



NEAR EAST UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
INTERNATIONAL LAW PROGRAM

**LEGAL DESCRIPTION OF INTERNATIONAL CRIMES
COMMITTED BY ISIL AGAINST YAZIDIS IN IRAQ
(CASE STUDY OF SINJAR DURING 2014-2017)**

SAMAN AHMED

MASTER'S THESIS

NICOSIA
2019

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MASTER'S THESIS

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NICOSIA
2019

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DECLARATION

I hereby declare that this master's thesis titled as "Legal Description of International Crimes Committed by ISIL against Yazidis in Iraq (case study of Sinjar during 2014-2017)" has been written by myself in accordance with the academic rules and ethical conduct in partial fulfilment of The Near East University, Graduate School of Social Sciences regulations and does not to the best of my knowledge breach any Law of Copyrights and has been tested for plagiarism and a copy of the result can be found in the Thesis., . I also declare that all the materials benefited in this thesis consist of the mentioned resources in the reference list. I verify all these with my honour

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Saman Ahmed

DEDICATION

1. To all victims of International Crimes in the world through history till moment .
2. To my Parents and Sibling for their continued love and support throughout my life , If it were not , I would not have succeeded in my life.

ACKNOWLEDGMENTS

I truly and sincerely thank my supervisor Asst. Prof. Dr TUTKU TUGYAN (teacher- International Law Department - Near East University) for for his guidance, suggestions, patience and for being very helpful and efficient . I also thank teacher (Prof and Asst Prof) in International Law Department - Near East University) and my advisor Mr. Nabi Berkut (research assistan/teacher –Phd student International Law Department - Near East University) for teaching and being very helpful throughout my studying masters program in international law, Lastily thank to the staff of Grand Library of Near East University for their assistance.

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ABSTRACT

LEGAL DESCRIPTION OF INTERNATIONAL CRIMES COMMITTED BY ISIL AGAINST YAZIDIS IN IRAQ: CASE STUDY OF SINJAR DURING 2014-2017

The purpose of this study is to investigate whether international crimes like the genocide and crimes against humanity committed by Islamic State in Iraq and the Levant (ISIL) against Yazidi people in Sinjar-Iraq during 2014-2017 can be brought within the jurisdiction of International Criminal Court (ICC). The study is explanatory and uses a content analysis approach to answer the research questions. The researcher analyzed the existing literature and as well as the legal documents of ICC to analyze the jurisdiction of ICC against genocide and crime against humanity in general then deducing to the Sinjar, Iraq to call a reform at the end of the study. ISIS has brutally executed Yazidi people in Sanjar, Iraq. The militant group confidently committed crimes like brutal executions, sex slavery, abduction, forced conversion, imprisonment and torture against Yazidi people. These crimes are considered as international crimes, crimes of genocide in accordance with Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 and Article 6 of the Rome Statute of the International Criminal Court, as well as crimes against humanity in accordance with Article 7 of the Rome Statute of the International Criminal Court. The findings of the study suggested that the ICC has no direct jurisdiction over the Islamic State of Iraq and Syria however, the jurisdiction of the court can be extended and strengthen as the country extend its support and jurisdiction over such crimes. The study concluded that there is an imperative need for the active role of the countries that are experiencing Crime of Genocide and crimes against humanity but are not a member of ICC.

Keywords: International law, Islamic State in Iraq and Levant, Yazidi, Rome Statute, Genocide, Crimes Against Humanity, International Criminal Court.

ÖZ

IRAK'TA YAZİDİS'TE ISIL'DAN KABUL EDİLEN ULUSLARARASI SUÇLARIN YASAL TARİFİ: 2014-2017 SINJAR DURUMUNDA VAKA ÇALIŞMASI

Bu çalışmanın amacı, Soykırım gibi uluslararası suçların ve Irak'ta İslam Devleti tarafından işlenen insanlığa karşı suçlar ve Şantrak-Irak'taki Yezidilere karşı Levant'ın (ISIL) 2014-2017 döneminde getirilip getirilemeyeceğini araştırmak Mahkeme (ICC). Çalışma açıklayıcıdır ve araştırma sorularını yanıtlamak için bir içerik analizi yaklaşımı kullanır. Araştırmacı, mevcut literatürü ve ayrıca ICC'nin soykırım ve genel olarak insanlığa karşı suçun yargı yetkisini analiz etmek için ICC'nin yasal belgelerini ve daha sonra çalışmanın sonunda reform çağrısı yapmak için Irak'ın Şedar'ına olan kararını analiz etti. IŞİD, Irak'ın Sanjar kentinde Yazidi halkını acımasızca idam etti. Militan grup, vahşice infazlar, seks köleliği, kaçırma, zorla dönüştürme, hapis ve Yezidilere yönelik işkence gibi suçları güvenle işledi. Bu suçlar, uluslararası suçlar, 1948 Soykırım Suçunu Önleme Sözleşmesinin 2. Maddesine ve soykırım suçlarına ve Uluslararası Ceza Mahkemesi Roma Statüsü'nün 6. Maddesine uygun olarak ve aynı zamanda insanlığa karşı işlenen suçlar olarak kabul edilir. Uluslararası Ceza Mahkemesi Roma Statüsü'nün 7. Maddesi ile birlikte. Çalışmanın bulguları, ICC'nin Irak ve Suriye'nin İslam Devleti üzerinde doğrudan bir yetkisi bulunmadığını, ancak ülkenin bu tür suçlar üzerindeki desteğini ve yetki alanını genişlettiği için mahkemenin yetki alanını genişletebileceğini ve güçlendirebileceğini ileri sürdü. Çalışma Soykırım Suçu ve insanlığa karşı suç işleyen ülkelerin aktif rolüne zorunlu olarak ihtiyaç duyulduğu, ancak ICC'ye üye olmadıkları sonucuna varılmıştır.

Anahtar Kelimeler: Uluslararası Hukuk, Irak'ta İslam Devleti ve Levant, Yezidilerin, Roma Statüsü, Soykırım, İnsanlığa Karşı Suçlar, Uluslararası Ceza Mahkemesi.

TABLE OF CONTENTS

ACCEPTANCE/APPROVAL	
DECLARATION	
DEDICATION	
ACKNOWLEDGMENTS	iii
ABSTRACT	iv
ÖZ	v
TABLE OF CONTENTS	vi
ABBREVIATIONS	ix
CHAPTER 1	1
INTRODUCTION	1
1.1 Background of the study	1
1.2 Literature Review	2
1.3 Statement of Problem	4
1.4 The Aim of the Study	5
1.5 Research Question	5
1.6 Significance of the Study	5
1.7 Limitation of the Study	5
1.8 Research Methodology	5
1.9 Study Plan	6
CHAPTER 2	7
INTERNATIONAL CRIMINAL LAW AND THE JURISDICTION OF INTERNATIONAL CRIMINAL COURT	7
2.1 The term of Genocide and Crimes Against Humanity	7
2.2. History of Genocide and Crimes Against Humanity	8
2.2.1 Pre-WWI	8
2.2.2 20th Century and WWI	9
2.2.3 Post-WWII	10
2.3 Differences Between Genocide , Crimes Against Humanity, and War Crimes, Aggression	10
2.3.1 Genocide	10
2.3.2 Crime Against Humanity	12
2.3.3 War Crimes	13
2.3.4 Aggression	14

