NEAR EAST UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
INTERNATIONAL LAW PROGRAM

INDIVIDUALS CRIMINAL RESPONSIBILITY FOR THE CRIME OF GENOCIDE

DILER ISMAEL AHMED AL AHMED

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To My Family

And

My Friends

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ABSTRACT

INDİVİDUALS' CRİMİNAL RESPONSİBİLİTY FOR THE CRİME OF GENOCİDE

Genocide is considered the most dangerous crime threatening humanity, as it represents an attack on the human being in his health and dignity and affects his most fundamental rights. The study endeavor to investigate the notion of the genocide crime, and delineate the elements of this crime. Dealing also, with individual and state responsibility for crimes of genocide. The study highlighted that it is important to prove, whether international crimes when committed by state organs are an indication of private or public capacity. The importance of this topic emerges, from the being of criminal law norms as important controls for the maintenance of the values and interests of humanity. Therefore, the study investigated the concept and notion of genocide crime, and tried to identify whether this crime is individual or it is state capacity. Many studies has been offered, according to which they supported the notion of international crimes are committed in public capacity. Then the study demonstrated that the exception from general rule authorizes the conclusion that international crimes are recognized in a wide range as official acts which can though be attributed toward individuals and bear its criminal liability at the same time. The thesis elucidate the material and mental factors of genocide crime to conclude that the mental factor is the important parts in genocide. The study highlighted also that the punishment not limited to punish the genocide crime, but includes the criminalize conspiracy to perpetrate genocide, because it is necessary to ban the genocide before the taking place. Also, direct and public instigation to execute genocide and to commit genocide, to participate in genocide. In addition, the study recommended to involve seriously the cultural genocide which is no less dangerous than other forms of genocide. Finally, the thesis concluded that to include rather than natural persons the legal persons such as organizations and States, especially since genocide's act are in most systematic and orderly manner and result from a planned scheme that reflects the objectives of the legal person to which the natural persons who carried out the crime of genocide belong.

Keywords: Individual's Crime Responsibility, Genocide, Material and Mental Elements of Crime, International Criminal Tribunal.

ÖZ

BİREYLERİN SOYKIRIM SUÇU İÇİN CEZAİ SORUMLULUĞU

Soykırım suçu insanlığı tehdit eden en ciddi suçlardan biri olarak kabul edilir, çünkü insan sağlığına ve onuruna karşı bir saldırıyı temsil eder ve en temel hakları etkiler. Bu çalışma, soykırım suçu kavramını araştırmaya ve bu suçun unsurlarını tasvir etmek üzere yapılmıştır. Çalışma, bunun yanında, soykırım suçları için bireysel ve devlet sorumluluğu konularına da değinecektir. Araştırmada, uluslararası suçların devlet organları tarafından işlendiğinde özel veya kamusal kapasitenin bir göstergesi olup olmadığını kanıtlamanın önemli olduğunun altı çizilmiştir Bu konunun önemi, bireysel ceza sorumluluğu, ceza hukuku normlarının varlığı, insanlığın değer ve çıkarlarının korunması için en önemli kontrollerden biri olması olgusunu doğurmaktadır. Bu nedenle, çalışma, bir suç olarak Soykırım kavramını incelemiş ve bu suçun bireysel mi yoksa devlet suçu mu olduğunu tespit etmeye çalışmıştır.Uluslararası suçlar kavramını destekleyen birçok kamu araştırması yapılmıştır. Daha sonra çalışma, genel istisna kuralının, uluslararası suçların, bireylere atfedilebilecek ve aynı zamanda cezai sorumluluğunu taşıyabilecek resmi eylemler olarak geniş bir yelpazede tanındığı sonucuna yetki verdiğini ortaya koymuştur. Tez, soykırım suçunun maddi ve zihinsel unsurlarını aydınlatmakta ve zihinsel unsurun soykırım suçunun en önemli parçalarından biri olduğu sonucuna varmıştır. Çalışma ayrıca, cezanın soykırım suçunu cezalandırmakla sınırlı kalmayıp, soykırımı gerçekleştirme suçluluğunu da içerdiğini, çünkü soykırımın meydana gelmeden önce engellenmesi gerektiğinin altını çizdi.Ayrıca, soykırıma ve soykırım yapmaya, soykırıma katılmaya yönelik doğrudan ve kamusal teşvik eyleminin yanı sıra, diğer soykırım türlerinden daha az tehlikeli olmayan kültürel soykırıma ciddi olarak dahil edilmesini tavsiye etti. Son olarak, tez çalışmasında, özellikle soykırım eylemlerinin en sistematik ve düzenli bir şekilde gerçekleşmesi ve tüzel kişiliğin amaçlarını yansıtan planlı bir politikadan kaynaklanması nedeniyle, gerçek kişilerden ziyade örgütler ve devletler gibi tüzel kişiliklerin yer alması gerektiği sonucuna varılmıştır.

Anahtar Kelimeler: Bireysel Suç Sorumluluğu, Soykırım, Suçun Maddi ve Zihinsel Unsurları, Uluslararası Ceza Mahkemeleri.

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ABBREVATIONS

ICC …… International Criminal Court
ICJ …… International Court of Justice
ICTY ..…… International Criminal Tribunal for Yugoslavia
ICTR..…… International Criminal Tribunal for Rwanda
ILC …… International Law Commission
YILC ..……Year book of the International Law Commission
IMT ……..International Military Tribunal
RS …… Republic of Serbia
RPF ……Rwandese Patriotic Front
SC …….. Security Council

CHAPTER ONE

LEGAL FRAMEWORK FOR THE INTERNATIONAL CRIMINAL RESPONSIBILITY OF INDIVIDUALS

1.1 Introduction

International crimes against humanity are the most dangerous crimes against human beings, involving the violation of the life, liberty, rights or humanity of an individual,or group of individual. These crimes constitute, in aggregate, so-called genocides. The World War I was the starting point that led to the emergence of personal criminal responsibility against the perpetrators of these grave violations and thus crystallized the idea of 'ICJ' to try the perpetrators. Germany developed Gliom II, the first seed in international criminal law regarding liability, as well as the top German war criminals in Leipzig, as well as the trial of war criminals for war crimes[1].While the World War II was the real starting point for establishing the notion of personal criminal liability and for the establishment of an ICC to determine this liability, specifically by establishing both the Nuremberg Tribunal, which formulated important principles in its rules [2]. Also, it is prosecuted many of those who was responsible for important crimes and violations Human Rights, International Humanitarian Law (IHL) and the Far East Court (Tokyo) considered the dire conditions prevailing at the time.Hence, the most brutal crimes against humanity have been recognized during and the aftermath of these two wars. International crimes against humanity constitute one of the most significant crimes against human beings, as they involve the violation of the life, liberty, rights or humanity of an individual or group of individuals, all of which constitute so-called humanitarian crimes. Humanitarian crimes are relatively recent in the international arena, which only emerged after 2nd World War and were first articulated in the sixth principle of the Nuremberg Trials, which defined these

[1]Norbert Ehrenfreund, *The Nuremberg Legacy: How the Nazi War Crimes Trials Changed the Course of History*, St. Martin's Press, (2007).

[2]M. R. Marrus, 'INTERNATIONAL LAW: The Nuremberg Trial: Fifty Years After (1997)', Vol. 66,The American Scholar, 563.

international crimes as "murder, extermination, slavery and deportation, any other inhuman act committed against any civilian people before and during the war, as well as acts of persecution based on political, racial or religious grounds.The ‘crimes against humanity’ defined in Article ‘7’ of the Rome Statute of (ICC).[3]

Genocide was first known as a wrongdoing by the UN General Assembly (A/RES/96-I) under universal law in 1946. It was managed as a self-governing wrongdoing in the Genocide Convention in the 1948. ’149’ States has endorsed the Convention (as of January 2018). The (ICJ) has expressed that the Convention considers as principles that are part of the general standard global law. This shows regardless of whether states did not endorsed the Convention, the entire of them bound as an issue of law by the rule that annihilation is a wrongdoing banned under global law . At long last slaughter constitutes a sort of ’twistedness’ that features the most genuine human experiencing severe mercilessness and inconsistency in its on-screen characters. It is likewise one type of global wrongdoings that require the discipline of culprits and universal participation to battle and destroy them and rebuffing the people who are conferring them. The concurrence on the Prevention and punishing, of The Crime of Genocide which hung on 1948 (you may utilize Genocide Convention for the other utilize) has made another period of impediment. This horrendous wrongdoing submitted between first World War I and the second World War, which killed a large number of individuals. What occurred after the second World War were the interior wars that denoted another defining moment in the destruction against regular citizens, ladies, and kids. This is the plan to accomplish the equity of the global society against the culprits of annihilation criminal acts. This is finished by barring the idea of good responsibility, for the trouble of deciding the obligation of the State. Where, it prompts the assurance of individual criminal risk, which was just formally shown by the presence of the Military Court (Nuremberg) under the London Convention of 1945 whose arrangements were gone for Nazi residents in Nazi run the show. At that point, rebuff the individuals who are responsible for, for breaking of the universal peace and security rules. Between State relations and the intermixing

[3] United Nations office on Genocide prevention and the Responsibility to Protect. *para 1. states* that it is; “The notion encompasses crimes such as murder, extermination, rape, persecution and all other inhumane acts of a similar character (willfully causing great suffering, or serious injury to body or to mental or physical health), committed ‘as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”. Available on http://www.un.org/en/genocideprevention/genocide.html

of interests have prompted the non-use of these arrangements. Henceforth, distinguishing the duties of the people as a culprit of destructions isn't clear. The proposal endeavored to answer few inquiries that can be brought up in this exploration, specifically; to what degree is singular global criminal obligation is reflected before worldwide criminal councils? Or then again, to what degree is the criminal locale of individual criminal duty reflected? Likewise, Can the State be culprit destruction's wrongdoing?

1.2 The International Criminal Responsibility of Individuals

International criminal responsibility (ICR) for individuals is one of the most significant legal bases for punishing perpetrators and referring them to ICJ. They have been established by international criminal law and by the legal framework of ICR. According to the international level this leads to their effective implementation, for impunity for the culprits of international crimes.In order to prevent confusion about the legal framework of (ICR), it must be addressed. The following elements:The first requirement: the concept of (ICR)The second requirement: the contraindications of absence of ICR.

1.2.1 The concept of international criminal responsibility (ICR)

The following statement of the Nuremberg International Military Tribunal materialized the autonomous status of person under international law by holding that: the crimes versus international law are perpetrate by people, not only entities, hence the provisions of international law can enforce by the punishment of perpetrators individuals of such crimes[4].The ICR of individuals resulting from violations of the regulation of international humanitarian law is the concentrate of the international legal system, which is capable and effective in its transformation and responsibility. The international criminal law is designed to control and direct relations between States. The Treaty of Versailles was the first structure to reflect the ICR of an individual for violating the norms and customs of war at the international level [5].

[4] Nuremberg IMT, Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, 1947, 223, <https://www.loc.gov/rr/frd/Military_Law/pdf/NT_Vol-I.pdf> accessed 02 March 2018

[5]Text in the Treaties of Peace 1919-1923, vol. I, Carnegie Endowment for International Peace, New York, 1924, p. 121.

Where, before that, theindividual was in the realm of traditional international jurisprudence, merely the subject and not a person of international law[6].

From this point of view, the author will refer to the definition of ICR of individuals (as a first branch) as a new element of international law and to the development of the rules of liability as the author attempt in Section II to indicate the ICR of individuals or jurisprudential trends in ICR.

1.2.2 The definition of international criminal responsibility of individuals

The definitions of international criminal responsibility (ICR) have several types [7]and some of them will be mentioned bellow;

- The person responsible for carrying out his or her criminal activity shall apply to the application of the prescribed penalty for such offenses in law by assigning an unlawful act to the individual and causing damage to a person of international law[8].
- It is a condition in which a person is liable for the wrongdoing of an unlawful act and for violating a legal basis. It leaves the person behind the obligation and assumes liability in the case of failure to fulfill this obligation. Such liability arises if a person (State or individual) is a person of international law action or omission contrary to the obligations established in accordance with the provisions of international law.
- It is also defined as a part of the international custom and general principles of law that is the outcome of a violation of a rule of law by international law.
- It is also known asan individual should be responsible for the perpetration of his acts resulting from an unlawful act[9].

Finally, it should be pointed out that ICR is the consequence of a person of international law as a outcome of an internationally incorrect action that would cause harm to another person[10].Although these definitions differ in their formulation, they are concentrated on one aspect: that ICR is assigned to every natural person who has committed or contributed to the commission of an international crime, regardless

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[6] K. Kittichaiseree, *International Criminal Law* (Oxford: Oxford University Press, 2001), at 221.

[7] Elies van Sliedregt, *Individual Criminal Responsibility in International Law*, OUP Oxford, (2012)

[8] M. C. BASSIOUNI, *Introduction to International Criminal Law*, (2nd Edition) , Leiden/Boston, Martinus Nijhoff Publishers, (2013), 202.

[9] B. GOY, Individual Criminal Responsibility before the International Criminal Court A Comparison with the Ad Hoc Tribunals. International Criminal Law Review 12 (2012) 1–70.

[10] C. DAMGAARD, *Individual Criminal Responsibility for Core International Crimes*. *Selected Pertinent Issues*, Berlin, Springer, (2008), 13.

of his official status, in the sense that the individual has a free and conscious freedom from the persons of the law international cooperation.

1.2.3 The position of international criminal responsibility

At the international level the jurisprudential debate on the attribution of criminal responsibility was that;

1.2.3.1 In traditional jurisprudence

The existence of this type of liability is denied, since the State is the only individual to bear liability but only as a civil person who is a juridical person who cannot be matterof criminal punishments.

1.2.3.2 In contemporary jurisprudence

Ithas created new international people, scientific development has led to the establishment of the idea of ICR, anda question raised is the place of this liability, the person who bears this responsibility[11].To answer this question, we find that the jurisprudence was divided into three directions, which are as follows;

1. First Direction: State with criminal responsibility: This pattern perceives the attribution of criminal duty to the State alone, being the main lawful individual as far as possible by the tenets of global law. Thus, there is no ICR for the individual regardless of whether he has carried out the wrongful demonstration and depends on; That global law tends to just States and hence can be considered responsible and the possibility of sway does not struggle with the assurance of the criminal obligation of the State in case of the commission of a universal wrongdoing, which requires risk and discipline. Also, the State has an autonomous specialist not the same as that of people. Global law is tended to by the State and people are considered just instruments of articulation.But this view is criticized in two ways:

- The state's criminal responsibility is incompatible with the principle of sovereignty, hence, determination this fact will exclude the State from these criminal offenses. The imposition of criminal sanctions leads us to wonder

[11] M. Naser, فعالية العقاب على الانتهاكات الجسيمة لقواعد القانون الدولي الانساني[The Effectiveness of Punishment on Serious Violations of the Rules of International Humanitarian Law] (tran). Master thesis, Legal Sciences, University of Haj Lakhdar, Batna,Algeria: University of Haj Lakhdar. (2009), 124.

who is allowed to apply criminal sanctions, which leads us to question who can apply these punishments against the state[12].

- The State cannot be answerable as a moral person with no criminal intent[13].

2. Second Direction: The duality of ICR:This direction has incorporated the State and the individual, where, taking the state 'responsibility and of the individual together.Since the State is an international person who must assume the subordination of criminal responsibility and the individual is the one who commits such acts in the name of his State and for their account[14]. Therefore, the punishment must be imposed on them together, taking into consideration that the imposition of penalties in line with the nature of each of them.The state is expected to impose appropriate penalties such as intervention and sanctions, whereas, the individual is subject to physical sanctions such as imprisonment and execution, but this trend has been mentioned to several criticisms including:

- The penalties imposed on the state are not criminal, but civil.
- The integration of State and individual liabilityis incompatible with the international law's principles if they do not have a criminal contribution association.
- The moral person merely a legal presumption and the individual is the true mastermind of it[15].

3. Third Direction: the ICR of the individual: Supporters of this bearing perceive that ICR is resolved just by people and not by states. As it were, universal wrongdoings must be submitted by people, with the goal that the individual is exclusively in charge of what he has done. Since the individual was not perceived in the past as a worldwide lawful identity, it created after the second World War, as confirm by the Charter of the UN, the Tokyo and Nuremberg Conventions. In this manner, the individual is in charge of universal wrongdoings as he is worried about the arrangements of global law, and under Prosecution or criminal discipline. This is thought to be the prevailing perspective of contemporary worldwide idea and

[12] M. Bergsmo and L. Yan (editors), *State Sovereignty and International Criminal Law,* (Torkel Opsahl Academic E Publisher, 2012).
[13] Ibid.
[14] One of the founders of this trend is "Bella" and "Lauterpacht".
[15] M. Spinedi, 'State Responsibility v. Individual responsibility for International Crimes: Tertium non Datur?'(2002), Vol. 13, No.3, EJIL, 895-99.

additionally of global activity and criminal equity. Be that as it may, it has not been denied feedback, but rather it isn't as sharp as the initial two feelings. Along these lines, the person's risk alone can make the state invulnerable from criminal discipline, and a few authorities ought to be conveyed to a criminal trial[16].The benchmarks that created by the ICTY could bolster this thought and have risen the most huge basis, which is; an administrator can be held globally criminal risk for violations perpetrated by his subordinates in the event that he could have sensibly be relied upon to know or realized that the wrongdoings were carried out by these subordinates or may going to be perpetrated by them. Regardless of, the request of charge obligation depends altogether on the particular case reality; some basic components are given by the ICTY case law. The principal showed in the Appeals Chamber Decision of February 20, 2001, in the Celebi'ci case. The Appeals Chamber thought about that as an administrator can be considered criminally dependable as indicated by order obligation "just if data was accessible to him who would have put him on notice of offenses carried out by subordinates." This likewise valid on account of connivance under article III, passage (b), and agreement under article III, section (e); The litigant raised the issue of whether, as a law matter, it was necessary for the court to be able to uphold the State's claim of responsibility for committing genocide or any other act mentioned in article III that should have been the result of genocide by a court or body exercising Criminal jurisdiction. According to the defendant, the prerequisite for addressing State responsibility was the prior establishment, according to the rules of criminal law, of the responsibility of individual of the wrongdoer of the crime to which the State was responsible[17].

1.2.4 Factors of Absence of Criminal Responsibility

It is well established in international criminal law that individuals may uphold the exemption from ICR if certain acts are established under exceptional circumstances and circumstances and we shall address the reasons for excluding criminal responsibility as follows:

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[16]See M. C. Bassiouni/P. Nanda, A Treatise on International Criminal Law, Springfield, 1973.

[17]Bosnia and Herzegovina v Serbia and Montenegro - Application of the Convention on the Prevention and Punishment of the Crime of Genocide - Judgment of 26 February 2007 - Judgments [2007] ICJ 2; ICJ Reports 2007, p 43; [2007] ICJ Rep 43 (26 February 2007), para 180, http://www.worldlii.org/int/cases/ICJ/2007/2.html accessed 27 March 2018

1.2.4.1 Objective factors

They are factors that interfere with the corner of illegality and deny him the criminal character and become a permissible act[18], which are as follow;

1.2.4.1.1 LegitimateDefense (State of Necessity and Proportionality)

Is defined in international law as the right that international law requires for a State or group of States to use force against armed aggression, if committed against the territorial integrity and political independence of the territory, provided that the use of force is the only means of repelling and proportionate to that aggression.And we find the legal basis for it in the Charter of the United Nations in Article (51), thereof has been surrounded by this right some of the restrictions and the conditions that must be provided in the act of aggression, are:The occurrence of unlawful armed aggression; the aggression should be immediate and direct; armed aggression against members of the United Nations; the aggression is serious and dangerous and affects the fundamental rights of States.

International law also imposed several conditions on the defending States, namely;

- Condition of Necessity:That defense actions are necessary for the response of aggression, which entails that defense acts are the only means of repelling aggression, and that the acts of defense are aimed at the source of aggression. It must be provisional until the Security Council takes the necessary steps to maintain international peace and security[19].
- Condition of proportionality:In the sense that the actions of the Aggressor State or group must be commensurate with and not exceed the scope of aggression, and the criterion used in this case is an objective one[20].

