Fiji and New Caledonia in the 1870s were carried out with a ferocity matched only by excessive levels of ritualistic depravity to which the targets of violence were rumored to sink. In this context genocide readily becomes a passive and mysterious extinction, edited of the conditions producing it. It led a mimetic culture of terror in this land of cannibals and such violence

[36] ibid

targeting women, unborn babies, community leaders and physical means of survival is all too familiar in the annals of genocide.[37]

However, she submits that the two taboos of human (genocide and cannibalism) circle each other in the information that comes out of West Paupa in silencing tangle where a constant chatter about ritual violence, lost tribes, lost worlds, lost people, over writes and actual disappearances and violence that make such an imagined world available for a small fee.[38] Cannibalism tourism signals the kind of cognitive universe where taxonomies of violence impose differing models of perception and render sustained and structural violence, genocide, invincible, inevitable and natural. Cannibal tourism and discourse therefore matter not simply because of racism they perpetuate. She equally pointed out a key and defining feature of colonial genocide is the formative role of neglect, inaction, passivity, and inability to carefully frame face of civilization inevitable future.

She criticized the colonial forces in settler colonies to have failed repeatedly to prevent frontier atrocities or to hold back the tide of history has always been central to the legitimization of ever more invasive penetrations into indigenous societies. She equally pointed out that colonialism genocides are frequently framed and defended as happening rather than actions and states need only nothing or be thoroughly, repeatedly and consciously inept for nature to take its natural course, or for tide of history to wash away colonized people. The result of course is that colonial genocide may still be framed as the product of misguided benevolence in a language of denial that itself is central to the deeper genocidal structure of settler states.

Finally, she suggest that the definitions of genocide put forward by indigenous people, victims and survivors such as those put forward by the west paupans indicate dominant ways of

[37] ibid
[38] ibid

talking about indigenous people and to render them native savages. If left uninterogated, conversations about the particular status of metaphoric violence endured by indigenous people is likely to be inflected with some taxonomies that compelled the violence in the first place. Ultimately there is a crude simplicity of genocide that is encapsulated by the brevity of its legal definition.

Shirleene and Jessica,[39] in discussing Genocide in Colonial Australia submits that historical work that has explored the topic has concentrated on the twentieth century, when Government agents removed Aboriginal children from their family groups, these twentieth century efforts were based on perverse eugenic ideas, a fear of miscegenation and a desire to "breed out" a group offensively labeled "Australia's half-caste" population. The genocidal motivations, as well as the devastating impact these twentieth century removal policies had on aboriginal people, were noted in the 1997 Human Rights and Equal Opportunity Report bringing them home and have since been explored by a considerable number of historians.[40]

They focused on the earlier colonial period in Australia, from 1788 to 1901, when generations of Aboriginal children were forcibly removed from their aboriginal family group. They examined the unity of colonial Australian discourse about Aboriginal child removal and made some observations about the scale of indigenous child removal in the colonial era. They argued that the use of a conceptual framework centered around genocidal discourse provides the most effective way of understanding the motivations behind indigenous child removals in Australia's past. They assert that the idea of containing an indigenous threat by removing and

[39] Robinson, S. and Paten ,J. (2008,)"The Question of Genocide in Indigenous Child Removal, Journal of Genocide Research ,Routledge Taylor and Francis Group, December,501-518
[40] ibid

retraining Aboriginal children clearly guided the stolen generation policies of the nineteenth and twentieth century.[41]

They equally considered the foundation stage of indigenous policy, when many ideas that were to impact on Aboriginal people in the twentieth century were formulated. They then examined the unity of broader colonial Australian discourse about aboriginal child removal by charting the development of legislation permitting indigenous child removal in the colonial era. They argued that removal of Aboriginal children must be central to any discussion of genocide in Australia's past. Although such removals were conducted for desperate purposes by range of individuals, they had outcomes that can be considered genocidal. They asserts that there has already been considerable dispute amongst Australian historians over what happened on the Australian frontier and whether this debate has focused on the extent of violence on the Australian frontier and whether this might constitute a form of genocide. Other debate has centered on the policies of indigenous child removal that developed at the end of the nineteenth century and whether these policies might also be described as genocidal.[42]

To consolidate their submissions, the writers acknowledged Rapheal Lemkin's contribution to Genocidal studies as he developed the term "genocide" in 1944 to describe the practices of Nazi Germany in occupied regions, it is clear that the term has meaning and use outside of that precise historical Milieu. There are still some dispute, though, over exactly what constitutes "genocide" Robbert van Krieken has adequately expanded on this point, arguing that there are a number of tensions between broader and narrower understandings of what precisely constitutes genocide. He asserts that a narrow conception essentially restricts the definition of genocide to the various forms of killing and physical annihilation, whereas the broader

[41] ibid
[42] ibid

conception allows for a wider variety of ways in which human groups can be eliminated, including the destruction or undermining of their culture and physical environment.[43]

Van Krieken also points out that "some of these tensions are certainly generated by the occasional excessive political enthusiasm for calling something seen as destructive in some way or another genocidal".[44]

They equally stated that forced removal clearly fit into the definition of genocide that was advanced in the Convention on the Prevention and Punishment of the Crime of Genocide by the United Nations in 1948. The devastations that this removal caused to both the Aboriginal children and their family group is unimaginable.[45]

Duncan [46]suggested that the breaking up of the tribe habits, superstition and influence by the withdrawal of the young of both sexes seems the first and necessary step. If a broad definition of genocide is used, then his suggestion could be labeled genocidal. It is obvious that the impact of forced removals with the denial of cultural and family connections appears to fit into the definition of genocide contained in Article II of the Convention on the crime of genocide. They equally assert that if forcibly transferring children of one group to another group is considered genocide as described by Article II of the Convention on the crime of Genocide , then genocide certainly happened in Australia.[47]

Finally they concluded by saying that Australian colonies most clearly fits in to a genocidal frame work and this also appears to be the case with the topic of indigenous child removal, although they have made some observations about the links between genocide and indigenous child removal, as more and more studies of the polices of individual colonial

[43] ibid
[44] ibid
[45] ibid
[46] W.A. Duncan The First Controller of Customs in the British.
[47] Robinson, S. and Paten ,J.Op cit

colonies are conducted, greater education will be provided on the overall links between genocide and indigenous child removal in Australian history.[48]

Robbie Mcviegh [49] illustrates, accusations and assertions of genocide pervade both historical and contemporary readings of Irish history. Ireland thus provides a case study of the relationship between colonialism and genocide and as "proof" of their own righteousness and their opponent's perfidy. Ireland therefore provides an important case study of the question of colonialism and its relationship to genocide. More generally, it adds understanding to the connection between different forms of colonialism and genocidal logic. He assets that the notion of the state as a necessary condition for genocide is largely implicit in the Convention but this connection is starkly illuminated by any examination of the colonial state and genocide.[50]

He argues that claims of genocide have been made by both sides of the colonial nexus settler and native and less often and less recently by the British state as the colonial power. In fact, the use of the term in the Irish context substantially predates the Convention and its incorporation in international law. Beyond generalist claims, however, these claims of genocide can be reduced to a number of key events on "both sides." In terms of the genocidal claims these are not unconnected events. First, many narratives trace a seamless process of genocide from 1641 to the present for protestants or from 1169 to the present for catholics. Second, these claim are clearly connected in the sense that settler/native violence was dialectical one "genocide" precipitated and often justified another against the other side.[51]

[48] ibid
[49] Mcveigh, R.(2008) The Balance of Cruelty': Ireland, Britain and the Logic of Genocide. Journal of Genocide Research, Routledge Taylor & Francis Group , 10(4), 541-561.
[50] ibid
[51] ibid

Lone Lindilot[52]made a comparative analysis on the human rights abuses which took place in Rwanda and Burundi. The book talked about the common experience and heritage between Rwanda and Burundi, the fact that the two countries are placed in Central Africa and neighbored by the Republic of Congo. These two countries have suffered Human rights abuses of their citizenry in the hands of the Governments. Furthermore he gave an account of the legal and political order of the two countries. The two countries gained independence in 1962 while control was in the hands of Hutu majority in Rwanda, and in Burundi it was in the hand of the Tutsi minority. Human Rights problems facing these countries were largely attributed to violent conflicts between government armies and armed rebels in the countries. This posed serious threat to the rights to life, physical safety and integrity of the citizens of these countries. Also the book gave an account on the international community to these conflicts which led to the establishment of the International Criminal Tribunal for Rwanda but none was established in Burundi. In conclusion ,the book raised questions on why reactions are not the same in the two countries, which explained why people thought that if a tribunal cannot be established in Burundi, then the mandate of the Rwandan Tribunal should have extended to have covered Genocide in Burundi. However the author did not give causes of the war and he did not also offer suggestions for future remedies.[53]

Gareth[54] asserts that in getting apparent consensus at the highest levels of government there is something wrong with the view that it's no-one's business but their own if states murder or forcibly displace large number of their own citizens, or allow atrocity crimes to be committed

[52] Lindilot, L,(1999) .Human Rights in Rwanda and Burundi ;A Comparative Analysis ,Proceedings of the 11th Annual Conference, 2-4 August,pp.95-108
[53] ibid

[54] Evans, G. The Responsibility to Protect: Ending Mass Atrocity Crimes , International Crisis Group, Global Philanthropy Forum, San Francisco, 11 April 2008, http://www.genocidewatch.org/images/Arties.29/07/12

by one group against another on their soil. But when it comes to getting that understanding deeply embedded in the consciousness and practice of states everywhere.[55]

He submits that going all the way back to the emergence of the modern system of states in the 1600s, the view has prevailed that state sovereignty is a license to kill. After World War II and Hitler's Holocaust, some progress was certainly made in challenging this absolutist concept of sovereignty, with individual and group human rights recognized in the UN Charter and, more grandly, in the Universal Declaration; with the Nuremberg Tribunal Charter in 1945 recognizing the concept of 'crimes against humanity'; and with the signing of the Genocide Convention in 1948.

He debunked the overwhelming preoccupation of those who founded the UN was not in fact human rights but the problem of states waging aggressive war against each other. And what actually captured the mood of the time, and the mood that prevailed right through the Cold War years, was, more than any of the human rights provisions, Article 2(7) of the UN Charter: "Nothing should authorize intervention in matters essentially within the domestic jurisdiction of any State". The state of mind that even massive atrocity crimes like those of the Cambodian killing fields were just not the rest of the world's business prevailed throughout the UN's first half-century of existence: Vietnam's invasion, which stopped the Khmer Rouge in its tracks, was universally attacked, not applauded.[56]

He is of the view that old habits of non-intervention died very hard. Even when situations cried out for some kind of response, and the international community did react through the UN, it was too often erratically, incompletely or counterproductive, as in the debacle of Somalia in

[55] ibid
[56] ibid

1993, the catastrophe of Rwandan genocide in 1994, and the almost unbelievable default in Srebrenica, Bosnia just a year later, in 1995.[57]

He asserts that killing and ethnic cleansing started all over again in Kosovo in 1999. Not everyone, but certainly most people, and governments, accepted quite rapidly that external military intervention was the only way to stop it. But again the Security Council failed to act in the face of a threatened veto by Russia. The action that needed to be taken was eventually taken, by a coalition of the willing, but in a way that challenged the integrity of the whole international security system (just as did the invasion of Iraq in far less defensible circumstances).[58]

He supported Kofi Annan as he challenged the General Assembly in 1999, and again in 2000:"*If humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica to gross and systematic violations of human rights that offend every precept of our common humanity?*".

He argued that the core idea of the responsibility to protect, or R2P(responsibility to protect), is very simple. Turn the notion of 'right to intervene' upside down. Talk not about the right of big states to do anything, but the *responsibility of all* states to protect their own people from atrocity crimes, and to help others to do so. Talk about the primary responsibility being that of individual states themselves respecting their sovereignty but make it absolutely clear that if they cannot meet that responsibility, through either ill-will or incapacity, it then shifts to the wider international community to take the appropriate action.[59]

[57] ibid
[58] ibid
[59] ibid

He pointed out the notion of 'intervention' but of *protection*: studying the whole issue from the perspective of the victims, the men being killed, the women being raped, the children dying of starvation; and look at the responsibility in question as being above all a responsibility to *prevent*, with the question of reaction through diplomatic pressure, through sanctions, through international criminal prosecutions, and ultimately through military action arising only if prevention failed.

He further argues that many governments now, to use R2P language to describe the situation in Darfur, and the situation in Kenya when it erupted so horribly and so reminiscently of Rwanda.He concluded that the responsibility to protect is not just a matter of intellectual persuasion, but of very powerful emotional commitment.[60]

Ladan, M.T.[61]submits that the case against former Taba Bourgmestre (mayor) Jean Paul Akayesu is significant for a series of reasons it was the first trial before an International Criminal Tribunal of someone charged with Genocide, and it was the first in which an International Tribunal conceptualized sexual violence (including rape) as an act of Genocide, because it was ICTR's first Judgment based on contested trial because the Judges were faced with many Jurisprudential issues for the first time. He also pointed out that Trial Chamber 1's lengthy Judgment of 2/9/98 carefully explicates the facts , reasoning and rules it relied upon to reach its conclusions by so doing, this judgment stands as a historic precedent for future Tribunals dealing with similar cases.

[60] ibid
[61] Ladan .T. (2004), The Akayesu Case: A Progressive Jurisprudential Development of The Concept of Genocide under International Law, UDUSLJ, VOL.1: NO.5,P.183-206

He further stated that Jean Paul Akayesu was arrested in Zambia on 10 October, 1995. On the 22nd November, 1995 the Prosecutor of the Tribunal pursuant to Rule 40 of the Rules[62], requested the Zambian authorities to keep Akayesu in detention for a period of ninety days while awaiting the completion of the investigation into potential charges against him. On 3 February 1996, Prosecutor Richard Goldstone submitted an indictment against Akayesu, which was subsequently amended on 17 June 1997 to add rape to the charges. The final indictment contained a total of fifteen counts individually charging Akayesu with genocide, complicity in genocide, direct and public incitement to commit genocide, extermination, murder, torture, cruel treatment, rape other inhumane acts and outrages upon personal dignity, crimes against humanity, and violation of Articles 3 Common to the 1949 Geneva Conventions and Additional Protocol II thereof. Judge William H. Sekule confirmed the indictment and issued an arrest warrant, accompanied by an order for continued detention, on 16 February 1996. Akayesu was transferred to the ICTR detention facilities in Arusha on 24 May 1996. He pleaded not guilty to all counts in the indictment.[63]

The writer points out how the ICTR defined how groups can be identified by using Akayesu's case. The Trial Chamber I. consisting of judges Laity Kama (Senegal), Lennart Aspegren (Sweden), and Navanethem Pillay (South Africa) had to determine whether genocide as defined in Article 2 of the ICTR Statute which replicates the Genocide Convention had occurred in Rwanda. Members of the chamber reasoned that since the special intent to commit Genocide lies in the intent to destroy, in whole or in part, national, ethnic racial or religious group, it was necessary to determine the meaning of these social categories. Because neither the Genocide Convention nor the ICTR Statute had defined them, the task fell upon the Justices

[62] The ICTR Rules of Procedure and Evidence adopted on 29th June, 1995.
[63] Ladan, M.T, op cit

themselves. Based on their readings on *travaux preparatoires* (preparatory works) of the Genocide Convention,[64] the Justices concluded that the drafters perceived the crime of Genocide as targeting only stable, permanent groups whose membership is determined by birth. The drafters excluded more mobile groups, political and economic groups, that one joins voluntarily. The Justice then proceeded to define each of the social categories listed in the ICTR Statute.Based on the Nottebohm decision rendered by the International Court of Justice, the Chamber holds that a national group is defined as a collection of people who are perceived to share a legal bound based on common citizenship coupled with reciprocity of rights and duties.[65]

An ethnic group is generally defined as a group whose members share a common language or culture. The conventional definition of racial group is based on the hereditarily physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors. The religious group is one whose members share the same religion, denomination or mode of worship.

He stated that the Tribunal *sua sponte* (on its own motion) chose to consider sexual violence in connection with Count I and the allegations made in paragraphs 12(A) and 12(B) of the indictment . The three Justices reasoned that the acts of rape and sexual violence contained in the indictment constituted genocide in the same way as any other act listed under "Genocide" in Article 2(2) of the ICTR statute as long as they were committed with the specific intent to destroy, in whole or in part, a particular group- the Tutsi. Rape and sexual violence certainly constitute inflections of serious bodily and mental harm on victims. In light of all the evidence before it, the chamber was satisfied that the acts of rape and sexual violence described by witnesses were committed solely against Tutsi women, many of whom were subjected to the

[64] The Genocide Convention of December1948. U.N.T.S277 : See also International Court of Justice :- Opinion on Reservations to the Genocide Convention.
[65] Ladan, M.T, Op cit.

worst public humiliation, mutilated, and raped several times, often in public in the bureau communal premises or in other public places, and often by more than one assailant. These rapes, the chamber concluded, 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, 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.

The Tribunal found that Akayesu had aided and abetted the acts of sexual violence by allowing them to take place in his presence on or near the premises of the bureau communal and by verbally encouraging the commission of these acts. By virtue of his authority, his overt encouragement sent a clear signal of official tolerance for sexual violence, without which these acts would not have taken place. Consequently, the chamber concluded that the acts alleged in paragraphs 12A and 12B of the indictment and subsequently proven at trial constitute the crime of genocide for which it found Akaysu individually criminally responsible.

During the seventeen month long trial, punctured by defence requested adjournments, the Justices heard forty-two witnesses (including five expert witnesses). Many of those testifying were mostly eye witnesses and victims who told gruesome stories of their ordeals. The first defense witnesses were heard on the 17th November, 1997. The initial three witnesses were natives of Taba imprisoned in Rwanda for their alleged participation in the Genocide. The Rwandan Authorities facilitated their appearance by handing over temporarily to the custody of the ICTR they testified that Akayesu, the former mayor of Taba, had given into the pressure from the interahamwe militia two weeks after the Genocide. The accused had initially tried to prevent

the Interahamwe from invading his commune, the witness said, he supported the people, who had killed two militia members. Akayesu in his own defense testified on 12 March, he portrayed himself as a helpless, low level official who had no control over events in the Taba commune. He told the court that the interahamwe was responsible for the killings. Akayesu claimed that he had asked the prefect of Gitarama for gendarmes to maintain law and order, but received no support. He said that when he tried to save some Tusti , he was accused with supporting the RTF and his wife was threatened.

In reading its verdict, the chamber largely agreed with the prosecution. The judges unanimously found Akayesu guilty of Genocide (count 1), the crimes against Humanity (extermination) (Count 3), direct and public indictment to commit Genocide (Count 4), crimes against Humanity (Murder) (Count 5,7,9), Crimes against Humanity (torture) (Count II) crime against humanity (rape) (Count13), crime against humanity (other inhumane Acts) (Count 14). The Chamber found him not guilty of complicity in Genocide (Count 2), violations of Article 3 common to the Geneva Conventions (murder) (Counts 6,8,10) and cruel treatment (Count 12), and violations of Article 3 common to the Geneva Conventions and Article 4(2)(e) of Additional Protocol II(outrage upon personal dignity, in particular rape degrading and humiliating treatment and indecent assault,(Count 15).

Finally, the writer made some observations that despite Akayesu's lowly political stature, his case has immense factual and Jurisprudential importance. With its decision in Akayesu's case, the Trial Chamber expanded the Genocide Convention and Tribunal Statute and introduced a subjective standard for determining what groups in a particular society are protected by the Genocide Convention, without which there would have been no Genocide in Rwanda if the Chamber had not done this. In addition, the chamber explicated a method for determining an

individual's constructive Genocidal intent and also proffered definitions of rape and sexual violence for the purposes of Humanitarian Law.[66]

Ladan M.T submits[67] that in the year 1998 the International Criminal Tribunal for Rwanda (ICTR) made significant progress in the prosecution of persons responsible for the 1994 genocide of Tutsi and moderate Hutu in Rwanda. The case against Rwandan ex-premier Jean Kambanda established essential facts concerning what happened in Rwanda during those fateful 100 days in 1994. Kambanda's extensive admissions of guilt should dispel forever any doubts about the occurrence of a premeditated genocide in Rwanda.

In addition, also he stated that this case represents a milestone for international humanitarian law Jean Kambanda is the first person in history to accept responsibility for genocide before an International Court. He did so fifty years after the UN adopted the Convention on the Prevention and Punishment of the Crime of Genocide in 1948.

He went further to give a detailed background study on Jean Kambanda as the highest-ranking former political leader in ICTR custody, was born on 10 October1955 at Mubumbano in the southern Rwandan Prefecture of Butare. He holds the Diploma de Ingenieur Commercial, and in 1994 he had a wife and two children. From May 1989 to April 1994, he worked at the Union des Banques Populaires du Rwanda, rising to the position of bank director. With Swiss backing, the bank promoted economic development in rural areas, where Kabanda first came into contact with what the politicians called the rural masses. His work and influence among the people may have given Kambanda the idea of pursuing a political carrier when multi-party politics was allowed in Rwanda in June 1991.

[66] See, Ladan, M.T,(1999) Introduction to International Human Rights and Humanitarian Law, A.B.U Press, Zaria, Nigeria,pp.132-394.
[67] Ladan M.T, (2004) The Kambanda Casa:- A Mile Stone for International Humanitarian Law,7 U. Maid. L.J, Gaza Press, Maiduguri.

Kambanda became one of the first members of the Movement Democratique Republican (MDR) the party of former President Gregorie Kayibanda, who had been president of the MDR in Butare prefecture. During the course of the 1990-92 conflict between the Hybyarimana government and then rebel army of the RPF, the MDR split into two factions, a moderate element in favor of peace negotiations, and an opposing hard-line Hutu Power' group that included Kambanda.

Kambanda claimed that soldiers came to his door on 8 April 1994 while he was in the bath. Fearing for his life, he quickly put on his trousers jumped out the window and ran into a banana grove to hide. The solders caught up with him but rather than kill him, they enlisted him to lead the new, radical government. Kambanda claimed he did not want the job the soldiers made it clear that he had no choice . Fearing for his family safety, Kambanda says he went along.

Shortly after Habyarimana's plane crash, Hutu extremists had slaughtered the previous premier Agathe Uwilingiyamana, and the ten Belgian United Nations troops protecting her. Uwilingiyamana, Rwanda's first female Premier, had been opposed to the Hutu power politicians who planned the genocide. Hence, she was one of the first to be murdered. Kambanda was the obvious choice to succeed her, because he had been the extremist candidate for Prime Minster the previous year.