2.4 Elements of the Genocide and Crimes Against Humanity	15
2.5 Jurisdiction of International Criminal Court.....	15
CHAPTER 3.....	18
CASE STUDY OF SINJAR- IRAQ 2014-2017.....	18
3.1 Introduction.....	18
3.2 Previous Targeting of Yazidis by Sunnis	19
3.2.1 Ottoman Era	19
3.2.2 Post 2003 Iraq Invasion Era.....	20
3.3 What happened in Sinjar – Iraq 2014-2017?.....	20
3.3.1 Brutal Executions.....	20
3.3.2 Sex Slavery.....	20
3.3.3 Abduction.....	21
3.3.4 Forced Conversion.....	22
3.3.5 Imprisonment and Torture.....	23
3.4 ISIL and Genocide/Crime Against Humanity	23
3.4.1 Rome Statute.....	23
3.4.2 ICC and Genocide/Crimes Against Humanity.....	24
3.4.3 Criterion for Punishment	25
CHAPTER 4.....	26
ANALYSIS OF THE ROME STATUTE OF ICC	26
4.1 Introduction.....	26
4.2 Comparing Rome Statute and Sinjar.....	26
4.3 Applications of the Elements.....	27
4.3.1 Yazidi are an Ethnic and Religious Group.....	27
4.3.2 Intent to Destroy	28
4.3.3 Manifest Pattern.....	29
4.3.4 ISIL Committed Genocide and Crimes Against Humanity	30
4.4 Charging ISIL for Genocide and Crimes Against Humanity Under the Rome Statute	32
4.5 Need for Accountability and Challenges of the law	32
4.5.1 Jurisdiction.....	34
4.5.2 Applicable Crimes.....	36
4.5.3 Modes of Liability	37
4.6 Current International Legal Developments	38
CHAPTER 5.....	42
CONCLUSIONS AND RECOMMENDATIONS	42

5.1 Introduction	42
5.2 Recommendations	42
5.3 Conclusion	43
REFERENCES	45

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ABBREVIATIONS

IL	International Law
ICL	International Criminal Law
IC	International Crimes
ISIL	Islamic State in Iraq and the Levant
IS	Islamic State
Rome Statute	Rome Statute of the International Criminal Court
ICC	International Criminal Court
WWI	World war one
WWII	World war two
ILC	International Law Commission
OTP	The Office of the Prosecutor
OHRCR	Office of Human Research Compliance Review
UNAMI	United Nations Assistance Mission for Iraq
ICTY	International Criminal Tribunal for the Former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
UNGA	United Nation General Assembly
UNSC	United Nation Security Council

CHAPTER 1

INTRODUCTION

1.1 Background of the study

In August 3, 2014, Islamic State in Iraq and the Levant (ISIL), also known as Da'esh, attacked the Sinjar in northwestern Iraq, near the country's border with Syria. The Sinjar was home to about 400,000 Yazidis, or sometimes Ezidis, are a mostly Kurmanji-speaking religious minority, member of a Kurdish religious minority found primarily in northern Iraq, southeastern Turkey, northern Syria, Although scattered and probably numbering only between 200,000 and 1,000,000, the Yazidis religion includes elements of ancient Iranian religions as well as elements of Judaism, Nestorian Christianity, and Islam. have a well-organized society, with a chief sheikh as the. The ISIL controlled the town of Sinjar and neighboring villages within a few hours, kidnapping and killing the Yazidis who could not escape. Those who could escape to mount Sinjar, where they were surrounded by ISIL, for days, enduring temperatures of over 122 degrees Fahrenheit without access to water, food, or medical care. At the request of the Iraqi government, the United States of America began conducting air strikes and air-dropping humanitarian aid on August 8, between August 9 and August 13, Kurdish forces opened a safe corridor, allowing most of the surviving Yazidis to flee through Syria into the Kurdistan region of Iraq.

Therefore, there is a need to evaluate and normalize this growing challenge to avoid the negative consequences among the developing and the developed countries. The developing countries are still operating as a puppet

of their former colonizers. The policies are still influenced by some of the developed countries that do not allow the developed countries to experience the economic and social development. The economic and social well-being of the people and especially the youth is fundamental to the sustainable development. The better employment opportunities lead to high literacy rate and help in eliminating poverty.

1.2 Literature Review

Buffon and Allison (2016) outlined that brutal executions and merciless abductions were carried out in Sinjar by the Islamic State of Iraq and Syria. The religious minority called as Yazidis were killed and abducted. The study outlined that the militants detained the Yazidis women and children in the area of Sinjar without food and water. Many people detained dies of starvation and inhumane conditions. The inhumane abduction and killing continued for days and the Yazidis were seized without any support and help from neighboring countries.¹

Cetorelli, Sasson, Shabila, and Burnham (2017) outlined that the kidnapping and mortality of the Yazidi people was huge and so does the displacement of these people. The study conducted household survey to collect the data and represented the figures as still not specifically known as to how many deaths were reported and in reality how many people were killed and kidnapped during the genocide by the ISIL militants.

Ahram (2015) outlined that the Yazidi women in Sinjar were captured, abducted, and forced to prostitution by the ISIL militants. The Yazidi males were killed but women were kept to be forced as sex workers. The study outlined that the Yazidi women and children were kept alive to be trafficked to other countries where they also worked as sex slaves. This genocide was an enormous and brutal in the history on the name of religion. These were crimes committed against humanity. However, the enslavement and other crimes were legitimized on the name of Islam.²

¹ V. Buffon and C. Allison, C. 'The Gendering of Victimhood: Western media and the Sinjar Genocide in Kurdish Studies' [2016] PL175, 196

² A. I. Ahram, 'Sexual Violence and the Making of ISIS in Survival' [2015] PL 57, 78

Nicolaus and Yuce (2017) further added that the genocide is not restrained to the massive killing and abductions but also there is another aspect of genocide and that is the crime against humanity. The ISIL militants also prosecuted brutal and inhumane behavior against women and children. They killed the Yazidi men and captured their women and children. Human trafficking and sex slavery are among these crimes against humanity.³

Dulz (2016) outlined that many Yazidi people were displaced after the genocide in Sinjar in Northern Iraq. The study further outlined that the ISIL militants occupied the area that belonged to the Yazidi people before the genocide. The surviving Yazidi people were displaced to neighboring areas most of them in Northern Iraq.⁴ The study outlined that 2000 to 3000 Yazidi people were displaced and hosted by the Duhok governorate. However, they are living as internally displaced people in these areas and are still not able to collect their basic needs and rights. The study outlined that the internal displacement left strong impact on the social life of Kurdish as well as Yazidi people in terms of ethnic and religious differences between the Kurdish and Yazidi people (Whiteside, 2015).⁵

Mullaney (2016) outlined that the entire ancient culture was intended to be wiped by the ISIL during the genocide in Sinjar. ISIL considered Yazidi people as a religiously legitimate to be killed however, there was no legal claim that ISIL made for justifying their executions. Genocide and crime against humanity are legal crimes that can be legally punished and prosecuted. Yazidis believe in reincarnation and practice Baptist rites as they worship Peacock named as Tawuse Melek. The story of Melek resembles that of the story of Satan in Christianity and Islam. Therefore, ISIS tried to legitimize these executions on the name of religion. Hence, ISIL immediately after the attacking town and villages inhabiting Yazidis started to kill Yazidi

³ P. Nicolaus and S. Yuce, 'Sex-Slavery: one aspect of the Yezidi Genocide in Iran and the Caucasus' [2017] PL 196, 229

⁴ I. Dulz, 'The Displacement of the Yezidis after the Rise of ISIS in Northern Iraq in Kurdish Studies' [2016] PL 131, 147

⁵ C. Whiteside, 'A Case for Terrorism as Genocide in an era of Weakened States in Dynamics of Asymmetric Conflict' [2015] PL 232 ,250

people that represent the genocide in the name of religion. They considered Yazidis to be devil and non-believers who must convert or die.⁶

Greco (2007) examined the victim rights of Yazidi people who were under the ICC. Over the span of the history of domestic legal systems, victims' role in the trials gained greater importance. Even after that, victims' rights were recognized at the international level after the Second World War due to the compensation claims which enhanced the crescendo of victim rights. In the international field, the ICC legal framework stands out as a glaring achievement. The Rome Statute provides victims with a wide range of rights starting from the pretrial stage throughout the trial. It reflects the protection and involvement of victims in trials. It is not representing the procedural fairness only but the victims' needs and claims are also considered for justice. Starting from a teleological approach, this paper demonstrates the victims' rights under the Rome Statute. It analyzes the Court's jurisprudential analysis of the underpinning principles for victim status and the rights of participation and equity given to the victims.⁷

1.3 Statement of Problem

ISIL violence and atrocities against the Yazidis may constitutes (prima facie) a case of Genocide and Crimes Against Humanity , defined by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and Rome Statute of the International Criminal Court (Rome Statute) , Genocide as “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group , and crime against humanity focus on killing large number of people and/or individuals. ISIL had openly proclaimed, in its English-language magazine, Dabiq, its intent to destroy the “pagan” Yazidi minority through Brutal executions, Sex slavery, Abduction, forced conversion, Imprisonment and Torture

⁶ A. Mullaney, 'Wiping out an entire religion: how ISIS will inevitably Eliminate an Ancient Culture Unless the United States Employs Military and Diplomatic Intervention in Suffolk Transnat'l L. Rev' [2016] PL 107

⁷ Greco, G, 'Victims' rights overview under the ICC legal Framework: A Jurisprudential Analysis in Int'l Crim. L. Rev' [2007] PL 531

1.4 The Aim of the Study

The aim of the study is to figure out whether international crimes like the Genocide and Crimes Against Humanity have been committed by ISIL against Yazidis religious minority in Sinjar-Iraq during 2014-2017 can be brought within the jurisdiction of International Criminal Court (ICC) .