The defense of necessity require to be a conflict-resolving mechanism between morality in one side and criminal law in another side, abided to by defendants where other defenses are considered to be unsuccessful or are not useful. ICL, showed by the legislations and jurisprudence of the ICTR or ICTY, as well as the Rome Statute of the ICC, particularly Article 31(1) (d), states that there is no such a choice between who must die or who may live, by on purpose killing an innocent person; also, ICL announced that no one purposely sacrifice human life

[18] M. Barendregt, E. Muller, H. Nijman, and E. de Beurs, 'Factors associated with experts' opinions regarding criminal responsibility in The Netherlands' [2008], Volume 26, Issue 5, Behavioral Science & Law, 619

[19] James A. Green, and Francis Grimal, (2011), 'The Threat of Force as an Action in Self-Defense under International Law', Vanderbilt Journal of Transnational Law, Vol. 44, 321-23.

[20] Ibid. 324.

for the property protection, this being illustrated in Chapter V with relation to the element of military necessity as justification for self-defense[21].

Three conditions as to the admissibility of the defense of necessity regarding genocide or war crimes accuses:

- The act should have been done to prevent a greater malady than inflicted.
- There should have been no another better alternative.
- The hurt projected should not have been disproportionate to the hurt avoided[22].

The defense of necessity in ICL should be allowed if the indicted believed at the event time that the first and second elements were present, even if that belief was mistaken. Antithesis of that, the belief of defendant alone will not be enough to the third element, where, ICL asks also an objective intention with regard to the various shapes of international crimes and their contingent *'jus cogens*' character[23].

In the case of Prosecutor v. Zlatko Aleksovski, the appellant emerged a necessity defense, which was discarded by the Appeals Chamber. The judges held that:

"*The Appellant is essentially presenting that the abuse the prisoners endured—not the reality of detainment, with which he was not charged—ought to have been translated by the Trial Chamber as by one means or another having been legitimized by the affirmation that they would have endured considerably more had they not been dealt with the way they were while in confinement. […] This was insinuated from the Bench while amid the oral hearings on 9 February 2000, the direction for the Appellant was asked: [Y]ou said the denounced picked a lesser fiendishness, apparently as against the more noteworthy malevolence, however wouldn't it be available to him to have picked no malice by any means? Wouldn't that have been a choice to him*?"[24]

The state of necessity in the national criminal law is a condition that happens to a person or others, threatening him with a danger which he sees it are harmless if committing a crime.This is called necessity crime, a situation in which there is no

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[21]Geert-Jan Alexander Knoops, Defenses in Contemporary International Criminal Law, 2nd Edition, Martinus Nijhoff Publishers, and VSP, (2008).

[22] See, for these three elements, Cleveland v. Municipality of Anchorage, decision of the Alaska Court, 631, P.2d 1073, 1078 (1981), <https://law.justia.com/cases/alaska/supreme-court/1981/4956-1.html> accessed 26 May 2018.

[23] Ibid

[24]Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1, ICTY Appeals Chamber Judgment, para. 54 (Mar. 24, 2000), <http://www.icty.org/x/cases/aleksovski/acjug/en/ale-asj000324e.pdf> accessed 26 May 2018

absence of absolute authority, but not has way to another choice.International criminal law means "the situation in which a individuals faces a real or imminent danger to its entity, regional and personal existence or regime[25].

1.2.4.1.2 Orders of the Superior

The inside criminal law is considered acquiescence to the request issued by the president one reason for the nonattendance of risk in light of the fact that the subordinate dependably accepts to the legitimate mastery of the president, thus he executes his requests in the conviction of his authenticity. In global criminal law, there has been a wide discussion, and it is not quite the same as the national criminal law since in worldwide criminal law just the submission of the better request than military requests is portrayed by the way that such requests have a particular character and require prompt execution. Disregard the requests of the pioneers lead ordinarily to sort of confusion, and defiance. Notwithstanding, the standards got from global case law result in that the Supreme Leader's choice not to be viewed as a ground for the absolution of the demonstration, which was perceived by Principle IV of the Nuremberg Principles. It incorporates the non-exclusion of a global culprit based on a request issued by his Government[26].In the same context, the International Criminal Court, where Article 33 of its Statute states that a person is not relieved of liability if his conduct is in compliance with the order of his Government or a President.It should be noted that the Supreme Leader's order remains a fundamental impetus to the mitigation of punishment[27].The International Criminal Tribunal for former Yugoslavia Statute was issued in Article '7' determined the individual responsibility about the execution of crimes[28].

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[25] Ibid, 401-417

[26] P. Gaeta, 'The Defense of Superior Order',(1999), 10, EJIL, 172.

[27] Ibid, 173

[28] ICTY Statute, states that;*"1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.*

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so

In Prosecutor v. Bagilishema, the ICTR Trial Chamber cleared that the significant factor is the superior had real power on the individuals who perpetrated the crimes and not only for him to be in charge of over a specific territory [29]Thus, under such circumstances the superior's geographical location may have an exculpatory effect, demonstrated by the Blaski´c case. Tihomir Blaski´c was the Commander of the Croatian Defense Council (HVO) Armed Forces in Central Bosnia during the crimes were committed.28 Among the factors disprove the Trial Chamber's outcome that Blaski´c has effective control over all personnel and retention centers was Blaski´c's "*physical isolation from some locations.*"[30]The Appeals Chamber found that Blaski´c's circumstances "*resulted both in the limiting of his capability to gives his command, and in the emergence of 'local' leaders in each locality*."[31]Hence, Blaski´c's personal distance from the regions of crimes affected his potential to control his subordinates. Therefore, this is exculpatory element.

1.2.4.2 Subjective factors

A person shall not be criminally liable if at the time he commits such conduct in the following conditions;

1.2.4.2.1 Mental Illness or Disability

It means madness or mental disability and all diseases that affect the individual and lead to his lack of authority by not being able to exercise his legitimacy or normal behavior or ability to control his behavior in accordance with the requirements of the law stipulated in Article ' 31' in paragraph (a) of the Rome Statute[32].

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requires."<http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf> accessed 30 April 2018

[29] See Prosecutor v. Bagilishema, Case No. ICTR-95-1A-T, Trial Chamber Judgment1, para. 45 (June 7, 2001), <http://www.worldcourts.com/ictr/eng/decisions/2001.06.07_Prosecutor_v_Bagilishema_1.pdf> accessed 26 May 2018

[30] Prosecutor v. Blaski´c, Case No. IT-95-14-A, Appeals Chamber Judgment, para. 2 (July 24, 2004).<http://www.icty.org/x/cases/blaskic/acjug/en/bla-aj040729e.pdf accessed 26 May 2018

[31] Ibid.

[32] Rome Statute of the International Criminal Court, 20. Text of the Rome Statute circulated as document A/CONF.183/9 of 17 July 1998 and corrected by process-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002. The Statute entered into force on 1 July 2002. Stated that ; *"The person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law"*<http://legal.un.org/icc/statute/english/rome_statute(e).pdf> accessed 2 March 2018

The ICTY Trial Chamber, in its first judgment on this issue, separated between the plea of diminished mental responsibility and the plea of insanity (lack of mental responsibility)[33]. The defense claimed that Rule 67(A) (ii) made diminished mental responsibility a complete defense to any charge. This debate was admitted by the Trial Chamber, which considered that Rule 67 should not be interpreted limitedly[34]. A "complete defense" means that, if successful, this could lead to a complete acquittal rather than an alleviation of punishment or reclassification of the crime charged[35].The Delali'c case vindicated the conclusion that the central component of reduced obligation is discretion misfortunes by the prosecuted, maybe for explanations behind which the arraigned isn't he to fault, i.e., natural malady or indivisible causes instead of self-instigated frenzy or loss of temper. This can be taken from the Trial Chamber's refusal of the decreased obligation supplication in light of that the prosecuted had an identity issue yet that he "was very fit for controlling his activities" at that time.198 The request of constrained physical limit raised was additionally rejected in view of that, while the arraigned had some physical issues, he conceded that he killed and beaten prisoners and along these lines was physically competent of doing so[36].

1.2.4.2.2 Intoxication

In this section we have surveyed the point of ICR for people, starting with our introduction to criminal duty when all is said in done. Numerous definitions for ICR have been tended to. The section explained the components that meddle with the parameters of illicitness and deny the criminal character. These variables were separated subjective and target factors. To outline the reason what have prompted the foundation of lasting ICJ. The section outlined the improvement of duty when the obligation was exclusively for the State and being referred to and the individual was not criminally in charge of the offenses carried out by him. Though, later on there

[33]*See* Prosecutor v. Delali´c et al., Case No. IT-96-21, ICTY Trial Chamber Judgment, para. 1156 (Nov. 16, 1998).<http://www.icty.org/x/cases/mucic/tjug/en/> accessed 25 May 2018

[34]John R.W.D. Jones & Steven Powles, *International Criminal Practice*, 3rd Edition, Martinus Nijhoff, (2003). P. 448

[35]Geert-Jan Alexander Knoops, Defenses in Contemporary International Criminal Law, 2nd Edition, Martinus Nijhoff Publishers, and VSP, (2008), P.112

[36]Prosecutor v. Delali´c, Case No. IT-96-21, Trial Chamber Judgment, para. 1186 (Nov. 16, 1998); *see* JONES & POWLES, *supra* note 196, at 448–49, <http://www.icty.org/x/cases/mucic/ind/en/cel-ii960321e.pdf> accessed 26 May 2018

was a dismissal of this rule and numerous components has been distinguished to include the person as dependable of violations against humankind including slaughters.from the paragraph (b) of article '31', of its statute of Rome[37].The defense of self-intoxication that regulated in Article '31(1-b)' of the ICC Statute, did not characterized as a fully advantage defense before international criminal tribunals. Where it was raised Before the ICTY by one of the indicted in the case of Prosecutor v. Kvocka et al. This indicted, Mr. Zigic, claimed to have oppress prisoners, depending on the pretext that had suffered from intoxication during those events. The ICTY, in judging stage, refused this defense. Contrary to being a mitigating circumstance, it considered it to be an intensive factor. Eventually, the ICTY did not give much value to intoxication as a relevant judging factor[38].

1.2.4.2.3 Threat (Duress)

According to paragraph (d) of Article '31' of the Rome Statute, the behavior that considers to constitute a crime within the Court jurisdiction brought about by duress resulting from a threat of killing or serious bodily harm front of the individual[39].

The absolutist-utilitarian debate was elaborated on in the 'Erdemovi´c' case decided by the Appeals Chamber of the ICTY. 'Erdemovi´c' had been judged by ten years imprisonment, because of his guilty plea to one crime against humanity, regarding his participation in the mass killing of a huge number of civil Muslim men after the collapse of Srebrenica. In this case the indicted raised the defense of duress, based upon the confirmation that, when he refused to participate in this massacre by a firing squad in the beginning, he informed that he would be terminated himself together with the Muslim victims and therefore compelled by imminent threats.In the opposed view of President-Judge Cassese, the utilitarian approach was advocated,

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[37] *"The person is in a state of intoxication that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court",* Ibid, 20

[38] See Prosecutor v. Kvocka et al., Case No. IT-98-30/1-T, ICTY Judgment, para. 748 (Nov. 2, 2001), http://www.icty.org/x/cases/kvocka/tjug/en/kvo-tj011002e.pdf, accessed 25 May 2018

[39] *"The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be: (i) Made by other persons; or (ii) Constituted by other circumstances beyond that person's control.";* SeeWatts (n 20)

debating that due to the massive killing was unavoidable at that while (or would have took place irrespective of the will of the indicted), the refusal of the defendant to engage in the execution, resulting in the consequent loss of his own life, would not have saved any life but only led to the loss of another life. According to the dissenting opinion of Judge Cassese, the duress defense is in such situations admissible because of the lack of any real moral choice. However, paragraph 50 of his opinion is very significant[40].

1.2.4.2.4 Mistake of fact or mistake of law

Article 32 of the Rome Statute provided for this prohibition. The fact that the facts are not a reason for the absence of criminal responsibility is the result of the absence of the moral element required to commit such an offense. A mistake in the law was not a reason for excluding criminal responsibility if a type of conduct constituted a crime within the jurisdiction of the court, but a mistake in the law might be a reason for

[40] *"More particularly, in applying the conclusions of law which I have reached above, in my view the Trial Chamber to which the matter is remitted must first of all determine whether the situation leading to duress was voluntarily brought about by the Appellant. In particular, the Trial Chamber must satisfy itself whether the military unit to which he belonged and in which he had voluntarily enlisted (the 10th Sabotage Unit) was purposefully intent upon actions contrary to international humanitarian law and the Appellant either knew or should have known of this when he joined the unit or, if he only later became aware of it, that he then failed to leave the unit or otherwise disengage himself from such actions. If the answer to this were in the affirmative, the Appellant could not plead duress. Equally, he could not raise this defense if he in any other way voluntarily placed himself in a situation he knew would entail the unlawful execution of civilians. If, on the other hand, the above question be answered in the negative, and thus the Appellant would be entitled to urge duress, the Trial Chamber must then satisfy itself that the other strict conditions required by international criminal law to prove duress are met in the instant case, namely:*
1. whether Appellant acted under a threat constituting imminent harm, both serious and irreparable, to his life or limb, or to the life or limb of his family, when he killed approximately 70 unarmed Muslim civilians at the Branjevo farm near Plica in Bosnia on 16 July 1995;
2. whether Appellant had no other adequate means of averting this harm other than executing the said civilians;
3. Whether the execution of the said civilians was proportionate to the harm Appellant sought to avoid. As I have stated above, this requirement cannot normally be met with respect to offences involving the killing of innocents, since it is impossible to balance one life against another. However, the Trial Chamber should determine, on its assessment of the evidence, whether the choice faced by Appellant was between refusing to participate in the killing of the Muslim civilians and being killed himself or participating in the killing of the Muslim civilians who would be killed in any case by the other soldiers and thus being allowed to live. If the Trial Chamber concludes that it is the latter, then Appellant'sdefense of duress will have succeeded. In addition, bearing in mind that, as stated above, the lower the rank of a serviceman the greater his propensity to yield to compulsion, the Trial Chamber, in determining whether or not Appellant acted under duress, should also take into account his military rank. Furthermore, the Trial Chamber should consider whether Appellant confessed at the earliest possible opportunity to the act he had committed and denounced it to the relevant authorities. If he did so, this might contribute to lending credibility to his plea of duress." See, Diss. Op. Cassese Prosecutor v. Erdemovic, Case No. IT-96-22-A, Appeals Chamber Decision (Oct. 7, 1997), discussed by Meron, *supra* note 17, at 91., <http://www.icty.org/x/cases/erdemovic/acjug/en/erd-aj971007e.pdf> accessed 25 May 2018.

excluding responsibility if the mistake resulted from the absence of the moral element required for that crime, as mentioned in the Article '32'[41].

1.3 Summary

In this section we have surveyed the point of ICR for people, starting with our introduction to criminal duty when all is said in done. Numerous definitions for ICR have been tended to. The section explained the components that meddle with the parameters of illicitness and deny the criminal character. These variables were separated subjective and target factors. To outline the reason what have prompted the foundation of lasting ICJ. The section outlined the improvement of duty when the obligation was exclusively for the State and being referred to and the individual was not criminally in charge of the offenses carried out by him. Though, later on there was a dismissal of this rule and numerous components has been distinguished to include the person as dependable of violations against humankind including slaughters.

[41] *"1. A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime. 2. A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime, or as provided for in article 33."* , Ibid, 21

CHAPTER TWO

THE LEGAL FRAMEWORK FOR THE CRIME OF GENOCIDE

The crime of genocide is one of the significant international crimes which have attracted the attention of the international community to the definition of this crime and the organization of an 'ICC' to punish the perpetrators.Because it is a serious international crime, in view of the heavy losses it has inflicted on humanity throughout the ages, it involves a violation and particularly violation of fundamental human rights and the principles and rules of international humanitarian law, regardless of whether committed in times of peace or time of war[42].It should be remarked that this crime was not previously known by the ICJ system, as it was incorporated in the crimes opposite to humanity in the Nuremberg Tribunal Statute, and the development of 'ICL' led to its being considered an independent crime, as reflected in the Convention of Genocide in 1948[43], and the Statute of the ICC, where the genocide's crime is one of the first international crimes within its substantive jurisdiction[44].The annihilation's wrongdoing has been presented to a few meanings of either by universal statute or worldwide traditions. Through these different definitions, it is obvious to us that this wrongdoing has an arrangement of qualities that give it its own element, which recognizes it from other global violations. In spite of the

[42]Nasour Koursami,*The 'Contextual Elements' of the Crime of Genocide*, Springer, (2018), P. 53
[43] Convention on the Prevention and Punishment of the Crime of Genocide, Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948, Adopted by Resolution 260 (III)A of the United Nations General Assembly on 9 December 1948, <https://www.oas.org/dil/1948_Convention_on_the_Prevention_and_Punishment_of_the_Crime_of_Genocide.pdf> accessed 3 April 2018
[44] Rome Statute (n 34)

considerable cover between the wrongdoing of annihilation and other global violations and the likeness between them, there are a few qualities particular to every wrongdoing recognize them from the other. In order to perpetuate the crime of genocide must have three pillars; these pillars are in the form of different images, The 1948 Genocide Convention[45]. In this chapter we will try to cover the subject of Genocide in order to get comprehensive legal understanding about this crime.

2.1 The crime of genocide

The first appearance of the term genocide was used by the jurist "Raphael Lemkin" in a study prepared in 1944 to clarify the specificity of the crimes committed by the Nazis and the atrocities committed against humanity, especially those acts aimed at the destruction and 'Germanization'[46] of the countries of Europe under Nazi occupation[47].The first person who used the word 'Genocide' was Lemkin, where derived it from old Greek word 'Genos" which means race, group of people or clan, and the Latin suffix 'Cide' which means killing. Later he called this crime as 'Crime of Crimes', because of its greatest destructive effects[48].

It was the arrangement of shocking wrongdoings perpetrated against humankind amid World War II and its related human rights misuse and infringement of opportunities, the privilege to life and the utilization of different merciless methods for executing, torment and attack on the flexibility of people - its effect on the inclination of all States to embrace standards to go up against the wrongdoing of Genocide in the entirety of its structures, including (physical, moral or social) slaughter.

2.1.1 Different definitions of the crime of genocide

There are many definitions that have been addressed for the term 'Genocide'. We will try to cover many of them as much as possible according to specific classification.

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[45] Convention on the Prevention, 1948 (n 3)

[46] Item is used often to connote the imposition by a stronger nation. Hitler stated many times that 'Germanization' could only be carried out with the soil, never with men.

[47] Raphael Lemkin, 'Genocide', [1946], Vol. 15, no.2, American Scholar, 227.

[48] He then made the definition of the crime as; " *[G]enocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group*..", see Raphael, Lemkin, *Lemkin on Genocide*, Lexington Books (2012).

2.1.1.1 The Juristic' Definition of Genocide

In addition to the definition of 'Raphael Lemkin', which mentioned previously, Professor Graven[49], also defined the crime of genocide as; the most important crimes against humanity and its model. In this crime, the idea of crime against humanity is embodied in its fullest sense. Where, the killers and murderers commit the annihilation of a group (total or partial annihilation) with no fault or guilty, except that they belong to a national group, race or religion that is contrary to the nationality, race or religion of the killers[50].Professor Donnedieu de Vabressees the crime of genocide as denial of the human groups from right to exist, and it corresponds to murder, which is the denial of the human right to survival[51].