Kambanda claims that not he, but Colonel Theoneste Bagosora, was the one behind the planned genocide. As the RPF advanced towards Kigali in July 1994, Kambanda and other Hutu leaders of the genocide regime, such as President Theodore Sindikubuwabo, fled to Bukavu in Zarie. From there Kambanda fled to Nairobi. Kenya, where President Daniel Arap Moi was providing refuge for members of Rwanda's Hutu regime. He and other genocide conspirators feared a Rwandan firing squad more than a Tribunal trial.

He also stated that prosecutor's office submitted its indictment against Kambanda on 16th October 1997 to Judge Yakov Ostrovsky (Russia), who confirmed it, issued a warrant of arrest against the Accused and ordered his continued detention. The indictment contained six counts, namely Genocide, Complicity in Genocide, Crimes Against Humanity (murder) punishable under Article 3(a) of the ICTR statute, and Crimes Against Humanity (extermination) punishable under Article 3(b) of the ICTR Statute. On 1 May 1998, during his initial appearance before Trial Chamber1 consisting of judges Laity Kama (Senegal), Lennart Aspegrn(Sweden), and Navanethem Pillay (South Africa), Kambanda pleaded guilty to all six counts.

Accordingly, he analyzed that for a crime of Genocide to have been committed, it is necessary that one of the acts (e.g killing, causing serious bodily harm to have been committed, e.t.c) as listed under Article 2(2) of the ICTR Statute be committed against a specific targeted group, with the intent to destroy it, in whole or in part. A potential defence for many Rwandan Genocide suspect is that the 1994 killings were part of an ordinary war on religious group, in whole or in part. Significantly however, Kambanda admitted that the extermination of Tutsi was a policy of his Government.[68]

The writer stated that Kambanda admitted all the relevant facts alleged in the indictment. After determining Kambanda's sentence, the trial Chamber considered three mitigating factors offered by the defence attorney: 1) Kambanda's guilty plea: 2) the remorse, which the defense attorney claimed was evident from the act of pleading guilty: and 3) Kambanda's past and future cooperation with prosecutor's office. The prosecutor confirmed that Kambanda had extended substantial cooperation and invaluable information to him, and that Kambanda agreed to testify for the prosecution in future trials of other accused. However, the trial chamber noted that Jean Kambanda had offered no explanation for his participation in the Genocide: nor has he expressed

[68] ibid

contrition, regret, or sympathy for the victims in Rwanda, even when given the opportunity to do so by the chamber during the hearing of September3,1998.

The writer pointed out that the chamber explained that a sentence must reflect the predominant standard of proportionality between the gravity of the offence and the degree of responsibility of the offender. Just sentences contribute to respect of the law, and the maintenance of a just, peaceful and a safe society. The crimes for which Kambanda is responsible carry an intrinsic gravity, and their widespread, atrocious and systematic character is particularly shocking to human conscience. The Judges went on to say that Jean Kambanda committed the crimes knowingly and with premeditation and moreover, Jean Kambanda, as a prime minister of Rwanda was entrusted with duty and authority to protect the population and he abused this trust. The Judges concluded that the aggravating circumstances surrounding Kambanda's crimes negated the mitigating circumstances. On 4th September, 1998 they sentenced him to a single term of life in prison.[69] .

Finally, the writer concluded by observing that the prosecution did not also charge Kambanda with violations of Article 3 common to the Geneva Conventions and Additional Protocol II thereof, which deals with crimes committed during an armed conflict not of an international nature, Kambanda did admit that as prime minster, he exercised *de jure* and *de facto* authority over senior civil servants and senior officers in the military. He also admitted that he issued the Directive of Civil Defense addressed to the prefects on 25 May, 1994 and this directive encouraged and reinforced the interahamwe who were committing mass killings of the Tutsi civilian population and prefectures. Kambanda also acknowledged that by this directive the Government assumed responsibility for actions of the interrahamwe. Consequently, by virtue of

[69] Prosecutor v. Jean Kambanda (1998September,4,) : www.UN.Org/ICTR. Case NO. 97-23, Judgment and Sentence, see Okali Agwu(1998) Peace with Justice :- Address at UN International School Student Conference, 6 March, New York.

the Humanitarian law principle of command responsibility, Kambanda is culpable for those violations of Article 3 common to the Geneva Conventions and Additional Protocol II committed by the military forces and the Interahamwe.[70]

Also the bulk of the legal materials written in the area of this research were written based on particular places of interest to the writers as no recourse was shown or made to the procedures of the International Criminal Court and other International Criminal Tribunals in discharging their duties in the prosecution of the crimes of genocide. This research work will clear such "lacunae". The UN has established the International Criminal Tribunal for former Yugoslavia in 1993, International Criminal Tribunal for Rwanda in 1994. Then in 1998 the International Criminal Court was established, while in 2002, the UN Special Court for Sierra-Leone was established. These Tribunals have commenced hearing and they have delivered some Judgments, and others to be delivered in future. New principles of law are bound to emerge since they have not been dealt with by these writers. Finally, it is a fact that International Law is dynamic and so its principles are subject to change in view of modern events. The rules of law that developed more than a decade ago may create a lacunae now, to cure these lacunae, will therefore be an added value to the final product of this research work.

1.8 ORGANIZATIONAL LAYOUT

This Dissertation is divided into five chapters, the first chapter ie. chapter one primarily deals with the General Introduction, identifying the Statement of the Problem, Aim and Objectives of the Research, Scope of the research work, Justification/Significance of the Research, the Research Methodology used, Literature Review, and Organizational Layout.

[70] Prosecutor v. Jean Kambanda (1998September,4,) op cit and Ladan M.T. Introduction to Human Rights and Humanitarian Law, A.B.U Press, Zaria, Nigeria, p.281-394

Chapter Two gives a clarification of some of the main concepts of Genocide, that is the definition of the concepts of crime, the meaning of International crime, the concepts of punishment and prevention. Also the chapter gives a clearer understanding of the nature, scope and what constitutive elements of the crime of Genocide and the Rational and scope of the Genocide convention.

Chapter three discusses the development of Genocide as a crime under International Law, its origin, development stages from Pre World War II to date.

Chapter four discusses the role of International Law in the prevention and punishment of the crime of genocide, , the roles of the International Criminal Tribunals/Courts in combating the crime of Genocide i.e, the International Criminal Tribunal for Rwanda, International Criminal Tribunal for Yugoslavia and United Nation Special Court for Sierra Leone and the role of the Rome Statute of the International Criminal Court.

Finally, Chapter Five basically deals summary and conclusion of the study.

CHAPTER TWO

CONCEPTUAL CLARIFICATIONS

2.1 Introduction

This chapter aims at discussing the conceptual clarification of the relevant key terms of the research topic in order to give meaning and direction of this research topic by facilitating the reader with a proper understanding of the research topic. That is by defining and analyzing the terms crime, prevention, punishment and genocide. Also the chapter will provide a significant clarification of the relevant constitutive elements of the crime for a clearer understanding of the research topic.

2.2 Concept of Crime

It is difficult to present a universal definition of crime for many obvious reasons. As acts defined as criminal vary with time and space, an act may be a crime in one society but not in another society. In some cases even if same or similar acts are defined as acts of crime in different societies, the gravity or seriousness to which each society views the acts may be different. The difficulty stems largely from the complexity of the concept and the elusive impression of the word crime[71]to a critical mind.

However many Jurist have made varied efforts to give a definition, most of the definitions may have one or two things in common and some may differ only in the wording. For instance, Cross and Jones say that a crime is a legal wrong the remedy for which is punishment of the offender at the instance of the state.[72] On the other hand, Rusell on crime as quoted by

[71] Brett, P. (1996) An Inquiry to Criminal Guilt, p.6
[72] Cross and Jones, (1968) Introduction to Criminal Law.6th ed. Butterworth, London, p.9.

Ladan M.T. [73]says that crime is an act or omission involving a breach of a duty to which by the Law of England a sanction is attached by way of punishment, in the public interest, for which the ordinary remedy is by indictment.[74]

Granville Williams while attempting to define crime says it is a legal wrong that can be followed by criminal proceedings which may result in punishment[75]. A more comprehensive definition of crime is that of Allen Glendhill in the following words: a crime is a human conduct which the state decides to prevent by the threat of punishment liability of which is determined by legal proceedings of a special kind".[76] Crime is defined by Werle and Bung as an act that the law makes punishable [77]. The word punishment appears in the definitions above and they all suggest whenever a human conduct is proscribed with penal consequences, i.e., sanctions such conducts is often than not criminal. Other writers put up what is essentially no definition at all. They argue not without some justification that it is not necessary to advance cut and dry definitions, all one needs to do is to on serve the proceedings of any given case as Okonkwo and Nash marks out a criminal case from a civil case, one is essentially the different procedure used. The learned writers therefore submitted that the legal definition of a crime is essentially a definition in terms of procedure.[78] According to Chukkol,[79] the word crime is tied down from legal perspective as a vice against public which is sanctioned by way of punishment under the law. A crime is an act prohibited by law visited by penal consequence, it is also defined as acts or omissions which render the persons doing the act or making the omission liable to punishment

[73]Ladan. M.T. Crime Prevention and Control and Human Rights in Nigeria, Justice Watch, Abuja, p. 1
[74] ibid
[75] Williams G,Text Book of Criminal Law, 2nd ed. London, Stevens, at p. 27
[76] Allen Glendhill (1963):The Penal Code of the .Northern Nigeria and the Sudan, London.
[77] Werle and G, Bung. J, (2010) Summary,(Principles Of Int'l Criminal Justice) International Criminal Justice, Humboldt-Universität Zu, Berlin, Sommer Semester.
[78] Okonkwo and Nash (1980), Criminal Law in Nigeria, London, p.19.
[79] Chukkol, K.S. (2010The Law of Crimes in Nigeria)Revised Edition, A.B.U. Press, Zaria, p.523

under the code[80]. Crime, in the sense of a breach of a legal prohibition, is a universal concept, but what actually constitute a crime, and how seriously it should be regarded, varies enormously from one society to another. Perceptions of crime are not determined by any objective indicator of the degree of injury or damage but cultural values and power relations.[81]

A crime punishable under an internationally prescribed criminal law or defined by an international convention is required to be made punishable under the criminal law of a member state. So also, a crime punishable under international law is an act that is internationally agreed to be of a criminal nature, such as Genocide[82]. Crime is also defined as an act or omission or state of affairs prohibited by law and which makes a person committing such an act or making the omission or who is responsible for the state of affairs liable to punishment imposed by law in judicial proceedings usually instituted by or on behalf of the state.[83]

A crime in law consist of two basic elements, i.e the *actus reus* and the *mens rea*. The *actus reus* is the physical element or the guilty act, and it requires proof. Where there is no *actus reus,* there is no crime. It includes all the elements in the definition of the crime with exception of the mental element. The *actus reus* could be made up of conduct, its consequences and the circumstances in which the conduct takes place.[84]

The second element is *mens rea,* which is the mental element or the guilty mind. It is basically the intention, and a man is said to have intended doing something if he foresaw and desired it.[85] The desire is not required for all crimes. There is no single definition of *mens rea* because every crime has its own *mens rea*. To demonstrate *mens rea,* it must be proven that an individual intentionally, knowingly, recklessly, negligently behaved in a given manner or caused

[80] Criminal Code Act Cap C 38 , LFN, 2004.
[81] Dambazau, A.B. (2007)Criminology and Criminal Justice, Spectrm Books Limited, Ibadan,p.49
[82]Garner.G.A, ed(2007),.Blacks law Dictionary,8th edition,Thomson West,p.**401**
[83] Inchi. S.S(2000) , the Nigerian law Dictionary, Green World Publishing Company ,Jos Plateau State, p.145-6
[84] Smith, J.C. and Hogan B.(1998), Criminal Law, Burtherworths, London, p. 35
[85] ibid

a given result. Crime can be dichotomized into serious and minor, felony and misdemeanor, "mala in se" and "mala prohibitum,"[86] crimes against persons and crimes against property[87].

2.3 The Meaning of International Crime

What constitutes an international crime is one of those concepts so difficult to define that most writers and even international conventions such as Geneva Convention of 1948 and their protocols of (1977) and the statute of the ICC, avoid defining it. Nevertheless, some efforts have been made. According to Quincy Wright, a crime against international law is an act committed with intent to violate a fundamental interest protected by international law or with knowledge that the act will probably violate such an interest and which may not be adequately punished by the exercise of the normal jurisdiction of any state.[88] And, "The Osborn's Concise Law Dictionary" defines a crime as "an act, default or conduct prejudiced to the community, the commission of which by law renders the person responsible liable to punishment by fine or imprisonment in special proceedings…"[89] Perhaps, the most comprehensive effort so far made at defining international crimes was the one made by the international law commission in its draft articles on the origin of state responsibility (1996). Article19 of the international crimes and international delicts of International Law Commissions in its draft articles (1990) provides:

1. An act of state, which constitutes a breach of an international obligation, is an internationally wrongful act regardless of the subject matter of the obligation in breach.
2. An international wrongful act which results from the breach by a state of an international obligation so essential for the protection of fundamental interest of the

[86] Mala in se crimes are those which are almost universally accepted as wrong or bad in themselves, such as murder, assault and rape. Mala prohibitum are those which are statutory in nature and may pass in and out of criminal law.
[87] Dambazau, A.B. Opcit p.49
[88] Glendhill, A, (1963),The Penal Codes of Northern Nigeria and Sudan , (London) quoted in Chukkol , Laws of Crime in Nigeria Op cit
[89] Sagey, I.E. (2006)The Nature and Characteristics of International Criminal Justice and Administration, NAILS, Lagos, 20th May, p.17

international community that its breach is recognized as a crime by that community as a whole constitute an international crime.

i. There must be a serious breach of an international obligation.

ii. That international obligation must itself be essential to an aspect of human existence.

In this definition; (a) the maintenance of international peace and security and the prohibition of aggression, (b) the right to self determination and the prohibition of colonial domination (c) the safeguarding of the human being such as the prohibition of slavery, genocide, apartheid and presumably war crimes, crimes against humanity and terrorism are illustrative of what constitutes an international crime.[90]

It is clear that the act constituting the offence must be grave in the sense in which the scourge of war was described in the preamble to the charter of the United Nations as having brought untold sorrow to mankind.[91]The gravity of the type of offences currently characterized as international crime is also fully captured in the opening paragraphs of the preamble to the statute of the International Criminal Court otherwise known as the Rome Statute (1998) which states inter alia that;

> During the twentieth century, millions of children, women and men had been victims of unimaginable atrocities that deeply shocked the conscience of humanity and that such grave crime threatened the peace, security and well-being of the world". It affirmed that most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation. It also states that "the determination of the parties to put an end to impunity of the perpetrators of those crimes and thus to contribute to their prevention.[92]

[90] "The Law of Nuremberg Trial" 41 American Journal of International Law (1947)
[91] Ibid
[92] Article 19 of the Draft Constitution Article on the Origin of State Responsibility.

Arguably the first international crime was the prosecution of Pater Von Hogenbacch in 1474 for atrocities committed during an attempt to compel Breisach to submit to Burdandian rule by a tribunal comprising judges drawn from states and principalities. Article 27 of the Treaty of Versailles provided that German Emperor William II should be tried in an International Court to answer charge for flagrant offence against international morality and the sacred authority of the treaties. But since Netherlands refused to give up the accused, the trial never took place and William II died in exile in Holland in 1941. With the establishment of the International Criminal Court, with an extensive list of what constitute International Crime, the true nature and characteristics of an international crime has been revealed. As has been observed in Digest of International Law by White[93] the question of the existence of international crime has been brought more sharply into focus as a result of the war crimes following the World War II, the signing of the Genocide Convention and the step being taken by the General Assembly of the UN towards establishing a code of International Crimes. What acts should be classified as a crime under international law in the last analysis is intimately connected with the question of the machinery by which such acts should be dealt with. The machinery, the international criminal court and its statute have been established with the singular exception what constitute an international crime is no longer difficult to answer, nor is an act constituting such an offence any longer difficult to identify.[94]

Also, crime under international law encompasses all crimes that involve direct individual criminal responsibility under international law, namely, genocide, crimes against humanity, war crimes, and the crime of aggression. These so called core crimes are the most serious crimes of

[93] McCarmack, T.LH and Simpson, G.J. (1997) eds. *The Law of Crimes: National and International* Hague/London, p.37
[94] Majorie Whiteman,(1968), *Digest of International Law* , Vol. II Cambridge Press, London, p.835.

concern to the international community.[95] A comprehensive set of general principles of international criminal law has emerged in recent years. These principles are now fully codified.[96] International criminal law protects peace, security and the well-being of the world as the fundamental values of the international community.[97] International criminal law is thus based on a broad concept of peace, which means not only the absence of conflict between States, but also the conditions within a State. Therefore, a threat to world peace can be presumed even as a result of massive violations of human rights within one State. Crimes under international law affect the international community as a whole.[98]

An attack on the fundamental values of the international community lends a crime an international dimension and turns it into a crime under international law. For this reason, the norms of international criminal law penetrate the armor of State sovereignty. Thus, its link to the interests of the international community lends international criminal law its specific legitimacy. A connection to the most important values of the international community is established for all crimes under international law through one common characteristic, the so-called international element: all international crimes presume a context of systematic or large-scale use of force. As a rule, it is collective entity that is responsible for this use of force, typically a state.

2.4 The Concepts of Prevention and Punishment

2.4 .1 The Concept of Prevention

The definition of Prevention as per the UN guide lines on the prevention of crime [99]comprises strategies and measures that seek to reduce the risk of crimes occurring and their potential harmful effects on individuals and society, including fear of crime, by intervening to

[95] Preamble and Article 5 of the Rome Statute of the International Criminal Court.
[96] Part 3 of the Rome Statute of an International Criminal Court (Articles 22-33).
[97](see Preamble (3) of the ICC Statute
[98] see Preamble (4) and (9), and Art. 5 (1) of the ICC Statute
[99]United Nations Guidelines for the Prevention of Crime, outlined in the 2002

influence their multiple causes. These Guidelines were preceded by the duty to prevent and halt genocide and mass atrocities lies first and foremost with the State, but the international community has a role that cannot be blocked by the invocation of sovereignty. Sovereignty no longer exclusively protects States from foreign interference; it is a charge of responsibility where States are accountable for the welfare of their people. This principle is enshrined in Article 1 of the Genocide Convention and embodied in the principle of "sovereignty as responsibility" and in the emergent concept of the responsibility to protect. The three pillars of the responsibility to protect, as stipulated[100] are:

(1) The State carries the primary responsibility for protecting populations from Genocide, War crimes, Crimes against humanity and Ethnic cleansing, and their incitement;

(2) The international community has a responsibility to encourage and assist States in fulfilling this responsibility;

(3) The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations.

If the root causes of genocide revolve around inequalities between identity groups, preventing genocide begins with ensuring that all groups within society enjoy the rights and dignity of belonging as equal citizens. Early prevention therefore becomes a challenge of good governance and equitable management of diversity, that means, eliminating gross political and economic inequalities, and promoting a common sense of belonging on equal footing.

[100] Utcome Document of the 2005 United Nations World Summit

Crime prevention[101] is a living concept whose boundaries vary depending on the institutional framework in which it is used, and on the geographical regions, languages, and time periods in which it takes place. Also, crime prevention as stated by Ladan M.T[102] involves a variety of activities that people can undertake individually or collectively, to affect directly their probability of being victimized by certain types of crimes. It is a method to prevent socially undeniable events from occurring and the reduction of risk of crime being committed and limitation of the material and non material damage that may arise from crimes.

The preventive measures against the commission of the crime and reduction of high crime rates should not be directed against potential criminal and recidivist, rather they should be directed towards eliminating the factors that could force the potential criminal to commit crime, and to block any existing opportunity that would create contact between the potential criminal and the victim. Those who engage in criminal activities are motivated by social, psychological, economic and political conditions around them.[103] The desire to commit crime is controlled by such conditions, and the potential criminal with desire goes to commit the criminal act. Opportunity refers to availability of situations in which crime is likely to outcome due to the extent to which something (valuable object) clearly represents an attractive target for potential criminals. Availability refers to the extent to which a potential criminal is given an opportunity to commit crime when he or she comes in contact with an attractive target. Eliminate either or both of the components of crime, the crime is prevented. Elimination of desire and opportunity is as a result of elimination of factors that generated the desire in the first place. Preventive Justice also refers to that part of law concerned with direct prevention of injustice[104]

[101] Manar Idriss, Manon Jendly, et al, (2010) International Report On Crime Prevention And Community Safety Trends And Perspectives, p. 22-24)
[102] Crime Prevention and Control and Human Rights in Nigeria, Justice Watch, Abuja, p. 191
[103] ibid
[104] Suleiman Samaila Inchi , Opcit, pg. 413

2.4.2 The Concept of Punishment

In defining crime Halsbury's Laws of England puts the sequence of events culminating in punishment, thus an unlawful act or default which is an offence against the public which renders the person guilty of an act liable to legal punishment.[105]Punishment is also defined as sanction or penalty imposed by the court.[106]Punishment is a sanction such as fine, penalty confinement, or loss of property, rights, or privilege assessed against a person who has violated the law.[107] Another definition of punishment proposed by Garland is the legal process whereby violators of criminal law are condemned and sanctioned in accordance with specified legal categories and procedures[108].Likewise, penology simply means the study of punishment. Punishment is an important aspect of law since for every criminal law there is punishment attached to it. Punishment is also defined as the infliction of pain or suffering, or the deprivation of something valuable in relation to someone who has committed a crime or other rules.[109]Punishment in all its forms is a loss of advantages consequent upon a breach of law. When it loses this quality, it degenerates into an arbitrary act of violence that can produce nothing but bad social effect. Punishment unless specifically fixed by law, the prescribed punishment means maximum punishment .It is not however mandatory that it be imposed. In Slap v. A.G. Federation[110] The Appellant was charged with two counts charge, the First Count was for ex-porting, certain goods to wit: Diamonds of a total value of £31,000, the exportation of which is prohibited while the Second Count was that not being Government servants, acting in the execution of their duties possessed certain controlled mineral to wit: uncut diamonds and thereby committed an offence

[105] This definition was adopted in Board of Trade v. Oven(1957)A.C.602
[106] Suleiman Samaila Inchi , Opcit, pg. 424
[107]Garner., G.A, ed. (2007),Blacks law Dictionary, 8edition,Thomson West,p.1269
[108] Garland, **The Purpose of Criminal Punishment,** 05-Banks.qxd 1/30/04 4:40 PM1990: 17 Page 103
[109] Dambazau, A.B. (2007)Criminology and Criminal Justice, Spectrm Books Limited, Ibadan,p.331
[110] (1968) N.M.L.R,326

contrary to section 68 and punishable under section 99 of the Minerals Acts. He was sentenced to a fine of £94,500 or 2 years imprisonment with hard labour on the first count arid £100 or 12 months imprisonment with hard labour on the second count. On appeal to the High Court, his appeal on the convictions was dismissed and the order on the sentence on the first count was varied to read £189,000 or 2 years imprisonment with hard labour on the first count. On the second count the sentence of £100 or 1 year imprisonment with hard labour was con-firmed.[111] The appellant then appealed for the second time where three grounds of appeal were argued the and the Appeal was dismissed. It was held that the punishment section provides that an offence shall be liable to a fine six times the value of goods. The Magistrate imposed a fine of three times the value of the goods involved. It was held on Appeal that the Magistrate had discretion as to the punishment to give an accused person and if properly exercised, such discretion could not be disturbed by the Appellate court, though there are some offences that carry mandatory sentencing e.g, capital offences.[112] International criminal law gains its legitimacy as criminal law from the purposes of punishment, which can be transferred from domestic criminal law. International criminal law undeniably serves the idea of retribution. However, the preventive effect of international criminal law is even more important (deterrence, norm, stabilization). It may also have a specific preventive effect on individual (potential) perpetrators two specific effects of the punishment of crimes under international law are a trial proceeding's acknowledgment and truth-finding functions. Convictions represent official acknowledgment of past injustices and the suffering of victims. They destroy the foundation for denial of atrocities and prevent falsification of history. Finally, individual accountability makes it clear that it was not an abstract entity, such

[111] ibid
[112] The Nigerian Law School Hand Book on Criminal Procedure 2002 Edition (Unpublished) pg.49-50

as a State, that committed the crimes under international law but certain individuals, working together. As such, it helps avoid charges of collective guilt.