1.5 Research Question

1. what is the legal description of the International Crimes committed by ISIL against Yazidis in Sinjar – Iraq in 2014-2017 accordance to International Law ?
2. Does the jurisdiction of the International Criminal Court apply to International crimes that have been committed by ISIL against Yazidis in Sinjar – Iraq in 2014 - 2017?

1.6 Significance of the Study

The study holds great significance because it is important to document the extent of ISIL' Genocide/crime against humanity against the Yazidis. These documents provide information; aids rescue missions and care strategies, for humanitarian assistance and protection; supports accountability in national and international courts and tribunals. It may serve as a historical evidence that may be used for recovery and reconciliation. The study is also significant for international law as it signifies the jurisdiction and extend to which the international law can help in prosecuting international crimes: Genocide/crime against humanity. The study will also shed light on how the international law can help in sustaining peace and security in an international arena.

1.7 Limitation of the Study

The study is a qualitative research and does not include the opinions of human beings as population of the study. The study only focused on the time period of 2014-2017 in Sinjar. Lastly, the study does not include empirical methods for collecting and analyzing data.

1.8 Research Methodology

The study is a qualitative research design and will follow content analysis as a research method to answer the research question. The study will analyze

the existing literature and as well as the legal documents of ICC to analyze the jurisdiction of ICC against Genocide and Crime Against Humanity in general then deducing to the Sinjar, Iraq to call a reform at the end of the study.

1.9 Study Plan

The study was divided and designed into five main chapters as following:

Chapter 1: the first chapter represents the introduction and background to the study. The chapter also highlights literature review, the problem statement and the aim of the study. The significance of the study and the limitations of the study are also highlighted. Lastly, research methodology followed in the study is also represented.

Chapter 2: the second chapter represents the international criminal law and the jurisdiction of international criminal court. The chapter discusses the term of Genocide and Crimes Against Humanity, history of crimes and elements of international crimes. Lastly, Jurisdiction of international criminal court

Chapter 3: the third chapter represents the case study of Sinjar and highlights what happened in Sinjar – Iraq 2014-2017 and ISIL committed Genocide/Crime against Humanity.

Chapter 4: this chapter represents the results and discussion of the study. The chapter outlines the analysis of Rome Statute and the crimes committed by ISIL against the Yazidi people in Sinjar – Iraq 2014-2017

Chapter 5: the last chapter represents the conclusion and recommendation based on the findings of the study.

CHAPTER 2

INTERNATIONAL CRIMINAL LAW AND THE JURISDICTION OF INTERNATIONAL CRIMINAL COURT

2.1 The term of Genocide and Crimes Against Humanity

Genocide and crime against humanity are two distinct concepts. They became part of international law (IL) in mid 1940s as the end of the WWII. Genocide focus on killing people by destruction of groups – it means that killing individuals who are part of a particular group and crime against humanity focus on killing large number of people and/or individuals. The act of genocide can be prosecuted on the basis of: (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; and (e) forcibly transferring children of the group to another group. Contrary, the act of committing crimes against humanity are to be considered for prosecution based on: (a) murder; (b) extermination; (c) enslavement; (d) deportation; (e) imprisonment; (f) torture; (g) rape; (h) persecutions on political, racial and religious grounds; and (i) other inhumane acts. Hence, both concepts have different aims and objectives. One concept focus on saving individuals other focuses on savings group. Hersch Lauterpach introduced crimes against humanity and Raphael Lemkin introduced genocide killing groups. ⁸

⁸ Stuart Ford ,‘Crimes against Humanity at the Extraordinary Chambers in the Courts of Cambodia: Is a Connection with Armed Conflict Required ’(UCLA Pac Basin LJ2006) p. 24.25

2.2. History of Genocide and Crimes Against Humanity

The concept of genocide and crimes against humanity like most legal concepts evolved over the period of time. The two previous crime evolved and developed out of the body of rules that regulate the use of force during conflict and war in late 19th and early 20th century. Thus, it evolved with the evolution of laws governing arm conflicts and it is now recognized as a specified crime. However, the Geneva conference of 1968 made it clear that the genocide and crime against humanity are not limited to arm conflict only as it is more than an armed conflict. The concept of genocide however is not linked explicitly to the armed conflict but the crimes against humanity does link explicitly to the idea of armed conflicts. Opposite to this idea, it is also argued that the crime against humanity can exist in the absence of an arm conflict.⁹ For example, the South African racial segregation known as apartheid that lasted from 1948 to 1990s was not armed conflict yet crime against humanity.¹⁰ The term was introduced in 1948 and was defined as deliberate and systematic destruction of a particular religious, race, ethnicity and/or national group. It was defined in Article 2 of Convention on the Prevention and Punishment of the Crime of Genocide. However, the concept existed in several distinctive situations and different time period as:

2.2.1 Pre-WWI

According to Adam Jones, if a dominant group has least in common with that of the marginalized group, it is easy for the dominant group to define the other as subhuman. Jones continues, "The difficulty, as Frank Chalk and Kurt Jonassohn pointed out in their early study, is that such historical records as exist are ambiguous and undependable. While history today is generally written with some fealty to 'objective' facts, most previous accounts aimed rather to praise the writer's patron (normally the leader) and to emphasize the superiority of one's own gods and religious beliefs."¹¹ Chalk and Jonassohn argued that there are differences among human beings, some are majority in

⁹ Ibid ,note 6 .

¹⁰ C. Lemanski, 'A New apartheid? The Spatial implications of fear of Crime in Cape Town, South Africa in Environment and Urbanization' [2004] PL 101,112

¹¹ A. Jones, *Genocide: A Comprehensive Introduction* (Routledge 2016) p.57

terms of religion, language, manners, customs, and so on whereas, others can be minority.¹²

Prior to 1949, the genocide against the indigenous people was conducted. The literature suggests that genocidal violence was conducted against the indigenous people. It is also argued that not only genocide but gendercide have also been executed against these indigenous people. Gendercide refers to killing only the males and letting females and children to be part of the conquering groups. Ancient gendercides have also been popular where Midianites were destructed. The literature suggests that there is no exact count for the number of Midianites killed but 32,000 girls survived that were taken by the conquering group. Furthermore, in fourth century, racial genocide was executed against ancient Chinese that killed about 200,000 Jie people, which had high bridged nose and bushy bush. Similarly, Mongol empire in 13th century executed genocides committed by Mongol armies under Genghis Khan. They also aimed to destroy whole nation. From 1490-1914, Congo, French conquering Algeria, German, Zulu Kingdom, Americas including Argentina, Mexico, Haiti, Canada and Asia including Afghanistan, East India Company rule of Subcontinent, Dzungar genocide, Ottoman Empire, Japanese Conquest, Russia, Vietnam, Europe, and the British Empire all experienced massacre and genocide and crimes against humanity. Historically, it is been observed that the crimes against humanity and the genocide existed for long but it is now that the phenomenon is under consideration of the international law and court of justice. However, the phenomenon is still not eliminated nor avoided completely. There are many live examples of genocidal attacks around the world.¹³

2.2.2 20th Century and WWI

During world war one (WW1) in 1915, crimes against humanity concept was first introduced into international relations when the Allied Powers sent a letter to the government of the Ottoman Empire, a member of the Central