2.1.1.2 Defining the crime of genocide before the Rome Statute

The finish of the World War II and the massacres committed by the Nazis in order to eliminate certain groups, especially the religious and ethnic groups, as is the case with the Jews in Europe. In addition, the wars in the antecedent Yugoslavia and Rwanda have resulted in chilling massacres. The Genocide Convention had been defining the crime of genocide in the Article II[52]. However, Max Du Plessis address that the genocide's definition of provided in Article II of the Genocide Convention is reflecting "a preoccupation among the drafters of the Convention with the Nazi extirpation of the Jews in World War II."[53]The classification of human groups into a national, ethnic, racial and religious group is a classification that is both flawed and ambiguous, and it is difficult to recognizeamong the concepts of these groups. The Rwanda Tribunal took a flexible view of its interpretation of the Ethnic community, by condemning 'Jean- Paul Akayesu' of the Hutu group for the crime of genocide against the Tutsi community. The question that offered before the Court was whether the Tutsi group was considered as the ethnic group in the concept of the 1948 Convention? The court noted that both Tutsis and Hutus have the same nationality

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[49] Professor Jean Graven, was the dean of the Law school, of the University of Geneva, Switzerland and President of International Association of Penal Law (IAPL)

[50] Abdullah Sulaiman,المقدمات الأساسية في القانون الدولي الجنائي [Fundamentals of International Criminal Law], University Press, Algeria. (1992), p. 286

[51]Hilary Earl, 'Prosecuting genocide before the Genocide Convention: Raphael Lemkin and the Nuremberg Trials, 1945–1949', [2013], Journal of Genocide Research,317 , DOI: 10.1080/14623528.2013.821225

[52] Convention on the Prevention, 1948 (n 3), states; "*In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group*…"

[53] David L. Nersessian, *Genocide and Political Groups*, Oxford, Oxford University Press,(2010), p62

and race, and they condemn one religion in addition to their participation in language and culture. From this perspective, the Court concluded that the Tutsis did not represent a different ethnic group than the Hutu community.[54] 'John Paul Akayesu' case, the mayor of "Taba" before ICTR was one of the examples for the individual liability for the crimes against humanity, and sexual violence acts, the Court decision was to sentence him to life imprisonmentbecause of the massacres and the heinous crimes committed in the territory of both the previous Yugoslavia and Rwanda, the Security Council issued a decision to establish a court for each of them, to try and punish the delinquent of these serious crimes, and not forget the role played by both the Nuremberg and Tokyo courts Genocide, although not specifically established to punish this type of crime, so that the genocide's crimes included within Crimes against humanity. Thus, the description of genocide under the Statute of the (ICTY), under Article IV, paragraph (2) of the Statute of the Court, the genocide'scrime refers toany specific acts executed with purpose to ruin, a national, ethnical, racial or religious group, partially or totally.[55]The definition of genocide under the Statute of the (ICTR) came under Article II, Paragraph (2) from the Statute, Which is the same definition as the Convention on the Prevention and Punishment of the Genocide of 1948[56].

2.1.1.3 Definition of the crime of genocide within the framework of the Rome Statute

The 'ICC' is responsible for punishing the important crime of concern to the international community as a whole, by threatening the security and integrity of humanity. Genocide crime is the international crimes that have the priority within the substantive jurisdiction of the I CC.[57]The Statute of the Court determined the

[54]Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*, Princeton University Press, (2014), pp1-47

[55] International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991,United Nation (2009), Article IV started that; "*...any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group...*"accessed through: http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf

[56] STATUTE OF THE INTERNATIONAL TRIBUNAL FOR RWANDA, 2007: accessed through: Statute of the International Criminal Tribunal for Rwanda 2007

[57] Triestino Mariniello (Ed.), *The International Criminal Court in Search of Its Purpose and Identity*, Routledge,(2014).

genocide ‘crime under Article VI as the commission of acts of destruction of a group because of its involvement in a national, ethnical, racial or religious customs and traditions, whether wholly or in part, through murder, physical injury or mental damage tothe members of the group, or to take action to prevent reproduction, or compulsory transfer of children from the group, another group[58].What is noted in the definition of the genocide’s crime under the Statute of the ICCin article VI is a repetition of the text of article II of the convention on the genocideprevention in 1948, which restores the same acts constituting the genocide’s crime. In the same way, the same definition of genocide was stated with the Statute of the previous Yugoslavia and Rwanda.

2.1.2 The Elements of the Crime of Genocide

International crimes against humanity are among the most serious crimes against human beings, as they involve the violation of the life, liberty, rights or humanity of a person or group of persons, all of which constitute so-called humanitarian crimes.The crimes of humanity are relatively recent in the international arena, as they have not appeared in their present form until after the Second World War. They were mentioned in the beginning in the principle VI of the Nuremberg Trials, which defined these international crimes in paragraph (c)[59].

Article ’18’ in 1996 define and characterize the crimes against humanity[60].The series of heinous crimes committed against mankind during the Second World War and the

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[58] Article VI, of Rome Statute states; *“…“genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group*.”

[59]Paragraph ‘c’, mentioned that; “ (C) *Crimes against humanity: Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime*.”See Principle VI, paragraph (c), of The Nuremberg Principles, accessed through: https://kozidryngiel.files.wordpress.com/2009/01/nuremberg-principles.pdf, accessed 6 April 2018

[60] See Article ‘18’ of Draft Code of Crimes against the Peace and Security of Mankind, 1996 states;*"A crime against humanity means any of the following acts, when committed in a systematic manner or on a large scale and instigated or directed by a Government or by any organization or group: (a) murder; (b) extermination; (c) torture; (d) enslavement; (e) persecution on political, racial, religious or ethnic grounds; (f) institutionalized discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population; (g) arbitrary deportation or forcible transfer of population; (h) arbitrary imprisonment; (i) forced disappearance of persons; (j) rape, enforced prostitution and other forms of sexual abuse; (k) other inhumane acts which severely damage physical or mental integrity,*

ensuing loss of human rights, violations of freedoms and the right to life and the use of various brutal means of killing, torture and assault on the freedom of individuals have affected the tendency of all States to adopt principles to confront the crime of genocide in all its forms which include material, moral or cultural destruction. In the twenty-first century, there are crimes of genocide against minorities and sects as happened in Iraq from the genocide of 'Ezidis' by extremist groups in the second and third of August, 2014 and the killing and extermination of more than 6000 children, women, and men, according to figures of the United Nations and local organizations[61].

2.1.2.1 MaterialElement

The material element of the genocide can be considered if one of the acts mentioned by Article II of the convention on genocidecrime prevention exists[62], as follow:

(a) Killing (Murder)individuals of the group;It can be defined as the killing of a mankind by a rational person, with intent, hatred planned and without legal power or pretext[63]. That is, killing a certain number of them so that the extermination is intended to be a group rather than a collective or partial individual. The act must be intentional but not necessarily premeditated[64]. Example of the killing sentence, the case of Drazen Erdimovic.He was convicted on charges of committing a crime against humanity in the Yugoslav region on 29 November 1996 after conviction, for his involvement in killing for nearly 1,200 civilian men, including Muslims and non-Muslims, on farms in eastern Bosnia, and he was sentenced to 10 years' imprisonment[65].

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

The act must be carried out in any material or moral way that has an effect on the members of the group such as beatings or mutilation that leads to permanent

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health or human dignities, such as mutilation and severe bodily harm.": accessed through :http://legal.un.org/ilc/texts/instruments/english/commentaries/7_4_1996.pdf, accessed 6 April 2018

[61] Sa'ad Salloum, *Ezidis in Iraq: Memory, Beliefs and Current Genocide*, The Italian organization Un Ponter, (2016)

[62] Convention on the Prevention and Punishment of the Crime of Genocide (n 28)

[63]Law.com, Search legal terms and Definitions, https://dictionary.law.com/Default.aspx?selected=1303> accessed 25 May 2018

[64] International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991, Original: United Nation, English Case No. IT-97-24-T, Stakic ICTY T. Ch. II 31.7(2003) para. 515

[65]Prosecutor vs Drazen Erdimovic Case No. IT-96-22-A, [1997],<http://www.icty.org/x/cases/erdemovic/ind/en/erd-ii960529e.pdf> accessed 26 May 2018

disabilities or torture[66]. The Convention criminalizes the causing of serious bodily or mental harm to victims. The ICTR in the case of 'Akayesu' a new ground has been introduced in determining that acts ofrapes and sexual assaults can constitute genocide; sexual violence considered an integral part of the destruction process of in the genocide of Rwanda[67].

(c) Apply intended pain on the group in a conditions of life planned to cause physical destruction totally or partially;an example of this is living in a place devoid of all means of life, where there is no planting, no water, or under harsh climatic conditions that bring diseases without providing a way for life.This category of prohibited acts comprise methods of destruction whereby the perpetrator does not immediately kill the members of the group, but which seek to bring about their physical destruction in the end[68].The International Criminal Court Elements of Crimes explain the term 'conditions of life' as including but 'not necessarily' limited to, deliberate deprivation of resources necessary for existence, such as food or medical services, or systematic expulsion from houses[69].According toICTR, inKayishema and Ruzindana case, Trial Chamber showed, that applyingspecific condition on the group that planned to hurt them. *"[T]he conditions of life envisaged include rape, the starving of a group of people, reducing required medical services below a minimum, and withholding sufficient living accommodation for a reasonable period*."[70] Whereas, the Chamber in para 548, held that despite of the Tutsi group in "Kibuye" were preventing food, water and sufficient medical and sanitary facilities, but,these preventingwere not the intentional creation of conditions of life *,. ". . intended to bring about their destruction*" due to these "*deprivations . . . were a result of the persecution of the Tutsis, with the intent to exterminate them within a short period of time thereafter*." Moreover, the Chambers demonstrated that the times periods "*were not of sufficient length or scale to bring about destruction of the group*."[71]

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[66] See Article II (b), of the Convention on the Prevention of the Crime of Genocide, (1948).
[67] Prosecutor v. Akayesu, ICTR Trial Chamber, Judgment, ICTR T. Ch. I 2.9. (1998) para. 731.
[68] Akayesu, supra note 75, para. 505.
[69] Dejene Teshome, *Protected Groups under the Genocide Convention; The Trends and Prospects*,
Addis Ababa University (2014)
[70] The Prosecutor. v. Clement Kayishema and Obed Ruzindana, Case No. ICTR-9S-l-T, 25 may [1999].para. 115-116<http://www.worldcourts.com/ictr/eng/decisions/1999.05.21_Prosecutor_v_Kayishema_1.pdf> accessed 26 May 2018
[71] Ibid.

(d) Applying measures, aim to block births within the group;

This act is applying measures intended to stop births within the group. This is the act of community members being subjected to obstruction of procreation, such as castration their men and infertility in their women with drugs that deprive them of the ability to conceive and procreate and force them to abort when they are achieved.This provision was inspired by the Nazis" exercise of forced infertility during and before the Second World War[72].Example of that is what happened in ICTR in the case of Akayesu, (Trial Chamber) that accused to apply measures to ban the births within the individuals of the group[73].

(e) Transferring children of the group to another by force;

This form of genocide has been received less of judicial consideration.The act involves a kind of cultural genocide as these children represent the future and social continuity of the cultural community. It should be noted thatArticle III of the Genocide Convention is equal in terms of criminal responsibility between the crime, as well as conspiracy and incitement[74].It elucidated as, The aim behind this act is not only to penalty a direct act of forcible physical transfer, but also to penalty acts of threats or impacts through the forcible transfer of children from one group to another[75].

2.1.2.2 MentalElement

The mentalelement of this crime requires the need for special criminal intent. The offender must be aware that he or she is doing destroys the entity of the group, yet does not deter and continues his work in order to reach the end. In this crime, the elements of criminal intent (knowledge and will) are not sufficient but must be motivated by a specific purpose and motivated by certain causes linked to religious, racial or sexual factors.But the meaning to be attributed to this 'intent' is a matter of some difficulty.Based on Prosecutor v. Akayesu, Case No. ICTR-96-4-T (Trial Chamber), September 2, 1998, para. 498, 517-522; Genocide is different from other

[72]Kelly Dawn Askin,War *Crimes against Women: Prosecution in International War Crimes Tribunals*, Martinus Nijhoff Publishers (1997)

[73]Akayesu, 02 September, [1998], para. 507-508, stated "[*I]mposing measures intended to prevent births within the group*" consist of: "*sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages. In patriarchal societies, where membership of a group is determined by the identity of the father, an example . . . is the case where, during rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother's group*."

[74] Convention on the Prevention, 1948 (n 29)

[75] See *Akayesu,* (Trial Chamber), September 2, 1998, para. 509; *See also Kayishema and Ruzindana,* (Trial Chamber), May 21, 1999, para. 118; *Rutaganda,* (Trial Chamber), December 6, 1999, para. 54; *Musema,* (Trial Chamber), January 27, 2000, para. 159

crimes where it is holding a special intent or 'dolus specialis'. Specific intention is the special intent of the crime, and needed as a constitutive the crime element, which requires that the wrongdoer clearly seeks to produce the act. Therefore, the special intent in genocide crime embodied in the intent to destroy, partially or completely, an ethnical, national, religious or racial group. The Chamber found that "*the offender is culpable*" only when he has perpetrate one of the acts charged under Article 2(2), with the intention to destroy, totally or partially a specific group, because he knew or should have known that the committed act would destroy, that group, either partially or totally[76].In addition to this, according to *Rutaganda,* (Trial Chamber), December 6, 1999, para. 59; an individual may only be condemned for the crime of genocide if he perpetrated one of the enumerated acts with "*the specific intent to destroy, in whole or in part, a particular group.*"[77]

One of the most debatable and unique elements in Genocide Convention is the presence of an intent to ruin. The ruin determined here is biological or physical, despite, the tools that resulting the destruction of the group may be by acts short of causing the death of individuals. Other forms of destruction, for example, the social assimilation of a group into another, or offensive on cultural merits which give a group its own identity, do not constitute genocide if they are not related to physical or biological destruction.The intent to destroy based on the Convention it could be "in part or in the whole ", where, there must be an intent to ruin the protected group in part or in whole. This part of the intention is caused a huge controversy[78].This is because the range of the protections granted by the prohibition of genocide is dependent on how the relevant group is broadly or narrowly conceptualized. The first issue is a geographical one, for example in the case of genocide Rwanda the Hutu (who committed the genocide) didn't show that they want to destroy all Tutsis everywhere, but only in Rwanda[79].It is worthy to mention that, genocide, unlike the crime of aggression, is not a crime that may be committed only by leaders or planners of the campaign of destruction. Where, any level or rank may also be

[76] Ibid, para498, 517-522; see also,

[77]The Prosecutor v. Georges Anderson Nderubumwe Rutaganda, Case No. ICTR-96-3-T, 6 Dec., [1999], para 59, http://www.worldcourts.com/ictr/eng/decisions/1999.12.06_Prosecutor_v_Rutaganda.pdf accessed 26 May 2018

[78] It is worth emphasizing that this part of the offence is a part of the mental element, not the material elements of Genocide it is not necessary to establish whether all or part of a group was actually destroyed to prove Genocide.

[79] Prosecutor v Radislav Krstic, Case No: IT-98-33-,(19 April 2004), para. 13

principal perpetrators of genocide, and have the requisite intent. The special intent required for genocide necessitates, each perpetrator, either leader or subordinate, intend to destroy all or part of the group when committing any of the forbidden acts. Therefore genocide is different from other international crime because *'mens rea'*[80]requires '*dolus speciallis*' or (The Specific intent).[81] Based on 'Musema,' case, ICTR (Trial Chamber), January 27, 2000, para. 192; The '*mens rea*' of the conspiracy crime to perpetrate genocide is rests on the concerted intent to commit genocide,that is to ruin, a national, ethnic, racial or religious group partially or totally, The "."[82]

2.1.2.3 Legal Elements

The principle of legality means crimes and punishments, "No Crime and No Punishment Unless Substantiated"[83].The purpose of this principle is that only the texts of the law determine the punishable acts and the penalties prescribed for each act. The adoption of this principle in domestic law entails limiting the sources of criminalization and punishment in written legal texts, and restricting the criminal judge's authority in applying the provisions of criminalization and punishment The judge cannot punish a non-criminal act and the legislator has not decided to punish him, and he is not entitled to impose a punishment other than the penalty prescribed by law for the criminal act, within the limits provided in the provisions of the law. This principle does not raise any controversy in the internal criminal law In view of the existence of a national legislator enacting criminal laws defining criminal offenses and determining appropriate penalties. This is not so easy in international law, given the absence of an international lawmaker entrusted with the task of drafting international criminal provisions defining international crimes and the corresponding

[80]The intention or knowledge of wrongdoing that constitutes part of a crime, as opposed to the action or conduct of the accused.

[81] Claire de Than, and Edwin Shorts, *International criminal law and Human Rights*, 1st ed., London, sweet and Maxwell, (2003), p73.

[82] Alfred Musema (Appellant) v. the prosecutor (Respondent),Case No. ICTR-96-13-A, January 27, [2000], Para 192, mentioned that, "*requisite intent for the crime of conspiracy to commit genocide is . . . the intent required for the crime of genocide that is the 'dolus specialis' of genocide"*<http://unictr.unmict.org/sites/unictr.org/files/case-documents/ictr-96-13/appeals-chamber-judgements/en/011116.pdf accessed 26 May 2018

[83]Jeremy McBride, *Human Rights and Criminal Procedure: The Case Law of the European Court of Human Rights*, Council of Europe, (2009)

penalties[84].Considering that international criminal law, as a new branch of international law, has several characteristics, including that it is unconstitutional and most of its rules are customary, the international judge is required to decide whether the act is consistent with international custom and whether Constitutes an international crime or not, which is fraught with several difficulties[85].The lack of codification of international criminal law in clear and specific written texts makes the idea of international crime a vague idea, since it is difficult to reconcile the act with the customary model of that crime and because the international community lacks the legislative authority to codify the rules of this law, There is, therefore, no potential for the application of the principle of "No Crime and No Punishment Unless Substantiated" in international law. Most of the narrators say that once the act has been subjected to an international criminal rule, it is not required to be written. This is based on the principles of justice and morality, and the public good or refers to some treaties and international conventions that reveal this custom, including the Convention on the Prevention and Suppression of the Crime of Genocide.However, The Convention of 9 December 1948 is the written international legal instrument criminalizing genocide, on the basis of which the perpetrators of this crime can be tried and punished.

2.1.3 Acts Punishable By the Genocide Convention

There are specific acts to be punished mentioned inArticle 3 of the convention of the genocide crime prevention of 1948 states:

"The following acts shall be punished:

1. Genocide.
2. Conspiracy to commit genocide.
3. Direct motivate and public motivate to perpetrate genocide.
4. Attempt to commit genocide.
5. Complicity in genocide."

The International Criminal Court of Rome did not include in its statute all of these acts covered by the convention on the genocide crime preventionin 1948, which we shall summarize as follows:

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[84] Dr. Mohamed Abdel-Moneim Abdel-Khaliq,الجرائم الدولية ، دراسة شاملة للجرائم ضد الإنسانية. السلام وجرائم الحرب [International Crimes, a thorough study of crimes against humanity. Peace and War Crimes] (trn), (1st Ed.), Cairo, (1989)

[85] Ibid

2.1.3.1 Commit Genocide

It is an expression that goes to complete crime and is intended to mean acts of extermination committed when committing or carrying out an act that leads to a particular genocide and which has already described in accordance with Article II of the Convention[86].

2.1.3.2 Conspiracy to Commit Genocide

Conspiracy to commit a crime is the agreement of two or more persons to commit the crime of genocide and to think seriously about it and the weight of all its aspects[87]. The important thing is that the agreement itself is independent of the criminal act. The conspiracy to commit it is punishable even if it is not committed. In the implementation, that is, it is a crime to conspire to commit the crime of genocide and requires punishment[88], and the wisdom of criminal conspiracy to commit the crime of genocide due to two things;

1. To ensure that the conspirators are responsible for committing the crime and that they must be punished.
2. Ensure that the crime of conspiracy is prevented, which is always the primary stage of the crime, where, without the criminal planning the crime did not take place[89].

Where, "*[T]he act of conspiracy itself is punishable, even if the substantive offence has not actually been perpetrated*."[90]

At the Nuremberg Trial, it was obvious, that the conduct to the conspiracy problem in common law and in civil law countries is various. The United States counsel at Nuremberg, Mr. Justice Jackson, announced in his coinciding opinion in Krulewitch v. United States, 336 U. S. 440 (1949), that the notion of conspiracy in common Law of modern law does not advise itself to jurists countries of civil law, despite universal recognition that an organized society must have legal weapons for combating

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[86] Convention on the Prevention, 1948 (n 29)
[87] Alfred Musema, para. 191 (n 84)
[88] SONG Tianying, ' Conspiracy to Commit Genocide and its Exclusion From the ICC Statute', 2014, 18, TOAEP, <http://www.toaep.org/pbs-pdf/18-song>, accessed 9 April 2018.
[89] William Schabas, *Genocide in International Law: The Crime of Crimes*, Cambridge University Press, (2009)
[90] THE PROSECUTOR v. ELIEZER NIYITEGEKA Case No. ICTR-96-14-T, 16 May [2003], para 423, <http://www.refworld.org/pdfid/48abd5a3d.pdf> accessed 27 May 2018.

organized criminality[91].The notion of conspiracy, punishable even if the crime has been not committed, in its wide application when it is developed historically in common law countries, is not recognized in the traditional civil law system. , the term "conspiracy", historically was linked in continental Europe, with some political aims. As most representative of the continental European criminal law, German, French, Italian and Polish law may be considered. However, some statutes legislated in severalcountries made the notion of conspiracy nearer to the concept of common law, widening it beyond the political plots field[92].