Furthermore, there are also several theories of punishment which will be considered and they are[113]:

(a) The theory of Deterrence is based on assumption that punishing convicted offenders can act to prevent the commission of similar offences in the future. There are two types of deterrence viz. specific deterrence and general deterrence. The former is best seen in the imposition of capital punishment since the convicted murderer who is hanged cannot be in the position to kill again. While general deterrence on the other hand, means that punishments are imposed with the hope that those watching the convict punished will have second thoughts when in future they contemplate committing criminal offences. However, this theory presupposes that quite apart from the need for wide publicity (for criminals are indeed in full public glare) majority of criminals are indeed not deterred watching some criminals punished.

(b) The theory of Rehabilitation stems from the realization that crimes are products of society and the society as a whole benefits in the long run if the criminals are helped to re-adjust so that they can be useful citizens in the future. Therefore, those convicted of crimes should be rehabilitated since the society as a whole is somewhat blamable for their conducts.

(c) Virtually everybody knows the Mosaic Law “an eye for an eye”. This sums up the principle of retributive justice at its best. The human instinct for

[113] Chukkol, K.S. op cit, p.542.

> revenge is something that exist and will continue to exist for a foreseeable future. A violation of societal code leading to injurious consequences normally invites societal wrath and a call for vengeance by members of that society. Despite the current criticisms of the retributive theory (.i.e. it is unscientific; killing the murderer does not bring back the deceased, etc) the theory still appeals to human instinct and cannot just be wished away at the present level of development in our society.[114]

Furthermore, in explaining the fundamental justification of inflicting punishment in criminal law, Ladan M.T. [115] assessed two different ways of looking at the objects of punishment and they are; Retributism and Utilitarian principles. Retributism involves the process of "looking back"[116]at the circumstances of the crime committed and deciding what punishment the accused deserves for his conduct, having regard to his responsibility to the crime. This approach to punishment involves merely the wreaking of vengeance and infliction of pain by the society, on behalf of its self or the injured individual, on the wickedness of the offender. This form of punishment is also imposed in order to relieve the public's indignant feelings[117] or to mark with what revulsion they regard the crime. Thus, the purpose of capital punishment, though it may be partly deterrent, contains also the idea that he who kills must be killed. Or again, the notion of extra hardness of the punishment implicit in "hard labour" as distinct from ordinary imprisonment stems from the feeling that a more wicked man should suffer more severe pain.[118]

---

[114] ibid

[115] Crime Prevention and Control and Human Rights in Nigeria, Justice Watch, Abuja, p..214

[116] Cf .Hart, Punishment and the Elimination of Responsibility , Hobhouse Memorial lecture, (1961). Ladan M.T. Opcit p.218

[117] Cf .Salmon, Jurisprudence" We have too much forgotten that mental attitude which best becomes us when fitting Justice is done upon the evil doer is, not pity, but solemn exultation" 11 edition , p. 121. Ladan M.T. ibid p. 218

[118] Ladan M.T op cit

A compliment of straightforward retribution may also be that of the offender by undergoing punishment is offered a chance to expiate his wickedness, to relieve his conscience, and to pay for what he has done.[119]

While Utilitarian principle of punishment is essentially forward looking. Punishment is imposed with an eye to its future results, the fundamental aim is to prevent further crime. The great arguments amongst Utilitarians are as to the best methods of achieving prevention of crime. The value of the Utilitarian approach is that theories of what type of treatment will prevent what types of individuals from offending again are open to proof or disproof although it must be admitted that the scientific measurement of the effectiveness of different penalties is in its infancy. It may be suggested here that prevention of crime by rational measures is the primary aim of punishment and that the notion of just desert, however important, should operate merely as a limitation on this principle. Finally, this principle could be seen in the light of forms of punishment and they are deterrence, disablement[120] and rehabilitation or reform.[121]

The paramount objective of criminal justice system is Punishment. By this, the law prohibits any conduct that unjustly inflicts or threatens substantial harm to individual or public interest. In the words of Karibi Whyte, the repression of anti social conduct by means of punishment is the paramount objective of the law.[122] In similar terms Bairamian, JSC, observed that "the aim of criminal law is to curb the passions of man"[123]

As a general rule punishment varies in intensity, mode, style and extent. What determines the type of punishment depends on the nature of the crime and the criminal, the status of the victim and the extent of his victimization, and the feelings of the society towards the crime

[119] ibid

[120] This principle does not figure as largely in punishment as might be thought, for logically the most efficient way of preventing further crime might be to impose supreme disabling punishment such as capital punishment or imprisonment for life.

[121] Ladan , M.T ,Crime Prevention and Control and Human Rights in Nigeria, Justice Watch, Abuja, p. 218

[122] Whyte, K. (2002), Ground Work of Nigerian Criminal Justice System in Nigeria. University of Ado-Ekiti Law Journal Vol.1 p.65 at 66.

[123] See Adams v. DPP. of the Federation (1966) NSCC (Vol 4) p.25 at 28.

committed. More often than not, these factors are relevant, in combination, rather than in exclusive isolation of one another. Most statute books provide punishment for criminals ranging from death, through imprisonment, fine and suspended sentence.[124]

Death sentence as a form of punishment is the most controversial of all punishments. While some people argue that it is the best deterrent, others believe that it is unnecessary and immoral. Imprisonment covers various terms, and at its extreme is life imprisonment. The essence of imprisonment is deprivation of liberty, but convicted prisoners are supposed to be rehabilitated. Fine is the payment of required amount of money as a form of punishment, particularly for minor crimes.[125]

2.5 Nature and Scope of the Concept of Genocide

Genocide as an international crime involves acts causing serious physical and mental harm with intent to destroy, partially or entirely a national, ethinic, racial, or religious group. The widely ratified Genocide Convention of 1948 defines the crime. [126]Genocide is defined by Article 6 of the Rome Statute; "as any of the following acts committed with intent to destroy in whole or in part a national, ethnic racial or religious group" by:

a. Killing members of the group
b. Causing serious bodily or mental harm to members of the group
c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
d. Imposing measures intended to prevent births within the group

[124] Dambazau, A.B. Op cit p.312
[125] ibid
[126] Garner.B.A, ed (2007),.Blacks law Dictionary, 8edition,Thomson West, p.707

e. Forcibly transferring children of the group to another group

This definition is a wholesome adaptation of the definition contained in Article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Many of the words and phrases used to describe genocide in the Rome Statute have not been judicially defined by the ICC, recourse to interpretation given by the various *ad hoc Tribunals* to similar provision of the Genocide Convention can provide valuable guide to the ingredients of the crime.

Genocide, is also defined as intentional killing, destruction, or extermination of groups or members of a group as such, was first assessed to be purely a sub-category of crimes against Humanity.[127] The solid definition of genocide is the one set forth in the Genocide Convention in 1948, which defines genocide as one of the five types of acts committed with the special intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such. By means of this Convention, genocide acquired independent importance as a specific crime.[128]The context of genocide in 1948 Genocide Convention was narrower than that of crimes against humanity and the context of genocide expressed by Lemkin.[129] However, clarifying the concept of the crime of genocide, Articles II and III of the Genocide Convention were reproduced in a verbatim form in Article 4 of ICTY Statute and Article 2 of ICTR Statute. Under Article 4 of the ICTY, genocide refers to any criminal activity aiming to destroy, in whole or in part, a particular human group, as such, by certain means. There are two elements of the special intent requirement of genocide:

(1) The act or acts must target a national, ethnic, racial or religious group;

[127] Cassese, Antonio,(2003) ***International Criminal Law***, Oxford University Press, p.97
[128] Article II and III of the Genocide Convention
[129] A polish Jewish legal scholar, who had fled Nazi occupied Poland and arrived United States in 1941 as he introduced Genocide to give the crime a name.

(2) The act or acts must seek to destroy all or part of that group"[130]

Under Article 2 of ICTR Statute, the Chamber of ICTR concluded that a crime has to be of any of the acts listed under Article 2(2) of the ICTR Statute was committed and, if only this act was committed with the specific intent to destroy a specifically targeted national, ethnic, racial or religious group , in whole or in part. For this reason, an act in order to be punished under 'genocide' provisions must contain both the prohibited underlying act and the specific genocidal intent (dolus specialis.*)*[131]The crime of genocide is considered to be the most serious and most aggravated type of crime against humanity, and "the crime of crimes" among other international crimes. [132]Other definitions describing Genocide will also be considered thus:

Elihu and Gregory [133] defined Genocide as Any of following acts committed with intent to destroy a racial, or religious group, as such:

Killing members of group, causing serious bodily or mental harm to the group, deliberately inflicting on the group conditions calculated to bring its physical destruction in whole or in part, imposing measures to prevent births within the group, forcibly transferring children of the group to another group, while ethnic cleansing defined as Murder, Extrajudicial executions, Sexual assault, Torture, Confinement of civilians to ghetto areas, Deliberate initiation of attacks or threats of attacks on ... civilians and civilian areas.

These definitions are wholesome adaptations of the definition contained in Article II of the 1948 Convention on the Prevention and Punishment on the Crime of Genocide, as many of the words and phrases used to describe genocide in the Rome statute have not been judicially

[130] ICTY, Krstic, (Trial Chamber), August 2, 2001, para.550; see also: ICTY, Krstic, (Trial Chamber), August 2, 2001, para.580 and ICTY, Jelisic, (Trial Chamber), December 14, 1999, para.62.)
[131] Prosecutor v. Bagilishema, Case No.ICTR-95-1-A-T (Trial Chamber), June 7, 2001, para.55.
[132] Schabas, W. A.(2008), An Introduction to the International Criminal Court Cameroon May Publishers, London, p.37
[133] Suggested Definition of 'Ethnic Cleansing': (1992): Expert Advisory Committee to Security Council

defined by the ICC, recourse to interpretation given by the various ad hoc Tribunals to similar provision of the genocide convention can provide valuable guide to the ingredients of the crime.

2.6 The Constitutive Elements of the Crime of Genocide

To sustain a charge of genocide three main ingredients are required. Firstly, there must be an identifiable national, ethnic, racial or religious group against which any of these acts constituting genocide is perpetrated against. This excludes social and political groups. Secondly, there must be the intent to destroy such group in whole or in part. This is the mental element of the offence. To succeed the prosecution must prove specific intent to destroy any of the enumerated identifiable groups. Killing of a single person with such intent would suffice while the killing of a million people without a requisite intent will amount to homicide.

Genocide requires that acts be perpetrated against a group with an aggravated criminal intent, namely that of destroying the group in whole or in part. The degree to which the group was destroyed in whole or in part is not necessary that genocide has occurred. The intent may be inferred from a certain number of acts such as the general political doctrine, which gave rise to the acts possibly covered by the definition in Article II of the Convention or the repetition of destructive and discriminatory acts. The intent may be inferred from the perpetration of acts which violate, the very foundation of the group acts which are not themselves covered in the list in Article II which are committed as part of the same pattern of conduct.

Thirdly, the *actus reus* must prove the commission of any of the enumerated acts against an identifiable group. The exact scope of this element is far from been clear. A clear understanding of the full import of these words or phrases would go a long way to promote an understanding of the crime of genocide. It is in this regard that recourse will be made to the various interpretations made by the courts giving a valuable insight to the meaning of the words

used to describe genocide for purpose of clarity as defined by the Convention and they are discussed below.

2.6.1 Relevant Protected Groups

The definition in the 1948 Convention applies to national, ethnic, racial and religious groups. The concept is broadly analogous to what, at the time the Convention was adopted, were considered as national minorities. This was clearly the perspective of Raphael Lemkin and one of the other international experts such as Vespasian Pella who assisted the United Nations in preparing the first draft of the Convention. With considerable frustration, lawyers and courts have searched for objective definitions of the protected groups. But most of the judgments treat the identification of the protected group as an essentially subjective matter. For example, Trial Chambers of the International Criminal Tribunal for Rwanda have concluded that the Tutsi were an ethnic group based on the existence of government-issued official identity cards describing them as such. However, in prosecuting Akayesu's case, the trial chamber expanded the Genocide Convention and the Tribunal's Statute by introducing this subjective standard for determining what groups in a particular society are protected by the Genocide Convention. The chamber went further to hold that a national group is defined as a collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties. An ethnic group is generally defined as a group whose members share a common language or culture. The conventional definition of a racial group is based on the heredity of physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors. A religious group is one whose members share the same religion, denomination or mode of worship.[134]

[134] Prosecutor v. Jean Paul Akayesu (1998), Case No.96/4/T. Judgment, September 2.

A Trial Chamber of the International Criminal Tribunal for the former Yugoslavia wrote that the relevant protected group may be identified by means of the subjective criterion of the stigmatization of the group, notably by the perpetrators of the crime, on the basis of its perceived national, ethnic, racial or religious characteristics. In some instances, the victim may perceive himself or herself to belong to the aforesaid group. The prevailing view is that determination of the relevant protected group should be made on a case by case, relying upon both objective and subjective criteria.

2.6.2 Destruction of a group in whole or in part

The definition of genocide by the Genocide Convention of 1948 speaks of the destruction of a group in "whole" or in "part". It was a noble attempt by the drafters to reach a consensus, but in reality the General Assembly used ambiguous terms and left their clarification to judges in subsequent prosecutions. Several theories have emerged with a view to circumscribing the notion of "in part" because the term appeared in the preliminary paragraph of the definition, it is quite clear that they refer to the genocidal intent. As a result, the fundamental question is not how many victims were actually killed or injured, but rather how many victims the perpetrator intended to attack? Even where there are small numbers of victims, or none at all, the Convention also criminalizes attempted genocide, i.e, the crime can be committed if the genocidal intent is present. The actual result, in terms of quantity, will nevertheless be relevant in that it assists in assessing the perpetrator's intent. The greater the number of actual victims, the more plausible becomes the deduction that the perpetrator intended to destroy the group, in whole or in part. But there are other issues involved in construing the meaning of the term "in part". Could it be genocide to target only a few persons for murder because of their membership in a particular ethnic group, a literal reading of the definition seems to support such an

interpretation. Nevertheless, this construction is rather too extreme, and inconsistent with the drafting history, as well as with the context and the object and purpose of the Genocide Convention. Two basic approaches to the scope of the term "in part" have emerged, each adding a modifying adjective, substantial or significant, to the word "part".

According to the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia, it is well established that where a conviction for genocide relies on the intent to destroy a protected group in part, the part must be a substantial part of that group. Noting that the Nazis did not realistically intend to destroy all Jews, but only those in Europe, and that the Hutu extremists in Rwanda sought to kill Tutsis within Rwanda, the Appeals Chamber said: The intent to destroy formed by a [135]perpetrator of genocide will always be limited by the opportunity presented to him. While this factor alone will not indicate whether the targeted group is substantial, it can in combination with other factors, inform such analysis. In the factual context, the Appeals Chamber considered that the Bosnian Muslim community in Srebrenica constituted a substantial part of the Bosnian Muslims as a whole, and that the attempt to destroy it amounted to genocide. Another approach takes more of a qualitative than a quantitative perspective, reading in the adjective significant.

There is nothing to support this in the drafting history of the Convention, and the idea seems to have been launched by Benjamin Whitaker in a 1985 report to the United Nations Sub-Commission for the Protection and Promotion of Human Rights. He wrote that the term "in part" denotes a reasonably significant number, relative to the total of the group as a whole, or else a significant section of a group such as its leadership.[136] Citing Whitaker's report, an expert body

[135] *Prosecutor* v. *Krstić* (Case No. IT-98-33-A), Judgment, 18 August 2004, para. 8 www.eda.admin.ch/politorbis, p.93. Retrieved 7/29/12 at 12:32 PM

[136] Benjamin Whitaker, "Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide" UN Doc. E/CN.4/Sub.2/1985/6, para. 29) www.eda.admin.ch/politorbis, p.93. Retrieved 7/29/12 at 12:32 PM

established by the United Nations Security Council[137] to investigate violations of international humanitarian law in the former Yugoslavia held that 'in part' had not only a quantitative but also a qualitative dimension. According to the Commission's chair, Professor M. Cherif Bassiouni, the definition in the Genocide Convention was deemed sufficiently pliable to encompass not only the targeting of an entire group, as stated in the convention, but also the targeting of certain segments of a given group, such as the Muslim elite or Muslim women[138].This approach was adopted by the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, in some of the initial indictments, and was subsequently accepted by trial judges. Although not explicitly endorsing the significant part gloss on the Convention, the Appeals Chamber of the Tribunal considered the relevance to the Srebrenica Muslim community of the destruction of approximately 7,000 men. It referred to an observation of the Trial Chamber about the patriarchal character of Bosnian Muslim society in Srebrenica, and the consequent impact upon the future of the community that would result from the killing of its adult male population. Evidence introduced at trial supported this finding, by showing that, with the majority of the men killed officially listed as missing, their spouses are unable to remarry and, consequently, to have new children.

The physical destruction of the men therefore had severe procreative implications for the Srebrenica Muslim community, potentially consigning the community to extinction. In other words, the adult males were a significant part of the community, the Srebrenica Muslims, which was itself a substantial part of the group as a whole, namely, Bosnian Muslims.

[137] In1992

[138] "Final Report of the Commission of Experts", UN Doc. S/1994/674, para. 94). www.eda.admin.ch/politorbis, p.93. Retrieved 7/29/12 at 12:32 PM

2.6.3 Genocidal Intent

In principle, what sets criminal law apart from other areas of legal liability is its insistence upon establishing that the punishable act was committed intentionally, inadvertent or negligent behavior lies at the fringes of criminal law, and will certainly not apply when the most serious crimes, including genocide, are concerned. As a rule, criminal legislation does not spell out a requirement of intent, as this is considered to be implicit. The International Criminal Tribunal for the former Yugoslavia has adopted the view that an individual, acting alone, can commit genocide to the extent that he or she engages in killing with a genocidal intent. The problem with such analysis is that it loses sight of the importance of the plan or policy of a State or analogous entity.

In practice, genocide within the framework of international law is not the crime of a lone deviant but the act of a State. The importance of a State policy becomes more apparent when the context is from individual prosecution to a broader and more political determination.

In September 2005, the United Nations Security Council commissioned a study to determine whether genocide was being committed in Darfur. The resulting expert report did not seriously attempt to determine whether any single individual within Sudan had killed with genocidal intent. Rather, it examined the policy of the Sudanese government, stating: The Commission concludes that the government of Sudan has not pursued a policy of genocide.[139] The Commission said that there was evidence of two elements of the crime of genocide. The first was the presence of material acts corresponding to paragraphs in the definition of the crime set out in Article II of the 1948 Convention for the Prevention and Punishment of the Crime of Genocide. It observed that "the gross violations of human rights perpetrated by government

[139] Report of the International Commission of Inquiry on Violations of International Humanitarian Law and Human Rights Law in Darfur", UN Doc. S/2005/60, para. 518) www.eda.admin.ch/politorbis, Retrieved 7/29/12 at 12:32 PM

forces and the militias under their control" included reports of killing, causing serious bodily or mental harm, and deliberate infliction of conditions of life likely to bring about physical destruction.[140]

The second was the subjective perception that the victims and perpetrators, African and Arab tribes respectively, made up two distinct ethnic groups. But one central element appears to be missing, at least as far as the central government authorities are concerned genocidal intent is lacking. Generally speaking, the policy of attacking, killing and forcibly displacing members of some tribes does not evince a specific intent to annihilate, in whole or in part, a group distinguished on racial, ethnic, national or religious grounds. The lack of an explicit contextual element requiring that genocide was committed as part of a policy of a State or similar entity has led to some normative gap-filling at the International Criminal Court. Although only summary attention was paid to the definition of genocide during the drafting of the Rome Statute, some of the issues involved in the crime of genocide were explored in more detail by the Preparatory Commission as it devised the Elements of Crimes. The Elements of Crimes are a subsidiary instrument to the Rome Statute whose purpose is to assist the Court in the interpretation of the definitions of the crimes.[141] In particular, the Elements address various aspects of the mental element for the commission of genocide. They also impose a contextual element that does not appear in the text of the Genocide Convention itself.