¹² F. R. Chalk, & K. Jonassohn, *The History and Sociology Of Genocide: Analyses and Case Studies* (Yale University Press) p.165

¹³ J. Meierhenrich, *Introduction: The Study and History Of Genocide* (Oxford University Press 2014) p.45

Powers, protesting massacre.¹⁴ The internal institutions for peace and justice convicted Turkey of conducted crimes against humanity. Following genocide by the young Turks, Assyrians in Iraq were also killed massively by the Iraqi forces. Germany and Nazi occupation of Europe also marked world records of massive killing and brutal genocides. The Holocaust killed about 6 million Jewish people under the rule of Adolf Hitler.¹⁵

2.2.3 Post-WWII

This era was marked with the forced migration against 10-12 million German at the end of the world war two (WWII). Many Germans were also displaced when the Eastern province was given to Poland. This is known to be the largest displacement and ethnic cleansing in history. The ethnic cleansing was marked as genocide.¹⁶ Following German genocide and ethnic cleansing is retributive genocide among Hindus and Muslims at the time of partition of Subcontinent into Pakistan and India.¹⁷ Similarly, Australian genocide followed by 20,000-25,000 children were forced to leave their families and the aboriginal people were left helpless to die alone. Algeria, Cambodia, and Burundi, North Korea, Indonesia, Bangladesh, Ethiopia, Iraq, China, Brazil, Somalia, Sri Lanka, Bosnia, and Rwanda experienced and executed genocides against ethnic, racial, or religious minorities.¹⁸

2.3 Differences Between Genocide , Crimes Against Humanity, and War Crimes, Aggression

2.3.1 Genocide

The definition of 'genocide' was formulated in 1948 in article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide,

¹⁴M. I. Midlarsky, *The killing trap: Genocide In Tthe Twentieth Century* (Cambridge University Press 2005) p.92

¹⁵ G. Weissman, *Fantasies Of Witnessing: Postwar Efforts To Experience The Holocaust* (Cornell University Press 2014) p.56

¹⁶E. Glassheim, 'National mythologies and ethnic cleansing: The expulsion of Czechoslovak Germans in 1945 in Central European History '[2000] PL 463,486

¹⁷ P. R. Brass, 'The partition of India and retributive genocide in the Punjab, 1946-47: Means, methods, and purposes in Journal of Genocide Research' [2003] PL 101,71

¹⁸ R. J. Rummel, *Death By Government: Genocide And Mass Murder Since 1900* (Routledge 2018) p.45

that Convention adopted by the United Nations General Assembly on 9 December 1948 as General Assembly Resolution 260 and entered into force on 12 January 1951. However, Article 6 of the Rome Statute of the International Criminal Court (Rome Statute) defines the crime of genocide as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.” As it is borrowed from this Convention. The definition of genocide represents a series of acts which includes serious violations of the right to life along with the physical or mental integrity of the members of the group. The Convention also states that the acts of genocide are not merely punishable themselves but it also involves conspiracy to commit genocide, direct and public incitement to commit genocide, and complicity in genocide. Genocide can be differentiated from a crime against humanity through the specific intention to destroy an identified group either in whole or in parts.¹⁹

The mapping report notes that “The question of whether the numerous serious acts of violence committed against the Hutus (refugees and others) constitute crimes of genocide has attracted a significant degree of comment and to date remains unresolved.” The report repeatedly stresses that this question can “only be decided by a court decision on the basis of evidence beyond all reasonable doubt.” With that caveat, the mapping exercise drew the following conclusions:

Hutu ethnic group was also one of the biggest massacre committed against the ethnic group. Tens of thousands of victims were killed using edged weapons mostly hammers. The camps of survivors were also taken control and the survivors were also killed systematically in the genocide. Most of victims were children, women, elderly people and the sick.²⁰ attacks were also made on the mental and physical integrity of these victims including rape, shooting, brutally beating and burning. The humanitarian assistance intended for the victims was also blocked thus depriving them of resources

¹⁹ R. J. Rummel, ‘Power, genocide and Mass Murder in Journal of Peace Research’ [1994] PL 1,10

²⁰ D. R. M. O’meara, ‘Rutgers, The State University Genocide, War Crimes And International Law in African Affairs’ [2012] PL 177,210

essential to their survival. Thus, the apparent systematic and widespread attacks could be characterised as crimes of genocide.²¹

However, the report also indicated that there are numerous opposing factors that could lead a court to find that the requisite intent was lacking. Therefore, it confirms that the crime of genocide was not committed. These factors include facts and evidence which tend to show that spared the lives. It also shows that they facilitated the return of large numbers of Hutu to Rwanda, which militates against proving a clear intent to destroy the group. It was found that Hutu inhabitants were killed intentionally as individuals and in groups as well. It is considered as genocide which was committed in Rwanda.²²

Consequently, the report notes, “it is important that a full judicial investigation take place, in order to shed light on the reported incidents” in 1996-97. “Only such an investigation and judicial determination would be in a position to resolve whether these incidents amount to the crime of genocide”.²³

2.3.2 Crime Against Humanity

The definition of ‘crimes against humanity’ is codified in article 7 of the Rome Statute of the International Criminal Court (ICC). “The notion encompasses crimes such as murder, extermination, rape, persecution and all other inhumane acts of a similar character (wilfully 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’.” The mapping report says that most incidents listed may fall within the scope of “widespread or systematic attacks” characterized by “multiple acts of large-scale violence, carried out in an organized fashion and resulting in numerous victims. Most of these attacks were directed

²¹ D. Conversi, ‘ Genocide, Ethnic Cleansing and Nationalism in The SAGE Handbook of Nations and Nationalism ’ [2006] PL320,334

²² O. Gasana, ‘ A Typology of Theoretical Approaches to the Study of Rwandan Tutsi Genocide in Journal of Aggression, Conflict and Peace Research’ [2016] PL 268,258

²³ D. J. Scheffer, ‘ The United States and the International Criminal Court in American Journal of International Law’ [1999] PL 12,22

against non-combatant civilian populations consisting primarily of women and children.²⁴

As a consequence, the vast majority of acts of violence perpetrated during these years, which formed part of various waves of reprisals and campaigns of persecution and pursuit of refugees, were in general terms all transposed into a series of widespread and systematic attacks against civilian populations and could therefore be classified as crimes against humanity by a competent court.” 1993-2003 have been observed as the era that experienced crimes against humanity. These crimes include mass deportation of Kasaians from Katanga province in 1993 and systematic massacre of Hutu refugees, and the murder, torture, and violence directed at Tutsis in the DRC during 1996-1997 as a result of armed conflict.²⁵

2.3.3 War Crimes

The term war crimes are defined in breaches of international humanitarian law as those crimes that are committed against civilians and/or combatants during an international or domestic armed conflict. War crimes are derived from the Geneva Conventions of 1949 and its additional Protocols I and II of 1977. Similarly, the Hague Conventions of 1899 and 1907, and Rome Statute of the International Criminal Court (ICC) in Article 8 war crimes are: depending on whether an armed conflict is either international or non-international.²⁶

The majority of incidents described in the report could, if investigated and proven in a judicial process, “point to the commission of prohibited acts such as murder, willfully causing great suffering, or serious injury to body or health, rape, intentional attacks on the civilian population, pillage, and unlawful and arbitrary destruction of civilian goods, including some which were essential to the survival of the civilian population. The vast majority of these acts were committed against protected persons, as defined in the Geneva Conventions,

²⁴ D. Petrovic, ‘ Ethnic Cleansing-An Attempt at Methodology in Eur. J. Int'l Law’ [1994] PL 342

²⁵ D. Luban, ‘ A Theory of Crimes Against Humanity in Yale J. Int'l L.aw ’ [2004] PL 29,85

²⁶ T. Meron, War crimes in Yugoslavia and the Development of International law in American Journal of International Law [1994] PL 78,87

primarily people who did not take part in the hostilities, particularly civilian populations and those put out of combat. This applies in particular to people living in refugee camps, who constitute a civilian population that is not participating in the hostilities, in spite of the presence of military personnel among them in some cases. It is stated in the report that almost all violent incidents since 1996 are based on armed conflict even if they are internal or international. The time and intensity of these crimes denote that these crimes were based on armed conflict and were internal to the state however, these crimes can be executed by international law and are liable to the judicial process.