2.1.3.3 Direct and Public Incitement to Commit Genocide

Incitement is the instigation or transmission of the criminal design of the offender to commit a particular crime. Accordingly, it is a moral process used by the instigator to influence the offender's psyche by spreading the idea of crime in the mind of others.It is noted that Article III of the paragraph (c) of the 1948 Convention clearly; requires that the incitement be direct and public[93].According to Nahimana, Barayagwiza and Ngeze, ICTR (Trial Chamber), December 3, 2003, para. 1017; the direct and public motivation crime to perpetrate genocide, such as conspiracy, is an "*inchoate offence*" that carry on until the acts contemplated are completed[94].Bagilishema, (Trial Chamber), addressed: inciter is a person who instigates others to perpetrate a crime bears responsibility for that crime. By arouse or encouraging others to perpetrate a crime, the instigator may contribute extraordinary to the act of the crime[95].So that direct incitement requires that the instigator be encouraged to commit the genocide in a clear and explicit manner, not merely to suggest it in a vague or indirect manner or confusion, and therefore indirect incitement to use general and vague terms does not consider as incitement to the crime. Accordingly, direct and public incitement to

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[91]United States Supreme Court KRULEWITCH V. UNITED STATES, (1949), No. 143 Argued: January 10, [1949], Decided: March 28, 1949, <https://caselaw.findlaw.com/us-supreme-court/336/440.html> accessed 27 May 2018.

[92] Wienczyslaw J. Wagner, 'CONSPIRACY IN CIVIL LAW COUNTRIES', (1951), Vol. 42, Journal of Criminal Law and Criminology, 171

[93] Convention on the Prevention, 1948 (n 29)

[94] Prosecurtor v. Ferdinand Vahimana, Jean-Bosco Barayagwiza and Hassan Negeze Case No. ICTR-99-52-T, 03 Dec., [2003], <https://www.opensocietyfoundations.org/sites/default/files/2-ictr-nahimana-trial-judgment-20031203.pdf>, accessed 28 May 2018; see also; Genocide,War Crimes,And Crimes Against Humanity: Topicaldigests Ofthe Case Law Ofthe International Criminaltribunal For Rwanda And The International Criminaltribunal For The Former Yugoslavia, Human Rights Watch, (2004), <https://www.legal-tools.org/doc/44fe30/pdf/>, accessed 28 May 2018.

[95] Prosecutor v. Bagilishema, Case No. ICTR-95-1A-T, 07 June, [2001], para 30.

commit the crime of genocide is considered an offense and the punishment of the perpetrator is required, even if the crime has been not committed.

2.1.3.4 Attempt to Commit Genocide

This is intended to begin with the implementation of the material elements of the crime of genocide, where the offender begins to carry out his criminal project, through preparatory work material, but the result is not realized for reasons not included in the will of the offender. This is defined in the Criminal Code "Attempt" of the crime, which is one of the stages of the commission of the crime following the preparation and precedence to complete. Most of the penal laws of States decide the same penalty of full action[96]. An example of attempted genocide is that a person begins to carry out the acts on which the material element of the crime of genocide is based, such as arresting the offender before he or she can achieve the result. As a reference to the rules of criminal law, they distinguish between initiation and preparatory work, where all acts preceding the commencement of the implementation process are considered preparatory acts such as the purchase of equipment, weapons, and weapons for use in the commission of the crime.However, if the stage of preparation is exceeded, the criminal act will continue to be carried out. It is subject to the law and is considered an attempt to crime and punishable. This is, according to the Internal criminal law, but in the case of international criminal law, the opinions were divided into supporters and opponents of the criminalization of the preparatory process, some considered that the preparations were not punishable, as were in the internal laws, and some of them called for the need to punish the preparatory work, and do not wait until the crime occurs, but the crime must be prevented whenever possible before it occurs.Preparations for the crime of genocide are acts that contribute substantively to the process of their commission since such a crime requires prior preparation, and preparation is only a form of conspiracy provided and punished in the text of Article III of this Convention.

Although the Convention punishes conspiracy, it was better and first to penalize the preparations for this crime, especially as it represents tangible acts. As long as this Convention aims to suppress the crime of genocide before it occurs, it is important to prohibit the genocide before the occurrence.The ICC Statute's drafters did not follow

[96] Jens David Ohlin, '"Attempt, Conspiracy, and Incitement to Commit Genocide"', (2009). 24, Cornell Law Faculty Publications. <http://scholarship.law.cornell.edu/facpub/24> accessed 9 April 2018.

the Genocide Convention in delineating 'attempt' in its Article VI genocide provision, surpassing instead to codify a general 'attempt' provision applicable to all the crimes that are within the court's jurisdiction, as stated in Article 25 (3-f)[97].Comparatively, the second sentence is redundant since the first sentence suggests abandonment already[98]. The crucial criterion of 'circumstances independent of the person's intentions' perfectly tracks the attempt provisions that have long existed in domestic criminal law.However, the provision requires more not only the voluntary abandonment of the criminal aim, but the perpetrator ought to 'completely' abandon the criminal aim as well. The provision is comparatively different from previous one in the 1996 Draft Code, which penalized attempts to perpetratethis type of crimes by acting in the beginning of the committing of a crime which does not, in fact, happened because of circumstances independent of his intentions,' though it made no clear mention of abandonment[99]. But, the 1954 Draft Code did not include attempt in its genocide provision,[100] although it did include a general attempt provision.[101]

2.1.3.5 Complicity in Genocide

The definition of complicity accordance with the tribunals is, all assistance actions that substantially participated and had a substantial influence on, the implementation of a crime within the jurisdiction of the Tribunal[102].Complicity in the commission of the crime is like conspiracy and incitement. The complicity here is intended to provide assistance to the offender by taking a secondary or consequential act in which the accomplice contributes to the crime and facilitates it. The international

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[97]"*Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose*."

[98] See Ambos, supra note 21, at 764 (noting that the second sentence was added based on a proposal from the Japanese delegation and supported by Germany, Argentina and others). Ambos concludes that '[i]n the heat of the negotiations, the drafters, including this author, overlooked the fact that the first clause already contained a rule on abandonment, albeit only an implicit one.'

[99] See Draft Code of Crimes against the Peace and Security of Mankind, (1996), Article 2(3-g) which, states that; "*attempts to commit such a crime by taking action commencing the execution of a crime which does not in fact occur because of circumstances independent of his intentions*."

[100] Draft Code of Offences against the Peace and Security of Mankind (1954), Article 2 http://legal.un.org/ilc/texts/instruments/english/draft_articles/7_3_1954.pdf accessed 9 April 2018

[101] Ibide

[102] 3 Prosecutor v. Karemera, Case No. ICTR-98-44-T, Decision on Defence Motions Challenging the Pleading of a Joint Criminal Enterprise in a Count of Complicity in Genocide in the Amended Indictment, <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?referer=https://www.google.com.cy/&httpsredir=1&article=7298&context=jclc> accessed 9 April 2018.

criminal law, identify three fundamental elements of complicity, which are; (1) the commission of a crime; (2) the accomplice's-one who is complicit-material contribution to the commission of that crime; and (3) the helper's intention that the crime be committed, or the helper's careless ignorance for the possibility to committ the crime. The third requirement elements are referred to in this Article as the *'mens rea*' degrees of "specific intent" and "malice," respectively[103].The punishment of accomplices is provided in the international criminal law[104]The International Tribunal for the Former Yugoslavia (ICTY) stressed the importance of the availability of knowledge to participate in the crime of genocide for the person involved in the commission of the crime, so that its responsibility, as disclosed by the Chamber of Investigation of the Tribunal, which determined in the case of the Serbian accused 'Tadic' where Tribunal decided[105]; That a person is criminally liable only for his conduct, if he has been proved to have been aware of his involvement in the commission of the crime of genocide, and that his direct and important involvement has contributed to the commission of the crime by supporting the original perpetrator both before, during and after the incident[106].

The ICTY Appeals Chamber clarifies that, only some members are physically committing the crime...but the participation of others could be significant in easing the commission of the crime[107]. However, in the view of Professor 'Schabas', complicity is not secondary as described; there is nothing "secondary" in the case of genocide about it. The "accomplice" is the real (villain). He mentioned that Hitler did not commit any physically murder or brutalize anyone; but technically, he was the accomplice to the genocide crime[108].

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[103] Daniel M. Greenfield, 'The Crime of Complicity in Genocide: How the International Criminal Tribunals for Rwanda and Yugoslavia Got It Wrong, and Why It Matters',(2008), 98 J. Crim. L. & Criminology.

[104] William A. Schabas, 'Enforcing International Humanitarian Law: Catching the Accomplices', (2001) ,842 INT'L REv. RED CRoss 439, 446 <

[105] PROSECUTOR v. DU[KO TADI] (1997), a/k/a/ "DULE" Case No. IT-94-1-T <http://www.icty.org/x/cases/tadic/tjug/en/tad-tsj70507JT2-e.pdf> accessed 9 April 2018.

[106]William A. Schabas, *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone*, Cambridge University Press, (2006).

[107] Prosecutor v. Tadic, (1999), Case No. IC-94-1-A, Judgement, 191, states "*Although only some members of the group may physically perpetrate the criminal act... the... contribution of the other members of the group is often vital in facilitating the commission of the offence in question. It follows then that the moral gravity of such participation is often no less--or indeed no different-from that of 19 those actually carrying out the acts in question*."

[108] Greenfield, (n 105)

2.1.3.5.1 Joint Criminal Enterprise (JCE)

It is a legal concept used in the time of war crimes tribunals to let the prosecution of group members for the group actions. This concept represents each member of any organized group responsible separately and individually for crimes perpetrated by group. The concept became a helpful way in international criminal law. It let courts to hold individuals criminally subordinate for group activities that they have contributed in by criminal way. The doctrine let for an attribution of liability of crimes of unexpected consequences of such activities for such groups, and it will give the capability to the prosecution and the courts to widening criminal responsibility to superior wrongdoers that use other persons to achieve their crimes. The advantages of such a way are clear because the crimes under international criminal law are in majority systematic, collective character, and large-scale[109].

In the ICTY the prosecutors indictment, "*Milutinović et al*," along with others, took part in a joint criminal enterprise(JCE) to change the ethnic balance in Kosovo to ensure continued control by the FRY and Serbian power on the province. On 26 February 2009, the court returned a judgments that;

One of the indicted was 'Nikola Šainović',, and the court found that "*had substantial de facto powers over both the MUP and the VJ operating in Kosovo*" and he coordinated these forces politically. And the court satisfied that he did a considerable participation to the joint criminal enterprise.The court found that he was the most important members of that common enterprise. Hence, "*He was found guilty* "of counts 1 to 5 of the Indictment, by commission as a member of a joint according to Article 7(1) of the Statute of ICTY[110].

[109]Kai Hamdorf, 'The Concept of a Joint Criminal Enterprise and Domestic Modes of Liability for Parties to a Crime: A Comparison of German and English Law', [2007], Volume 5, Journal of International Criminal Justice, 208–226. doi.org/10.1093/jicj/mql084

[110] Prosecutor v. Milan Milutinović, et al, 26 Feb., 2009, <http://www.icty.org/x/cases/milutinovic/tjug/en/090226summary.pdf> accessed 28 May 2018

CHAPTER THREE

INDIVIDUAL AND STATE RESPONSIBILITY FOR CRIMES OF GENOCIDE

3.1 Role of International Law Commission

The interrelation between state and personliability was clearly discussed within International Law Commission (ILC) during codification works on the liability of states for wrongful acts and the liability of the individual for crimes against security and peace of mankind. Hence, it is necessary to summarize ILC position towards the matter briefly.The codification effort is allowed to adopt two substantial documents, namely; DASR (2001) and Draft Code of (1996). These documents include a provision defining their scope which distinguishes them from responsibility rules applicable towards individual or state respectively.

Without prejudice clause in Article 58 of Draft articles on liability of States for internationally wrongful acts (DASR)[111] refers to that the articles are without prejudice regarding any question of the liability of individual under international law of any person acting for the benefit of a State[112]. Similar terms are used in Draft

[111]Draft articles on Responsibility of States for internationally wrongful acts (DASR), adopted by the International Law Commission at its fifty-third session (2001), <http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf> accessed 10 April 2018.

[112] See Article 58, of DASR, states; "*These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State*."

Code[113], 1996 in the Article 4[114].Explanations on both codifications expose that ILC highlighted the non-limited character of the state and liability of the individual (without prejudice clause),and main variation existing between them.There is no particular analysis of the reciprocal relationship between state and individual liability regimes contained anywhere in presented drafts, despite it is alleged by ILC as matter of fact.Such attitude is not strange as any other solution would clog finalization of codification works.In the next part, the study tries to explore points of contact between the two regimes as they were presented during debates in ILC – these views are related in the context with genocide crime as well.

3.1.1 Codification of StateResponsibility

The crucial question of a role the prosecution of individual state organs will play within the system of state responsibility was presented immediately after the adoption of state responsibility on the list of topics considered by ILC. It was needful to prove, if penalization of individuals should be eligible to exhaust reparatory obligation of states and if criminal sanctions towards perpetrator state organs should be considered as part of primary or secondary state obligations[115].García-Amador, the first reporter on the topic of state responsibility, accepted in his original report the punitive character of state responsibility. He distinguished between ordinary wrongful act and punishable act (e.g. genocide, aggression, and crimes against humanity) with punitive dimension. García-Amador vigorously solved the impossibility of applying criminal sanctions against the state as punishment was restricted only to individuals in a rank of state organs[116]. Thus, when talking about the criminal sanction against the individuals, it formed part of secondary state obligation.'R. Ago' strictly unaccepted this conception when he became special reporter in 1963.

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[113] Draft Code of Crimes against the Peace and Security of Mankind , Text adopted by the International Law Commission at.its forty-eighth session (1996), <http://legal.un.org/ilc/texts/instruments/english/commentaries/7_4_1996.pdf> accessed 10 April 2018.

[114] See Article 4, of Code, 1996, states that; "*The fact that the present Code provides for the responsibility of individuals for crimes against the peace and security of mankind is without prejudice to any question of the responsibility of States under international law.*"

[115] Thordis Ingadottir, '*The ICJ Armed Activity Case : Reflections on States' Obligation to Investigate and Prosecute Individuals for Serious Human Rights Violations and Grave Breaches of the Geneva Conventions*.', (2009), Vol. 78, Nordic Journal of International Law, 581

[116] Yearbook of the International Law Commission (YILC), 1956, Vol. 2, A/CN.4/SER.A/1956/Add.l,http://legal.un.org/ilc/publications/yearbooks/english/ilc_1956_v2.pdf accessed 11 April 2018

Where, in his fifth report from 1976 debate that individuals' punishment, whose behavior initiated the liability of the state, cannot be defined as a special form of state responsibility, because there are obvious differences between both responsibility regimes[117]. 'R. Ago' sees that adverse consequences of the illegal act cannot be moved from one legal entity to another.The final phase of DASR codification process detected this question with new strength. The position of prosecution and punishment of individual within the system of state responsibility was connected with DASR Article 45 adopted in the first reading[118], and according to 'G. Hafner' it is presenting "thorniest [part] of the draft articles".[119]

The last special reporter, 'J. Crawford', impugned ex-Article 45 as he reached to the fact that it is not clear whether the punishment of individuals is connected with primary or secondary obligations. However, he retained this form of satisfaction in the draft presented to drafting committee and recommended an only little change in wording which corresponds better with the splitting of state power and independence of the 'judiciary – penal' action instead of punishment. Other presented comments were inspirational. A. Pellet stressed that "*it would have been instructive to draw a parallel between "the serious misconduct of officials or … the criminal conduct of any person" and Article 19, on crimes, and to examine the possible relationship between the two or three concepts involved*."[120]

Unfortunately, no any analyze in this way has ever been approached, and finally, the prevailed opinion which discarded any connection between the responsibility of state and punishment of individuals was dominated[121]. In term of this essential critics,

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[117] Yearbook of the International Law Commission (YILC) 1976, Vol. 2, Part One, A/CN.4/SER.A/1976/Add.l (Part 1),<http://legal.un.org/ilc/publications/yearbooks/english/ilc_1976_v2_p2.pdf> accessed 11 April 2018

[118] Article 45, of DASR, "*The responsibility of a State may not be invoked if: (a) The injured State has validly waived the claim; (b) The injured State is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim*."

[119] Yearbook of the International Law Commission (YILC), [2000], Vol. 1, A/CN.4/SER.A/2000, p. 202, Para 2, <http://legal.un.org/ilc/publications/yearbooks/english/ilc_2000_v1.pdf> accessed 11 April, 2018

[120] Ibide, 204, para 24

[121] Some International Law Commission members talked about the humiliation of state. See Yearbook of the International Law Commission (YILC), [2000], Vol. 1, A/CN.4/SER.A/2000, p. 213, para 33 which states;

"*Many of the steps taken by Western States in the late nineteenth century to impose indemnities and punish officials had had nothing to do with justice but had been aimed purely at political punishment and humiliation of the State through the requirement that its officials be punished even though they had not necessarily committed a crime. Such political vengeance was the subject of subparagraph (c), and more thought should be given to whether it was worthy of inclusion in the draft. The more acceptable parts of article 45, on the other hand, should be partitioned off to other articles*."

statement of 'G. Gaja' who was the chairman of drafting committee at that time,demonstrated that no surprise; given the divergent views on this issue and also the paragraph 2 have not intended to offer an comprehensive list, the committee determined not to mention disciplinary or penal action in the text[122], the opinion of drafting committee constitutes final framing of current Article 37[123] (satisfaction), which refers only to the acknowledgment of the violation, apology, regret, or another appropriate shape.An explicit embodiment of state organs prosecution and punishment among forms of satisfaction would lead to more concrete interweaving between an individual and state responsibility.In another side, this solution may open the way for the potential transfer of responsibility which explicitly rejected by International Law Commission[124].

The conclusion is that questions connected with individual completely disappeared from the second version of DASR or were essentially marginalized[125].International Law Commission ILC preferred the understanding of criminal actions against individuals as part of primary obligations, which can be shown on Genocide Conventionof 1948[126]. This conclusion was confirmed by ICJ in Genocide Case[127]; obligation to punish genocide is not a consequence of a state organ previous commission of genocide, for example, non-punishment of perpetrators is considering as an independent breach of international law[128].

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[122] (YILC) (n 89), Statement of the Chairman of the Drafting Committee Mr. G. Gaja at the 2662nd meeting of the ILC, 17 August 2000, p. 20

[123] See Article 45, of DASR, p.52; "*1. The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation. 2. Satisfaction may consist in an acknowledgment of the breach, an expression of regret, a formal apology or another appropriate modality*."

[124]Supra note 66, p. 114, para 21. ILC commentary says: "The obligation to punish personally individuals who are organs of the State and are guilty of crimes against the peace, against humanity, and so on does not, in the Commission's view, constitute a form of international responsibility of the State, and such punishment certainly does not exhaust the prosecution of the international responsibility incumbent upon the State for internationally wrongful acts which are attributed to it in such cases by reason of the conduct of its organs.". See

[125] Riccardo, Mazzeschi,. 'The Marginal Role of the Individual in the ILC's Articles on State Responsibility', (2005), Vol. 14, the Italian Yearbook of International Law, 39-51

[126] See Article VI, from Convention on the Prevention and Punishment of the Crime of Genocide, 1948, which states that; "*Persons charged with genocide or any of the other acts enumerated in Article 3 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 with respect to those Contracting Parties which shall have accepted its jurisdiction*."

[127] Bosnia and Herzegovina v. Serbia and Montenegro, ICJ, (2007), Summary 2007/2. nternational Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Paras. 439-450.

[128]James Crawford, United Nations. International Law Commission, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries*, Cambridge University Press, (2002).