The contextual element set out in the Elements of Crimes was invoked by Pre-Trial Chamber I in its decision on the Al-*Bashir's* arrest warrant. The Chamber acknowledged that the definition in the Genocide Convention itself does not expressly require any contextual element. It then considered the case law of the *ad hoc* tribunals, which have not insisted upon a plan or

[140] ibid
[141] Article 9 of the Rome Statute of the International Criminal Court, (2002) 2187 UNTS 90, **Politorbis Nr. 47 - 2 / 2009,** www.eda.admin.ch/politorbis

policy as an element of the crime of genocide. The ICTR's pronouncements are *obiter dictum*, because there has never been any doubt about a plan or policy in the 1994 genocide. The significant case here is Jelisić,[142] in which a Trial Chamber of the ICTY ruled that there was no sufficient evidence of a plan or policy, but that a conviction for genocide was in any event theoretically possible because an individual, acting alone, could perpetrate the crime. The Trial Chamber's decision in Jelisić was issued only months before the Elements of Crime were adopted by the Preparatory Commission and it is very likely that it influenced delegates to the Commission.

The original United States proposal on the Elements of genocide had borrowed the widespread and systematic language from Crimes Against Humanity. It was replaced by the manifest pattern formulation early in 2000.In president Al-Bashir's case, Pre-Trial Chamber I said that pursuant to the case law of the *adhoc* Tribunals, Pre-Trial Chamber I said that under this interpretative approach, the crime of genocide depends upon proof that the accused had the intent to destroy the protected group, and that as soon as this intent exits and materializes in an isolated act of a single individual, the protection is triggered, regardless of whether the latent threat to the existence of the targeted group posed by the said intent has turned into a concrete threat to the existence in whole or in part of that group. Noting a certain controversy as to whether the contextual element should be recognized, Pre- Trial Chamber I quite clearly distanced itself from the case law of the ad hoc tribunals. It highlighted the importance of the contextual element set out expressly in the Elements of Crimes. Dissenting Judge Ušacka insisted that the Elements of Crimes were only to assist the Court and hinted at the view that in this case they are inconsistent with Article 6, a point she said did not need to be determined in the present case. The Pre-Trial Chamber might well have justified the difference in its approach

[142] ICTY Jelisic, (Trial Chamber), December 14,1999, para.62

and that of the ad hoc tribunals by relying on the requirements imposed by the Elements of Crimes, in effect conceding that the interpretation in Jelisić[143] is more consistent with customary international law. However, it went on to state that it did not see any irreconcilable contradiction between the definition of genocide in Article 6 of the Rome Statute and the requirement of a contextual element set out in the Elements. Therefore the decision represents an important departure in the jurisprudence of the International Criminal Court from established case law of the ad hoc tribunals on an important substantive legal issue.

2.7 The Rationale and Scope of the Genocide Convention

The Convention for the Prevention and Punishment of the Crime of Genocide was adopted in Paris, on 9 December 1948, at the third session of the United Nations General Assembly. It entered into force slightly more than two years later, on 12 January 1951, later obtaining the requisite twenty ratifications. Interest in the Convention and in the legal aspects of genocide has grown dramatically in the past years, a part of the proliferation of activity in the field of International Criminal Law.

There have been more important judicial pronouncements on genocide in the past years than in the previous years. At the same time, the legal significance of genocide has probably declined, a phenomenon related to the dramatic expansion of the related category of crimes against humanity. Today, there are few if any legal consequences in identifying an act as genocide as opposed to describing it with the somewhat broader and more flexible label of crimes against humanity. Yet for victims of atrocity, describing their persecution as genocide is viewed as a badge of honour, and denying this to them is often treated as trivialization.

The Convention provides the definition of the crime of genocide, in one sense, the definition is considerably narrower than that of crimes against humanity, which can apply to a

[143] Supra

broad range of acts of persecution and other atrocities committed against any civilian population. On the other hand, the definition is manifestly broader because of the absence of any requirement of a link with aggressive war. Besides defining the crime, the Convention imposes several obligations upon States that ratify it. They are required to enact legislation to provide for punishment of persons guilty of genocide committed on their own territory. The legislation must not allow offenders to invoke in defence that they were acting in an official capacity. States are also obliged to cooperate in extradition when persons suspected of committing genocide elsewhere find refuge on their territory. They may not treat genocide as a political crime, which is a historic bar to extradition. Disputes between States about genocide are automatically subject to the jurisdiction of the International Court of Justice.

The title of the Convention speaks of prevention, but other than a perfunctory undertaking to prevent genocide there is nothing to suggest the scope of this obligation. In 2007, in a case filed by Bosnia and Herzegovina against Serbia, the International Court of Justice said there had been a breach of the Genocide Convention because Serbia failed to intervene with its allies, the Bosnian Serbs, so as to prevent the Srebrenica massacre of July 1995. The court said that in view of Serbia's undeniable influence, the authorities should have made the best efforts within their power to try and prevent the tragic events then taking shape, whose scale, though it could not have been foreseen with certainty, might at least have been surmised. [144]

The judgment clarifies that the obligation to prevent extends beyond a country's own borders. The principle it established should apply to other States that take little or no action to respond when mass atrocities posing a risk of genocide is threatened. This pronouncement is in the same spirit as an emerging doctrine in international law expressed in a unanimous resolution

[144] Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, 26 February 2007, para. 438

of the United Nations General Assembly, adopted in 2005, declaring that States have a responsibility to protect populations in cases of genocide, crimes against humanity, war crimes, and ethnic cleansing.[145]

The Convention specifies that genocide is to be prosecuted by the courts of the country where the crime took place or by such international penal tribunal as may have jurisdiction with respect to those contracting parties which shall have accepted its jurisdiction. The original General Assembly resolution proposed by Cuba, India and Panama called for recognition of universal jurisdiction over genocide. This would mean that the courts of any state could punish the crime, no matter where it was committed. The idea was rejected by the General Assembly in favour of an approach combining territorial jurisdiction and an international institution. The promised international court was not established for more than half a century, when the Rome Statute of the International Criminal Court entered into force on 1 July 2002. [146]

Despite the Convention's rejection of universal jurisdiction, in the Eichmann prosecution, the Israeli courts decided that it was accepted by customary international law. [147]Although no treaty confirms universal jurisdiction over genocide, and there is as yet no determination of its legitimacy by the International Court of Justice, there now seems little doubt that it is permitted by international law. In 2006 and 2007, the International Criminal Tribunal for Rwanda authorized transfer of suspects for trial on the basis of universal jurisdiction with the approval of the United Nations Security Council, further evidence of the broad acceptance of universal jurisdiction over genocide. [148]

[145] 2005 World Summit Outcome", UN Doc. A/RES/60/1, para 138

[146] Rome Statute of the International Criminal Court, (2002) 2187 UNTS 90

[147] A-G Israel v. Eichmann, (1968) 36 ILR 5 (District Court, Jerusalem), paras. 20-22

[148] Prosecutor v. Bagaragaza (Case No. ICTR-2005-86-R11bis), Decision on Prosecutor's Request for Referral of the Indictment to the Kingdom of the Netherlands, 13 April 2007. For Security Council acquiescence, see: UN Doc. S/PV.5697

The definition of genocide set out in Article II of the Convention has frequently been criticized for its narrowness, for example, it applies to a limited number of protected groups, and it requires an intent directed at physical destruction of the victimized group. There was disappointment when the International Court of Justice, in the Bosnia and Herzegovina case, dismissed attempts to broaden the definition by interpreting the words to destroy so as to encompass the notion of ethnic cleansing. The Court said that ethnic cleansing, which it described as the deportation or displacement of the members of a group, even if effected by force, was not necessarily equivalent to destruction of that group, and that destruction was not an automatic consequence of such displacement. [149]The relatively conservative approach to interpreting the definition, and a resistance to broadening the scope through judicial action rather than amendment of the Convention, is also reflected in judgments of the International Criminal Tribunal for the former Yugoslavia[150] and an authoritative report by a United Nations fact-finding commission, [151] nor has there been any serious effort at the political level to amend or modify the definition in Article II of the Convention. The ideal opportunity for such a development would have been the adoption of the Rome Statute of the International Criminal Court, when the definitions of the other core international crimes, crimes against humanity and war crimes, were quite dramatically modernized. But when it came to genocide, there were a few modest proposals, and these did not gain any attraction during the negotiations.[152]

[149] Prosecutor v. Bagaragaza Op cit
[150] Prosecutor v. Krstić (Case No. IT-98-33-A), Judgment, 19 April 2004. Also: Prosecutor v. Stakić (Case No. IT-97-24-T), Judgment, 31 July 2003; Prosecutor v. Brđanin (Case No. IT-99-36- T), Judgment, 1 September 2004; Prosecutor v. Blagojević et al. (Case No. IT-02-60-A) Judgment, 9 May 2007
[151] "Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Pursuant to Security Council Resolution 1564 of 18 September 2004", Geneva, 25 January 2005, available at www.eda.admin ch/ politorbis.com retrieved on 9/7/22
[152] "Report of the Ad Hoc Committee on the Establishment of An International Criminal Court", UN Doc.A/50/22; para. 61; UN Doc.A/AC.249/1998/CRP.8, p. 2.; Herman von Hebel and Darryl Robinson, 'Crimes Within the Jurisdiction of the Court', in Roy S. Lee, ed., The International Criminal Court: The Making of the Rome Statute, Issues, Negotiations, Results, The Hague, London and Boston: Kluwer Law, 1995, at pp. 79-128, 89, n. 37 available at www.eda.admin ch/ politorbis.com retrieved on 9/7/22

At the Rome Conference, only Cuba argued for amendment of the definition, proposing that it be expanded to include social and political groups. [153]There is some evidence of innovation by national lawmakers when the provisions of the Genocide Convention are translated into domestic criminal legislation. The French Code Pénal, for example, defines genocide as the destruction of any group whose identification is based on arbitrary criteria.[154]

The Canadian implementing legislation for the Rome Statute states that genocide means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that, at the time and in the place of its commission, constitutes genocide according to customary international law, explaining that the definition in the Rome Statute, which is identical to that of the Convention, is deemed a crime according to customary international law. The legislation adds, in anticipation this does not limit or prejudice in any way the application of existing or developing rules of international law.[155]

Recently, the European Court of Human Rights acknowledged some of this variation at the national level, ruling an expansive interpretation of the definition of genocide by German courts not to be inconsistent with the prohibition of retroactive criminality.[156] Still, at the international level, a relatively strict reading of the Convention's definition remains the rule. The title of the Convention speaks of prevention, but other than a perfunctory undertaking to prevent genocide, there is nothing to suggest the scope of this obligation.

[153] UN Doc. A/CONF.183/C.1/SR.3, para. 100 available at www.eda.admin ch/ politorbis.com retrieved on 9/7/22
[154] Code Pénal (France), Journal Officiel, 23 July 1992, art. 211-1, available at www.eda.admin ch/ politorbis.com retrieved on 9/7/22
[155] Crimes Against Humanity and War Crimes Act, 48-49 Elizabeth II, 1999-2000, C-19, s. 4, available at www.eda.admin ch/ politorbis.com retrieved on 9/7/22
[156] *Jorgić* v. *Germany* (Application no. 74613/01), Judgment, 12 July 2007

CHAPTER THREE
HISTORICAL DEVELOPMENT OF THE CRIME OF GENOCIDE UNDER INTERNATIONAL LAW

3.1 Introduction

This chapter aims at discussing the historical development, of the crime of genocide, taking a look at Pre World War II, Post World War II, and the position of the international community and the crime of genocide today. The term genocide which is defined as the crime of destroying or conspiring to destroy a group of people because of their ethnic, national, racial, or religious identity was introduced by Raphael Lemkin, a Polish legal scholar. He created the word in 1944 to describe the systematic annihilation of entire group of people by Nazi Germany during World War II.[157] Yet, genocide did not originate with the Nazis: it has been a common practice since ancient times, and it has occurred in all parts of the world. In fact, scholars estimate that during the last half of the twentieth century, genocide was committed or attempted by at least sixteen nations in Africa, Central and South America, Asia, and Europe.

In 1948, the General Assembly of the United Nations authorized the establishment of the International Convention on the Prevention and Punishment of the Crime of Genocide (commonly called the Genocide Convention). Taking effect in 1951, the Genocide Convention made genocide a crime under international law. The first attempt to prosecute people under the convention took place in 1993, when the UN formed an international criminal tribunal to investigate war crimes and crimes against humanity, including genocide, in the former Yugoslavia. In late 1994, the UN established another international criminal tribunal to investigate war crimes in Rwanda; three men, including former Rwandan Prime Minister Jean Kambanda, were convicted of genocide in 1998. Enforcement of the Genocide Convention was

[157] 1939-1945

difficult, however, in 1998 the UN voted to create a permanent International Criminal Court based in the Hague, Netherlands with jurisdiction over International Crimes, which includes genocide, crimes against humanity, war crimes and aggression.

3.2 Development of the Concept of Genocide Pre- World War II

The concept of Genocide was forged in the crucible of post World War II efforts to prosecute Nazi atrocities. Its development took place in conjunction with that of other international crimes, especially crimes against humanity, with which it bears a close but complex relationship. The development and history of genocide as a legal concept cannot be properly understood without considering the parallel existence of crimes against humanity. Although the participants of the United Nations War Crimes Commission, established in November 1943, in a conference in London which met from late June to early August 1945 to prepare the Nuremberg trial of the major war criminals, opted to use the term crimes against humanity in the prosecutions, they also employed the word "genocide" as if it was more or less synonymous. In his planning memorandum distributed to delegations at the beginning of the conference in June 1945, Justice Robert Jackson outlined evidence to be adduced at the Nuremberg trial, he spoke of genocide or the destruction of racial minorities and subjugated populations by such means and methods as underfeeding, sterilization and castration, depriving them of clothing, shelter, fuel sanitation, medical care, deporting them for forced labour and working them in inhumane conditions.

The Herero and Namaqua Genocide in German South-West Africa (present-day Namibia) in 1904–1907 was the first organized state genocide according to the Whitaker Report (1985), prepared for the United Nations but not adopted. The Herero were also the first ethnic group to

be subjected to genocide in the 20th century.[158] Eighty percent of the total Herero population and 50 percent of the total Nama population were killed in a brutal scorched earth campaign led by German General Lothar von Trotha. In total, between 24,000 and 100,000 Herero perished along with 10,000 Nama.[159] A lone copy of Trotha's Extermination Order survives in the Botswana National Archives, and one reads of his intention that "every Herero, with or without a gun, with or without cattle, will be shot. I will no longer accept women or children, I will drive them back to their people [to die in the desert] or let them be shot at". [160]Olusoga and Erichsen wrote: "It is an almost unique document: an explicit, written declaration of intent to commit genocide."[161].

3.3 Genocidal incidences in the Ottoman Empire/Turkey

The concept of Crimes against humanity was introduced into international relations for the first time when the Allied Powers sent a correspondence to the government of the Ottoman Empire, a member of the Central Powers, over massacres that were taking place within the Empire.

On May 24, 1915, the Allied Powers (Britain, France, and Russia) jointly issued a statement explicitly charging for the first time ever another government of committing " crime against humanity" in reference to that regime's persecution of its Christian minorities including Armenians, Assyrians and Greeks among others. Many researchers consider these events to be part of the same policy of planned ethnoreligious purification of the Turkish state followed by the Young Turks.[162]

---

[158] Cooper, Allan D..(2006), Reparations for the Herero Genocide: Defining the limits of International litigation. Oxford Journals, African Affairs p.113–126

[159] Hughes, J.S. Colonial Genocide and Reparations Claims in the 21st Century: The Socio-Legal Context of Claims under International Law by the Herero against Germany for Genocide in Namibia, (PSI Reports) 1904-1908

[160] Olusoga D. & Erichsen C.W. (2010), The Kaisers Holocoust: Germany's forgotten Genocide and the Colonial Roots of the Nazism, Faber & Faber LTD London, p. 150–1.

[161] Ibid pg.151

Schaller, Dominik J.; Zimmerer, Jürgen (2008)"Late Ottoman Genocides: the Dissolution of the Ottoman Empire and Young Turkish population and Extermination Policies – Introduction". Journal of Genocide Research 10 (1): 7–14.

This joint statement stated, "in view of these new crimes of Turkey against humanity and civilization, the Allied Governments announce publicly to the Sublime Porte that they will hold personally responsible for these crimes all members of the Ottoman Government, as well as those of their agents who are implicated in such massacres."[163]

Armenian civilians, escorted by armed Ottoman soldiers, were marched through Kharpert to a prison in the nearby Mezireh district, in April 1915.The Armenian Genocide also called by a host of other names, refers to the deliberate and systematic destruction of the Armenian population of the Ottoman Empire during and just after the World War I. It was implemented through wholesale massacres and deportations, with the deportations consisting of forced marches under conditions designed to lead to the death of the deportees. The total number of resulting Armenian deaths is generally held to have been between one and a half million.[164]

The starting date of the genocide is conventionally held to be April 24, 1915, the day when Ottoman authorities arrested some 250 Armenian intellectuals and community leaders in Constantinople. Thereafter, the Ottoman military uprooted Armenians from their homes and forced 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 commonplace.[165] The majority of Armenian diaspora communities were founded as a result of the Armenian genocide.

---

163 1915 Declaration ,Affirmation of the United States Record on the Armenian Genocide Resolution (Introduced in House of Representatives) 109th Congress, 1st Session, H.RES.316, June 14, 2005. 15 September 2005 House Committee/Subcommittee: International Relations actions. Status: Ordered to be Reported by the Yeas and Nays: 40 - 7.Original source of the telegram sent by the Department of State, Washington containing the French, British and Russian joint declaration

164 Dadrian, Vahakn N.(1995), The History of the Armenian Genocide: Ethnic Conflict from the Balkans to Anatolia to the Caucasus. Oxford: Erghahn Books, ; Peter Balakian,(2003) The Burning Tigris: The Armenian Genocide and America's Response. New York: HarperCollins,; Donald Bloxham (2005), The Great Game of Genocide: Imperialism, Nationalism, and the Destruction of the Ottoman Armenians. Oxford: Oxford University Press,; Taner Akçam, (2012)The Young Turks' Crime Against Humanity: The Armenian Genocide and Ethnic Cleansing in the Ottoman Empire. Princeton: Princeton University Press.

165 Hans-Lukas Kieser, Dominik J. Schaller, Der Völkermord an den Armeniern und die Shoah: (2002,) The Armenian Genocide and the Shoah, Chronos, p. 114.

The modern Republic of Turkey, which succeeded the Ottoman Empire in 1923, vehemently denies that genocide took place and has resisted calls in recent years by scholars, countries, and international organizations to recognize them as so. The Armenian Genocide is acknowledged to have been one of the earliest modern genocides, as historians point to the organized manner in which the killings were carried out to eliminate the Armenians, and it is the second most-studied case of genocide after the Holocaust. The word genocide was coined by scholar Raphael Lemkin in order to describe these events.

Also another genocidal incident recorded in the Ottoman empire was the Assyrian Genocide (also known as Sayfo or Seyfo; Aramaic: Turkish: Süryani Soykırımı) which was committed against the Assyrian population of the Ottoman Empire during the World War I by the Young Turks. The Assyrian population of northern Mesopotamia (Tur Abdin, Hakkari, Van, Siirt region in modern-day southeastern Turkey and Urmia region in northwestern Iran) was forcibly relocated and massacred by Ottoman (Turkish and allied Kurdish) forces between 1914 and 1920 under the regime of the Young Turks. This genocide is considered to be a part of the same policy of extermination as the Armenian Genocide and Greek Genocide. The Assyro-Chaldean National Council stated in a December 4, 1922, memorandum that the total death toll is unknown, but it estimates that about 750,000 "Assyro-Chaldeans" died between 1914–1918.

The Greek Genocide[166] also refers to the fate of the Greek population of the Ottoman Empire during and in the aftermath of World War I [167]. Like Armenians and Assyrians, the Greeks were subjected to various forms of persecution including massacres, expulsions, and death marches by Young Turks. George W. Rendel of the British Foreign Office, among other

[166] Assyrian International News Agency, International Genocide Scholars Association Officially Recognizes Assyrian, Greek Genocides, Retrieved on 2007-12-15.
[167] 1914-1923

diplomats, noted the massacres and deportations of Greeks during the post-Armistice period.[168] It is estimated that 348,000 Anatolian Greeks died during this period as a result of these persecutions.[169]The Pontian and Anatolian Greeks were the victims of a boarder Turkish Genocide project aimed at all Christians minorities in the Ottoman empire. A total of 3.5 million Greeks, Armenians, and Assyrians were killed under the successful regimes of young Turks and of Mustafa Kemal from roughly 1914 to 1923. Of this, as many as 1.5 million Greeks have died. The end of the genocide marked a profound rupture in the long Greek historical presence on the Asia minor.[170]

The Dersim massacre refers to the depopulation of Dersim in Turkish Kurdistan, in 1937-1938, in which approximately 65,000-70,000 Alevi Kurds were killed and thousands were driven into exile. A key component of the Turkification process was the policy of massive population resettlement. The main policy document in this context, the 1934 Law on Resettlement, was used to target the region of Dersim as one of its first test cases, with disastrous consequences for the local population.[171]

Many Kurds and some ethnic Turks consider the events that took place in Dersim to constitute genocide. A prominent proponent of this view is the academic İsmail Beşikçi. Under international law, it has been argued, the actions of the Turkish authorities were not genocide, because they were not aimed at the extermination of a people, but at resettlement and suppression, while a Turkish court ruled in 2011 that it could not be considered genocide

168 Foreign Office Memorandum by Mr. G.W. Rendel on Turkish Massacres and Persecutions of Minorities since the Armistice (20 March 1922)
169 Rummel , R. J.. "Statistics of Democide". Chapter 5, Statistics of Turkey's Democide Estimates, Calculations, and Sources. Retrieved 2006-10-04
170 The Genocide of Ottoman Greeks , Heinous Genocides, Leadership News Paper, Saturday, November2, 2013.
171 The Suppression of the Dersim Rebellion in Turkey (1937-38) Page 4

according to the law because they were not directed systematically against an ethnic group.[172] Scholars, such as Martin van Bruinessen, have instead talked of an ethnocide directed against the local language and identity.[173]

3.4 Genocide in the Soviet Union

There are several documented instances of unnatural mass death occurring in the Soviet Union. These include the Soviet-wide famines in the early 1920s and early 1930s and deportations of ethnic minorities. Soviet diplomatic efforts removed the extermination of political groups from the United Nations Convention on Genocide, so many of the atrocities committed by the Soviet authorities do not fall under the United Nations definition of genocide because the perpetrators of the atrocities were targeting members of political or economic groupings rather than the ethnic, racial, religious, or national groups listed in the UN convention. Nevertheless some of the gross violations of human rights committed by agents of the Bolshevik and Soviet governments have been described by some authorities as genocide.