2.3.4 Aggression

The term of Aggression is defined as offences against the peace and security of mankind, which would serve as an international criminal code. In 1950, the International Law Commission adopted the Nuremberg Principles, the principles of international law recognized in the London Charter and the Nuremberg judgment, and submitted them to the General Assembly for consideration.²⁷ The Principles included the concept of 'crimes against peace', essentially reproducing the terms of the London Charter without specifying what constituted a 'war of aggression' The London and UN charter also describes aggression as a war crime against mankind that is possibly prosecuted and individual or states can be convicted of conducting aggression against the other. ²⁸

Aggression is codified in article 8bis in the Rome Statute of the ICC , as well as how and what instances the ICC can begin exercising jurisdiction over crimes codified in article 15 bis and 15 ter, adopted at the 2010 Review Conference in Kampala. In essence, three elements are required:²⁹ First, the perpetrator must be a political or military leader, i.e. a "person in a position effectively to exercise control over or to direct the political or military action of a State". Secondly, the Court must be able to prove that the executor has

²⁷ T. Meron, 'War Crimes Law Comes of Age in American Journal of International Law ' [1994] PL 462 ,468

²⁸ T. Meron, 'International criminalization of Internal Atrocities in American Journal of International Law ' [1995] PL 554, 557

²⁹ T. Meron, 'Defining Aggression for the International Criminal Court in Suffolk Transnat'l L. Review ' [2001] PL1,25

been involved in the planning, preparation, initiation or execution of crimes of aggression. Thirdly, such a State act must amount to an act of aggression as defined in General Assembly Resolution 3314. It must, by its character, gravity and scale, constitute a manifest violation of the UN Charter. Thus, it is obvious that most serious legal executions are under the jurisdiction of the court.³⁰

2.4 Elements of the Genocide and Crimes Against Humanity

Those are two elements of the special intent requirement of genocide:

1. The act or acts must target a national, ethnical, racial or religious group;
2. The act or acts must seek to destroy all or part of that group.³¹

Crimes against humanity have four elements.

1. Inhumane in nature and character, causing great suffering, or serious injury to body or to mental or physical health;
2. Part of a widespread or systematic attack;
3. Committed against civilians
4. Committed on one or more discriminatory grounds.³²

Whereas, the act of committing crimes against humanity are to be considered for prosecution based on: (a) murder; (b) extermination; (c) enslavement; (d) deportation; (e) imprisonment; (f) torture; (g) rape; (h) persecutions on political, racial and religious grounds; and (i) other inhumane acts.

2.5 Jurisdiction of International Criminal Court

The development of international criminal law (ICL) during the 21st century will arise primarily out of the jurisprudence of the permanent International Criminal Court located in The Hague, For three and one-half years a majority

³⁰ Liechtenstein Institute on Self-Determination, ' Ratification And Implementation Of The Kampala Amendments to the Rome Statute of the ICC Crime Of Aggression War Crimes' (Jersey-2012) p. 2-11

³¹ Jane E, ' Stromseth, The International Criminal Court and Justice on the Ground in Ariz. St. L.J'[2011] PL 1,21

³²William A. Schabas and Nadia Bernaz , *Rutledge Handbook of International Law* (First published USA and Canada 2011) p. 121

of the world's governments sent legal experts and diplomats to several multi-week sessions annually to negotiate the provisions of the statute for the International Criminal Court. They agreed to go to Rome to finish the statute in the summer of 1998 and, after five intensive weeks of negotiations, a final text emerged on 17 July. The Rome Statute of the International Criminal Court was adopted by an overwhelming majority of votes when 120 governments approved the final text, 21 abstained, and seven voted 'no,' including the United States, the People's Republic of China, and Israel. The Court has four organs: the judicial chambers, the presidency, the prosecutor, and the registry. There are 18 judges elected by majority vote of the Assembly of States Parties for terms of nine years (except for some who had lesser terms in the beginning of the Court) .

The subject matter jurisdiction of the Court is set forth in Articles 5 through 8 of the Rome Statute. It consists of the atrocity crimes described earlier: Genocide, Crimes Against Humanity, War crimes and Aggression.³³ Article 13 of Rome Statute of the International Criminal issued that icc has many jurisdictions in terms of exercising and implementing new laws and policies as referred by the UN Security Council as described in chapter VII of the UN charter. Similarly, the acts of aggression can also be referred to the ICC for prosecution by the Security Council.³⁴

Security Council deferral of investigation or prosecution Article 16 of the Rome Statute recognizes the Security Council's power to adopt an enforcement resolution under Chapter VII of the UN Charter that requests that an investigation or prosecution of a case or an overall situation not be commenced or continued for a period of 12 months, a period that can be renewed in the same manner.³⁵ The origin of this provision arises from the effort by some governments, particularly the United States, to require that all situations be referred to the Court either by the Security Council or by a state party provided the Council approved the referral if the situation pertained to a

³³ K. Dörmann, *Elements Of War Crimes Under The Rome Statute Of The International Criminal Court: Sources and Commentary* (Cambridge University Press 2003) p. 89

³⁴ Ibid, note 13 .

³⁵ M. H. Arsanjani, 'The Rome statute of the international criminal court in American Journal of International Law ' [1999] PL 22 , 43

matter already before the Council. When the Council oversight role was eliminated during the negotiations and the prosecutor gained the power to initiate investigations with Pre-Trial Chamber approval.³⁶

The member states are obliged to follow and comply with the policies and laws that are designed and implemented by the international criminal court. The international criminal court plays an important role when the domestic court fails to exercise justice. The large-scale violence has always been the focus of court's investigation.³⁷ The focus of these courts is on the free and fair trials and delivery of justice. Hence, they have been successful in eliminating crimes and prosecuting criminals. Thus, the jurisdiction of ICC was established in 2002.³⁸ ICC only has jurisdiction over genocide, crimes against humanity, and aggressive war crimes in case the countries are unable or unwilling to investigate or prosecute.³⁹

³⁶ P. Hwang, 'Defining Crimes Against Humanity in the Rome Statute of the International Criminal Court in Fordham Int'l LJ' [1998] PL 22, 27

³⁷ M. A. Newton, 'Comparative Complementarity: Domestic Jurisdiction Consistent with the Rome Statute of the International Criminal Court in Mil. L. Rev' [2001] PL 20, 27

³⁸ This case highlights the far-reaching judicial role ushered in by the Rome Statute Treaty 1998s

³⁹ V. Oosterveld, 'The definition of gender in the Rome Statute of the International Criminal Court: A step forward or back for international criminal justice in Harv. Hum Rts. J' [2005] PL 18, 55

CHAPTER 3

CASE STUDY OF SINJAR- IRAQ 2014-2017

3.1 Introduction

Yazidis are Kurmanji speaking Kurds that are in religious minority. They are native to Northern Iraq, Northern Syria, and Southeastern Turkey. These people have been vulnerable to most religious extremists and the genocide against this religious minority is not new in the Middle East. There are different religions found among Kurds including, Islam, Christianity, and Zoroastrianism. They live in different parts of Middle East.⁴⁰

On August 3, 2014 Islamic State in Iraq and the Levant ISIL attacked the religious minority of Yazidis residing in a small town near Mount Sinjar. Approximately 50,000 Yazidis fled to the valley of Sinjar where they were captured and detained by ISIL militants.⁴¹ ISIL deliberately executed genocide of Yazidis men as an act for religious integrity and to eliminate non-Islamic customs from a so-called Islamic state. The militants detained the Yazidis women and children in the area of Sinjar without food and water. Many people detained dies of starvation and inhumane conditions. The inhumane abduction and killing continued for days and the Yazidis were seized without any support and help from neighboring countries. In 2014, prior to the genocide, ISIL declared itself to the caliphate in the state of Iraq and Syria and as a consequence tried to legitimize its genocidal act against the Yazidis. None the less, ISIL also took control over the neighboring towns

⁴⁰ Michale M. Gunter , *The Kurds a Modern History* (United states of America 2015) p.xi .