3.1.2 Codification of IndividualResponsibility

The reciprocal connection between state and individual responsibility was discussed also during works on the Code of Crimes against the Peace and Security of Mankind. The issue was connected with the question of perpetrators of crimes against the peace and security of mankind. In the 1950s International Law Commission concluded that perpetrators of crimes can only be individuals[129].D. Thiam report opened the door for potential penal state responsibility from 1983 which proposed the correlation between crimes against the peace and security of mankind on the one hand and the state international crimes on the other hand. International Law Commission held off this variant even in primary phase, (ratione personae) scope of the Code should have been limited only to individuals for future[130].

Any connection towards state was consequently exclusive by adoption of the way according to which international crimes can be committed not by state authorities only, but also by private individuals. The separation of state liability and individual liability was implemented when the idea of crimes against the peace that should be defined through international crimes of the state was rejected[131].The summery of criticism about that can be as follow;Individual and state responsibility is two various institutes results in different consequences. Briefly, the definition of the penal institute cannot be taken from extra-penal (civilian) Institute. Also, the definition of crimes against the peace and security of mankind is unnecessary; it was not included even in International Law Commission activities regarding the topic from the 1950s. In the same context, the broad term of the international crime of state, should not be used for the purpose of the definition of the narrower term[132].International Law Commission refused any conceptual connections between state and individual responsibility and confirms their difference. Article 4 contained of Code of Crimes against the Peace and Security of Mankind in final version can be explained as a logical evaluation of actuality (i.e. the existence of dual responsibility in international

[129] Convention on the Prevention and Punishment of the Crime of Genocide, 1948 (n 96)

[130] Yearbook of the International Law Commission (YILC), [1984], Vol. 2, Part Two, p. 11, para. 32, <https://read.un-ilibrary.org/international-law-and-justice/yearbook-of-the-international-law-commission-1984-vol-ii-part-2_ea01dec1-en#page16> accessed 12 April 2018.

[131] Yearbook of the International Law Commission (YILC), [1985], Vol. 2, Part One, p. 81<http://legal.un.org/ilc/publications/yearbooks/english/ilc_1985_v2_p1_add1.pdf> accessed 12 April 2018.

[132]Béatrice I. Bonafè, *The Relationship Between State and Individual Responsibility for International Crimes*, BRILL, (2009).

law) and "*sui generis*" safety-clause, which is best,demonstrated in the comment presented by Belgium[133].According to the previous elucidation, the study can assess that, ILC did not resolve the reciprocal relation between state and individual responsibility regimes in details and managed with a shallow term of their simultaneous existence.

3.2 Concurrence Prerequisites

3.2.1 Personal preconditions '*Prerequisites ratione personae*'

The concurrence of responsibilities is possible only when the wrongful act is committed by a person, whose conduct is attributable to the state, first of all, the post of the perpetrator will be evaluated, and current '*lex lata*' is completely obvious in this issue.Next, debatable ICJ resolution in 'Arrest Warrant' Case which enables the conclusion that international crimes by public powers are committed in private capacity is studied and critically revised.Prerequisites '*ratione personae'* are achieved, where genocide perpetrator is, state organ, where, its acts are adopted in public capacity.Another type of results would make the establishment of direct state responsibility unattainable. If a private individual, respectively in private capacity of a state organ, committed genocide crime, concurrence between individual criminal responsibility and indirect state responsibility is discussed.Any person who does not show any link (formal or factual) to the state is private individual. For example, the individual action based on the order of the state or under its direction or control is therefore sensed here as *'de facto*' state organ which its conduct can establish direct state responsibility definitely. However, as far as a private individual in the proper sense of the word is involved, the responsibility of the state lies only in the failure to prevent and put down his behavior[134].To use terminology support to human rights,

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[133]Yearbook of the International Law Commission (YILC), 1994, Vol. 2, Part One, p. 101, para. 42 (According to Belgium Government ' paras 15 and 16';

"*There ought to be an article in the Code dealing with the question of the international responsibility of States. The State as such is inevitably involved in any crime against the peace and security of mankind, either directly as the active and, in some cases, the sole agent, or indirectlybecause of its failure to act or its own improvidence. It therefore seems unusual that State responsibility should not have been dealt with in the Code. It should also be noted that inclusion of State responsibility in the Code would make it possible to provide a sound juridical basis for the granting of compensation to the victims of crimes and other eligible parties*."

134"*The basis of responsibility here is not the attribution to the State of the acts of the individuals; it is the failure by the State as an entity to comply with the obligations of prevention and prosecution*

state positive obligations can be mentioned[135].The concurrence between negative obligations (means duty not to commit genocide) is practical only when state organ in his public capacity is committed the international crime. Furthermore, indirect state liability can hardly achieve standards of aggravated state liability which needs a systematic breach of convincing international norms. Even if the obligation to prevent and put down genocide is defined as part of 'ius cogens', it is barely possible that seriousness norm would be determined.

3.2.1.1 Position of perpetrator

Theory and practice of international law mostly concur that even private individual can commit international crimes. Simultaneously, the fact of most conflicts detect that these crimes are generally perpetrated or acquiesced by state organs as a complementary part of criminal state policy[136].

The high connection to the state was clear in the early period of individual criminal responsibility, for example Article 6 [137]of Charter of International Military Tribunal (IMT) determined jurisdiction only over individuals who acted in the benefit of European Axis countries. IMT hence covered only illegal behavior of 'de iure' or 'de facto' state organs[138].

International tribunals, last time do not frankly request the perpetrator official position, instead of that, they stress the character of illegal behavior. For example, according to the Rome Statute, ICC will have the power to practice its jurisdiction over persons for the most serious crimes of international interest[139]. This general attitude is applicable to the relation to genocide crimes as well.Article IV of Genocide

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incumbent on it.", See, Crawford, James and Olleson, Simon. *State Responsibility*, *in:Encyclopediaof Genocide and Crimes against Humanity*, Thomson/Gale,(2005).

[135] Jean-François Akandji-Kombe, *Positive Obligations under the European Convention on Human Rights,* Council of Europe, (2007).

[136] Jan Wouters, 'The judgement of the International Court of Justice in the Arrest Warrant case : some critical remarks', (2003), Vol. 16, Leiden Journal of International Law. 253-267

[137] INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST, 1946, Article 6, states that; "*Responsibility of Accused. Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires*." <http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.3_1946%20Tokyo%20Charter.pdf>, accessed 13 April 2018.

[138]Neil Boister, and Robert Cryer, *The Tokyo International Military Tribunal: A Reappraisal*, Oxford University Press, (2008).

[139] Rome Statute of the International Criminal Court, 2002, < https://www.icc-cpi.int/nr/rdonlyres/add16852-aee9-4757-abe7-9cdc7cf02886/283503/romestatuteng1.pdf> accessed 13 April 2018.

Convention obviously states that the individual who commit genocide will be punished regardless their positions[140]. The most of the cases before (ad hoc) tribunals covered crimes committed by public officials, in another side, lack of such condition cannot embarrasses the criminal proceedings, the doors are opened even for the prosecution of private individuals, an example related to the genocide is famous Media Case held before ICTR[141].Any links to the state are further minimized by the refusal of state policy as a separate element of genocide.The policy or plan of the state is not a legal ingredient of the crime, despite, the presence of such policy can aid to confirm that accused held wanted 'dolus specialis'[142]. Generally, the genocidal policy can be used as indirect evidence of 'mens rea'.

3.2.1.2 Is Genocide Crimes are Individual or State Capacity?

In spite of the fact that, the destruction execution probability by a private individual, commonplace miscreant remains an individual is holding a post inside the state framework. It is, along these lines, critical to demonstrate, regardless of whether worldwide wrongdoings when submitted by state organs are an indication of private or open limit. On the off chance that worldwide wrongdoings are perpetrated in private limit, the circumstance would be relatively like the textbook case of wrongdoing enthusiasm. In this condition, the state would be accountable for the most part for inability to hone due persistence, however unquestionably not for murder[143]. The stimuli of long arguments, which still cannot be regarded as definitively fixed, is judgment provided by ICJ, in 2002 in so-called (Arrest Warrant) Case[144].The realistic background can be brief as follows; Belgian court in the year

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[140] Convention on the Prevention and Punishment of the Crime of Genocide, 1948, p. 1, "*Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public.officials or private individuals.*"<https://www.oas.org/dil/1948_Convention_on_the_Prevention_and_Punishment_of_the_Crime_of_Genocide.pdf> accessed 13 April 2018.

[141]The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza & Hassan Ngeze, TRIAL CHAMBER I CASE NO. ICTR-99-52-T (2003), paras 5-7, <http://www.tjsl.edu/slomansonb/8.5_RadioMachete.pdf> accessed 13 April 2018.

[142] PROSECUTOR v. RADISLAV KRSTI, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, Case No: IT-98-33-A, [2004], para 225, <http://www.icty.org/x/cases/krstic/acjug/en/krs-aj040419e.pdf>, accessed 13 April 2018.

[143]Nina H. B. Jørgensen,*The Responsibility of States for International Crimes*, Oxford University Press, (2003)

[144] ARREST WARRANT OF 11 APRIL 2000 (DEMOCRATIC REPUBLIC OF THE CONGO v. BELGIUM) (MERITS), 2000, <http://www.icj-cij.org/files/case-related/121/13743.pdf> accessed 14 April 2018.

2000 issued an arrest warrant against Congolese foreign minister for violations of Geneva Conventions and for crimes against humanity although, perpetrated before he became in his post.The Democratic Republic of Congo alleged that behavior of Belgium breach the international law, based on, “the principle that a State may not exercise (its authority) on the territory of another State and of the principle of sovereign equality among all Members of the United Nations”, and “the diplomatic immunity of the Minister for Foreign Affairs of a sovereign State”[145]. After two years, ICJ decided for Congo side with majority 13 to 3, the decision was depending on the absolute character of immunities ’ratione personae’ before foreign domestic courts, which arising from customary international law[146]. According to ICJ rule, the personal immunity in specific circumstances does not represent an obstacle to criminal prosecution and gave following examples. Incumbent state officials can be tried before own domestic courts, they can be tried even abroad, if the state they represent decides to abandon their immunity and finally, they can be tried before the international criminal tribunal, which is not taking in account any immunity ’ratione personae’[147].Based on the most debatable part of the judgment, a state organ commonly can be prosecuted after departing his office for crimes committed during the period of the post, in private capacity[148].Supporters of the first line of deducing ’private capacity’ debate that international crimes cannot be considered as official acts because they are not listed among normal functions of the state[149].The belief system and routine with regards to universal law is isolated between those, who demand that elucidation of global law can’t close the entryways for settling of state obligation (worldwide wrongdoings as acts done out in the open limit) and those, who dismiss that global violations are capacity of any state organ (global wrongdoings as acts done in private limit).

[145] Ibid, Immunity and inviolability of an incumbent Foreign Minister in general, P. 212, paras. 47-55
[146] ARREST WARRANT (n 114), para 58.
[147] Ibid.
[148] ICJ ruled that “*court of one State may try a former Minister for Foreign Affairs of another State in respect*
of acts committed prior or subsequent to his or her period of office, as well as in respect of acts committed
during that period of office in a private capacity.” ARREST WARRANT Case, para. 61.
[149] Andrea Bianchi, Denying state immunity to violators of human rights’, (1993), Vol. 46 , Austrian journal of public and international law, 195-229.

Based on the previous arguments, the study presents several points, according to which they will support that international crimes are committed in public capacity, as follow;

1. The provisions of international law for the exclusion of functional immunities which attained the status of customary international law[150].Commonly, functional immunities concern official acts of 'de iure' or 'de facto' state organs (the act of the state doctrine), which means that these acts are not induced individual responsibility, but, it is attributed only towards the state.The exception from general rule authorizes the conclusion that international crimes are recognized in a wide range as official acts which can though be attributed toward individuals and bear its criminal liability at the same time. 'Blaskic' decision implies that it is not necessary to substantiate domestic criminal prosecution of international crimes by their private character and to circumvent intricately the general rule on functional immunities[151].The individual is shielded only by immunity 'ratione personae' which have absolute concerned characters on domestic level.

2. Implicitly acknowledged about official character of international crimes even by ICJ in its later case law[152]. Thus, the court departed from the debatable conclusion in 'Arrest Warrant Case'. Based on ICJ, state responsibility for genocide in 'Srebrenica' can only arise when it was "*perpetrated by 'persons or entities' have the status of organs of the Federal Republic of Yugoslavia*".[153]Subsequently, International wrongdoings executed through state organs don't wipe out state duty, implies they are not dedicated in private limit. Besides, when ICJ is discussing the nearness of a two-sided arrangement of duty, it utilizes the thinking of the steady component of worldwide law. From 'Capture Warrant Case', it can be reason that it is entirely in opposition to the proposed steadiness.

3. The main pretext of private act doctrine is predicated on the impossibility to consider the commission of international crimes as the execution of ordinary state function. This excuse is logical and should be subscribed to, but it should not

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[150]Dapo Akande, and Sangeeta Shah, '*Immunities of State Officials, International Crimes, and Foreign Domestic Courts*', (2010), Vol. 10, European Journal of International Law, 815–852.

[151]*Prosecutor v. Krstic*. Case No. IT-98-33. ICTY Appeal Chamber, The Hague, 19 April (2004), para. 41, < http://www.icty.org/x/cases/krstic/acjug/en/krs-aj040419e.pdf >, accessed 14 April 2018.

[152] Bosnia and Herzegovina v. Serbia and Montenegro, INTERNATIONAL COURT OF JUSTICE General List No. 91 (26 February 2007), para 180. http://www.tjsl.edu/slomansonb/10.1_Bosnia_v_FRYGeno.pdf accessed 14 April 2018.

[153] Ibid, para 386.

conclude from it that international crimes are committed in private capacity.Override of state organs authorities is not an obstacle for the fixing of state responsibility (DASR Article 7)[154], at the same time it eliminates the possibility to invoke the act of the state doctrine connected with functional immunities[155].State organs which commit International crimes are representing a typical case of 'ultra vires' acts, they are forbidden according to international law, they are usually committed with the assistance of resources connected to the specific official function, they are "carried out by persons cloaked with governmental authority"[156]. According to International Law Commision commentary to DASR confess that the problem can emerge in the way of distinguishing between "unauthorized but still (official) conduct, on the one hand, and (private) conduct on the other"[157], which is not imputed to the state, but at the same time it illustrated that this cannot be the case if the conduct in question is, systematic, recurrent or massive[158].In this kind of situations, it is clear that the state knew or should have known about unlawful conduct and should have applied preventive and repressive measures. In general, if the perpetration of international crimes is commonly extended and systematic, there is no doubt about its official character. Therefore, the provisions set in DASR, Article 7 are fulfilled[159], 'ultra vires' behavior can be imputed to the state, and in the same time, individual in the post of state organ cannot rely on the act of the state doctrine, because his behavior was obvious in the violation of domestic law, as well as international law.

4. If international crimes are classified in the class of private acts, it will give the states the pretext first and foremost as a reason to clear themselves from ICR. Such

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[154] Article 7, of DASR, states that; "*The conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions*."

[155] Rosanne Van Alebeek, *The immunity of states and their officials in the light of international criminal law and international human rights law*, Oxford, Oxford University Press (2008)

[156]Petrolane, Inc. v. The Government of the Islamic Republic of Iran. *Iran-United States Claims Tribunal, The Hague*, 14 August (1991). CASES NOS. Al5 (IV) AND A24, para. 7

[157] Ibid, para. 8

[158]ICTY conclusion in '*Jelisic Case* 'about commission of genocide by sole perpetrator (supra note 40) is generally considered as illustrative and theoretical.<http://www.icty.org/x/cases/jelisic/cis/en/cis_jelisic.pdf> accessed 15 April 2018.

[159] Article 7 DASR (n 124)

process would be in quite a contradiction to the notion of bilateral responsibility as "constant feature of international law"[160].

All those causes support the opinion, according to which international crimes, when committed by state organs, have to be considered as official capacity acts. Consequently, if genocide is committed by a state organ, it can be attributed to the state without difficulties.

[160]Federica Paddeu , *Justification and Excuse in International Law: Concept and Theory of General Defences,* Cambridge University Press (2018)

CHAPTER FOUR

THE ROLE OF THE INTERNATIONAL CRIMINAL TRIBUNALS IN PROSECUTING PERPETRATORS OF GENOCIDE

4.1 The role of the ICTY in determining the crime of genocide and punishment on it

The Republic of the Former Yugoslavia was composed of different nationalities and religions, including Serbs, Croats, Bosnians and others. The State was composed of a union composed of several republics: Croatia, Macedonia, Bosnia and Herzegovina, Slovenia, Montenegro and Serbia, as well as two autonomous regions, Kosovo, and Vodevodina. These republics united under the leadership of Joseph Tito, who died in 1980. The Union of Republics began to crack; the Serbs took control of the governance of the Union republics and persecuted other minorities in the Union.The Republic of Bosnia and Herzegovina independent from Yugoslavia on February 19, 1991. Bosnian Serbs announced independence from Bosnia in April of the same year, leading to the outbreak of armed conflict within Bosnia between Serbs, Muslims, and Croats. Serbia and Montenegro intervened The Bosnian Serb side and Russia, which supported the Serbs, controlled 70% of the territory of Bosnia and committed horrific massacres against the Muslims that considered war crimes, crimes against humanity and genocide. They annihilated entire villages, killed unarmed civilians and committed the most horrific forms of torture, Arbitrary detention, hostage-taking and the destruction of hospitals and mass rape of women,

And psychological humiliation and burial in mass graves[161].In spite of international efforts to stand up to these crimes and serious violations of international humanitarian law, the Serbs committed them with unbridled hatred and brutality, prompting the UN Security Council to put its hand on the conflict and to consider the armed ethnic conflicts in Bosnia as a threat to international peace and security. The Security Council asked the Secretary-General of the United Nations to examine the possibility of establishing a criminal court, and whether there is a legal basis for that, and if the event of a favorable, to the formulation of the statute of that arbitrator[162].The Security Council issued resolution 848 of 11 February 1993 establishing the ICTY for the prosecution of people who committed violations against humanity in the previous Yugoslavia since 1991[163]. This is the first resolution of its kind Since the Nuremberg trials of 1945 and Tokyo in 1946 after World War II. The purpose of resolution 848 was to try war criminals through the formation of an 'ICC' to try them, in order to contribute to peace support by bringing to justice those responsible for crimes of genocide, murder, torture, and rape through trial. Furthermore, to deter further contravention of international humanitarian law that define the rules for the safekeeping of civilians during the war, the inadmissibility of the immunity of planners and perpetrators of such crimes and the establishment of a historical record of what happened during the conflict[164].The designation of this court as (ad hoc) and characterization of this court as temporary or purpose-specific, because it has been established along the lines of the Nuremberg and Tokyo Tribunals for a specific case and that its mandate could end at any moment if the case was decided or if Security Council resolution 827 of 25 May 1993[165], by which the Security Council unanimously adopted the report of the Secretary-General of the UN and the associated system of the Court.This part of the study will attempt to highlight the function of the ICTY in determining and punishing the genocide's crime,

[161]Francine Friedman,*Bosnia and Herzegovina: A Polity on the Brink*, Routledge, (2013).

[162]Rachel Kerr, *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics, and Diplomacy***,** OUP Oxford, (2004).

[163] International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, United Nation, http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf accessed 15 April 2018.

[164] Sarah Williams, *Hybrid and Internationalised Criminal Tribunals: Selected Jurisdictional Issues*, Bloomsbury Publishing (2012)

[165] International Tribunal (n 133)

through the study of the competence of the Tribunal for the previous Yugoslavia, and some judgments of the former Yugoslavia Tribunal concerning genocide.

4.1.1 Jurisdiction of the Court

The Statute of ICTY has clarified the Court jurisdiction, substantively, personally, temporally or territorially, and we will discuss each type of jurisdiction separately.

4.1.1.1 Substantive Jurisdiction

The ICTY is competent to prosecute those responsible for dangerous breach of IHL in the former Yugoslavia. The Statute of the ICTY defines the scope of its substantive jurisdiction[166]. These violations include the following:

4.1.1.1.1 Grave breaches of the Geneva Conventions of 1949[167]

Including the perpetration of every of the following criminal offenses against protected persons or property[168]:

(A) Murder.

(B) Torture or inhuman treatment, including biological testing;

(C) Intentionally causing serious suffering or serious bodily or health injuries.