During the Soviet famine of 1932-1933 that affected Ukraine, Kazakhstan, and some densely populated regions of Russia, the scale of death in Ukraine is referred to as the Holodomor, and is recognized as genocide by the governments of Australia, Argentina, Georgia, Estonia, Italy, Canada, Lithuania, Poland, the USA, and Hungary. The famine was caused by the confiscation of the whole 1933 harvest in Ukraine, Kazakhstan, the Kuban (a densely Ukrainian region), and some other parts of the Soviet Union, leaving the peasants too little to feed themselves. As a result, an estimated ten million died Soviet-wide, including over seven million

---

[172] Saymaz, Ismail (14 March 2011). "Turkish prosecutor refuses to hear Dersim 'genocide' claim". Hürriyet Daily News. Retrieved 24 November 2011.

[173] The Suppression of the Dersim Rebellion in Turkey (1937-38) Excerpts from: Martin van Bruinessen, "Genocide in Kurdistan? The suppression of the Dersim rebellion in Turkey (1937-38) and the chemical war against the Iraqi Kurds (1988)", in: George J. Andreopoulos (ed), Conceptual and historical dimensions of genocide. University of Pennsylvania Press, 1994, pp. 141-170.

in Ukraine, one million in the North Caucasus, and one million elsewhere.[174] American historian Timothy Snyder speaks of "3.3 million Soviet citizens (mostly Ukrainians) deliberately starved by their own government in Soviet Ukraine in 1932-1933"[175]

In addition to the requisitioning of crops in Ukraine, all food was confiscated by Soviet authorities. Any and all the food was prohibited from entering specifically the Ukrainian Republic. Ukraine's Yuschenko's administration recognized the Holodomor as an act of genocide, and pushed international policy to reflect this. This move is opposed by the Russian government and some Russophile members of the Ukrainian parliament. A Ukrainian court found Joseph Stalin, Vyacheslav Molotov, Lazar Kaganovich, Stanislav Kosior, Pavel Postyshev, Vlas Chubar and Mendel Khatayevich guilty of genocide on 13 January 2010. As of 2010, Moscow's official position is that the famine took place, but it is not an ethnic genocide; current Ukrainian president Viktor Yanukovych has supported this position.[176] A ruling of January 13, 2010 by Kyiv's Court of Appeal recognized the leaders of the totalitarian Bolshevik regime as those guilty of 'genocide against the Ukrainian national group in 1932-33 through the artificial creation of living conditions intended for its partial physical destruction.'"[177]

3.5 Rise of Adolf Hitler and the Enactment of the Genocide Convention

The Holocaust was a dark time in the history of the 20th century. Its beginning can be traced to as far back as 1933, when the Nazi party of Germany led by Adolf Hitler came to power, the Nazi party organized a strategy of persecution and murder. Their targets were the so called undesirables: Jews, Slavs, Roma, the disabled, Jehovah Witnesses, and homosexuals, as well as political and religious dissidents. Nazi began stripping citizenship from German Jews on

[174] Conquest, R, (1986). The Harvest of Sorrow: Soviet Collectivization and the Terror-Famine. London: Oxford University Press. p. 306.
[175] Snyder, Timothy (2010). Bloodlands: Europe Between Hitler and Stalin. New York: Basic Books. p. 412.
[176] . Yanukovych: Famine of 1930s was not Genocide against Ukrainians, Kyiv Post (April 27, 2010)
[177] Interfax-Ukraine (27 April 2010). "Our Ukraine Party: Yanukovych violated law on Holodomor of 1932-1933". Kyiv Post. Retrieved 10 August 2010.

the basis of their religious identity. five years later organized pogrom of Kristallnact marked the beginning of mass deportation of German Jews to concentration camps. The first and most infamous of these pogroms was the night of broken glass which was prompted by the assassination of Enrst von Rath, a German diplomat by a Jew. Two days later an act of retaliation was organized by Joseph Gobblls to attack the Jews in Germany. The attack led to the destruction of over 7,000 Jewish businesses, 175 synagogues and the death of nearly 100 Jews. As the Nazis conquered large areas of Europe, Jews and others in Nazi- controlled areas were also deported to camps. When the Nazi army invaded the soviet union, it soon gave rise to mobile killing squads operating throughout Eastern Europe and Russia, which killed more than one million Jews and tens of thousands of other civilians. The construction of other extermination camps at Auschwitz- Birkanau, Treblinka, Belzec, Chelmno and Sobibor led to the Nazis' killing of 2.7 million Jews and others through the use of cyanide gas, summary executions and medical experimentation. Poor living conditions in non extermination camps led to the death of millions more.[178]

The toll that the Holocaust took on the people of Europe, especially Jews, was staggering. By the time it was all over, an estimated 12 million people lay dead, nearly six million of which were Jews.[179] All this was made possible with the appointment of Adolf Hitler as Chancellor on January 30, 1933, the Nazi Party took control of Germany. In October, German delegates walked out of disarmament talks in Geneva and Nazi Germany withdrew from the League of Nations. In October, at an international legal conference in Madrid, Raphael Lemkin (who later coined the word "genocide") proposed legal measures to protect groups. His proposal did not receive support.

[178] The Holocaust, History's Dark moment, Heinous Genocides, Leadership News Paper, Saturday, November 2, 2013.
[179] ibid

The World War II began on September 1, 1939, when Germany invaded Poland triggering a treaty-mandated Anglo-French declaration of war on Germany. On September 17, 1939, the Soviet army occupied the eastern half of Poland. Lemkin fled Poland, escaping across the Soviet Union and eventually arriving in the United States. On June 22, 1941, Nazi Germany invaded the Soviet Union. As the German forces advanced further east, police, and military personnel carried out atrocities that moved British Prime Minister Winston Churchill to state in August 1941,"We are in the presence of a crime without a name."

In December 1941, the United States entered World War II on the side of the Allied forces. Lemkin, who arrived in the United States as a refugee in 1941, had heard of Churchill's speech and later claimed that his introduction of the word genocide" was in part a response to Churchill's statement. Nazi leadership embarked on a variety of population policies aimed at restructuring the ethnic composition of Europe by force, using mass murder as a tool. Included among these policies and involving mass murder were the attempt to murder all European Jews, which we now refer to as the Holocaust, the attempt to murder most of the Gypsy (Roma) population of Europe, and the attempt to physically liquidate the leadership classes of Poland and the former Soviet Union. Also included in these policies were numerous smaller scale resettlement policies involving the use of brutal force and murder that we now refer to as a form of ethnic cleansing.

In 1944, Raphael Lemkin, who had moved to Washington DC, and worked with the US War Department, coined the word genocide in his text Axis Rule in Occupied Europe. This text documented patterns of destruction and occupation throughout Nazi-held territories.

The term Genocide did not exist before 1944. It is a very specific term referring to violent crimes committed against groups with the intent to destroy the existence of the group. Human

rights as laid out in the US Bill of Rights or the 1948 UN Universal Declaration of Human Rights of individuals. In 1944 Raphel Lemkin sought to describe Nazi policies of the systematic murder, including the destruction of the European Jews, he formed the word Genocide by combinig geno-from the Greek word for race or tribe with cide from the latin word killing. In proposing this new term, he had in mind 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 next year the International Military Tribunal held at Nuremberg Germany charged with crimes against Humanity. The word Genocide was included in the indictment, but not legal term. He created the word in 1944 to describe the systematic annihilation of entire groups of people by Nazi Germany during World War II. Yet genocide did not originate with the Nazis, it has been a common practice since ancient times, and it has occurred in all parts of the world. In fact, scholars estimate that during the last half of the twentieth century genocide was committed or attempted by at least sixteen nations in Africa, Central and South America, Asia, and Europe.

On December 9, 1948 in the shadow of the Holocoust and in no small part due to the tireless efforts of Lemkin himself, the UN approved the Convention on the Prevention and Punishment of the crime of Genocide. This convention establishes Genocide as an International crime, which signatory Nations undertake to prevent and punish .According to the United Nations' definition if there is no 'intent to destroy' there is no genocide. While many cases of group targeted violence have occurred throughout history and even since the convention came into effect, the legal and the international development of the term is concentrated into two Historical distinct periods : the time from the coining of the term until its acceptance as International law (1944-1948) and the time of its activation with the establishment of the

International Criminal Tribunals to prosecute the crime of Genocide(1991-1998) .Preventing genocide, remains a challenge that nations and individuals continue to face.

After the Holocaust, Lemkin successfully campaigned for the universal acceptance of international laws defining and forbidding genocide. In 1946, the first session of the United Nations General Assembly adopted a resolution that affirmed that genocide as a crime under international law, but did not provide a legal definition of the crime. In 1948, the UN General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide which legally defined the crime of genocide for the first time.[180]

Since 1951, genocide has been a crime under international law. The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the United Nations General Assembly in 1948 and effective as of 1951, has two legal obligations of signatories: nations must try their own genocide suspects and those within their borders and nations are required to take steps to prevent, suppress, and punish genocide.

The Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) was adopted by the UN General Assembly on 9 December 1948 and came into effect on 12 January 1951[181]. It contains an internationally recognized definition of genocide which was incorporated into the national criminal legislation of many countries, and was also adopted by the Rome Statute of the International Criminal Court, the treaty that established the International Criminal Court (ICC).

The first draft of the Convention included political killings, but the USSR[182]along with some other nations would not accept that actions against groups identified as holding similar

[180] Rubinstein, W. D.(2004) Genocide: A History. Pearson Education. p. 308.
[181] (Resolution 260 (III))
[182] Robert Gellately & Ben Kiernan. (2003) The Specter of Genocide: Mass Murder in Historical Perspective. Cambridge, UK: Cambridge University Press. P. 267.

political opinions or social status would constitute genocide,[183] so these stipulations were subsequently removed in a political and diplomatic compromise. The Convention was manifestly adopted for humanitarian and civilizing purposes. Its objectives are to safeguard the very existence of certain human groups and to affirm and emphasize the most elementary principles of humanity and morality. In view of the rights involved, the legal obligations to refrain from genocide are recognized as *erga omnes*.

When the Convention was drafted, it was already envisaged that it would apply not only to then existing forms of genocide, but also "to any method that might be evolved in the future with a view to destroying the physical existence of a group".[184]

All signatories to the CPPCG are required to prevent and punish acts of genocide, both in peace and war time, though some barriers make this enforcement difficult. In particular, some of the signatories namely: Bahrain, Bangladesh, India, Malaysia, the Philippines, Singapore, the United States, Vietnam, Yemen, and Yugoslavia, signed with the proviso that no claim of genocide could be brought against them at the International Court of Justice without their consent.[185] Despite official protests from other signatories (notably Cyprus and Norway) on the ethics and legal standing of these reservations, the immunity from prosecution they granted has been invoked from time to time, as when the United States refused to allow a charge of genocide brought against it by Yugoslavia following the 1999 Kosovo War.

It is commonly accepted that, at least since World War II, genocide has been illegal under customary international law as a peremptory norm, as well as under conventional international law. Acts of genocide are generally difficult to establish for prosecution, because a chain of

---

183 Staub, Ervin (1992). The Roots of Evil: The Origins of Genocide and Other Group Violence. Cambridge, UK: Cambridge University Press. p. 8.

184 From a statement made by Mr. Morozov, representative of the Union of Soviet Socialist Republics, on 19 April 1948 during the debate in the Ad Hoc Committee on Genocide (E/AC.25/SR.12).

185 United Nations Treaty Collection (As of 9 October 2001): Convention on the Prevention and Punishment of the Crime of Genocide on the web site of the Office of the United Nations High Commissioner for Human Rights

accountability must be established. International Criminal Courts and Tribunals function primarily because the states involved are incapable or unwilling to prosecute crimes of this magnitude themselves.

Between November 20, 1945, and October 1, 1946, the International Military Tribunal in Nuremberg tried 22 major Nazi German leaders on charges of crimes against peace, war crimes, crimes against humanity and conspiracy to commit each of these crimes. It was the first time that International Tribunals were used as a post war mechanism for bringing national leaders to justice. The word genocide was included in the indictment, but as a descriptive, not legal, term.

In 1975 The Khmer Rouge, led by Pol Pot, Ta Mok and other leaders, organized the mass killing of ideologically suspect groups. The total number of victims is estimated at approximately 1.7 million Cambodians between 1975–1979, including deaths from slave labour.[186]Also between 1950-1987, massive crimes against civilian populations were all too common in the years after World War II and throughout the Cold War. Whether these situations constituted "genocide" was scarcely considered by the countries that had undertaken to prevent and punish that crime by joining the Genocide Convention.

On November 4, 1988, US President Ronald Reagan signed the UN Convention on the Prevention and Punishment of Genocide. The Convention had strong supporters, but also faced ardent opponents, who argued it would infringe on US national sovereignty. One of the Convention's strongest advocates, Senator William Proxmire from Wisconsin delivered over 3,000 speeches advocating the Convention in Congress from 1968-1987.

[186] Cambodian Genocide Program, Yale University's MacMillan Center for International and Area Studies

3.6 The Post 1997 the Genocidal Wars

3.6.1 The Genocidal Wars of Former Yugoslavia Between 1991-1995

In the late eighties tension rose in the socialist Federative republic of Yugoslavia, where Yugoslavia experienced of the Yugoslavian system of self governing economy and economic tension richer northern and poorer southern Republics and also a bloody riot in Kosovo between 1991, 1989 and 1990, by large Albanian authority leaving in that historical heartland of Serbia pressing the Serb minority towards emigration:, the abolition of the autonomous status of Kosovo, which is an autonomous province within Serbia, but also a subject of the federation.

The publication of the Serb Nationalist Memorandum by the Serbian Academy of Science and the rise to power of the Serb nationalist politician Slobodan Milosevic in Serbia in 1986. Also the disbanding of the communist one party system with the formation of opposition parties in the republic of Slovenia and Croatia in 1988, and the multiparty elections in all six republics bringing nationalist party to power. However in 1991 the fragmentation increased to such a degree the republics of Slovenia and Croatia wanted to secede; the central Yugoslavian institutions are increasingly blocked by stalemate between the Serb block and those republics wanting to secede.

In 1993, the Former Yugoslavia targeted civilian groups suffered brutal atrocities throughout the conflicts in the former Yugoslav republics of Croatia (1991-95) and Bosnia-Herzegovina (1992-95). Though the international community showed little will to stop the crimes as they were taking place, the UN Security Council did establish the International Criminal Tribunal for the former Yugoslavia (ICTY) in the Hague. It was the first International Criminal Tribunal since Nuremberg and the first mandated to prosecute the crime of genocide. Nonetheless, the single worst atrocity to occur in Europe since the Holocaust came two years

later. In July 1995, the Bosnian Serb army overran the United Nations declared "safe haven" of Srebrenica. In the following days, they killed some 8,000 Bosniak men and boys. This incident would later be judged to constitute "genocide" by the International Criminal Tribunal for Yugoslavia. In total, 100,000 people died during the Bosnian conflict; some 80% of the civilians killed were Bosniaks.

UN Commission of Experts that examined violations of International Humanitarian Law committed in the territory of the former Yugoslavia.[187]The wars of the former Yugoslavia were marked by massive war crimes and crimes against humanity. The conflict in Bosnia (1992-1995) brought some of the harshest fighting and worst massacres to Europe since World War II. In one small town, Srebrenica, as many as 8,000 Bosniak men and boys were murdered by Serbian forces. In response to the atrocities occurring in Bosnia, the United Nations Security Council in 1993 issued resolution 827, establishing the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague. It was the first International Criminal Tribunal since Nuremberg. Crimes that the ICTY can prosecute and try were grave breaches of the 1949 Geneva Convention, violations of the laws or customs of war, genocide, and crimes against humanity. Its jurisdiction is limited to crimes committed on the territory of the former Yugoslavia.

3.6.2 The Genocidal Wars in Rwanda

The dimensions of the human tragedy that has played itself out in Burundi since the country's independence in 1960, however, are anything but diminutive, an estimated 400,000 killed, some 800,000 forced to flee the country, and many tens of thousands internally displaced. Rwanda, in 1994 saw close to one million of its population systematically murdered. The conflict

187. Mandate, Structure and Methods of Work: Genocide I of the UN Commission of Experts to examine violations of International Humanitarian Law committed in the territory of the Former Yugoslavia, created by Security Council Resolution 780 (1992) of 6 October 1992.]

between Tutsi and Hutu in Burundi, as in Rwanda, is at the heart of Central African regional instability, producing massive refugee flows, insurgencies, and cross-border violence. The Burundi conflict therefore cannot be fully understood, much less resolved, without reference to the wider region. The Tutsi-Hutu schism within Burundi and the war within the Democratic Republic of the Congo (DRC) which involved as many as seven national armies, two rebel groups, and a host of foreign armed groups based within Congolese territory were interlinked. Not only did the belligerent parties operate across borders, but a very large number of regional states were also interested parties in both conflicts.

Moreover, events in Rwanda directly affect Burundian political dynamics and the Democratic Republic of the Congo, just as Burundian developments affect the perspectives and actions of both Rwandans and the Congolese. The Burundi conflict is significant for a second reason as well: the use of an innovative long-term leadership training initiative in collaborative decision-making, one that targets key leaders in all sectors and is designed to build the foundations for a more sustainable peace and to enable a country to effectively tackle the multiple challenges of post conflict reconstruction.

The lessons learned from this experiment in conflict transformation may well be applicable to other divided societies. In neither the Arusha peace process (for Burundi) nor the Lusaka peace process (for the Democratic Republic of the Congo did the United States or its diplomats take leadership of the facilitation. Rather, as a matter of policy, it was decided that the United States should play an active but secondary, supportive role working with the key facilitators, providing financial and technical support as needed, encouraging the belligerent parties toward negotiated settlements of their conflicts, and coordinating diplomatic efforts with the regional sponsors of the two peace processes the Rome based Catholic lay order of Sant'

Egidio that was facilitating discrete talks between belligerent parties, and the European partners (most notably, France, Belgium, the United Kingdom, and the European Union). Thus this analysis reflects, in large measure, the judgments not of a lead facilitator but rather of a diplomatic participant-observer.

From April until mid-July, at least 500,000 civilians, mostly from the Tutsi minority group, were killed in Rwanda. It was killing on a devastating scale, scope, and speed. In October, the UN Security Council extended the mandate of the International Criminal Tribunal for the former Yugoslavia to include a separate but linked tribunal for Rwanda, the International Criminal Tribunal for Rwanda (ICTR), located in Arusha, Tanzania.

The International Criminal Tribunal for Rwanda (ICTR) is a court under the auspices of the United Nations for the prosecution of offenses committed in Rwanda during the genocide which occurred there during April, 1994, commencing on 6 April. The ICTR was created on 8 November 1994 by the Security Council of the United Nations in order to judge those people responsible for the acts of genocide and other serious violations of the international law performed in the territory of Rwanda, or by Rwandan citizens in nearby states, between 1 January and 31 December 1994.

So far, the International Criminal Tribunal for Rwanda has finished nineteen trials and convicted twenty seven accused persons. On 14 December 2009, two more men were accused and convicted for their crimes. Another twenty five persons are still on trial. Twenty-one are awaiting trial in detention, two more added on 14 December 2009. Ten are still at large. The first trial, of Jean-Paul Akayesu, began in 1997. In October, 1998, Akayesu was sentenced to life imprisonment. Jean Kambanda, interim Prime Minister, also pleaded guilty.

3.7 Development of Genocide from 1997 to Date

In 1998 a permanent court to prosecute atrocities against civilians was established through an international treaty ratified on July 17, 1998. The International Criminal Court was permanently established to prosecute genocide, crimes against humanity, and war crimes. The treaty reconfirmed the definition of genocide found in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. It also expanded the definition of crimes against humanity and prohibits these crimes during times of war or peace.

Genocide occupies a prominent place within the structure of the ICC. The "crime of crimes" is the first to be defined in the Rome Statute. It was envisaged in article 6, which is analogous to article II of the Convention against Genocide, and it reflects the fact that genocide is an international crime. The jurisdiction of the Court is limited to the most serious crimes of concern to the international community as a whole .[188]The Court has jurisdiction in accordance with the Rome Statute with respect to the crime of genocide.

3.7.1 First Conviction for Genocide

On September 2, 1998, the International Criminal Tribunal for Rwanda issued the world's first conviction for genocide in an International CriminalTribunal when Jean-Paul Akayesu was found guilty of genocide and crimes against humanity for acts he engaged in and oversaw as mayor of the Rwandan town of Taba. While the International Criminal Tribunal for Former Yugoslavia and International Criminal Tribunal for Rwanda and the present International Criminal Court have helped establish legal precedents and can investigate crimes within their jurisdictions, punishment of genocide remains a difficult task. Even more difficult is the continuing challenge to prevent genocide.

[188] Article 6 of the Rome Statute.

In 2001, the International Criminal Tribunal for the Former Yugoslavia (ICTY) judged that the 1995 Srebrenica massacre was an act of genocide.[189]On 26 February 2007, the International Court of Justice (ICJ), in the Bosnian Genocide Case upheld the ICTY's earlier finding that the Srebrenica massacre constituted genocide, but found that the Serbian government had not participated in a wider genocide on the territory of Bosnia and Herzegovina during the war, as the Bosnian government had claimed.[190]

On 12 July 2007, European Court of Human Rights when dismissing the appeal by Nikola Jorgic against his conviction for genocide by a German court noted that the German courts wider interpretation of genocide has since been rejected by international courts considering similar cases. [191]The ECHR also noted that in the 21st century "amongst scholars, the majority have taken the view that ethnic cleansing, in the way in which it was carried out by the Serb forces in Bosnia and Herzegovina in order to expel Muslims and Croats from their homes, did not constitute genocide. However, there are also a considerable number of scholars who have suggested that these acts did amount to genocide"[192]

About 30 people have been indicted for participating in genocide or complicity in genocide during the early 1990s in Bosnia. To date after several plea bargains and some convictions that were successfully challenged on appeal two men, Vujadin Popović and Ljubiša Beara, have been found guilty of genocide, and two others, Radislav Krstic and Drago Nikolic, have been found guilty of aiding and abetting genocide. Three others have been found guilty of

[189] The International Criminal Tribunal for the Former Yugoslavia found in Prosecutor v. Radislav Krstic – Trial Chamber I – Judgment – IT-98-33 (2001) ICTY8 (2 August 2001) that genocide had been committed. (see paragraph 560 for name of group in English on whom the genocide was committed). It was upheld in Prosecutor v. Radislav Krstic – Appeals Chamber – Judgment – IT-98-33 (2004) ICTY 7 (19 April 2004)

190 "Courte: Serbia failed to prevent genocide, UN court rules". 26 February 2007.]