⁴¹Cetorelli, V., Sasson, I., Shabila, N., & Burnham, 'Mortality and kidnapping Estimates for the Yazidi Population in the area of Mount Sinjar, Iraq, in August 2014: a retrospective household survey' (May 9,2017)<https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002297#sec007> accessed 8 January 2019

and villages where there was a possibility for the Yazidi people to take a shelter.⁴²

Before the attack of ISIL, Sinjar was also inhabited by the Yazidi people. Iraq Peshmerga troops stood against the militants of ISIL and the war led to genocide and destruction of thousands of Yazidi people. The Yazidi men were deliberately killed and murdered while women and children were kept alive. Yazidi women were forced into sex and forced labor and the remaining population was executed for forced conversion campaign led by ISIL.⁴³

The genocide and rapid execution against the Yazidi people was highlighted internationally and US then intervened in the war through air strikes against ISIL. Similarly, weapons were provided to Kurdish Peshmerga through emergency airdrops carried out by US, UK, and Australia to fight against ISIL militants. Kurdish Peshmerga defended Yazidis however, basic human rights of Yazidi people were violated by ISIL and around 500,000 Yazidis became refugees and thousands of them were killed with the brutal actions carried by ISIL militants.

3.2 Previous Targeting of Yazidis by Sunnis

3.2.1 Ottoman Era

Yazidis have been executed historically, during the Ottoman rule in 1640; Yazidis inhabited in the area of mount Sinjar were attacked by 40,000 Ottoman soldiers. During this attack, approximately 3,060 Yazidis died and around 300 villages with suspect of Yazidi people were burnt. The soldiers also executed 1,000-2,000 Yazidis that flee to the caves near Mount Sinjar in 1892. A campaign of mass killing was led by Sultan Abdulhamid II to Islamize the Ottoman Empire. This campaign also targeted Armenians and other Christians to be killed to Islamize the Empire.⁴⁴

⁴²Philippe Sands, 'On Genocide and Trauma' (2016) <https://www.ft.com/content/2ce55dee-01c7-11e6-ac98-3c15a1aa2e62> accessed 9 January 2019

⁴³ Ambos, Kai, Large, Judith, Wierde, Marieke (Eds.) *The Legal Framework Of Transitional Justice: A Systematic Study with a Special Focus On The Role Of The ICC. In Building a Future on Peace and Justice* (Berlin 2009) p.19-103.

⁴⁴ Ibid , note 16 .

3.2.2 Post 2003 Iraq Invasion Era

Following the Ottoman Empire genocide, during the Iraq invasion of post 2003 Yazidis were attacked again in the name of religion and extremism. In 2007, Yazidis genocide was committed in Mosul. In a bus hijack incident, Muslims and Christians were saved and 23 Yazidi passengers were killed intentionally. In the same year, Jazeera near Mosul and Qahtaniyah in the south of Sinjar, two Yazidi communities were bombed with four vehicles full of explosives. In this incident, approximately 336-500 Yazidis died and about 1,500 were injured. This bombing was carried out by the notorious terrorist organization called as Al-Qaeda.⁴⁵

3.3 What happened in Sinjar – Iraq 2014-2017?

3.3.1 Brutal Executions

The genocide of Yazidi people was not deliberately presented as it was; the true scale of killings and abductions is still suspected. A study conducted by PLOS, a weekly journal determined that about 9,900 Yazidis were killed and abducted during the mass execution and genocide within days. The report published by the journal outlined that many of these people were burnt alive, executed by gunshots, starved, and through serious injuries accounting for 3,100 killings, many of them were burned alive.⁴⁶ In many cases, all family members were captured and killed so there were no records of how many family members died and how many survived. Genocide was so brutal and extreme that the aim was to just eliminate Yazidis. Most could not get a chance to escape, those who escaped were captured again, and those who were captured were murdered brutally.⁴⁷

3.3.2 Sex Slavery

Similarly, sex slavery was another consequence of the Sinjar incident. Yazidi women that were kidnapped and seized during the genocide were forced into sex slavery. The Yazidi males were killed but women were kept to

⁴⁵Ibid .

⁴⁶ Lizzie Dearden, 'Almost 10,000 Yazidis 'killed or kidnapped in ISIS Genocide but true scale of horror may never be known' (Independent, 9 May 2017) 3 January 2019

⁴⁷ Samira Shackle , 'Yazidis in Iraq: 'The Genocide is Ongoing' (aljazeera, 7 Novembe 2017) accessed 5January 2018

be forced as sex workers. Yazidi women and children were kept alive to be trafficked for the sake of money. This genocide was a massive and inhumane in the history on the name of religion. These were crimes committed against humanity. However, the enslavement and other crimes were legitimized on the name of religion considering them as sabaya and Al-Sabi that states that women and children of the non-believers are to be enslaved before invaders. The concept was popularized in ISIL magazines but the sex slavery was particular questioned.⁴⁸

In addition, ISIL organized human trafficking among children and women. They sold children and women in the international slave markets. The trafficking of children and women was organized systematically through professional websites like Telegram and Signal. The evidence is also found in an online chat group that is called as, The Great Mall of the Islamic State that has approximately 754 members. ISIL militants sell and buy children and women through this website often where the details of slaves are displayed with age and physical appearance. It is also found that the militants also buy and sell weapons and cars through these websites.⁴⁹

In an even organized by AMAR foundation, true and horrifying experiences of the sex slaves were described by a girl surviving the sex slavery after the genocide of Yazidi people in Sinjar. She told that she was 15 when ISIL captured Sinjar and killed her husband, took away her 3 months old son, and forced her onto sex slavery. She told that she was raped and tortured for two weeks continuously and later was smuggled to Syria and Mosul. She told that ISIL killed their men, took away their children, and enforced them as sex workers in the name of religion.⁵⁰

3.3.3 Abduction

Yazidi women and children were also abducted from different parts of the area and from different villages including, al-Qahtaniya, Tal Afar, Si Basha

⁴⁸ S. Hassen, 'Stories of Yezidi Women Uterus: Untold Stories of Pregnant, Rapped Yezidi Women in Advances in Women's Studies' (II Conference, June, 2015) p.75.

⁴⁹ Nicolaus, P., & Yuce, S , ' Sex-slavery: one aspect of the Yezidi Genocide. Iran and the Caucasus, (2017) 21(2) 196-229.

⁵⁰ Matt Payton, ' Yazidi teenager who escaped ISIS Sex Slavery describes being forced to leave baby son behind' (Independent, 10 March 2016) accessed 1 January 2018

Khidri and Ba'aj accounting for more than 450–500 abductions. During the ISIL attack, from Jabal Sinjar hundreds were abducted in Hardan. In addition, 400 Yazidi women in Sinjar were sold as sex slaves. The surviving Yazidi women reported that 500 children and women that were abducted from Ba'aj and 200 were abducted from Tal Banat were sold as slaves in different areas of Northern Iraq as reported by Iraqi Government.⁵¹ In a report by Office of Human Research Compliance Review (OHRCR) / United Nations Assistance Mission for Iraq (UNAMI), 1,000 Yazidi children and women were abducted from the village of Kojo near South of Sinjar accounting for total of 2,500 abductions. This massive abduction and sex slavery was not less than a pre-planned and institutionalized raping. The international human rights organizations and the safeguards of human rights could not realize but this genocide was not only to eliminate Yazidi people but it chattered many different aims. The genocide was to eliminate Kurds form the territory and bring in Arab population that obeys orders form ISIL, institutionalized rape was carried out, pre-planned trafficking, and sex slavery just in the name of religion and genocide.⁵² Matthew Barber reported (scholar of Yazidi history at the UoC) reported that up to 7,000 children and women were abducted during the genocide that has not been reported.