(D) The unlawful destruction and confiscation of property without justification justified by military necessity and the unlawful and arbitrary conduct of such acts.

(E) To force prisoners of war or civilians to surrender their right to a fair trial.

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[166] Article 1, from ICTY, which states; "*The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute*.", <http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf> accessed 15 April 2018.

[167] THE GENEVA CONVENTIONS OF 12 AUGUST 1949, <https://www.icrc.org/eng/assets/files/publications/icrc-002-0173.pdf> accessed 15 April 2018

[168] Persons or property protected under the four Geneva Conventions of 1949 are:
- The First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field: Protected Persons: Protected Persons (Article 13), Protection of Permanent Personnel (Article 24), Protection of Temporary Employees (Article 25). Buildings and stores (Article 33), property of relief societies (Article 34), protection of medical transport (Article 35).
- The Second Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked at Sea:
Protected persons: Protected persons (Article 13), protection of ship and hospital personnel (Article 36), protection of medical and other ship personnel (Article 37).
- Protected property: reporting and protection of ships and hospitals (Article 22) Ships and hospitals used by associations.) Relief by parties to a conflict or neutral countries (Article 24)
- Third Geneva Convention: On the Treatment of Prisoners of War, Persons Protected under Article 4;
- Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War:
Protected persons: definition of protected persons (Article 4), hospital staff (Article 20)
-Protected property: protection of hospitals (Article 18), suspension of protection from hospitals (Article 19), protection of land transport), maritime (Article 21), air transport (Article 22) (Prohibited acts of destruction) (Article 53), seizure of hospitals (Article 58).

F. Expulsion or unlawful killing of a civilian or imprisonment without legal justification.
G. Take the civilians hostage[169].

The Geneva Conventions recognize two sorts of infringement: the first is grave ruptures; the second is the other precluded acts which don't fall inside the system of grave breaks. Additionally, the first is won't be considered as grave breaks just if conferred in a universal equipped inconsistency against classifications ensured by traditions. The Court has confronted two central inquiries of foremost significance with regard for the substantive locale of the Court. To start with, it identifies with deciding the idea of the logical inconsistency in the past Yugoslavia, regardless of whether it is a global furnished clash or a non-universal outfitted clash; the second inquiry is whether the second article of the Statute requires the nearness of a worldwide equipped clash to be connected or is it conceivable to implement its arrangements even with regards to a non-worldwide equipped clash? As to first scrutinize, the Appeals Chamber considered that the outfitted clash in the previous Yugoslavia was of a universal and non-worldwide nature, in actuality in accordance with the general arrangements of global law in its present frame Question 2: The Appeals Chamber of the Court of Yugoslavia thought about that, given the present advancement of global law, Article II of the Statute applies just to wrongdoings submitted inside the extension of the international armed conflict[170].

4.1.1.1.2 Violation of the Laws and Customs of War

The following violations include:

(A) The use of poisonous weapons or other weapons for the purpose of causing unnecessary suffering;

(B) The arbitrary destruction or destruction of cities, countries or villages without the need for such acts.

(C) Bombing, or attacking, cities, villages, dwellings or residents, in any way, if these objectives lack defensive means.

(D) Confiscation, destruction or intentional damage to facilities dedicated to religious activities, charitable works, education, arts, sciences, historical monuments, and artistic and scientific works.

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[169] See Article 3, from ICTY, <https://www.icrc.org/eng/assets/files/publications/icrc-002-0173.pdf> accessed 15 April 2018.

[170] , Ali Wahbi Deeb ,المحاكم الجنائية الدولية *International Criminal Tribunals*(Trns), First Edition, Beirut, Manshwar Al-Halabi (2015)

(E) The looting of public or private property[171].

These violations have been cited, for example

4.1.1.1.3 Genocide

The Statute of the ICTY defined the crime of genocide in a manner consistent with the definition contained in the Convention of Genocide (1948), as given in Article 2 of the Convention[172]. Based on the Statute of the Court, it is the specialization of the Court to try anyone who commits the genocide crime as defined in the Statute and who commits determined acts[173], and this crime can be committed in both peacetime and war.

4.1.1.1.4 Crimes against humanity

Crimes against humanity target the civilian population and are prohibited regardless of the nature of the armed conflict during which the conflict is committed internationally or nationally, and crimes against humanity are acts of a grave nature. The definition of the crime against humanity adopted by the Statute of the ICTY "is essentially inspired by the definition contained in Nuremberg Tribunal system[174], and it is not far from that[175]. Crimes against humanity in the former Yugoslavia have been classified as acts of ethnic cleansing in the first place, as well as widespread and systematic rapes, as well as sexual assaults and forced prostitution[176].

4.1.1.2 Personal Jurisdiction

It is clear through the Statute of the Court that it is competent only to prosecute natural persons who commit any of the violations of international humanitarian law

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[171] Article 3, , from ICTY (n 139)

[172] See Article 4, from ICTY (n 139); and Article 2, from Convention on the Prevention and Punishment of the Crime of Genocide, 1948 (n 96), which states; "…*genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as; as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group."*

[173]"… *(a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide.*", See Article 4, from ICTY (n 139)

[174] INTERNATIONAL MILITARY TRIBUNAL (IMT) (NUREMBERG) Judgment of 1 October 1946, <https://www.loc.gov/rr/frd/Military_Law/pdf/NT_Indictments.pdf> accessed 15 April 2018

[175] See Article 5, from ICTY (n 139), which states, "*The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: (a) murder; (b) extermination; (c) enslavement; (d) deportation; (e) imprisonment; (f) torture; (g) rape; (h) persecutions on political, racial and religious grounds; (i) other inhumane acts*."

[176] Ali Jamil Harb, (العقوبات الدولية ضد الأفراد) **ظلم الجزاء الدولي**(*The International Penal System (International Penalties against Individuals*) (trns.), 1st eds., Beirut,, Al-Halabi, (2010).

which have already been mentioned in the substantive jurisdiction of the Court. Its jurisdiction does not extend to States or legal persons such as organizations, associations, and companies, as stated in Article 6 of the Statute of the ICTY[177]. Thus, criminal responsibility for acts in violation of international humanitarian law concerns an individual, (any person who has planned, instigated, ordered, committed, aided or encouraged by any means the planning, preparation or execution of any of the offenses set forth)[178]. The responsibility for the offense lies with him personally as mentioned in Article 7 (1) of the Statute of the ICTY[179].No one shall be exempted from criminal responsibility, due to an official position held by him or his official capacity, whether the head of state or government or a senior official and cannot be based on this official capacity or an official position to reduce the penalty for the actor.

The subordinates shall not be relieved of responsibility for the crimes mentioned, nor shall their superiors be exempted from such offenses if they are aware of them and have reason to conclude that the subordinate is on the verge of committing such acts or has actually committed them and the President has not taken the necessary measures[180]. This is reasonable to prevent the commission of such acts or to punish the perpetrators, and note the possibility of evading responsibility in the event of proof of the absence of knowledge by those superiors or of taking the necessary and reasonable measures (Article 7 (4) of the Statute of the former Yugoslavia).[181]

4.1.1.3 Temporal and Territorial Jurisdiction

The Statute of the Court clarified that the territorial jurisdiction of the Court was limited to the entire territory of the former Socialist Federal Republic of Yugoslavia and covered all the crimes which had been discussed in explaining the substantive

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[177] Artcle 6, from ICTY, states that; "*The International Tribunal shall have jurisdiction over natural persons pursuant to the provisions of the present Statute*."

[178]E. van Sliedregt, *The Criminal Responsibility of Individuals for Violations of International Humanitarian Law*, T.M.C. Asser Press (2003)

[179] Artcle 7 (1), from ICTY, states that; "*1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime*."

[180]Kate Parlett, *The Individual in the International Legal System: Continuity and Change in International Law*, Cambridge University Press (2011).

[181] Artcle 7 (4), from ICTY, states that "4.*The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires*."

jurisdiction of the Court if committed in that Territory[182]. As for the temporal jurisdiction of the Court, the Court is concerned with the serious crimes and violations committed on 1 January 1991, and the termination of the Tribunal's work is determined by the Security Council after the establishment of security and peace in the territory of the former Yugoslavia.

As long as we speak of the court's jurisdiction, it must observe that the (ICTY) is involved with national courts in punishing persons for breach of IHL executed in the previous Yugoslavia, according toArticle 9 (1) of the Statute of the Tribunal[183]. The Statute of the Court has established that jurisdiction in the jurisdiction of the Tribunal is in Yugoslavia. If the case is before the national courts, the Tribunal may at any time, in any case, formally request the National Court to discontinue consideration and refer to it according to the step offered byArticle 9 (2) of the Statute of the Court[184].The judgments of the Tribunal for the Former Yugoslavia shall have absolute jurisdiction, the same person may not be retried for the same offense as the ICJ sentenced before national courts in accordance with Article 10 (1) of the Statute of the Court[185].However, if the judgment has been handed down by the national courts in respect of acts in violation of international humanitarian law, which are vested in the former Yugoslavia Tribunal, this provision has no absolute jurisdiction authority before the Tribunal of the former Yugoslavia, where the latter has the right to trial for the same acts in conditions stated in Article 10 (2) of the Statute of the Court,[186].If the ICTY decides to convict the accused in one of the above cases, it must take into account past measures or sanctions when determining the amount of the

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[182] See Article 8, from ICTY, which states; "*The territorial jurisdiction of the International Tribunal shall extend to the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters. The temporal jurisdiction of the International Tribunal shall extend to a period beginning on 1 January 1991*."

[183] See Article 9 (1), from ICTY, which states that; "*1. The International Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991*."

[184] See Article 9 (2), from ICTY, states that; "*2. The International Tribunal shall have primacy over national courts. At any stage of the procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal*."

[185] See Article 10 (1), from ICTY, states that; "*1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal*."

[186] Article 10 (2), from ICTY, states that, "*2. A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal only if: (a) the act for which he or she was tried was characterized as an ordinary crime; or (b) the national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted*."

sentence.Finally, the Statute of the ICTY did not specify the applicable law for the Court's cases, though the priority was the Court's Statute, the Geneva Conventions of 1949, The Hague Convention on the Laws and Customs of War of 1943, and finally the 1948 Genocide Convention.

The penalties imposed by the Tribunal for the former Yugoslavia are limited to imprisonment as an original penalty. The proceeds and property seized by the perpetrator as a result of criminal conduct are ascribed to them as a dependent penalty, as provided for in Article 23 of the Statute of the Court[187]. The condemned individual and the prosecutor have the privilege to speak to the Appeals Chamber in case of a mistake in the realities bringing about the mishandle of equity. The Appeals Chamber has the specialist to help, change or scratch offs the interest.

4.1.2 Some of the judgments of the former Yugoslavia Tribunal concerning the crime of genocide

The Tribunal started its work a couple of months after the Prosecutor took office on 15 August 1994. In 10 years, the International Criminal Tribunal for the previous Yugoslavia (ICTY) was formally accused of disregarding the compassionate law to in excess of 120 blamed, Also (a mystery rundown of respondents kept their names covered up to encourage their capture, in anticipation of discipline. The court attempted various lawbreakers who were captured by the court. The court issued its first conviction on November 29, 1996, in which "Erdemkovic" was condemned to 10 years in jail for wrongdoings against mankind. The decision was the primary decision in an unspeakable atrocity since World War II . On August 14, 1997, the court issued another judgment, the first of its kind since World War II preliminaries, in which "Dushkutadic" was condemned to a greatest of 20 years' detainment in the wake of being discovered blameworthy of an unspeakable atrocity and atrocities, and in various cases under the steady gaze of the Court. In this area, the investigation will endeavor to feature two judgments of the International Criminal Tribunal for Yugoslavia identifying with the wrongdoing of destruction.

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[187] Article 23, from ICTY, states; "*1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law. 2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended*."

4.1.2.1 The verdict in the case of "Ratko Mladić" in 9/01/2013

The case was heard before the First Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY). The Court was composed of magistrates (Alphons Orie, President, members of Judges Bakone Justice Moloto, Christoph Flügge) and the Prosecutor(Mr. Dermot Grom). The accused, 'Ertko Mladic', is represented by the lawyer (Branko Lukic)[188].

4.1.2.1.1 Proceedings of the Case

The certainties of this case are that the denounced (Ratko Mladic), conceived on 12 March 1942 in the town of Kalinovik in the Republic of Bosnia and Herzegovina, was the leader of the Ninth Division of the Yugoslav People's Army in June of 1991, amid the battling between the Yugoslav People's Army and Croatian powers. On 9 May 1992, the blamed filled in as Chief for Staff of the central station of the Second Military Region of the Yugoslav People's Army (JNA) in Sarajevo. On 12 May 1992, He named as Commander-in-Chief of the General Staff of the Republic of Serbia (December) of 1996. As the leader of the General Staff, he had the most astounding rank in the armed force of the Republic of Serbia and in this way had full expert and obligation regarding the organization of the armed force of the Republic. He was in charge of arranging and coordinating all tasks of the armed force and for checking the exercises all things considered and units under his power His requests, he practiced military order and control through the General Staff that was made out of subordinates, and help all through the Republic of Bosnia and Herzegovina. By temperance of its power as accommodated in military controls and controls, he issued the requests to the subordinates and issued requests, guidelines, and mandates. He managed the certification of its execution and accepted full accountability for its culmination. He was in charge of the general circumstance of the RS (Republic of Serbia) Army and its lead. The charged was by and by in charge of guaranteeing regard for and use of Bosnian Serb powers under his order and control of worldwide law. Between May 12, 1991, and December 22, 1996, the charged either alone or as a team with others in a typical criminal act plotted,

[188]prosecuter V.(RATKO MILADIC),case No.(IT-09-29-T) in 9.January 2013, International Criminal Tribune for the former yoguslavia, ITCY, <http://www.icty.org/x/cases/mladic/ind/en/111216.pdf> accessed 16 April 2018.

actuated, requested, perpetrated violations, or did the fractional annihilation of the Bosnian Muslim Group National, ethnic or religious gatherings in the accompanying spots: (Kluc, Varus Kotor, Prijedor, Sanski Most and Srebrenica). The blamed likewise dedicated a number for acts with the aim of the halfway elimination of an ethnic, religious or national gathering of Bosnian Muslims in a few towns in Bosnia and Herzegovina, where the Bosnian Serb powers under his order and authority focused on a substantial piece of the Bosnian Muslim people group for ponder killing. The slaughtering, relocation and persuasive expulsion of each individual who isn't Serbian, in the previously mentioned regions, brought about the murdering of expansive quantities of Bosnian Muslims. A huge number of them were dislodged or expelled by constrain with the point of completing ethnic purifying efforts in the vicinity of 1991 and 1993 in Bosnian Krajina and in Eastern Bosnia. A substantial segment of the Bosnian Muslim populace was taken to the zone of Sremska-Kamenica. A huge number of Bosnian Muslim guys were slaughtered in Bratunac, Srebrenica, and others in a deliberate and orderly way more than a few days, an occasion that matched with the constrained uprooting of the staying Bosnian Muslim people group of Srebrenica. Notwithstanding the previously mentioned wrongdoings, the denounced, captured, tormented, and beaten Muslims, and also different types of physical and mental manhandle, remorseless and brutal treatment and sexual viciousness, which brought about incredible physical or mental damage to Bosnian Muslims, Considered conditions for the eradication of Bosnian Muslims. It additionally included likewise, lack for giving of satisfactory safe house, sustenance, water, medicinal care and sanitation offices.

In addition to his direct involvement in the above-mentioned crimes, the accused knew or had reason to be aware that the offenses in question were about to be committed or committed by his subordinates and subordinates but he failed to take the necessary measures to prevent The occurrence of such acts or the punishment of the perpetrators[189]

4.1.2.1.2 Charges against the Accused

Based on the above, the prosecution charged the accused with the following offenses:

[189] Ibid.

1. Genocide.

1. Complicity in genocide.

3. Committing crimes against humanity.

4. Violations of the laws and customs of war.

As is clear, these crimes fall within the substantive jurisdiction of the Court, as we have already explained. The punishable for the crime of genocide is provided in Articles 4 (3-a), and articles 7 (1) and 7 (3) of the Statute of the Court. The crime of conspiracy to commit genocide is provided for in articles 4 (3-e), 7 (1) and 7 (3) of the Statute of the Court[190].

4.1.2.1.3 Comment on the judgment

It is clear from the facts and allegations in the previous judgment that the ICTY, and after depending Article 4 of its Statute, upon the definition of the crime of genocide contained in Article II of the Convention of 1948,[191]had considered the accused to have committed three images of genocide, killing and executing members of the group, Muslims, who were considered a religious, national and ethnic group in Bosnia, and subjected them to torture, beatings and sexual assaults, which constituted a serious attack on the members of the group physically and psychologically, Their forcible displacement from Srebrenica and the failure to provide adequate shelter, food, water, medical care and sanitation are the deliberate subjugation of the group to living conditions that would physically or materially destroy them.

The above acts represent the element of behavior in the material element of the crime of genocide. The result was the elimination of large numbers of the Muslim community in Bosnia. This behavior was the cause of the crime. The causal relationship exists between behavior and result. The crime of genocide exists through what has been mentioned.Article 4 of the Statute of the Court is the legal

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[190]ICTY (n 139)

[191] Convention on the Prevention and Punishment of the Crime of Genocide, 1948, p. 1, "*In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group*."<https://www.oas.org/dil/1948_Convention_on_the_Prevention_and_Punishment_of_the_Crime_of_Genocide.pdf> accessed 13 April 2018.

basis for the crime of genocide. It has been established through the facts of the case provides the moral element of the crime based on the accused knowledge of the crime, and his will to act and result. He held the highest rank in the army of the Republic of Serbia and therefore had full authority and responsibility for the administration of the army of the Republic. He was responsible for planning and directing all operations of this army and for supervising the works of all officers and units under his authority to ensure the fulfillment of his orders. He exercised military orders and control through the General Staff, which includes of subordinates and assistants throughout the Republic of Bosnia and Herzegovina.The specific target of the purpose to annihilate, in entire or to some extent, a national, ethnical, racial or religious gathering all things considered is outlined by coordinating demonstrations of destruction against the Bosnian Muslims as a religious, national and ethnic gathering. With respect to the wrongdoing of complicity in the commission of the massacre, the denounced was found to have submitted the offense through his insight or gave the motivations to which he knew that the offenses being referred to were going to be conferred or conferred by his subordinates and subordinates however neglected to take the essential measures keeping in mind the end goal to avert or rebuff such acts. It is clear here that a man isn't just gotten some information about his own demonstrations however is gotten some information about the demonstrations of his subordinates on the off chance that he knows about them and has not taken the essential measures to forestall or rebuff such acts, as clarified in the Statute of the ICTY. Through the prior, we take note of that the Tribunal, by mean of its Statute and through its law, has not presented another meaning of the wrongdoing of massacre yet has embraced an indistinguishable definition from in article II of the Convention, 1948. Toward the finish of this part, in which we know about the organization and ability of the ICTY and analyzed case of its judgments identifying with the wrongdoing of annihilation, we found that the Court did not embrace in its statute or its arrangements another meaning of the slaughter, is not the same as the definition contained in the United Nations Convention of 1948. In spite of the fact that it doesn't consider the social annihilation of the ensured network to be one of the types of massacre culpable, it found in the social destruction confirmation to be founded on the affirmed that there was a goal to eradicate the demonstrations of the blamed, and we noticed the court had rebuffed the wrongdoing of decimation with detainment as opposed to with the punishment of

death. Having known the role played by the ICTY in determining and punishing the crime of genocide, we now turn to the role played by the Rwanda Tribunal in defining and punishing the crime of genocide through chapter IV of this letter.