[191]. ECHR Jorgic v. Germany. § 42 citing Prosecutor v. Krstic, IT-98-33-T, judgment of 2 August 2001, §§ 58048. ECHR Jorgic v. Germany Judgment, 12 July 2007. § 44 citing Prosecutor v. Kupreskic and Others (IT-95-16-T, judgment of 14 January 2000), § 751. In 14 January 2000 the ICTY ruled in the Prosecutor v. Kupreskic and Others case that the killing of 116 Muslims in order to expel the Muslim population from a village, was persecution, not of genocide.49. ICJ press release 2007/8 26 February 2007

[192]. ECHR Jorgic v. Germany Judgment, 12 July 2007. § 47)

participating in genocides in Bosnia by German courts, one of whom Nikola Jorgic lost an appeal against his conviction in the European Court of Human Rights. Further, eight men, former members of the Bosnian Serb security forces were found guilty of genocide by the State Court of Bosnia and Herzegovina .

Slobodan Milosevic, as the former President of Serbia and of Yugoslavia was the most senior political figure to stand trial at the ICTY. He died on 11 March 2006 during his trial where he was accused of genocide or complicity in genocide in territories within Bosnia and Herzegovina, so no verdict was returned. In 1995 the ICTY issued a warrant for the arrest of Bosnian Serbs Radovan Karadzic and Ratko Mladic on several charges including genocide. On 21 July 2008, Karadzic was arrested in Belgrade, and he is currently in The Hague on trial accused of genocide among other crimes.[193]. Ratko Mladic was arrested on 26 May 2011 by Serbian special police in Lazarevo, Serbia[194].

3.7.2 Genocide in Darfur Sudan

There has been much debate over categorizing the situation in Darfur as genocide.[195] The on-going conflict in Darfur, Sudan, which started in 2003, was declared a crime of genocide by United States Secretary of State Colin Powell on 9 September 2004 in a testimony before the Senate Foreign Relations Committee.[196] Since that time however, no other permanent member of the UN Security Council followed suit. In fact, in January 2005, an International Commission of Inquiry on Darfur, authorized by UN Security Council Resolution 1564 of 2004, issued a report to the Secretary-General stating that the Government of the Sudan has not pursued a policy of genocide. Nevertheless, the commission cautioned that the conclusion that no genocidal policy has been pursued and implemented in Darfur by the Government authorities, directly or

[193] . Staff (5 November 2009). "Q&A: Karadzic on trial". BBC News. Retrieved 28 January 2010
[194] Staff (26 May 2011). "Q&A: Ratko Mladic arrested: Bosnia war crimes suspect held". BBC News. Retrieved 28 May 2011
[195]. Jafari, Jamal and Paul Williams (2005)"Word Games: The UN and Genocide in Darfur" JURIST
[196] Powell declares Killing In Darfur 'Genocide', The News Hour with Jim Lehrer, 9 September 2004

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."[197]

In March 2005, the Security Council formally referred the situation in Darfur to the Prosecutor of the International Criminal Court, taking into account the Commission report but without mentioning any specific crime.[198] Two permanent members of the Security Council, the United States and China, abstained from the vote on the referral resolution.[199] As of his fourth report to the Security Council, the Prosecutor has found reasonable grounds to believe that the individuals identified[200] have committed crimes against humanity and war crimes," but did not find sufficient evidence to prosecute for genocide.[201]

In April 2007, the Judges of the ICC issued arrest 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.[202]On 14 July 2008, prosecutors at the International Criminal Court (ICC), filed ten charges of war crimes against Sudan's President Omar al-Bashir three counts of genocide, five of crimes against humanity and two of murder. The ICC's prosecutors claimed that al-Bashir "masterminded and implemented a plan to destroy in substantial part" three tribal groups in Darfur because of their ethnicity.

---

[197] Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General PDF, 25 January 2005, at 4

[198] Security Council Resolution 1593 (2005)

[199] Security Council refers situation in Darfur, Sudan, to prosecutor of international criminal court, un press release sc/8351, 31 march 2005

[200] In the UN Security Council Resolution 1593

[201] Fourth 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.

[202] 72. Statement by Mr. Luis Moreno Ocampo, Prosecutor of the International Criminal Court, to the United Nations Security Council pursuant to UNSCR 1593 (2005), International Criminal Court, 5 June 2008

On 4 March 2009, the ICC issued a warrant of arrest for 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 crimes against humanity. It did not include the crime of genocide because the majority of the Chamber did not find that the prosecutors had provided enough evidence to include such a charge.

To date all international prosecutions for genocide have been brought in specially convened International Tribunals. Since 2002, the International Criminal Court can exercise its jurisdiction if national courts are unwilling or unable to investigate or prosecute genocide, thus being 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 prosecutions.[203]

[203]. Statement by Carolyn Willson, Minister Counselor for International Legal Affairs, on the Report of the ICC, in the UN General Assembly 23 November 2005

CHAPTER FOUR

THE ROLES OF INTERNATIONAL CRIMINAL TRIBUNALS AND COURT IN THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

4.1 Introduction

International judicial institutions are those bodies that are empowered by Statutes/Conventions creating them to adjudicate or give advisory opinion on cases or matters concerning international crimes including genocide. These judicial bodies or institutions to be considered in this research work are International Military Tribunal of Nuremberg, International Criminal Court for Rwanda, International Criminal Court for former Yugoslavia, International Criminal Court, UN Special court for Sierra leone among others in relation to their various convictions on the crime of genocide.

4.2 The Roles of the International Criminal Tribunals in Combating Genocide

International Military Tribunal of Nuremberg was endowed with exclusive jurisdiction, as far as the trials of the major German war criminals of World War II were concerned (principle of exclusivity). According to Article 4 of the London Agreement, jurisdiction was only granted to the country of commission for other perpetrators. After the establishment of the Nuremberg and Tokyo Tribunals and the UN Genocide Convention, a long period elapsed until further steps were taken to develop and enforce International Criminal Law. These steps however, were notable in response to massive human rights violations and as a measure to re-establish international peace and security. The UN Security Council established the International Criminal Tribunal for Former Yugoslavia in 1993 and, in 1994, the International Criminal Tribunal for Rwanda. The creation of these Tribunals and subsequently, other judicial bodies for Sierra Leone, Cambodia, Lebanon, reflected increasing determination among the International

Community that such crimes were no longer to be tolerated. United Nations ad hoc International Criminal Tribunals the (ICTY and ICTR) Statutes accept the concurrent jurisdiction of national courts. Collisions are resolved according to the principle that International Courts take precedence.[204] The establishment of these tribunals brought about the activation of the genocide convention which is the principal instrument regulating the crime of genocide. Also as a result of the sentences passed by these tribunal on the perpetrators of genocide, these prosecutions were able to curb genocidal incidences around the world, by preventing wide spread or systematic attack against any civilian population that is a national ethnic, racial or religious group. Thus the conviction of Jean Paul Akayesu by the tribunal is one that could allay any fear regarding the ability of the tribunal to deliver. This was the first conviction of genocide by an International tribunal and it opened a complete new era for tribunals of this nature.

4.2.1 The International Criminal Tribunal for Rwanda (ICTR) and The International Criminal Tribunal for the Former Yugoslavia(ICTY)

The International Criminal Tribunal for Rwanda (ICTR) is an International court established in November 1994 by the United Nations Security Council in Resolution 955 in order to prosecute the people responsible for the Rwandan Genocide and other serious violations of International law in Rwanda, or by Rwandan citizens in nearby states, between 1 January and 31 December 1994. In 1995 it became located in Arusha, Tanzania, under Resolution 977. From 2006, Arusha also became the location of the African Court on Human and Peoples' Rights. The Tribunal has jurisdiction over genocide, crimes against humanity and war crimes, which were defined as violations of Common Article 3 and Additional Protocol II of the Geneva Convention (dealing with war crimes committed during internal conflicts). By December 2012, the Tribunal

[204] See Art. 9 ICTY Statute and Art. 8 ICTR Statute)

had completed the trial phase of its mandate. Of the 93 persons indicted for genocide, crimes against humanity and war crimes 83, have been arrested with 75 of them prosecuted to judgment, 65 of those tried were found guilty and convicted, while 10 of the accused persons have been acquitted and nine still at large.[205]

The first trials of the ICTR were that of Jean-Paul Akayesu, which began in 1997 and was concluded in 1998 where the chamber unanimously found as regards the crime of genocide on count 1 guilty of genocide, count 2 not guilty of complicity of genocide and count 4 guilty of direct and public incitement to commit genocide.[206] Also Jean Kambanda,[207] interim Prime Minister, who pleaded guilty was indicted. According to the ICTR's Completion Strategy, in accordance with Security Council Resolution 1503, all first-instance cases were to have completed trial by the end of 2008 (this date was later extended to the end of 2009) and all work is to be completed by 2010. It has recently been discussed that these goals may not be realistic and are likely to change. The United Nations Security Council called upon the Tribunals to finish its work by 31st December 2014 to prepare for its closure and transfer of its responsibilities to the International Residual Mechanism for Criminal Tribunals which was set up by the Security Council in December, 2010 will take over and finish the remaining task of the Tribunals.[208]

The trial of Jean-Paul Akayesu established precedent that rape is a crime of genocide if committed to destroy a particular group.[209] The Trial Chamber finds that in most cases, the rape 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 of serious bodily and mental harm committed against the Tutsi, reflected the determination to make Tutsi

[205]UN, Background Information On Preventing Genocide, available Online at www UN.org/en/Preventing Genocide. Retrieved 1/27/2014 3:24:08 PM
[206] Ladan, M.T. (2007), Materials and Cases on Public International Law, A.B.U Press, Zaria, p 226.
[207] Prosecutor v. Jean Kambanda,(1998, September 4,), www.U.N.Org/ICTR, Case No.ICTR 97-23-S, Judgment and Sentence
[208] UN, Background Information on Preventing Genocide, Opcit.
[209] ibid

women suffer and to mutilate them even before killing them, the intent being to destroy the Tutsi group while inflicting acute suffering on its members in the process.[210]

Among the achievements of the ICTR was the trial against hate media which began on 23 October 2000. It is charged with the prosecution of the media which encouraged the genocide of 1994.On 19 August 2003, at the Tribunal in Arusha, life sentences were requested for Ferdinand Nahimana, and Jean Bosco Barayagwiza, persons in charge of the Radio Télévision Libre des Mille Collines, as well as Hassan Ngeze, director and editor of the Kangur newspaper. They were charged with genocide, incitement to genocide and crimes against humanity, before and during the period of the genocide of 1994. On 3 December 2003, the court found all three defendants guilty and sentenced Nahimana and Ngeze to life imprisonment and Barayagwiza to imprisonment for 35 years. On 28 November 2007, the Appeals Chamber partially allowed appeals against conviction from all three men, reducing their sentences to 30 years imprisonment for Nahimana, 32 years imprisonment for Barayagwiza and 35 years imprisonment for Ngeze.[211]

The International Criminal Tribunal for the former Yugoslavia was created on the basis of Security Council Resolution 827 [212]and is located in The Hague. It has jurisdiction to prosecute war crimes, genocide, and crimes against humanity, committed after 1 January 1991 on the territory of the former Yugoslavia.[213]. It has indicted 161 persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia. It has concluded proceedings against 136, with proceedings ongoing for 25. The most prominent trials currently are those of former Bosnian Serb leader Radovan Karadzic, started in October 2009, and former Bosnian Serb military commander Ratko Mladic, started in May 2012. Both were

[210] . The Prosecutor v. Jean-Paul Akayesu (Trial Judgement), ICTR-96-4-T, International Criminal Tribunal for Rwanda (ICTR), 2 September 1998, p. 166 ¶.733. Available at:http://www.unhcr.org/refworld/docid/40278fbb4.html [accessed 13 April 2010]
[211] UN, Background Information on Preventing Genocide, Opcit
[212] In 1993
[213] UN, Background Information on Preventing Genocide, Opcit

accused of carrying out genocide and other crimes against Bosnian Muslims, Bosnian Croats and other non-Serb civilians between 1992 and 1995.[214] In 1995 the ICTY issued a warrant for the arrest of Bosnian Serbs Radovan Karadzic and Ratko Mladic on several charges including genocide. On 21 July 2008, Karadzic was arrested in Belgrade, and he is currently in The Hague on trial accused of genocide among other crimes.[215]. Ratko Mladic was arrested on 26 May 2011 by Serbian special police in Lazarevo, Serbia.[216]Slobodan Milosevic, as the former President of Serbia and of Yugoslavia was the most senior political figure to stand trial at the ICTY. He died on 11 March 2006 during his trial where he was accused of genocide or complicity in genocide in territories within Bosnia and Herzegovina, so no verdict was returned.

These Tribunals were established by the UN Security Council under its powers to maintain peace and to take military and non military action to restore international peace and security. Decisions taken by the Security Council are legally binding for all UN member states. The duty of nation states to cooperate with these courts prevails over all other obligations and includes the execution of arrest warrants, extradition, and providing access to evidence.

Even though the statutes for the ICTR and the ICTY differ, the tribunals share a common prosecutor and common Appellate chamber. This is a curious formula for two separate *adhoc* Tribunals established separately by the Security Council through two unrelated resolutions. According to the Secretary– General, however, the institutional links ensure a unity of legal approach, as well as economy and efficiency of resources.[217] The decision to link the two bodies was not however based on any valid legal argument.[218] The United States, which pushed for this formula, wanted to avoid delays in selecting the prosecutor as was the case with the ICTY. The

[214] ibid
[215] . Staff (5 November 2009). "Q&A: Karadzic on trial". BBC News. Retrieved 28 January 2010
[216] Staff (26 May 2011). "Q&A: Ratko Mladic arrested: Bosnia war crimes suspect held". BBC News. Retrieved 28 May 2011
[217] Bassiouni, M.C.(1997), From Versaillles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court, Harvard Human Rights Journal, Vol. II.
[218] i Bassiouni, M.C. Op cit

rationale for sharing the ICTY appellate chamber was based entirely on a cost saving consideration. The choice of a single prosecutor was particularly ill-advised because no person, no matter how talented, can oversee two major sets of prosecutions separated by 10,000 miles. The idea that one can shuttle between Hague, Netherlands and Arusha, Tanzania as part of a normal work schedule is nothing short of benign legal nature. First, the substantive law applicable to the two Tribunals is different. This means that in an eventual interpretation under both statutes, the Appellate chamber must necessarily be inconsistent. Secondly, while the ICTY judges rotate in the Appellate chamber, the ICTR judges don't. One of these two Tribunals was destined to suffer and in time it became clear that the ICTR did. [219]

The ICTR, like the ICTY, is under the administrative and financial control of the United Nations. It became fully operational in September, 1996 because of logistical, administrative, and financial problems. Yet, the Rwandan Government is holding 75,000 persons in custody, pending trial either before the ICTR or eventually, before its own tribunals. Thus unlike the ICTY which is fully operational but cannot apprehend those who are indicted, the ICTR has not been able to prosecute those held in custody. The ICTY which is unlikely under prevailing political circumstances to prosecute anyone who could upset the delicately balanced political settlement achieved so far, the ICTR could accomplish a great deal. To date, however, it has been regrettably treated with neglect.[220]

Because of the total devastation brought by the Rwandan Civil War, the Security Council was compelled to deal with many political, logistical, and practical problems in the establishment of the ICTR. The Security Council had to negotiate with the new government on the establishment of the Tribunal at a time when Rwanda was also a member of the Security

[219] ibid
[220] ibid

Council. The situation complicated the Council's task, particularly because of the views that government and its expectations of an International Tribunal differed from those of the rest of the Council. For instance, while the government of Rwanda wanted the new Tribunal to be able to impose death penalty, the Council opposed to it, because it had already decided against death penalty in connection to the ICTY. The creation of these international criminal tribunals brought about the restoration and maintenance of peace, national security and national reconcialion by trying persons responsible for committing acts of genocide and other grave breaches of international humanitarian law.

4.2.2 U.N Special Court for Sierra Leone

The difference between the International Criminal Tribunals for Yugoslavia, Rwanda and UN Special Court for Sierra Leone is subject matter jurisdiction. While the subject matter jurisdiction of the International Criminal Tribunals for Yugoslavia and Rwanda are made up of violations of international humanitarian law which are beyond doubt part of customary international law, the Special Court's subject matter jurisdiction extends (in addition to War Crimes and Crimes against humanity) to certain crimes under Sierra Leonean law, including abusing a girl under 14 years of age, abduction of a girl for immoral purposes, and setting fire to dwelling-houses or public buildings. But unlike the International Criminal Tribunals for Yugoslavia and Rwanda, the Special Court does not have jurisdiction over the crime of genocide, since there was no evidence that the mass killing in Sierra Leone was at any time perpetrated against an identifiable national, ethnic, racial or religious group with the intent to annihilate the group as such. Despite these differences, the Special Court is to be guided by the decisions of the appeal chamber of the Yugoslavian and Rwandan Tribunals, and to apply the

Rules of Procedure of the International Criminal Tribunal for Rwanda, though the judges have the power to amend or adopt additional rules, where a specific situation is not provided for.[221]

4.2.3 A Review of Jean-Paul Akayesu's Trial

Jean-Paul Akayesu was arrested in Zambia in October, 1995. On the 22nd November 1995, the prosecutor of the Tribunal pursuant to Rule 40 of the Rules[222] requested Zambian authorities to keep Akayesu in detention for a period of ninety days while awaiting the completion of investigation into potential charges against him. On 3 February 1996, prosecutor Richard Goldstone submitted an indictment against Akayesu, which was subsequently amended on 17 June 1997 and added rape to the charges.[223]

The final indictment contained a total of fifteen counts individually charging Akayesu with Genocide, complicity in Genocide, direct and public incitement to commit Genocide, extermination, murder, torture, cruel treatment, rape, other inhumane acts and outrageous upon personal dignity, crimes against humanity, and violations of Article 3 common to the 1949 Geneva Conventions and Additional Protocol II thereof. Judge William H Sekule confirmed the indictment and issued an arrest warrant, accompanied by an order of continued detention , on the 16th February 1996 Akayesu was transferred to the ICTR facilities in Arusha on the 24th May, 1996. He pleaded not guilty on all counts of his Indictment. The trial of Jean-Paul Akayesu established precedent that rape is a crime of genocide. Originally the indictment did not contain specific charges of sexual crimes. However, the prosecutor amended the indictment during trial in June 1997, and resubmitted it, under the signature of the new prosecutor, Louise Arbour, with addition of three counts (13 to 15) and three paragraphs (10A,12A and12B). In paragraph 10A,

[221] Scharf , M.P, (2000),The Special Court for Sierra Leone, The American Society of International Law, Massachusetts Avenue, NW Washington DC •

[222] The ICTR Rules of Procedure and Evidence adopted on 29 June, 1995

[223] Ladan. M.T,(2004), The Akayesu Case: A Progressive Jurisprudential Development of the Concept of Genocide Under International Law, UDUS Law Journal, Vol 1, No, S, End note 2 page 204.

the prosecutor proposed definition of sexual violence intended to clarify the allegation set forth in paragraphs 12A and 12B. The paragraphs reads thus :

10A. in this indictment acts of sexual violence include forcible sexual penetration of the vagina, anus or oral cavity by a penis and or of the vagina or anus by some other object, and sexual abuse, such as forced nudity.[224]

12A. Between April7 and the end of June, 1994, hundreds of civilians (hereinafter 'displaced civilians') sought refuge at a Bureau communal. The majority of the displaced civilians were Tutsi. While seeking refuge at the Bureau communal, female displaced civilians were regularly taken by armed local militia and /or communal police and subjected to sexual violence and or beaten and or near the bureau communal premises. Displaced civilians were also murdered frequently and or near the bureau communal premises. Many women were forced to endure multiple acts of sexual violence which were at times committed by one assailant. These acts of sexual violence were usually accompanied by explicit threats of deaths or bodily harm. The female displaced civilians live in constant fear and their physical and psychological health deteriorated as a result of the sexual violence, beatings and killings.[225]

12B. Jean Paul Akayesu knew that the acts of sexual violence, beatings and murders were being committed and was present at times during the commission. Jean Paul Akayesu facilitated the commission of the sexual violence, beating and murders by allowing the sexual violence, beating and murders to occur or near the bureau communal premises. By virtue of his presence during

[224] Prosecutor v.Jean Paul Akayesu (Trial Judgment), ICTR-96-4-T, International Criminal Tribunal for Rwanda (ICTR), 2 September 1998,: In Sassoli M. and Bouvier A.A,(1998), How Does law protect in War? Cases, documents and Materials on Contemporary practice in International Humanitarian Law, ICRC, p. 1326

[225] Prosecutor v.Jean Paul Akayesu (Trial Judgment), ICTR-96-4-T, International Criminal Tribunal for Rwanda (ICTR), 2 September 1998,: In Sassoli M. and Bouvier A.A,(1998), How Does law protect in War? Cases, documents and Materials on Contemporary practice in International Humanitarian Law, ICRC, p. 1326-7

the commission of the sexual violence, beating and murders and by failing to prevent the sexual violence beating and murders, Jean Paul Akayesu encouraged these activities.[226]

The chamber later defined rape and sexual violence for the purposes of Crime Against Humanity as: a physical invasion of sexual nature, committed on a person under circumstances which are coercive. Sexual violence which, includes rape, is considered to be any act of sexual nature which is committed on a person under the circumstances which are coercive. This act must be committed(a) as part of a widespread or systematic attack: (b) on a civillain population(c) on curtained catalogue discriminatory grounds, namely: national, ethnic, political, racial or religious groups.[227]

In introducing the amended Indictment, prosecutors stated that the testimony of witness H motivated them to review their investigation of sexual violence in connection with events which took place in Taba at the Bureau of Communal. Prosecutors explained that the evidence previously available was insufficient to link Akayesu to acts of sexual violence. They reasoned that the lack of evidence might be attributed to the shame that victims of sexual violence feel and insensitivity to the investigation of sexual violence.[228]

The Trial Chamber found that in most cases, 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 of serious bodily and mental harm committed against the Tutsi, reflected the determination to make Tutsi women suffer and to

[226] www.Hirondelle.Org for an Account of the proceedings of the Akayesu 's Trial covered by Swiss based foundation Hirondelle, an Independent press Agency.
[227] Hirondelle Op cit footnote 20 and Prosecutor v. Jean Paul Akayesu, (1998), Case No. 96/4/T. Judgment September 2.
[228] Ladan, M.T. Op cit p.188

mutilate them even before killing them, the intent being to destroy the Tutsi group while inflicting acute suffering on its members in the process."[229]

During the seventeen month long trial, punctuated by defence-requested adjournments, the justices heard forty-two witnesses including five expert witnesses. Many of those who testified where eye witnesses and victims who told the court gruesome stories of their ordeals. The proceedings generated over 4000 pages of transcripts and 25 evidentiary documents. The final Judgment runs over 200 pages. Finally, on September 2,1998 the ICTR on the basis of its factual findings, delivered some historical legal findings in International law. Having considered all the evidence and the arguments, the chamber unanimously found as regards the crime of Genocide the following count of charges: count 1 guilty of Genocide, count 2 not guilty of Complicity of Genocide and count 4 guilty of direct and public incitement to commit Genocide[230]

4.2.4 A Review of Jean Kambanda's Trial

Also in analyzing Kambanda's case, i.e, Prosecutor v. Jean Kambanda[231] the prosecutor submitted its indictment against Kambanda on 16th October, 1997 to Judge Yakov Ostrovsky (Russia), who confirmed it, issued a warrant of arrest against the Accused and ordered his continued detention. The Indictment contained six counts, namely genocide, complicity to commit genocide, direct and public incitement to commit genocide, complicity in genocide, crimes against humanity(murder) punishable under Article 3(a) of the ICTR Statute, Crimes against Humanity(extermination) punishable under Article 3(b) of the ICTR Statute. On 1st May,1998 during his initial appearance before Trial Chamber 1, consisting of Judge Laity

[229] . The Prosecutor v. Jean-Paul Akayesu (Trial Judgement), ICTR-96-4-T, International Criminal Tribunal for Rwanda (ICTR), 2 September 1998, p. 166 ¶.733. Available at:http://www.unhcr.org/refworld/docid/40278fbb4.html [accessed 13 April 2010]
[230] Ladan, M.T, Materials and cases on Public International Law,(2007),A.B.U Press Limited, Zaria, p.226
[231] (1998 September 4,): www.UN Org/ICTR. Case No. ICTR 97-23-S, Judgment and Sentence.