3.3.4 Forced Conversion

Furthermore, Yazidi people were forced to convert. Yazidis are a religious minority known as monotheists. They follow the ancient Iranian beliefs with fundamentals to Abrahamic faith. Yazidis believe in reincarnation and practice Baptist rites, Yazidis worship an angel in the form of an animal. Peacock is worshiped as God and they named it as Tawuse Melek.⁵³ However, their story of Melek resembles that of the story of Satan in Christianity and Islam. ISIL immediately after the attacking town and villages inhabiting Yazidis started to kill Yazidi people that represent the genocide in

⁵¹ Sefik Tagay, Dogan Ayhan, Claudia Catani, Ulrich Schnyder, and Martin Teufel, 'The 2014 Yazidi Genocide and its effect on Yazidi diaspora in The Lancet' [2017] PL 1946

⁵² Cathy Otten, 'When ISIS Rounded up Yazidi Women and Girls in Iraq to Use as Slaves' (The Guardian, 25 July 2017) 5 January 2018

⁵³ Cathy Otten, 'Letter from Sinjar: Convert or Die' (The American Scholar, 29 February 2016) accessed 12 January 2019

the name of religion. They considered Yazidis to be devil and non-believers who must convert or die. Yazidi men abducted from the village of Kojo were murdered in masses towards the South of Sinjar. ISIL militants grabbed material belonging of these locals and intendedly conducted the massacre.⁵⁴

3.3.5 Imprisonment and Torture

Survivors added that, women and children were separated from men. Young girls were further separated into groups and were taken to the camps of ISIL militants where they enslaved these girls and raped the girls. Furthermore, they were also sold to militants. ISIL militants took their men to prisons, where they taught them to offer prayer in Muslim way. They were also forced to read the Holy book of Muslims and were given Islamic teachings on everyday basis. Some of abducted men were trafficked to Syria and were tortured.⁵⁵

3.4 ISIL and Genocide/Crime Against Humanity

3.4.1 Rome Statute

Genocide is defined as a crime against humanity and is recognized by the Rome Statute. In Article (6), the International Criminal Court (ICC) defined what the genocide is and in Article (2) the legal elements involved in the act of genocide is defined in details.⁵⁶ The act of genocide is intended as to destroy individuals or communities that belong to particular nationality, ethnicity, religion, or race.⁵⁷ There are several elements that must be met indeed to specify a crime as genocide and such crime against humanity. The systematic and widespread execution against members of specific religious, ethnic, or racial group is specified as genocidal act in Article (7) of the Rome Statute. However, the jurisdiction of ICC to prosecute such crimes still needs

⁵⁴ Christine Vanden Toorn, 'How the U.S.-favored Kurds Abandoned the Yazidis when ISIS Attacked' (The Daily Beast, 17 August 2014) accessed 15 January 2019

⁵⁵ David J. Scheffer, 'The United States and the International Criminal Court in American Journal of International Law' [1999] PL 12, 22

⁵⁶ Convention on the Prevention and Punishment of the Crime of Genocide, art. II, 9 Dec. 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention]

⁵⁷ Rome Statute of the International Criminal Court, art. 6, U.N. Doc. A/CONF.183/9 (1998) [hereinafter Rome Statute]

further justification through Rome Statute. In the case of Sinjar, the jurisdiction of ICC to prosecute the genocide committed against Yazidis by ISIL militants is debated.⁵⁸

3.4.2 ICC and Genocide/Crimes Against Humanity

According to Rome Statute, the aim and objective of ICC is to avoid such crimes that are crimes against humanity. Rome Statute specify such brutal executions as the matter of international community as it named such crimes as crimes against humanity not just against some individuals. Therefore, such criminals are to be executed. These crimes cannot remain unpunished as then it will be promoted in future as well. Genocide, war crimes, crimes against humanity, and aggression are to be prosecuted. Hence, ICC aims to prevent such crimes to promote peace and justice in the society and the purpose of establishing ICC is to ensure accountability for committing such crimes.⁵⁹

At the time of drafting Rome Statute, the international Law Commission (ILC) clearly outlined that such groups will be executed for committing crimes of such nature mentioned in Article (7). Rome Statute with Pre-Trial Chambers of International Criminal Court justified the prosecution of such extremist organizations including ISIL for committing crimes against humanity. It is also clearly mentioned that the level of the group and/or the organization will not be the criterion to judge whether the group can be prosecuted for committing such crimes or not. At the same, the Statute clearly mentioned that the militant organizations such as ISIL can be openly prosecuted for systematically committing act of genocide and crime against humanity.⁶⁰

⁵⁸ Ruth Wedgwood, 'The International Criminal Court: a American view in European Journal of International Law' [1999] PL 93,107

⁵⁹ Marijana Konforta and Maja Munivrana Vajda, 'The Principle of Complementarity in the Rome Statute of the International Criminal Court in Zagreb Law Review' [2014] PL 10, 27

⁶⁰ John Quigley, *The Genocide Convention: An International law Analysis* (Routledge 2016) p. 147

3.4.3 Criterion for Punishment

The Pre-Trial Chamber specified certain criterion to accuse any group or organization for such crimes like genocide and crimes against humanity as for Rome Statute to execute these groups and/or organizations: ⁶¹

1. The first criterion of a group to qualify for punishment is that the group has an identified hierarchy;
2. The capability of a group to conduct such crimes like genocide and/or crimes against humanity;
3. The group has attacked/occupied a territory where these crimes are committed;
4. The intentions of the group to conduct violence and inhumane criminal activities against the unarmed civilians intentionally;
5. The group has an intend to harm the civilian population;
6. The group can be and is part of the larger group that is committing such crimes and qualifies above all criterions will be executed.

Hence, for any individual or group to be punished for committing crimes against humanity and crimes of international nature, it must have been convicted of above mentioned criterion. ISIL executions against the Yazidi people can be questioned under such criterion that has been analyzed in the proceeding chapter.

⁶¹ Gioia Greco, 'Victims' rights overview under the ICC legal framework: A jurisprudential analysis in International Criminal Law Review' [2007] PL 531

CHAPTER 4

ANALYSIS OF THE ROME STATUTE OF ICC

4.1 Introduction

This chapter represents the analysis of the Rome Statute of the International Court of Justice by analyzing its applications and jurisdiction over Sinjar case and charging ISIL for committing genocide and crimes against humanity. The chapter also represents the need for accountability for committing such crimes. The chapter also outlines the challenges of the law and the current international legal developments in the law. Lastly, the chapter highlights the generally weak and strong points by concluding the chapter.

4.2 Comparing Rome Statute and Sinjar

Since the adoption of Rome Statute in 1998, the ICC issued its first warrant in 2005 and the first trial was carried out in 2009 for systematic crimes against humanity and genocide performed in Rwanda and Yugoslavia. The systematic crimes in Rwanda and Yugoslavia were first to be broadcasted as systematic human destruction. Hence, global actors and audiences were eager for accountability and justice.⁶²

⁶² Yvette Borg Cardona, 'A critical analysis of the Rome Statute of the International Criminal Court' (Master's thesis, University of Malta 2013) p. 26,31

Rome Statute	Sinjar Case
Killing	Yazidi men were killed brutally
Serious mental and physical harm	Yazidi women were sexually and physically tortured, raped, and enslaved
Deliberate conditions for physical destruction	Yazidi people captured and trapped were besieged
Conditions for preventing birth	Yazidi women were forced to abort their children as they were forced to be sex slaves before ISIL and also Yazidi men were separated from Yazidi women.
Forced transfer of children	Yazidi children were abducted forcefully

From the above evidence and as discussed in previous chapters it is clear that ISIL committed crimes that are labeled as genocide and crimes against humanity by Convention on the Prevention and Punishment of the Crime of Genocide of 1948 and Rome Statute of ICC. These are all the pre-requisites to be convicted of great crimes. ISIL committed genocide and crime against humanity to destroy in part or whole an individual or in the group. According to the Genocide Convention and Rome Statute, the Yazidi community is a protected ethnic and religious group.

4.3 Applications of the Elements

4.3.1 Yazidi are an Ethnic and Religious Group

The first requirement for the ICC jurisdiction for genocide and crime against humanity is to identify that Yazidi people as an ethnic and/or religious group. According to systematic study, Yazidi people are defined as an ethnic and religious group. An ethnic group in the Rome Statute is defined as a group having its own language, customs, and traditional attachment with the land and distinctive culture. These attributes allow the victims not only

Yazidis to seek protection and execution of these mass killings and abductions.