4.2 The Role of the Rwanda Tribunal (ICTR) in Determining and Punishing the Crime of Genocide

Rwanda consists of a mixed population of tribes of different ethnicities. The Hutus constitute 84% of the total population. The Tutsi tribes make up 15% of the total population. The Tu tribes constitute 1% of the population. In the past, Rwanda had been subject to Belgian colonialism, which had deepened the differences between the components of Rwandan society and to support conflicts between the tribes and continued to fuel differences even after independence. Led to the displacement of thousands of Tutsis from their homes to neighboring countries The Hutus came to power.Since 1994, the Tutsis have launched intensive military operations against the Rwandese government from the northern border of Rwanda and established the Rwandese Patriotic Front (RPF), which inflicted heavy blows on the Government. The conflict has raised the concern of the surrounding countries. In 1993, in which it was agreed to cease hostilities, return refugees and share power between the Hutus and the Tutsis. The United Nations, the Security Council, international organizations and the international community as a whole have supported the agreement and all have provided humanitarian assistance to refugees in and outside Rwanda displaced by armed conflict, yet the agreement has not been able to end the armed conflict[192]. On April 6, 1994, the plane of the Rwandese and Burundian Presidents was devastated. Viciousness broke out in Rwanda between government powers and the Rwandese Patriotic Front, which killed an expansive number of regular folks, government authorities and even individuals from the peace-keeping powers who had not been saved. A great many regular folks and the dislodging of enormous quantities of Rwandans have been executed in these occasions' head of Rwandan Government. Amidst these occasions, destruction, wrongdoings against mankind and efficient infringement of human rights and worldwide helpful law have occurred, with significant slaughters between the Tutsi and Hutu clans, 1 "and there are reports

[192]L. J. Van Den Herik, *The Contribution of the Rwanda Tribunal to the Development of International Law*, Martinus Nijhoff Publishers (2005).

that a large portion of a million Tutsis and their supporters have been mercilessly butchered by individuals from the Hutu Government, After the Rwandan President's demise and the rise of past and ensuing occasions, fierce battling occurred in the areas of Bunar and Gecko Ngura, possessed by Tutsi inhabitants, following the visit of the Prime Minister of Rwanda to their interval Government. A large number of individuals have been gathered in schools, houses of worship and government structures under the appearance of securing them and they are then butchered and dispose of them by the administration powers . Therefore, the Security Council sent a little mission to examine the issue by determination 935 (1994) on 1 July 1994, taking note of in its reports that the violations being submitted are startling and that a large number of men, ladies and kids are cut into pieces and cut off and beaten with shapes An association of innate hostility.

The Commission submitted its report to the Secretary-General of the United Nations on 4 October 1994. Based on this report, the United Nations Security Council adopted resolution 955 of 8 November 1994[193], which included the establishment of the Rwanda Tribunal. This decision was accompanied by the Statute of the Court. On 6 August 1994, requested the Secretary-General of the United Nations to expedite the establishment of a criminal international tribunal similar to that of the former Yugoslavia, which would promote peace and reconciliation between the Rwandese parties and the removal of elements of instability from Rwanda and neighboring States. Rwanda government promised to offer the necessary assistance to ensure the success of this Tribunal and to comply with the decisions it makes.

The reason for the Rwandese government's demand for an "ICC was due to the complete collapse of national authorities and specifically to the judiciary"

"One might say that the Rwanda Tribunal is a between time court managing worldwide violations that happened amid inner outfitted clashes in Rwanda and whose command has lapsed after the consummation of its main goal. It was set up at the demand of the Rwandan Government to the Security Council to attempt people blamed for acts Genocide and genuine infringement of universal compassionate law on the region of Rwanda and also residents.

The foundation of the Rwanda Tribunal under Chapter VII of the Charter of the United Nations is viewed as a honest to goodness certification of the participation of

[193] S/RES/955 (1994), < https://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/140/97/PDF/N9514097.pdf?OpenElement > accessed 17 April 2018

Rwanda and of all States on whose region people blamed for violations inside the purview of the Court are found, and of the removal of those blamed to get the discipline for their demonstrations.

The examination will endeavor to feature the part of the Rwanda Tribunal in characterizing and rebuffing the wrongdoing of massacre by analyzing the purview of the Rwanda Tribunal and a few judgments of the Rwanda Tribunal on the wrongdoing of destruction.

4.2.1 Jurisdiction of the Court

The ICTR Statute has clarified the jurisdiction of the Court, whether substantively,personally, temporally or territorially, and is similar in many provisions of the jurisdiction of the ICTY, with some differences between them.

4.2.1.1 Substantive jurisdiction

The ICTR Statute[194] defined the scope of its substantive jurisdiction, which was adapted to the nature of the conflict in Rwanda, where the ICTR is competent to try those responsible for the following crimes:

1. Genocide, as provided for in article 2 of the Statute of the Rwanda Tribunal, and adopted the definition adopted by the Tribunal for the Former Yugoslavia, which is defined in the Convention on the Prevention and Punishment of the Crime of Genocide (1948), which is already mentioned, and need not be re-stated. Article 3, paragraph 3, added that the determined acts fall within the substantive jurisdiction of the Court and are subject to punishment[195]. It should be noted here that the International Tribunal for Rwanda (ICTR) recorded the first international provision of genocide on 4 September 1998 for the Rwandan Prime Minister, so that the crime and acts of genocide entered into force for the first time before an international criminal court[196]

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[194] Statute of The International Tribunal for Rwanda, ICTR,1994<http://legal.un.org/avl/pdf/ha/ictr_EF.pdf> accessed 17 April 2018.

[195] Article 2 (3), from Statute of The International Tribunal for Rwanda , ICTR , 1994, stated "…*(b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide*." <http://legal.un.org/avl/pdf/ha/ictr_EF.pdf> accessed 17 April 2018.

[196] Ali Jameel Harb, , (المحاكم الجزائية الدولية والجرائم الدولية المعتبرة، الموسوعة الجزائية الدولية)مظومة القضاء الجزائي الدولي الجزء الثاني – [*International Criminal Court System (International Criminal Tribunals and International Crimes- Part II*] (trns), First Edition Beirut, Halabi, (2013)

2. Crimes against humanity: The text of the jurisdiction of the Rwanda Tribunal for the prosecution of individuals responsible for the commission of such crimes is set out in Article 3 of the Statute of the Court of Rwanda[197].

Unlike the Statute of the ICTY, Crimes against humanity in the Rwanda Tribunal system are not linked to the existence of an international or internal armed conflict. Article 3 of the Statute of the Tribunal Rwanda provides for: a broader scope for the conflict to include unilaterally attacks against non-resistant civilians rather than requiring a state of armed conflict between two combative armed groups.

On the other hand, article 3 narrowing the scope of application, where it is requiring specifications for the reasons for the attack As the armed attack according to the Appeals Chamber: Arising where there is resort to armed force between States or long-term armed violence between governmental authorities and armed groups or among such groups within the State, Article 3 may be said to have been separated to address the particular features of the conflict in Rwanda because this conflict has two areas: one is a genuine armed conflict involving two regular armies, the Rwandese Patriotic Army and the Rwandese Patriotic Army fighting for power. While the second takes the form of systematic targeting and slaughter of certain unarmed civilians. By refraining from referring to an armed conflict, which is committed in both spheres and this legal circumvention of the requirement of an armed conflict, Article 3 is fully understood in the case of Rwanda.

3. Violations of Common Article 3 common to the Geneva Conventions of 1949 and the Additional Protocol to those Conventions of 8 February 1977: Article 4 of the ICTR Statute provides for the jurisdiction of the Court to consider such violations[198].

3. Violations of Common Article 3 common to the Geneva Conventions of 1949 and the Additional Protocol to those Conventions of 8 February 1977: Article 4 of the ICTR Statute provides for the jurisdiction of the Court to consider such violations,

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[197] Article 3, from Statute of The International Tribunal for Rwanda , ICTR , 1994, which has stated;

"*The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation; (e) Imprisonment; (f) Torture; (g) Rape; (h) Persecutions on political, racial and religious grounds; (i) Other inhumane acts*." <http://legal.un.org/avl/pdf/ha/ictr_EF.pdf> accessed 17 April 2018.

[198] ICTR, (n 167)

and includes many acts[199]. This type of crimes falling within the jurisdiction of the ICTR is the difference that is the case in Yugoslavia, given the nature of the conflict in Rwanda as a civil war and not an international one.For the same reasons, the Statute of the Rwanda Tribunal did not provide for the violation of the laws and customs of war, since events in Rwanda were not international.

The above-mentioned personal jurisdiction of the ICTY complies with the personal jurisdiction of the Rwanda Tribunal. Article 6 of the Statute of the Court refers that it is competent only to prosecute natural persons whose jurisdiction does not extend to States or legal persons such as organizations, associations, and corporations[200].The individual to be tried by the court is any person who has planned, instigated, ordered, committed, encouragedor encouraged any means of planning, preparing or carrying out the offense, and the responsibility of these crimes will be his personal responsibility[201]The official position occupied by the accused or the official capacity of the accused, whether as head of State, or of the Government or of a senior official, shall not be exempted from criminal responsibility[202]. This official capacity or official position cannot be used to commute the sentence of the offender. The subordinates shall not be relieved of responsibility for the crimes mentioned, nor shall their superiors be exempted from such crimes if they are aware of them and have reason to conclude that the offender is close to committing such acts or has

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[199] Article 4, from Statute of The International Tribunal for Rwanda , ICTR , 1994, states that "...*(a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; (b) Collective punishments; (c) Taking of hostages; (d) Acts of terrorism; (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; (f) Pillage; (g) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilised peoples; (h) Threats to commit any of the foregoing acts*."<http://legal.un.org/avl/pdf/ha/ictr_EF.pdf> accessed 17 April 2018.

[200] Article 6, from ICTR states that; "*1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime. 2. The official position of any accused person, whether as Head of state or government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment. 3. The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. 4. The fact that an accused person acted pursuant to an order of a government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires*."

[201]See Article 6 (1) of the Statute of ICTR, 1994.

[202] See Article 6 (2), of Statute of ICTR, 1994.

actually committed them and the President has not taken the necessary and reasonable measures to prevent The commission or punishment of those acts[203].
The accused shall not be exempted from criminal responsibility if he acts on the orders of his Government or of his superior. The Court may consider commuting the penalty if it deems that it is a duty of justice[204].

4.2.1.2 Temporal and Territorial Jurisdiction

The Statute of the Court clarified that the territorial jurisdiction of the Court covered Rwandese territory and airspace as well as the territories of the neighboring States in which the crimes took place. The objective of the Security Council to extend the territorial jurisdiction of the Rwanda Tribunal beyond the borders of the territory of Rwanda was "the refugee camps in Zaire and other neighboring States which have been alleged to have committed serious violations of international humanitarian law and human rights law with regard to the conflict in Rwanda.With regard to the temporal jurisdiction of the Court, the Court shall be competent for the offenses committed from 1/1/1994 until 31/12/1994[205].The rest of the provisions of the Statute of the International Criminal Tribunal for Rwanda contain many principles governing and regulating the work of the Court, such as the principle of joint jurisdiction between the ICC and national criminal courts[206], and the principle of (non- bis) in idem[207], and other principles.

4.2.2 Some judgments of the Rwanda Tribunal relating to the crime of genocide

[203] See Article 6 (3), of Statute of ICTR, 1994.
[204] See Article 6 (4), of Statute of ICTR, 1994.
[205] See Article 8 (1), of Statute of ICTR, 1994.
[206] Article 8 (2), of Statute of ICTR, 1994, states; "*2. The International Tribunal for Rwanda shall have the primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda*."
[207] Article 9, of Statute of ICTR, 1994, states that; "*1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal for Rwanda. 2. A person who has been tried before a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal for Rwanda only if: (a) The act for which he or she was tried was characterised as an ordinary crime; or (b) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted. 3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal for Rwanda shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served*."

The International Criminal Tribunal for Rwanda has faced several difficulties and has led to delays in the work of the International Criminal Tribunal for Rwanda ", which has forced the Government to intervene in its jurisdiction to deal with violations committed. In order to achieve domestic justice, the Transitional Government of Rwanda has drafted a bill called the Basic Law, Which stipulates in Article 22 (3) that the Attorney-General of the Supreme Court shall have the authority to supervise the prosecution of those accused of such violations by the Special Chambers[208]. Such jurisdiction shall be based on international agreements relating to such violations, and most important one is Conventions of Genocide, and Punishment, 1948.The main reason for the Rwandan Government's promulgation of the Basic Law is the steady increase in the numbers of those accused of genocide and crimes against humanity in Rwandan prisons, which require the criminal jurisdiction of the speedy adjudication of such cases.For its part, the International Criminal Tribunal for Rwanda (ICTR) has taken a number of institutional and legal measures to improve its efficiency so that it can complete all trial trials by 2008. Judges have amended the Tribunal's Rules of Procedure and evidence to enable them to transfer cases to national courts for to have an opportunity to determine and consider a limited number of important issues, which include senior Political, military and paramilitary leaders. The court issued its first conviction on September 2, 1998[209], and issued its second conviction on September 4, 1998, in which the Prime Minister of Rwanda, 'John Kambanda'[210], was sentenced from April to July, was sentenced to life imprisonment for genocide and crimes against humanity, and 'Mr. Kambanda' was the first prime minister to be convicted by an international tribunal for genocide. Also, the case of 'John Paul Akayesu', mayor of "Taba" where he was convicted of sexual violence such as rape, and other inhumane acts considered crimes against humanity and sentenced to life imprisonment. The research will attempt to highlight the judgments of the ITCR concerning the 'John Kambanda' case in Rwanda.

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[208] Article 22 states; "*1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law. 2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended."*

[209] The prosecutor of The Tribunal Against Jean-Paul Akayesu , [1998], Case No: ICTR - 96 - 4 – T, <http://www.refworld.org/pdfid/402790524.pdf> accessed 17 April 2018.

[210] The prosecutor Versus Jean Kambanda, [1998], Case no.: ICTR 97-23-S, http://www.un.org/en/preventgenocide/rwanda/pdf/KAMBANDA%20-%20JUDGEMENT%20AND%20SENTENCE.pdf accessed 17 April 2018.

4.2.2.1Ruling on the case of the Prime Minister (Jean Kambanda) on September 9, 1998

The trial panel was composed of two magistrates (Laïty Kama) as the presiding judge; the two judges (Lennart Aspegren), Navanethem Pillay and the Prosecutor General (Bernard Muna); the defense counsel representing the accused was Mr. Oliver Michael Inglis)[211].

4.2.2.1.1 Proceedings of the Case

Jane Kambanda was born on October 14, 1955 in the city of Mopomapno in Butare Province. From May 1989 to April 1994 he worked in the Union of Rwandan People's Banks. He became the director of the network of banks and later became deputy chairman of the Butare Division of the Movement for the Defense of Rwanda and a member of its political bureau. On April 9, 1994, he became prime minister of the interim government.The accused confessed that, as Prime Minister of the Interim Government of Rwanda, he had exercised de jure authority over the members of the Council of Ministers and that the Government had established and observed the national policy as it had managed the armed forces in accordance with its own conduct and discretion, and exercised the rule as de facto situation on senior civilian officials and military officials.

The accused also admitted that he had participated in cabinet meetings, cabinet meetings and governorate offices where the massacres were effectively pursued, but no action had been taken to stop the massacres. He also acknowledged that he had dismissed the Butare governor because the latter had opposed massacres, where a new governor was appointed to ensure the spread of massacres against Tutsi peoples in Butare province.The accused, 'Jane Kambanda', admitted that in 1994 there had been a widespread and systematic attack against the civilian population of the Tutsi population in Rwanda, the aim of which was to eliminate the group. Mass killings of hundreds of thousands of Tutsi tribes had taken place in Rwanda, Women, children, the elderly and boys who have been pursued and killed in places where they have taken refuge, such as provinces, municipal offices, schools, churches and playgrounds.

'Jean Cambanda' stated that he had issued a directive to the Civil Defense addressed to the Conservatives on May 15, 1994, which included encouraging and

[211] Ibid.

strengthening the Interahamwe's ability to commit mass killings of the Tutsi civilian population in the provinces and counties. The accused also admitted that under this directive the Government had assumed responsibility for the acts committed by the 'Interahamwe'.Jean Kampanda also acknowledged that the Government he headed had distributed weapons and ammunition to these groups, as well as that roadblocks administered by mixed FAR and Interahamwe patrols, had been established in Kigali and elsewhere immediately after the announcement of the death of President 'JB Habyarimana' in the radio. The accused also recognized the use of the media as part of the plan to mobilize and incite the population to commit massacres against the Tutsi civilian population and also recognized the existence of groups within the army, militias and political entities that planned to eliminate political opponents of the Tutsi and Hutu people.

The accused also admitted that on 21 June 1994, in his capacity as Prime Minister, he provided clear support to Radio and Television (Liberté des Mélé Collins), knowing that this radio station was inciting murder through its radio transmission, physical and psychological distress and persecution of the Tutsi and moderate Hutu tribes, and said that the station "*was an indispensable weapon in fighting the enemy*."

In his capacity as prime minister, provincial governors and members of the population were encouraged and encouraged to commit massacres and mass killings of civilians, in particular the Tutsi and moderate Hutu tribes, and he visited with his cabinet ministers between 24 April 1994 and 17 July In 1994, a number of provinces in order to incite and encourage the local population to commit such massacres, including the blessing of those who committed such massacres, and to limit their duty to ensure the safety of Rwandan children.Through public speeches on behalf of the Government, the accused spoke to public gatherings, the media and various places in Rwanda directly and publicly inciting the population to commit acts of violence against the Tutsi and moderate Hutu tribes. "*You refuse to donate your blood to your country. Dogs come to drink it for nothing* ". The accused admitted that he had ordered the establishment of checkpoints with the prior knowledge that these barriers had been used to identify and eliminate the Tutsis and that as Prime Minister he had participated in the distribution of arms and ammunition to members of political parties and militias and to local residents, To commit massacres against Tutsi civilians.

The accused also acknowledged that he knew or must have known that there were persons responsible for them and who had committed crimes and massacres against the Tutsis and that he had failed to prevent or punish the perpetrators of such crimes[212].The defense has asked the court to apply the mitigating reasons for the accused of several reasons:

1. Because he pleaded guilty to expressing his intention to plead guilty immediately upon his arrest and transfer him to court. His main motive for pleading guilty was his deep desire to tell the truth, because truth was the only way to restore national unity and reconciliation in Rwanda and condemned the massacres in Rwanda His recognition of his contribution to the restoration of peace in Rwanda is an immediate mitigating factor, and it is important for the International Tribunal to encourage persons to confess, whether they are already accused or unknown perpetrators, ease the matter on the victims with the trials and trauma of trials and enhancing the presence of justice

2. Also, because he regrets his actions and this is illustrated by the introduction of guilt.

3. Also, because it cooperated with the Office of the Prosecutor, providing valuable information to the Prosecution.

4.2.2.1.2 Charges against the accused

The prosecution charged the accused with murder and causing severe physical and psychological harm to members of the Tutsi population with the aim of eliminating, in whole or in part, a religious or ethnic group and thereby committing genocide, punishable under Article 2 (3-a) Of the Court. The prosecution also charged the accused with conspiracy to conspire with third parties, including ministers of his government, to kill and inflict considerable physical and psychological harm on members of the Tutsi community with a view to eliminating, in whole or in part, an ethnic or racial group punishable under Article 2 (3-b) Of the Statute of the Court. As well as the direct incitement to inflict substantial physical and psychological harm on members of the Tutsi population with a view to eliminating, in whole or in part, an ethnic or racial group punishable by Article 2 (3-c) of the Statute of the Court[213].

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[212] Ibid.

[213] Article 2 (3), of Statute of ITCR, 1994, states; "*3. The following acts shall be punishable: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide*."

The prosecution also charged the accused with the charge of killing civilians as part of a widespread and systematic attack against the civilian population on ethnic or racial grounds, a crime against humanity, punishable in accordance with article 3 (a) and (b)[214].

4.2.2.1.3 Comment on the judgment

On the basis of the facts of the case and the charges against the accused and the conviction of the crimes of genocide and of crimes against humanity, the court sentenced the accused to life imprisonment where the prison is in the State determined by the President of the Court in consultation with the Court, The Court chose that this choice ought to be actualized specifically and until been exchanged to his jail, 'Jean Kampanda' must stay in authority. Can be noticed that the demonstrations of the blamed specified in the talk for the realities of the case constitute the material component of the wrongdoing of slaughter and scheme and affectation to it, and maybe the most imperative normal for this arrangement that he was rebuffed for plotting and impelling to perpetrate the wrongdoing of decimation as two separate violations of annihilation, where the guilty party is accomplished by execute individuals from a racial, ethnic or religious gathering or open them to brutal conditions. Can be noted additionally, that the Rwanda Tribunal has not received another meaning of the wrongdoing of destruction in its Statute or its arrangements that vary from the definition contained in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which was likewise embraced by the Tribunal for the Former Yugoslavia. We likewise take note of that the Court did not react to the resistance's demand to apply the alleviating conditions to the denounced, in spite of the presence of genuine explanations behind its application, given the earnestness and the reality of the wrongdoing. This has become clear to us that the Court has imposed the most severe punishment it can impose on the crime of genocide which it is life imprisonment.