Kama(Senegal), Lennart Aspegrn(Sweden), Navenethem Pillay(South Africa), Kambanda pleaded guilty to all six counts.

In determing Kambanda's sentence, the Trial chamber considered three mitigating factors offered by the defence attorney:

1. Kambanda's plea of guilt;
2. The remorse which the defence Attorney claimed it was evident from the act of pleading guilty; and
3. Kambanda's past and future cooperation with the prosecutor's office. The invaluable information to him, and that Kambanda agreed to testify for the prosecutor in future Trials of other accused persons.

However, the trial Chamber noted that Jean Kambanda had offered no explanation for his voluntary participation in genocide nor has he expressed contrition, regret, or sympathy for the victims in Rwanda, even when given the opportunity to do so by the Chamber during the hearing of 3rd September, 1998. The Trial Chamber explained that the sentence must reflect the predominant standard of proportionality between the gravity of the offence and the degree of responsibility of the offender. Just sentences contribute to respect to the Law and the maintenance of a just, peaceful and safe society. The crimes for which Kambanda is responsible carry an intrinsic gravity, and their widespread, atrocious and systematic character is particularly shocking to the human conscience. The Justices went on further to say that Jean Kambanda committed the crimes Knowingly and with premeditation and, moreover, Jean Kambanda, as a prime minister of Rwanda was entrusted with duty and authority to protect the population and he abused this trust.

The Judges concluded that the aggravating circumstances surrounding Kambanda's crimes negated the mitigating circumstances. On 4th September, 1998, they sentenced him to a single term of life in prison[232]

4.3 The Role of the Rome Statute on the Establishment of the International Criminal Court in Combating Genocide

4.3.1 A Review of the Rome Statute

The Rome Statute is an International Treaty adopted under the auspices of the United Nations which provides for the establishment of the ICC with jurisdiction over International crimes. Article 5 of the Statute of the ICC list the crimes that will come within the jurisdiction of the Court namely, Genocide , Crimes against Humanity, War crimes and Crimes of aggression. Article 6 also provides that the crime of Genocide will for the purposes of the International Criminal Court, prosecutions be defined as it is currently defined in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide.[233] The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with the Statute, crimes which include the crime of genocide; as the 1st crime mentioned and also define genocide for the purpose of the Statute, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

[232] Ladan, M.T.(2004) , Kambanda's Case:- A Milestone for the International Humanitarian Law, Universality of Maiduguri Law Journal, Gaza Press,p.213

[233] Ladan, M.T. (2005)An Overview of the Rome Statute of the International Criminal Court :In An Introduction of the An Overview of the Rome Statute of the International Criminal Court, eds Guobadia, D.A. and Apker P.T. NIALS, Lagos, P.28

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

It has been 50 years since the United Nations first recognized the need to establish an international criminal court, to prosecute crimes such as genocide. In resolution 260 of 9 December 1948, the General Assembly, recognizing that at all periods of history genocide has inflicted great losses on humanity; and being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required, adopted the Convention on the Prevention and Punishment of the Crime of Genocide. Article I of that Convention characterizes genocide as a crime under international law, and article VI provides that persons charged with genocide shall be tried by a competent Tribunal of the State in the territory of which the act was committed or by such International Penal Tribunal as may have jurisdiction [234] In the same resolution, the General Assembly also invited the International Law Commission "to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide . . ." Following the Commission's conclusion that the establishment of an international court to try persons charged with genocide or other crimes of similar gravity was both desirable and possible, the General Assembly established a committee to prepare proposals relating to the establishment of such a court. The committee prepared a draft statute in 1951 and a revised draft statute in 1953. The General Assembly, however, decided to postpone consideration of the draft statute pending the adoption of a definition of aggression. Since that time, the question of the establishment of an international criminal court has been considered

[234] Osieki,E. War Crimes under the Statute of the International Criminal Court: In An Introduction of the An Overview of the Rome Statute of the International Criminal Court, eds Guobadia, D.A. and Apker P.T. NIALS, Lagos, P.94

periodically. In December 1989, in response to a request by Trinidad and Tobago, the General Assembly asked the International Law Commission to resume work on an international criminal court with jurisdiction to include drug trafficking.[235] Then, in 1993, the conflict in the former Yugoslavia erupted, and war crimes, crimes against humanity and genocide in the guise of "ethnic cleansing" once again commanded international attention. In an effort to bring an end to this widespread human suffering, the UN Security Council established the ad hoc International Criminal Tribunal for the Former Yugoslavia, to hold individuals accountable for those atrocities and, by so doing, deter similar crimes in the future. Shortly thereafter, the International Law Commission successfully completed its work on the draft statute for an international criminal court and in 1994 submitted the draft statute to the General Assembly. To consider major substantive issues arising from that draft statute, the General Assembly established the Ad Hoc Committee on the Establishment of an International Criminal Court, which met twice in 1995.[236] After the General Assembly had considered the Committee's report, it created the Preparatory Committee on the Establishment of an International Criminal Court to prepare a widely acceptable consolidated draft text for submission to a diplomatic conference. The Preparatory Committee, which met from 1996 to 1998, held its final session in March and April of 1998 and completed the drafting of the text.

At its 52nd session, the General Assembly decided to convene the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, subsequently held in Rome, Italy, from 15 June to 17 July 1998, to finalize and adopt a convention on the establishment of an international criminal court.[237] In the wordings of Kofi

[235] ibid
[236] Ibid
[237] Osieke,E. Op cit p. 96

Annan, the United Nations Secretary-General as he then was where he made a remark on the establishment of the International court.

> In the prospect of an international criminal court lies the promise of universal justice. That is the simple and soaring hope of this vision. We are close to its realization. We will do our part to see it through till the end. We ask you . . . to do yours in our struggle to ensure that no ruler, no State, no junta and no army anywhere can abuse human rights with impunity. Only then will the innocents of distant wars and conflicts know that they, too, may sleep under the cover of justice; that they, too, have rights, and that those who violate those rights will be punished.[238]

For nearly half a century almost as long as the United Nations has been in existence the General Assembly recognized the need to establish such a court to prosecute and punish persons responsible for the crimes as Genocide. Many thought …that the horrors of the World War II …the camps, the cruelty, the exterminations, the holocaust… could never happen again. And yet they have. In Cambodia, Bosnia, and Herzegonovia, in Rwanda. Our time …this decade even …has shown that man's evil knows no limit. Genocide….is now a word of our time, too a heinous reality that calls for historic response.[239]

One of the primary objectives of the United Nations is securing universal respect for human rights and fundamental freedoms of individuals throughout the world. In this connection, few topics are of greater importance than the fight against impunity and the struggle for peace and justice and human rights in conflict situations in today's world. The establishment of a permanent international criminal court (ICC) is seen as a decisive step forward. The international

[238] United Nations Secretary General available at http://www.un.org/law/icc/General Overview.htm visited 7/23/2004

[239] See Generally the Establishment of An International Criminal Court- Overview: Rome Statute of the International Criminal Court.,pp.1-2 ,www.eda.admin./Politorbis

community met in Rome, Italy, from 15 June to 17 July 1998 to finalize a draft statute which, when ratified, will establish such a court. The Rome Statute was signed (on 1st June, 2000) and ratified(on 27th September 2001) by Nigeria along with other countries.[240]

4.3.2 The Role of the ICC in the Prevention of the Crime of Genocide

The establishment of the ICC was a direct response to the experience of the past centuries, which witnessed crimes of the utmost seriousness which resulted in flagrant violations of human rights. The Preamble to the ICC Statute states that these crimes:"threaten the peace, security and well-being of the world". Confronted with the gravest international crimes, national tribunals in many cases were unable or unwilling to proceed with their investigations. These atrocities were often covered up by a culture of impunity which protected perpetrators. The fact that these massive atrocities have remained unpunished has had a number of traumatic consequences that is to say:

(i) Justice has been denied to the victims;

(ii) The lack of effective means of punishing perpetrators has undermined the dissuasive effect of justice and has failed to deter future crimes;

(iii) Countries and entire regions have been destabilized, as generalised and systematic crimes have triggered or have exacerbated large-scale conflicts. Given the fact of widespread impunity, there was clearly an urgent need to combat this with a permanent international institution to bring to trial the most serious crimes.

The International Criminal Court will fulfill two objectives[241] :-

[240] Ladan. M.T.(2007) An overview of the Rome Statute of the International Criminal Court: Obligations of State Parties and Issues of Domestic Implementation in Nigeria, In: Materials and cases on Public International Law, A.B.U Press, Zaria, ,p. 228

[241] See, Generally, Broom Hall, B. (1999), The International Criminal Court a checklist:- A checklist for a National Implementation", in M.C. Bassouni (ed), ICC Ratification and National Implementing Legislation, France:- eres,.

(i) Safeguarding higher values such as the protection of Human Rights, an obligation that transcends State border;

(ii) And accountability for those responsible for the commission of these crimes, so as to put an end to the impunity that is so often associated with these violations.

The establishment of an International Criminal Court to try persons accused of genocide was already envisaged in article VI of the Convention against Genocide of 1948. However, the conditions for this plan to become a reality did not emerge until half a century later. The ad hoc tribunals i.e. the Nuremberg and Tokyo tribunals and to the more recent examples of former Yugoslavia, Rwanda and Sierra Leone produced temporary solutions for specific situations. However, their deterrent effect was limited because they dealt only with specific situations and they were backward looking, focusing on the past. Although these tribunals represented major steps forward in terms of bringing the perpetrators of these crimes to justice, the international community ultimately did not derive from these events a sufficiently strong impetus to acknowledge the need for an international tribunal that was:

(i) Permanent and easily accessible;

(ii) Independent vis-àvis politics and political bodies;

(iii) Endowed with a potentially wide-ranging competence and itself subject to strict limitations with regard to the exercise of this competence.

The role of the ICC is not to exercise its responsibility by replacing national legal systems, in the exercise of criminal Jurisdiction but in complementing with national Courts.[242] Rather it functions as a tribunal of last resort. Hence, in accordance with the basic principle of

[242] Ladan. M.T, An Overview of the Rome Statute of the ICC.: In Guobadia, D.A and Akper. P.T. eds. (2005), An Introduction of an Over view of the Rome Statute of the International Criminal Court , p. 26

complementarily established by the Rome Statute, national tribunals retain the primary competence for judging cases of genocide and international crimes. In other words, the ICC is not the first mechanism but is merely complementary to the national tribunals in the matter of trying these crimes. It should be noted that even in the context of the general situations in which the Court exercises its competence, its capacity to judge specific crimes is limited. Consequently, its preventive effectiveness depends on the States immediately concerned and the international community making joint efforts. The Court can exercise its competence in one of the following hypothetical situations : a State Party may submit a situation in which it seems that crimes have been committed by a national of a State Party or on the territory of a State Party to the United Nations Security Council may submit a situation, regardless of the nationality of the perpetrator of the crimes or of the place in which they have been committed to the state prosecutor may initiate[243] on his or her behalf or ex officio an investigation concerning crimes committed on the territory of a State Party or by a national of a State Party. He or she can start such an investigation on the basis of information received from a reliable source. The Statute excludes any kind of impunity whatsoever for heads of state and government and establishes the responsibility of military commanders and other superiors. To sum up, anyone may be indicted for crimes before the ICC, regardless of their status. Moreover, the rights of the accused are guaranteed. Special importance is attached to the rights of the victims, who have the right provided that certain conditions are fulfilled to take part in proceedings and to obtain reparations. The reparations that can be granted to the victims of the most heinous crimes represent an important step forward in international criminal law as they have up to now been excluded from the international judicial process. One of the role of the ICC is that it has jurisdiction to

[243] Article 13 and 15 of the Rome Statute of the International Criminal Court, Also see Popoola, A.(2005) The International Criminal Court's Regime and Crimes Against Humanity, In :An Introduction to the Rome Statute of The International Criminal Court, Nigerian Institute of Advanced Legal Studies, Lagos, p.139

investigate and prosecute leaders of states that are responsible for crimes including the crime of genocide. The court will thus have a direct role in promoting the United Nation's charter and its quest for peace and security.

4.4.0 Present Situation of the Court

In the period that elapsed between the adoption of the Rome Statute in 1998 and its entry into force on 1 July 2002, the Court developed rapidly and today in its own right, it has become an independent judicial institution which over 139 States signed and 81 have ratified the Statute [244] while various other states are now going through the process of ratification such as Nigeria which is the 39th to have ratified and has now set in place a committee[245]in the domestication process. This accelerated tempo of ratification has been noteworthy compared with all other international conventions, even more so bearing in mind that it is a convention by which a judicial institution is established. This rapid tempo of ratification reflects both a universal feeling that the Court should exist and the confidence on the part of the states that it is a purely judicial institution. As the ICC has demonstrated its strict adherence to its judicial mandate, support for it has increased. In a number of cases, the judges have recently demonstrated the Court's total independence and its zealous concern for protecting the rights of the accused.

The Court is gaining ever greater recognition as an important actor on the international scene and as a key player in efforts to attain the general goals of peace and stability in regions affected by conflicts and in societies trying to rebuild after atrocities that were committed. The ICC started its activities in 2003, when the first judges and the prosecutor were elected. Nevertheless, five situations have been submitted to the Court. Three of these were submitted by

[244] Ladan. M.T, An Overview of the Rome Statute of the ICC.: In Guobadia, D.A and Akper. P.T. eds. (2005), An Introduction of an Over view of the Rome Statute of the International Criminal Court p.26

[245] Which has presently submitted a Preliminary Report of the Special Working Group on the Implementation of the Rome Statute of the International Criminal Court to the Hon. Attorney –General of the Federation and Minister of Justice , Muhammed Bello Adoke, SAN Federal Ministry of Justice, Central Business Area, Abuja, on the September 14th ,2011.

States Parties to the Rome Statute and refer to situations on the territories of those States i.e. the Democratic Republic of Congo, Uganda and the Central African Republic. The fourth case, concerning the situation in Darfur (Sudan), was submitted [246]to the Court by the Security Council in accordance with Chapter VII of the United Nations Charter. In the last case, on 26 November 2009, the prosecutor of the International Criminal Court requested permission to open an investigation of the crimes allegedly committed in Kenya in connection with the post-electoral violence of 2007-2008. The judges will have to consider whether there is sufficient evidence to start an investigation and whether the situation falls within the Court's jurisdiction. In addition to the above-mentioned cases, the Court is carrying out preliminary analyses in various other parts of the world, including Chad, Afganistan, Georgia, Colombia and Palestine.

The ICC judges have allowed the indictment for war crimes and crimes against humanity to proceed-but have rejected the genocide charge. They declare that there are reasonable grounds to believe that Sudanese and allied forced have "committed crimes against humanity of murder, extermination forcible transfer, torture and rape throughout the Darfur region, pursuant to the Government of Sudan policy to unlawfully attack as a core component of its counter-insurgency campaign that part of the civilian population of Darfur belonging to large extent to the Fur, Masalit and Zaghawa groups, perceived by the Government of Sudan as being close to the armed groups opposing the Government of Sudan in the ongoing armed conflict in Darfur.[247]

In principle, it is an important step that the world's first permanent International Criminal Court has charged a sitting head of state (Slobodan Milosevic of Serbia and Charles Taylor of Liberia were charged by an *adhoc* International Tribunals. Augusto Pinochet of Chile by national courts and Hissene Habre of Chad has been or is being subject to both). However the critics are

[246] **Politorbis Nr. 47 - 2 / 2009,** mailto: www.eda.admin./Politorbis
[247] ibid

right to point out the risks for the displaced in Darfur. Since president Al-Bashir's forces control access and mostly prevail on the ground, Sudanese government reprisals could have disastrous effects; these are even more likely in a situation where United Nations protests have not been backed up with meaningful counter-sanctions.[248]

At the same time, the Judges's rejection of the genocide charge is troubling. Here, the critics some of whom have accused Luis Moreno Ocampo of pursuing this with "fantastic" claims are on less sure ground; for there is much substance to the allegation. What is more troubling here is that the judges' rejection builds on earlier distortions in verdicts over genocide, which at root reflect a definitional sleight-of-hand that denies that "ethnic cleansing" constitutes genocide.

The ICC judges also quoted the ruling of the International Criminal Tribunal for former Yugoslavia (ICTY) in the case of Radislav Krstic[249], the Deputy commander of serbian forces at Srebrenica that "there are obvious similarities between a genocidal policy and the policy commonly known as ethnic cleansing though a clear distinction must be drawn between physical destruction and mere dissolution of a group."Such a distinction, however, is not clearly drawn in the United Nation Genocide Convention of 1948, on which the ICC's definition of genocide is based and which does list mental as well as physical harm as one of the means of genocide. As the ICTY has itself found, ethnic cleansing can be genocidal because it involves the intentional mental harm caused when families and communities are brutally uprooted, as has happened in Darfur.

Moreover, there is a contradiction between the judges' allowing of the charge of extermination as a crime against some Sudanese government forces and their rejection of the

[248] ibid
[249] Prosecutor v. Radislav Krstic, Trial Chamber I- Judgment, IT 98-33,2 August (2001) ICTY 8, para 562.

genocide charge if there is reasonable evidence to suggest that the Sudanese forces pursued a policy of extermination against some Fur, Masalit and Zaghawa, then this is surely *prima facie* support even on a narrow "physical" definition of group destruction for the charge of genocide against these groups in part (as the convention puts it).

A major legal authority has once more used tortuous and unsatisfactory reasoning to rule out genocide and has charged crimes against humanity and war crimes instead. The latter charges are grave enough but the logic of what the international criminal court has decided in the case of Omar Al-Bashir is to reinforce a trend in which genocide is becoming ever less cogent as a legal category.

It is noteworthy in this context that on 14 July 2008, the ICC prosecutor issued a warrant for the arrest of Mr. Omar Al- Bashir, President of Sudan[250]. The Prosecutor charged Mr. Al Bashir on ten counts of genocide, war crimes and crimes against humanity. This request is unique in its kind in the proceedings before the ICC in that it is the first to allege that the crime of genocide has been committed. In March 2009, Pre-Trial Chamber I, on a split vote, approved the arrest for crimes against humanity and for war crimes, but not for genocide. Of course, the arrest warrant discusses the most salient contextual and specific requirements for the crime of genocide. It is agreed that the crime of genocide is characterized by certain acts that are directed against a national, ethnic, racial or religious group rather than against the individuals who make up this group. The crime of genocide, as set out in Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, does not require any contextual element. Nor was a contextual element envisaged, or developed in jurisprudential terms, in the *ad hoc* tribunals the (ICTY and the ICTR.)[251] Nevertheless, as stated in the arrest warrant, the elements of the crimes

[250] Blattmann Op cit p. 87.
[251] ibid

require that "the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect that destruction". This requirement has been interpreted as a contextual element with regard to the competence of the ICC. With regard to the specific elements, it has been argued;

(i) That the victims have to belong to some national, ethnic, racial or religious group,

(ii) And that the perpetrator has to act with the specific intention that characterises this crime. As for the first element, it has been established that a negative definition of such groups (for example acts directed against persons who are not members of the Buddhist religion or do not belong to the Tutsi ethnic group) would not be sufficient to justify an indictment for the crime of genocide.

As for the definition of the second element, which is considered as the most expressive of the reprehensibility of this crime[252], Pre-Trial Chamber I defended its interpretation in a precedent of the International Court of Justice.[253]

It was argued that in order to satisfy the subjective criterion, it was not sufficient that the perpetrator should attack individuals on the grounds that for the purpose of this Statute, 'genocide 'means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

---

[252] Satzger, Internationales und Europäisches Strafrecht**,** Nomos, 3rd edition, available at : www.eda.admin ch./Politorbis .p. 87

[252] This is the well-known "Judgment on Genocide"**,** paragraph 187 ,available at www.eda.admin ch ./Politorbis .p. 87

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group. they belonged to a group, i.e. with discriminatory intent.