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[214] Article 3, of Statute of ITCR, 1994, states that; "*The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation; (e) Imprisonment; (f) Torture; (g) Rape; (h) Persecutions on political, racial and religious grounds; (i) Other inhumane acts.*"

CHAPTER FIVE

CONCLUSION & RECOMMENDATION

At the end of our study of the topic “Individuals’ Criminal Responsibility for the Crime of Genocide", in which we started to deal with the legal framework of the international criminal responsibility of individuals for the crime of genocide as an international crime by highlighting what constitutes an international crime of acts contrary to the provisions of general international law and their individual responsibility.Such acts are hazardous and genuine and troublesome in break of worldwide open security. We have explored the subject of universal criminal duty regarding people, starting with our introduction to criminal obligation all in all. Numerous meanings of ICR have been tended to. Likewise, we attempted to illustrate the elements that meddle with the parameters of lawlessness and deny the criminal character. These components were separated into; subjective and target factors. To outline the reason what have prompted the foundation of lasting worldwide criminal equity. Likewise, endeavors to delineate the improvement of obligation when the duty was exclusively for the State and being referred to and the individual was not criminally in charge of the offenses carried out by him. While, later on, there was a dismissal of this rule and numerous components has been distinguished to include the person as mindful of wrongdoings against humankind including massacres. From that point onward, the examination researched the idea and thought of Genocide as a wrongdoing. The crime of genocide, like any other international crime, is based on four elements: the legal element, the physical

element, the moral and the international elements. It has several characteristics, including that it is not a political crime, and that the offender was criminally liable in the light of the principles of international law, as well as universal criminal jurisdiction.After having known what characterizes the crime of genocide is, the next stage of the study, tries to identify whether this crime is individual or state capacity. Where study the genocide perpetration possibility by a private individual, typical wrongdoer stays an individual is holding a post within the state system. It is, therefore, important to prove, whether international crimes when committed by state organs are an indication of private or public capacity. The studies offered many points, according to which they will support the notion of international crimes are committed in public capacity. Such as study the provisions of international law for the exclusion of functional immunities which attained the status of customary international law. The study demonstrated that functional immunities deal with official acts of 'de iure' (the act of the state doctrine). Hence, these acts are not induced individual responsibility, but, it is attributed only towards the state. Then the study demonstrated that the exception from general rule authorizes the conclusion that international crimes are recognized in a wide range as official acts which can though be attributed toward individuals and bear its criminal liability at the same time. The study showed another point which is, implicitly acknowledged about the official character of international crimes even by ICJ in its later case law. Therefore, International crimes perpetrated through state organs don't eliminate state responsibility, means it is not committed in private capacity. Moreover, when ICJ is stating the being of a bilateral system of responsibility, it uses the reasoning of the constant feature of the international law. In another side, the examination offers that the fundamental reason of private act convention is predicated on the inconceivability to consider the commission of global wrongdoings as the execution of normal state work. This reason is consistent and ought to be bought in to, however it ought not close from it that worldwide violations are submitted in private limit. At that point, the examination showed that, when all is said in done, if the execution of universal wrongdoings is generally expanded and orderly, there is no uncertainty about its official character. The last point in this field was, If universal violations are named private acts, at that point, it will give the states the reason as a matter of first importance as motivation to far themselves from worldwide duty. In time, this would be in a significant logical inconsistency to the idea of respective

obligation as "steady element of universal law". With the finish of this part the examination addressed one of the inquiries of this proposal, which is (Can State be culprit of the wrongdoing of annihilation?). The investigation at that point went ahead to characterize the part of worldwide courts and their viability in the use of decisions against people submitting slaughter. The exploration elucidated the part of the ICTY in characterizing and rebuffing the wrongdoing of annihilation. It analyzed the ward of the Court, regardless of whether substantive, individual, fleeting or spatial, and the selection of the Statute of the Court embraced the meaning of the Convention on the Prevention, and ICTR has additionally done as such. The judgments of these two unique councils have added to the ID and discipline of the wrongdoing of destruction, deserving of detainment. Before the finish of this part, the examination addressed another inquiry that doled out toward the start of this proposition, which is (To what degree is individual ICR is reflected before global criminal courts? Or on the other hand, to what degree is the criminal purview of individual criminal obligation reflected?).

The study concluded from this chapter a number of points, including that the Statute of the former Yugoslavia Tribunal and the Statute of the Rwanda Tribunal were not limited to punish the crime of genocide, but also to criminalize conspiracy to commit genocide, direct and public incitement to commit genocide and to commit genocide, to participate in genocide.

The personal jurisdiction of both the Tribunals of the former Yugoslavia and Rwanda was limited to the prosecution of natural persons only. the (ICTY) and the (ICTR) have imposed prison sentences, which in most cases amount to life imprisonment for perpetrators of genocide and have not imposed the death penalty.Also, the Convention on Genocide of 1948 in its definition of genocide - adopted by the ICTY and the ICTR in its Statute - did not consider genocide a form of genocide, That cultural genocide is no less dangerous than the images that the Convention has spoken and punished, because cultural genocide will in one way or another cause the loss of the character of the target group, and destroy it in whole or in part.

5.1 Recommendations

In light of the issues studied in this thesis, and in the light of its findings, the researcher recommends the following:

1. The Special Jurisdiction of the Special Courts is reached out to incorporate instead of characteristic people the legitimate people, for example, associations and States, particularly since demonstrations of annihilation are in most efficient and organized way and result from an arranged plan that mirrors the destinations of the lawful individual to which the regular people who perpetrated the wrongdoing of destruction have a place.

2. It is explicitly expressed that the denounced should not profit by the moderating reasons for the wrongdoing of destruction in perspective of the earnestness of this wrongdoing and the gravity of the identity of the guilty party who does not like the lives of others and is in charge of the loss of their lives.

3. That the extent of ensured gatherings of annihilation ought not be restricted to ethnic, national, ethnic and religious gatherings, and that security ought to likewise be reached out to the political gathering as individuals from political gatherings or other political developments, as it has regularly been that individuals from a specific political gathering have been focused by the decision specialists for different types of decimation without arranging such goes about as massacre.

4. That the meaning of decimation, ought to include, the social slaughter - of denying the individuals from the network of taking in their way of life, talking their own particular dialect and obscuring the human progress character of the network, as a type of destruction, since it is no less unsafe than alternate pictures of annihilation that have been recommended, in entire or partially.

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Article '18' of Draft Code of Crimes against the Peace and Security of Mankind, 1996 states;*"A crime against humanity means any of the following acts, when committed in a systematic manner or on a large scale and instigated or directed by a Government or by any organization or group: (a) murder; (b) extermination; (c) torture; (d) enslavement; (e) persecution on political, racial, religious or ethnic grounds; (f) institutionalized discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population; (g) arbitrary deportation or forcible transfer of population; (h) arbitrary imprisonment; (i) forced disappearance of persons; (j) rape, enforced prostitution and other forms of sexual abuse; (k) other inhumane acts which severely damage physical or mental integrity, health or human dignities, such as mutilation and severe bodily harm.":* accessed through : http://legal.un.org/ilc/texts/instruments/english/commentaries/7_4_1996.pdf, accessed 6 April 2018

Article VI, of Rome Statute states; *"…"decimation" implies any of the accompanying demonstrations conferred with aim to obliterate, in entire or to some degree, a national, ethnical, racial or religious gathering, in that capacity: (a) Killing individuals from the gathering; (b) Causing genuine substantial or mental damage to individuals from the gathering; (c) Deliberately delivering on the gathering states of life figured to achieve its physical annihilation in entire or to some extent; (d) Imposing measures proposed to counteract births inside the gathering; (e) Forcibly exchanging offspring of the gathering to another gathering."*

Article 58, of DASR, states; "*These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State*."
Article 4, of Code of Crime against Pease and Security of Mankind, 1996, states that; *"The way that the present Code accommodates the obligation of people for violations against the peace and security of humanity is without preference to any inquiry of the duty of States under universal law."*

Article 45, of DASR, p.52; "*1. The State in charge of a universally wrongful act is under a commitment to give fulfillment for the damage caused by that demonstration seeing that it can't be made great by compensation or pay. 2. Fulfillment may comprise in an affirmation of the break, an outflow of disappointment, a formal expression of remorse or another suitable methodology."*

From Article 45, of DASR, "*The duty of a State may not be summoned if: (a) The harmed State has truly postponed the claim; (b) The harmed State is to be considered as having, by reason of its direct, truly submitted in the slip by of the claim."*

Article VI, from Convention on the Prevention and Punishment of the Crime of Genocide, 1948, which states that; "*People accused of destruction or any of alternate acts counted in Article 3 should be attempted by a capable council of the*

State in the domain of which the demonstration was submitted, or by such worldwide correctional court as may have locale concerning those Contracting Parties which might have acknowledged its purview."

ARREST WARRANT OF 11 APRIL 2000 (DEMOCRATIC REPUBLIC OF THE CONGO v. BELGIUM) (MERITS), 2000, <http://www.icj-cij.org/files/case-related/121/13743.pdf> accessed 14 April 2018.

Article 7, of DASR, states that; "*The principal of an organ of a State or of a man or substance engaged to practice components of the legislative specialist might be viewed as a demonstration of the State under global law if the organ, individual or element acts in that limit, regardless of whether it surpasses its power or contradicts guidelines."*

Article 1, from ICTY, which states; "*The International Tribunal should have the ability to arraign people in charge of genuine infringement of worldwide compassionate law submitted in the domain of the previous Yugoslavia since 1991 as per the arrangements of the present Statute.",*
http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf> accessed 15 April 2018.

Article 6, from ICTY, states that; "*The International Tribunal shall have jurisdiction over natural persons pursuant to the provisions of the present Statute*."

Article 7 (1), from ICTY, states that; "*1. A man who arranged, prompted, requested, perpetrated or generally helped and abetted in the arranging, readiness or execution of a wrongdoing alluded to in articles 2 to 5 of the present Statute, might be separately in charge of the wrongdoing."*

Article 7 (4), from ICTY, states that "4.*The way that a denounced individual acted compliant with a request of a Government or of a predominant might not assuage him of criminal duty, but rather might be considered in alleviation of discipline if the International Tribunal discovers that equity so requires."*

Article 8, from ICTY, which states; "*The regional locale of the International Tribunal might reach out to the region of the previous Socialist Federal Republic of Yugoslavia, including its territory surface, airspace and regional waters. The worldly purview of the International Tribunal should reach out to a period starting on 1 January 1991."*

Article 9 (1), from ICTY, which states that; "*1. The International Tribunal and national courts should have simultaneous ward to arraign people for genuine infringement of universal compassionate law submitted in the domain of the previous Yugoslavia since 1 January 1991."*

Article 9 (2), from ICTY, states that; "*2. The International Tribunal should have supremacy over national courts. At any phase of the method, the International Tribunal may formally ask for national courts to concede to the skill of the*

International Tribunal as per the present Statute and the Rules of Procedure and Evidence of the International Tribunal."
Article 10 (1), from ICTY, states that; "*1. No individual should be attempted under the watchful eye of a national court for acts constituting genuine infringement of worldwide helpful law under the present Statute, for which he or she has just been attempted by the International Tribunal.*

Article 23, from ICTY, states; "*1. The Trial Chambers should articulate judgments and force sentences and punishments on people indicted genuine infringement of global philanthropic law. 2. The judgment might be rendered by a dominant part of the judges of the Trial Chamber, and should be conveyed by the Trial Chamber in broad daylight. It might be joined by a contemplated sentiment in composing, to which particular or disagreeing conclusions might be affixed.*

Article 6, from ICTR states that; "*1. A man who arranged, incited, requested, carried out or generally helped and abetted in the arranging, readiness or execution of a wrongdoing alluded to in Articles 2 to 4 of the present Statute, might be independently in charge of the wrongdoing. 2. The official position of any denounced individual, regardless of whether as Head of state or government or as a dependable government official, should not alleviate such individual of criminal duty nor moderate discipline. 3. The way that any of the demonstrations alluded to in Articles 2 to 4 of the present Statute was carried out by a subordinate does not ease his or her unrivaled of criminal obligation in the event that he or she knew or had motivation to realize that the subordinate was going to carry out such acts or had done as such and the better fizzled than take the fundamental and sensible measures to avert such acts or to rebuff the culprits thereof. 4. The way that a denounced individual acted according to a request of an administration or of an unrivaled should not soothe him or her of criminal obligation, but rather might be considered in alleviation of discipline if the International Tribunal for Rwanda verifies that equity so requires."*

Article 8 (2), of Statute of ICTR, 1994, states; "*2. The International Tribunal for Rwanda might have the supremacy over the national courts all things considered. At any phase of the technique, the International Tribunal for Rwanda may formally ask for national courts to concede to its fitness as per the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda."*

Article 9, of Statute of ICTR, 1994, states that; "*1. No individual might be attempted under the steady gaze of a national court for acts constituting genuine infringement of global compassionate law under the present Statute, for which he or she has just been attempted by the International Tribunal for Rwanda. 2. A man who has been attempted under the watchful eye of a national court for acts constituting genuine infringement of global helpful law might be thusly attempted by the International Tribunal for Rwanda just if: (a) The represent which he or she was attempted was portrayed as a normal wrongdoing; or (b) The national court procedures were not unbiased or autonomous, were intended to shield the denounced from universal criminal duty, or the case was not industriously arraigned. 3. In viewing the punishment as forced on a man indicted a wrongdoing under the present Statute, the International Tribunal for Rwanda should consider the degree to which any punishment forced by a national court on a similar individual for a similar demonstration has just been served."*

Article 22 of Statute of ICTR, 1994. states; "*1. The Trial Chambers shall articulate judgements and force sentences and punishments on people indicted genuine infringement of universal helpful law. 2. The judgment should be rendered by a greater part of the judges of the Trial Chamber, and might be conveyed by the Trial Chamber in broad daylight. It might be joined by a contemplated supposition in composing, to which isolated or contradicting feelings might be annexed."*

Article 2 (3), of Statute of ITCR, 1994, states; "*3. The accompanying demonstrations might be culpable: (a) Genocide; (b) Conspiracy to confer annihilation; (c) Direct and open actuation to submit destruction; (d) Attempt to submit slaughter; (e) Complicity in decimation."*

Article 3, of Statute of ITCR, 1994, states that; "*The International Tribunal for Rwanda might have the ability to indict people in charge of the accompanying wrongdoings when conferred as a major aspect of a far reaching or orderly assault against any non military personnel populace on national, political, ethnic, racial or religious grounds: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation; (e) Imprisonment; (f) Torture; (g) Rape; (h) Persecutions on political, racial and religious grounds; (I) Other heartless acts."*

Alfred Musema (Appellant) v. the prosecutor (Respondent), Case No. ICTR-96-13-A, January 27, [2000], Para 192, <http://unictr.unmict.org/sites/unictr.org/files/case-documents/ictr-96-13/appeals-chamber-judgements/en/011116.pdf accessed 26 May 2018

Bosnia and Herzegovina v. Serbia and Montenegro, INTERNATIONAL COURT OF JUSTICE General List No. 91 (26 February 2007), para 180. http://www.tjsl.edu/slomansonb/10.1_Bosnia_v_FRYGeno.pdf accessed 14 April 2018.

Bosnia and Herzegovina v Serbia and Montenegro - Application of the Convention on the Prevention and Punishment of the Crime of Genocide - Judgment of 26 February 2007 - Judgments [2007] ICJ 2; ICJ Reports 2007, p 43; [2007] ICJ Rep 43 (26 February 2007), http://www.worldlii.org/int/cases/ICJ/2007/2.html accessed 27 April 2018

Bosnia and Herzegovina v. Serbia and Montenegro, ICJ, (2007), Summary 2007/2. International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Paras. 439-450.

Cleveland v. Municipality of Anchorage, decision of the Alaska Court, 631, P.2d 1073, 1078 (1981), <https://law.justia.com/cases/alaska/supreme-court/1981/4956-1.html> accessed 26 May 2018.

Convention on the Prevention and Punishment of the Crime of Genocide, Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948, Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948,

<https://www.oas.org/dil/1948_Convention_on_the_Prevention_and_Punishment_of_the_Crime_of_Genocide.pdf> accessed 3 April 2018.

Diss. Op. Cassese Prosecutor v. Erdemovic, Case No. IT-96-22-A, Appeals Chamber Decision (Oct. 7, 1997), discussed by Meron, *supra* note 17, at 91., <http://www.icty.org/x/cases/erdemovic/acjug/en/erd-aj971007e.pdf> accessed 25 May 2018.

Draft Code of Crimes against the Peace and Security of Mankind, (1996), Article 2(3-g) which, states that;"*endeavors to carry out such a wrongdoing by making a move beginning the execution of a wrongdoing which does not in reality happen as a result of conditions free of his expectations."*

Draft Code of Offences against the Peace and Security of Mankind (1954), Article 2 http://legal.un.org/ilc/texts/instruments/english/draft_articles/7_3_1954.pdf accessed 9 April 2018.

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International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991, Original: United Nation, English Case No. IT-97-24-T, Stakic ICTY T. Ch. II 31.7(2003) para. 515.

INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST, 1946, Article 6, states that; "Duty of Accused. Neither the official position, whenever, of a denounced, nor the way that a blamed acted in accordance with arrange for his administration or of a predominant should, of itself, be adequate to free such charged from obligation regarding any wrongdoing with which he is charged, however such conditions might be considered in relief of discipline if the Tribunal confirms that equity so requires."<http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.3_1946%20Tokyo%20Charter.pdf>, accessed 13 April 2018.

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Para 33, of (YICL), [2000], which states;
"A large number of the means taken by Western States in the late nineteenth century to force repayments and rebuff authorities had nothing to do with equity except for had been pointed absolutely at political discipline and mortification of the State through the prerequisite that its authorities be rebuffed despite the fact that they had not really perpetrated a wrongdoing. Such political retribution was the subject of subparagraph (c), and more idea ought to be given to whether it was deserving of consideration in the draft. The more adequate parts of article 45, then again, ought to be parceled off to different articles."

Rome Statute of the International Criminal Court, 20. Text of the Rome Statute circulated as document A/CONF.183/9 of 17 July 1998 and corrected by process-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002. The Statute entered into force on 1 July 2002. <http://legal.un.org/icc/statute/english/rome_statute(e).pdf> accessed 2 March 2018.

Principle VI, parageraph (c), of The Nuremberg Principles, accessed through: https://kozidryngiel.files.wordpress.com/2009/01/nuremberg-principles.pdf, accessed 6 April 2018

Statute of The International Tribunal for Rwanda , ICTR , 1994<http://legal.un.org/avl/pdf/ha/ictr_EF.pdf> accessed 17 April 2018.

Supra note 66, p. 114, para 21. ILC analysis says: "The commitment to rebuff actually people who are organs of the State and are liable of wrongdoings against the peace, against mankind, et cetera does not, in the Commission's view, constitute a type of universal obligation of the State, and such discipline positively does not deplete the indictment of the global duty officeholder upon the State for globally wrongful acts which are ascribed to it in such cases by reason of the lead of its organs." The Geneva Conventions of 12 August 1949, <https://www.icrc.org/eng/assets/files/publications/icrc-002-0173.pdf> accessed 15 April 2018.

S/RES/955 (1994),< https://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/140/97/PDF/N9514097.pdf?OpenElement > accessed 17 April 2018

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Yearbook of the International Law Commission (YILC), 1994, Vol. 2, Part One, p. 101, para. 42 (According to Belgium Government 'paras 15 and 16';

"*There should be an article in the Code managing the subject of the worldwide duty of States. The State in that capacity is definitely engaged with any wrongdoing against the peace and security of humanity, either specifically as the dynamic and, at times, the sole specialist, or by implication in light of its inability to act or its own improvidence. It along these lines appears to be surprising that State duty ought not have been managed in the Code. It ought to likewise be noticed that incorporation of State duty in the Code would make it conceivable to give a sound juridical premise to the giving of pay to the casualties of wrongdoings and other qualified gatherings."*

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