To qualify as a crime of genocide, it is additionally necessary that the perpetrator should wish to destroy the group as such, either in whole or in part. On the basis of this interpretation, the arrest warrant distinguished the criteria necessary for the crime of genocide from that of the crime against humanity of forcibly removing populations. As stated above, the arrest warrant was not issued for the crime of genocide. However, the minority opinion considered that the factual and legal requirements constituting the crime of genocide were present. The disagreement between the judges concerned in particular evidentiary issues, i.e. the question of the existence of sufficient proof to believe that the crime was committed [254] This question is now the subject of recourse to the Appeals Chamber.

The arrest warrant, even though it was not issued for the crime of Genocide, highlights the fact for the benefit of possible perpetrators that there can be no impunity for the most heinous crimes of international importance, regardless of the status or the position of the perpetrators of such crimes. This is an expression of the preventive intent as set out in the Preamble to the Statute and this flowed into the creation and the operation of the ICC. The preventive effect of international criminal law therefore has a number of points in common with the effects of criminal punishment in general. There has been considerable discussion in the legal literature about the justification of punishment as the imposition of an "evil" on whoever violates a norm.

[254] According to Article 58 of the Rome Statute, the Chamber must be convinced that there are reasonable grounds for believing that a crime has been committed.

The Rome Statute expressly highlights this preventive aspect when it states: "Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation, determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,... ."[255] The ICC, at the Preamble points out, is the result of the profound shock to the conscience of humankind caused by the fact that millions of men, women and children were the victims of unimaginable atrocities and of serious human rights violations in the last century. Ideally, all crimes should be judged by national tribunals, as is usually the case. However, as already stated, it is precisely when confronted with the most serious crimes and atrocities that national systems have shown a lack of the will or the capacity to activate their national judicial systems to prosecute these crimes. The failure of national jurisdictions to react to this category of crimes may encourage potential perpetrators to commit one of these crimes. The International Criminal Court, which was established as a mechanism to effectively bring such individuals to trial, would then have to fulfill a preventive role precisely in those cases which present the greatest difficulties for national jurisdictions.

The Court's potential for immediate dissuasion derives from the fact that the ICC, unlike previous international tribunals, generally operates in situations of ongoing conflicts. Inevitably, this poses major challenges with regard to obtaining and safeguarding evidence, to ensuring the arrest of suspects, and of protecting witnesses[256]. The realisation that the ICC has a dissuasive effect happened much earlier than expected and it will be necessary to monitor these initial effects. In order for this dissuasive effect to continue, it is important that states should comply

[255] Blattmann, Op cit, p. 88
[256] ibid

with the arrest warrants issued by the Court. The second aspect of dissuasion is achieved thanks to the contribution of the Court to a culture of accountability. In order to evaluate the success of this culture, a long-term perspective has to be adopted. It needs to be remembered that the preventive effects include the promotion of respect for human rights and the consolidation of judicial norms. These are both areas in which the Court is actively involved, and both also serve as bulwarks against the collapse of the social fabric, which creates an atmosphere that is favourable to the committing of acts of genocide and of other crimes.

Until recently The Federal Republic of Nigeria was charged by the ICC for her failure to arrest President Al Bashir during his visit to Nigeria, when President Al Bashir recently appeared in Nigeria to attend the special Summit of the African Union on HIV/AIDS, Tuberculosis and Maleria Scheduled to take place in Abuja on the 15th to 16th July, 2013. In her defence Nigeria made a submission to the court re-affirming her firm commitment to the Rome Statute and her readiness for continued cooperation with the International Criminal Court towards attainment of the latter's objective and the Judge ruled that Nigeria had Justifiable reasons for its failure to arrest President Al Bashir during his visit to Nigeria. On the 5th September, 2013 in the Judgment entitled " Decision on the Cooperation of the Federal Republic of Nigeria regarding Omar Al Bashir's arrest and surrender to the Court" presided by Justice Ekaterina Trendafilova the ICC cleared Nigeria of any charge on its failure to arrest president Al Bashir of Sudan in July when he attended the African Union Summit.[257]

[257] Ahmad, R.W. ICC Clears Nigeria Over Failure to Arrest Al Bashir, Daily Trust News Paper, Wednesday, September 11, 2013, p.8

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Summary

This work seeks to Appraise the prevention and punishment of the crime of genocide under international law and the contributions of international tribunals/ courts through prosecuting persons accused of the crime of genocide. The work is divided into five chapters. Chapter one basically entails the general introduction of the study, that is the background of the study , the aim and objectives of the research, research methodology, research problem, literature review and organization layout.

Chapter two of this work is an attempt to give a conceptual clarification of what Genocide is , so as to have a clearer perspective of the topic of this research that is by clarifying a distinct way of understanding genocide looking at the definitions of crime, prevention, punishment, also by analyzing the nature and scope of genocide and examining the constitutive elements of Genocide as each was addressed in this work. The term Genocide despite its murderous implications denotes that genocidal crimes are committed against some specific kinds of groups with the deliberate purpose of eradicating the group.

For genocide to happen, 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 a precondition for genocidal acts. In addition, members of the dominant society must perceive their potential victims as less than fully human: as pagans, savages, uncouth barbarians, unbelievers, effete degenerates, ritual outlaws, racial inferiors, class antagonists, counterrevolutionaries, and so on. In themselves, these conditions are not enough for the perpetrators to commit genocide. To do that, that is, to commit genocide the perpetrators

need a strong, centralized authority and bureaucratic organization as well as pathological individuals and criminals. Also required is a campaign of vilification and dehumanization of the victims by the perpetrators, who are usually new states or new regimes attempting to impose conformity to a new ideology and its model of society.

Chapter three of this research entailed the examination of the origin and development of the crime of genocide. The word genocide is thrown around today without much thought about the origin of the word and what it means. Genocide was a term coined by Raphael Lemkin to describe what Hitler's Germany was doing in Europe in the 1930s, which British Prime Minister Winston Churchill determined was a crime without a name. Lemkin, tried to warn the rest of the world of Hitler's planned Holocaust and explained that it was a crime that went beyond murder to the annihilation of people.

The convention of more than six decade remains an unrealized promise as beyond the legal hurdles, great political repercussions responding to the ongoing atrocities, as accusations prompt deeper isolation and violent reprisals making conditions worst for victims and those trying to help them. Crimes under international law are directed against the interests of the international community as a whole. Since every legal system may defend itself with criminal sanctions against attacks on its elementary values, the international community is empowered to prosecute and punish these crimes under international law, regardless of who committed them or against whom they were committed.

Most perpetrators of war crimes throughout history have gone unpunished. In spite of the military tribunals following the World War II and the two recent ad hoc international criminal tribunals for the former Yugoslavia and for Rwanda, the same holds true for the twentieth century. That being said, it is reasonable to conclude that most perpetrators of such

atrocities have believed that their crimes would go unpunished. Effective deterrence is a primary objective of those working to establish the International Criminal Court. Once it is clear that the international community will no longer tolerate such monstrous acts without assigning responsibility and meting out appropriate punishment to heads of State and commanding officers as well as to the lowliest soldiers in the field or militia recruits. It is hoped that those who would incite genocide; embark on a campaign of ethnic cleansing; murder, rape and brutalize civilians caught in an armed conflict; or use children for barbarous medical experiments will no longer find willing helpers.

The thrust of this work is was addressed in chapter four where the roles played by international criminal Tribunals/Courts established for the prosecution of international crimes genocide inclusive were addressed . Though, the idea of setting up international tribunals for the trial of war - related crimes had been mooted after the First World War, no steps were taken to actualize that ideal. It was not until the advent of the Second World War that the victorious Allied Powers actuated the idea. The setting up of the Nuremberg and Tokyo Tribunals respectively for the trial of German Leaders and Japanese warmongers set the precedent for subsequent measures. The Tribunals, apart from bringing the leaders of belligerent states to trial for the horrendous atrocities perpetrated during the Second World War, also effectively exploded the myth that individuals could not be subjects, but objects of international law. The desire for a court with the power to try crimes against international law wherever they were committed led to the creation of the International Criminal Court (ICC) in 1998. After some fifty years of prolonged discussion and debates, the creation of a permanent International criminal Court became a reality on July 17, 1998 with the adoption of the Rome Statute. As at November 5, 2002, 139 states have signed and 81 states had ratified the Rome Statute of the International Criminal Court ; Nigeria being the 39th on the list of the states that have ratified and signed the

Statute. There are now several ongoing cases and investigations, the ICC has become an important instrument to ensure that the perpetrators of heinous crimes and mass atrocities such as Genocide do not escape prosecution and punishment.

5.2 Findings

Amongst the hierarchy of crimes under International law, Genocide is widely perceived as being the most barbaric, heinous and abominable of all inhuman acts as man is capable of committing against his fellow man. Despite well documented Genocidal atrocities occurring throughout history, the twentieth Century was particularly horrific in the number of people from different race who suffered and died at the hands of despots and rogue Governments. This concluding chapter gives a highlight of the discussions of the preceding chapters of this study. This is with a view to analyzing the major findings of the Study.

1. First, the study found that even establishment of the International Criminal Tribunals to prosecute war crimes genocide inclusive has still not achieved its goal , as these courts and tribunals are still faced with problems as embedded in the Genocide Convention which creates loop holes in international criminal Justice system such as the definition of the crime of Genocide by the convention has been frequently criticized for its narrowness as it applies to a limited number of protected groups .Also it has been found that these adhoc International Tribunals/Courts have been in disagreements in their respective interpretations of the Genocide Convention because the words and phrases used in the convention are devoid of clear understanding and these Tribunals/ Courts have refused to adopt a single precedent to guide them instead they share dissenting opinions uptill date. An instance could be seen in the case of Jelisic and the case of president Al- Bashir of Sudan where both the ICTY and ICC shared dissenting opinions, the challenges faced by

the prosecutors in proving intent; a fundamental element in the crime of genocide which makes it distinct from ordinary crimes and other international crimes.

2. Secondly the study also found that decades after the enactment of the Genocide Convention it never came into life until when the International Criminal Tribunal for Rwanda (ICTR) was established to activate the Convention into life. Then the International Criminal Tribunal for Yugoslavia (ICTY) both built upon the Nuremberg legacy. However, all of these courts were created *ad hoc* with limited jurisdiction. These International Criminal Tribunals, were created with the hope of hastening the end of violence and preventing its recurrence, but such Tribunals were subjected to limitations of time or place, that is in their geographical and jurisdictional scope. Thousands of refugees from the ethnic conflict in Rwanda have been murdered, but the mandate of that Tribunal is limited to events that occurred in 1994. Crimes committed since that time are not covered, which the perpetrator of such crimes go unpunished. These International tribunals are expected to round up their works by the end of December 2014, and all cases remaining will be transferred to the Residual Mechanism for International Criminal Tribunals which will take over cases that are still pending, a careful look at this situation will show that it took a span of two decades from the date of establishment of these tribunal to the date of their completion and still some cases are still pending it is obvious that due to some reasons the aim justice has being defeated both to the victims, the accused persons and the society as a whole because the importance of fighting impunity is through prevention and also through enhancing the works of these international tribunals in accomplishing their mandate.

3. Third, the study found out that the lack of domestication or domestic implementation of the Genocide Convention and the Rome Statute of the International Criminal Court is largely due to lack of political will. As a result of the restraint faced by the International Criminal Tribunals, the achievements of these Tribunals even though they have made a great Impact in International Criminal Law but will definitely come to an end as a result of limits imposed on them by the International Community is bound to face conflict situations. The establishment of a permanent international criminal court (ICC) is a step forward but we are still faced with the problem of domesticating the Genocide Convention and the Rome Statute as countries lack the political will to do so Nigeria inclusive even though a step has been taken to do so but effort has been on hold for the time being. The success of the Court depends first of all on the focusing of efforts to achieve the universal ratification of the Rome Statute to ensure that it attains the truly global application that was envisaged by its founders. This is crucial for dissuasion, creating a real expectation that genocide and other serious international crimes, whenever and wherever they are committed, the perpetrators will not go unpunished.[258]With the domestication of the Rome statute of the ICC and the Genocide Convention by state parties prosecuting war crimes genocide inclusive will be made possible and easier for our national courts which will hasten the course of justice without waiting for the international community to take control when the matter has already gotten out of control.
4. It has been found that both the ICTR and the ICTY are under the administrative and financial control of the United Nations. Both tribunals share the same prosecutor,

[258]Blattmann, R. Prevention of Genocide: The Role of The International Criminal Court., Genocide Prevention, **Politorbis Nr. 47 - 2 / 2009,** mailto: www.eda.admin./Politorbis **p** P.89

budget and Appellate chamber which made prosecuting the crime of Genocide difficult. This is because one way or the other one of these tribunals is bond to suffer at the expense of the other which obviously turned out to be the International Criminal Tribunal for Rwanda. This will be seen in the light of the delay in the course of justice it took the ICTR and ICTY two decade to prosecute the perpetrators and yet their life span has come to an end while there are still cases pending before these tribunals. It is possible to prevent genocide before it spins out of control. It offers practical policy suggestions, as a mechanism for looking at genocide in a systematic way early warning and prevention are keys and calls on the states to create a senior-level interagency committee directed by the National Security Council to analyze threats of genocide and mass atrocities around the world and consider appropriate preventive action.[259]It is against this background that this research work has arrived at some recommendations as stated below.

5.3 Recommendations

We shall conclude this study by way of making some recommendations. This will be in addition to those already proffered in the body of this study. It is hoped that these recommendations will certainly go a long way in facilitating the progressive realization and effective implementation of the Genocide Convention, Rome Statute and any other Instrument regulating the prevention and punishment of the crime of Genocide.

1. In the course of the study, we have shown that there are loop holes in the Genocide Convention. It is therefore recommended that there is an urgent need to fill in these gaps, by amending the convention and also by encouraging the parliaments to legislate on this issue and formulate strategic proposals for their national executives and also to strengthen

259 A new report of the Task force headed by former Secretary of State Madeleine Albright and Former Defence Minister William Cohen : A Policy for Prevention of Genocide, Editorial, Dec 16, 2008, New York Times

judicial and non-judicial measures to combat impunity. The success of the International Criminal Court depends first of all on the focusing of efforts to achieve the universal ratification of the Rome Statute to ensure that it attains the truly global application that was envisaged by its founders.

2. In realizing that the rights of citizens are adequately protected it is also recommended that the government should spend additional millions annually on crisis prevention and response efforts, by helping international partners, including the United Nations and other regional organizations, build their capacity. It is hard to generate political will to fix a problem before it has crested. But if there is any doubt about the need for a new policy and structure, considering the failure in Rwanda, Yugoslavia and Darfur to mention but a few. There may be a ray of hope in frustrated efforts. Human rights groups should continue to call attention to the genocidal atrocities in the world, and activists around the world advocate for victims of genocide via the Internet, which may hold some promise for maintaining international pressure and keeping the world's conscience focused on relief action. It is recommended that all member States of the UN should be willing to contribute to UN peace keeping operations by providing the Security Council with the necessary support needed for the promotion of peace and security. It is only when the member states across the World pull together their economic and human resources and work together then the organization can achieve effectively its primary purpose.
3. The ICTR has been vested jurisdiction over crimes committed only in 1994. However, since then, there are substantiated allegations that thousands of refugees from the ethnic conflict have been murdered, but since the Tribunal does not have jurisdiction over post-1994 crimes, these allegations have gone uninvestigated. It is therefore suggested that the

ICTR Statute should be amended to confer jurisdiction on the Tribunal over crimes committed subsequently. The success of international tribunals depends to a large extent on the seriousness with which the comity of nations treats its obligations. In this regard, States should be more willing and ready to cooperate or ensure compliance with requests from international tribunals.

4. In light of the role and mandate of the United Nations in preventing the crime of Genocide, the law enforcement agencies should continue to develop communications, decision-making and action protocols, at governmental and intergovernmental level, to ensure that there is a rapid reaction when the worrying signs of a genocidal situation begin to emerge. It is recommended that when initial signs of mass atrocities are detected, the States would also require the intelligence community to do a full policy review and prepare a crisis response plan. The goal is to engage leaders, institutions and civil society in affected communities urgently, and at an early stage when talk and other help may defuse the situation.[260]With this understanding we continue to remind, cajole and mobilize against the tide of indifference with the underlying conviction, that eventually the age of genocide will come to an end and create healthy, internationally recognized institutions that preserve human rights, dignity and respect for self determination.[261]

In conclusion this new century and past centuries have faced these grave challenges as tribal conflicts exists in various ethnic groups. Genocide provided the spark for an organized campaign of violence against civilians across countries. Hundreds and thousands were killed in each and every community Genocidal crimes were committed through dehumanizing and degrading methods, some were executed others machete being preferred, as ammunition was too

[260] A new report of the Task force headed by former Secretary of State Madeleine Albright and Former Defence Minister William Cohen : A Policy for Prevention of Genocide, Editorial, Dec 16, 2008, New York Times
[261] Faign, A .Beyond Genocide : An Ounce of Prevention, 20th Century Illuminations

expensive and difficult to come by. Rape, mutilation and deliberate spread of disease were also used as tools of terror.

These challenges suggest that genocide may become even more frequent and devastating in this century than in the last one. Prevention of genocide is every citizen's responsibility. With our collective efforts no one of us will carry a burden too heavy for a single individual. This research work has made significant proposals to be used as positive incentives in dealing with potential or actual perpetrators of genocide. This controversial, but pragmatic, recommendation is balanced by a simultaneous demand to end impunity for perpetrators. This research work also includes an innovative discussion on the range of options for prevention, coupled with a call for the member States to address genocide prevention as a unique mission. Prevention is a process, and so are the conflicts that may lead to genocidal violence. Logically, we cannot say that genocide or mass political killing has been prevented, because we can never know for certain whether targeted violence aimed at eliminating an ethnic, religious, or political group would have occurred in the absence of preventive actions. But we can say that some combination of international actions mitigated the conditions that elsewhere have led to genocide.

BIBLIOGRAPHY

BOOKS

Antonio,C (2003) *International Criminal Law*, Oxford University Press.

Conquest, R (1986). The Harvest of Sorrow: Soviet Collectivization and the Terror-Famine. London: Oxford University Press.

Collins, H and **Bloxham**, **D** (2005), The Great Game of Genocide: Imperialism, Nationalism, and the Destruction of the Ottoman Armenians. Oxford: Oxford University Press,;

Dadrian, V. N. (1995), The History of the Armenian Genocide: Ethnic Conflict fromthe Balkans to Anatolia to the Caucasus. Oxford: Erghahn Books.

Cross and Jones, (1968) Introduction to Criminal Law.6th ed. Butterworth, London.

Chukkol, K.S. (2010)The Law of Crimes in Nigeria Revised edition, A.B.U. Press, Zaria.

Dambazau, A.B. (2007)Criminology and Criminal Justice, Spectrum Books Limited, Ibadan.

Garner. G.A, (2007) (ed) .Blacks law Dictionary,8th edition,Thomson West.

Glendhill, A (1963):The Penal Code of the .Northern Nigeria and the Sudan, London.

Guobadia, D.A. and Apker P.T. (eds) (2005) An Introduction of the An Overview of the Rome Statute of the International Criminal Court, NIALS, Lagos.

Inchi. S.S (2000), the Nigerian Law Dictionary, Green World Publishing Company, Jos Plateau State.

Jones, A. (2006) *Genocide: A Comprehensive Introduction*, London: Routledge.

Kiernan, B (2007), Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur, New Haven: Yale University Press.

Majorie Whiteman, (1968), Digest of International Law , Vol. II Cambridge Press, London,

McCarmack, T.LH and Simpson, G.J. (1997) eds. The Law of Crimes: National and International Hague/London.

Ladan, M.T, (1999) Introduction to International Human Rights and Humanitarian Law, A.B.U Press, Zaria, Nigeria.

Ladan. M.T. (1998) Crime Prevention and Control and Human Rights in Nigeria,Justice Watch, Abuja.

Schabas ,W. (2000) *Genocide in International Law: The Crimes of Crimes*, Cambridge, U.K: Cambridge University Press.

Smith, J.C. and Hogan B. (1998), Criminal Law, Burtherworths, London.

Snyder, T (2010). Bloodlands: Europe Between Hitler and Stalin. New York: Basic Books.

Olusoga D. & Erichsen C.W. (2010), The Kaisers Holocoust: Germany's forgotten Genocide and the Colonial Roots of the Nazism, Faber & Faber LTD London.

Balakian,P (2003) The Burning Tigris: The Armenian Genocide and America's Response. New York:

Rubinstein, W. D. (2004) Genocide: A History, Pearson Education.

Akçam, T (2012) The Young Turks' Crime Against Humanity: The Armenian Genocide and Ethnic Cleansing in the OttomanEmpire. Princeton: Princeton University Press.

Williams G, Text Book of Criminal Law, 2nd ed. London, Stevens.

JOURNALS

Bartoli A, Ogata T, and Stanton G.(2009), Emerging paradigms in Genocide Prevention, Genocide Prevention, Politorbis, No. 47, p.15,also available at www.eda.admin ch/politorbis retrieved on 7/22/12.

Cooper, A. D (2006), Reparations for the Herero Genocide: Defining the limits of International litigation. Oxford Journals, African Affairs.

Sagey, I.E.(2006)The Nature and Characteristics of International Criminal Justice and Administration, NAILS, Lagos.

Ladan M.T, (2004) The Akayesu Case:- A Progressive Jurisprudential Development of the concept of Genocide under international law.UDUS LAW JOURNAL , VOL.1: NO.5

Ladan M.T, (2004) The Kambanda Casa:- A Mile Stone for International Humanitarian Law,7 U. Maid. L.J, Gaza Press, Maiduguri.

Schaller, D J.; Zimmerer, J (2008)"Late Ottoman Genocides: the Dissolution of the Ottoman Empire and Young Turkish population and Extermination Policies – Introduction". Journal of Genocide Research 10 (1).

Richter E.D, and Stanton G.H,(2008), Comment on 'Ethnic Cleansing' and 'Genocide', The European Journal of Public Health, Oxford University Press,