4.3.2 Intent to Destroy

For the genocidal crime, both mental and physical elements must be present. Under the *Mens rea* component, article 30 of the ICC Rome statute has two components. It includes; specific intent and knowledge threshold. Both of these components contribute to differentiating genocide from other international crimes. The *Mens rea* cannot be suspected directly from direct evidence or proof. The criminal law assumes that the person is accountable for his actions and he knows the consequences of his crimes. Based on the evidence and proof, it can be considered that the proof of intent is inferred indirectly from the logical deductions.

The second component knowledge can be referred to as the awareness about the consequences which may occur on the reaction of the defendant. For the crime of genocide, negligence is inappropriate. In the crime of genocide, the knowledge threshold for specific intent directly indicates an obligation for government, bureaucracy, organization, or logical planning against the protected group. The genocide crime is usually not committed by an individual on its own. Genocide crime can be done by having required knowledge which can be deduced from the nature of order given to a person without having full awareness about the crime⁶³. The specific intent defines whether the required intent is to destroy the ethnic group as a whole or individually. Behind the general intent, there is an intent which demands the need of action taken against a special targeted group.⁶⁴

Another vision about the ethnic cleansing refers to the specific intent which focuses on displacing the ethnic group rather than destroying it. Although both genocide and ethnic cleansing have the same goals, ethnic cleansing should not be considered as a form of genocide. It may be concluded that ethnic cleansing is the war against humanity or war crimes but genocide is not. For a legal genocide, it is crucial to analyze the targeted area influence.

⁶³ See Prosecutor v. Tadic, (Case No. IT-94-1T), Judgment, 7 May 1997, para. 199-201, 206.

⁶⁴ Prosecutor v. Akayesu, (Case No. ICTR-96-4-T), Judgment, 2 September 1998, para. 499.

It should be evaluated that the portion being targeted has the strength to have a significant impact on the whole targeted group. The numeric number of targeted groups is also significant in determining a genocide. It is important in both relative and absolute terms. If an individual is targeted, it is mostly considered as a hate crime and it cannot be considered as genocide, no matter how many evidences are provided.

Premeditation can be determined as a strategy or preparation before executing the plan of the crime. In domestic criminal law, it is considered as an aggravating factor by various punishing systems, especially when it is about sentencing. However, the *travaux préparatoires* found that the Genocide Convention did not encompass the same concept to the genocide crime. On the other hand, it is important to distinguish premeditation from proof of a methodical plan, without which a principle of genocide would be tremendously doubtful.⁶⁵

If “specific characteristics” of a group, such as culture, language, history, or works are targeted, it is referred to as Cultural genocide. The Acts of cultural genocide do not establish genocide because they are not amongst the punishable acts listed by the Genocide Convention. The destruction of churches, libraries, and mosques in Karadzic and Mladic, in Bosnia, was intended to destroy a culture and damage the ethnic groups present from centuries.

4.3.3 Manifest Pattern

During the preparation of the Genocide Convention, Initially the US suggested a "plan to destroy" element, but later modified it to "widespread or systematic policy or practice." Due to the requisite immense scale of the crime, this wording was criticized as unnecessary and useless. However, Israel noted that "it is hard to conceive of genocide without it." The “plan” was suggested as acceptable in the consensus text but in a vigilant form.

On the other hand, the ICC Rome Statute clearly required a "manifest pattern" as an appropriate element for genocide. This prerequisite is deduced from the Genocide Convention's implied element of systemic pattern or a

⁶⁵ See *infra* Section III.E, Implied Elements of a Plan.

plan. To guarantee that manifest pattern meets the high standard of the specific intent “to destroy”, the ICC Rome Statute needs that each of the actus rei support with this plan or “manifest pattern. It is done by making the manifest pattern a formal element. As the men's rea and acti rei components are considered by the court, so this is proven in perspective. On the application level, it is believed that proving knowledge is easy for a subordinate. The significance of a plan in committing genocide is crucial. To destroy the Yazidis, the manifest pattern was shown by the ISIL terrorists by displaying several thousands of Yazidi children, women, and men.⁶⁶

4.3.4 ISIL Committed Genocide and Crimes Against Humanity

The ISIL militants started the genocide of the Yazidi people in Sinjar on August 3, 2014. It is considered as genocide under the Rome State, Article 6(a) which is genocide by killing members of a group, in whole or in part. From that time till the present time, ISIL terrorists have analytically targeted and killed the Yazidis.⁶⁷ It is done by considering them heretics, devil worshippers, and irreconcilable with their fanatical beliefs. They are considered as extremist and are being punished for their religious beliefs. The witnesses reported that the IS fighters initially tried to convince the villagers of the Yazidi to change their religion to Islam. They almost spent five days to convince them to convert. When they were not convinced after these five days, ISIS members captured Sinjar.⁶⁸

There were many reports of crimes and violence against the Yazidis done by ISIL. It included the systemically execution of Yazidi men and selling of women and children. The reports also showed that there was knowledge about the Yazidi's ethnic groups and religions. They were also well aware of their culture and geographical locations. Five explicit acts that will independently form legal genocide are highlighted by the Rome Statute and Genocide Convention. These acts are as under.

⁶⁶ Carsten Stahn, Héctor Olásolo, and Kate Gibson, ‘Participation of victims in pre-trial Proceedings of the ICC in Journal of International Criminal Justice’ [2006] PL 219,238

⁶⁷ Rome Statute, art. 6; *see also* ICC Elements of Crimes, art. 6 (adopting the structure of the elements of genocide from the Rome Statute).

⁶⁸ Fazel Hawramy, ‘Freed Yazidi: I was beaten by Isis because I refused to say the Shahada’ (The Guardian 19 January 2015) accessed 16 February 2019

- The assassination of the members of the targeted group
- Causing severe physical or mental harm to members of the group
- Deliberately imposing on the group conditions of life calculated to bring about its physical destruction in whole or in part
- Imposing procedures planned to prevent births within the group
- Forcibly transferring children of the group to another group as slaves or any other purpose

The crimes of ISIL were beyond humanity. They intended to torture the Yazidi both physically and mentally. The women were raped and many Yazidi girls committed suicide from the fear of being sold or raped. Starvation and the malnutrition was another important physical harm given to the Yazidi people. The Yazidi people were thrown out from their houses which resulted in their camping in the mountains.⁶⁹ Many Yazidi women were sold several times and were forced to perform the household works. They were also deprived of adequate food and water by their fighter-owners. Survivors who were able to escape from the ISIL captivity reported that they were beaten brutally and were often gang raped as well. They were punished if they tried to escape.⁷⁰ The Yazidi women who were captivated as sex slaves faced daily rapes with gradually turned into their slow death.⁷¹

Measures were taken by the ISIL to stop the birth of new Yazidi children. Abortion of women was performed who were expecting children. A woman reported that ISIL doctor sat on her stomach to kill the unborn baby. Young girls were raped frequently and pregnant women were given wrong pills. The degree of the sexual assault was severe which led to deaths of many girls. Rape and sexual assault is the worst inhuman act performed by the ISIL on Yazidis.⁷² The torture of sexual assault was given to those women who did

⁶⁹ Sebastian Meyer, Corbis, 'A young girl inside a school that's now home to displaced Yazidis. Between The Millstones: The State Of Iraq's Minorities Since The Fall Of Mosul' (ILHR, MRG, NPWJ and UNPO 2015)

http://webcache.googleusercontent.com/search?q=cache:zZG_vPYhtkYJ:minorityrights.org/wp-content/uploads/2015/08/Between-the-Millstones-English.pdf+&cd=1&hl=en&ct=clnk&gl=cy

⁷⁰ Alex P. Schmid, 'Challenging the Narrative of The Islamic State in The Hague: International Centre for Counter-Terrorism' [2015] PL 19,1

⁷¹ Ford Sypher, 'Rape, and Sexual Slavery Inside an ISIS Prison' (The Daily Beast, 28 August 2014) accessed 19 February 2019

⁷² Prosecutor v. Akayesu, (Case No. ICTR-96-4-T), Judgment, 2 September 1998, para. 731.

not convert to Islam. Those who converted to Islam were given as brides to the ISIL fighters

The young children of the Yazidi were kidnapped and were trained to become the future Jahidis. It was an effort to destroy the community on both ethnic and religious terms. It is considered as genocide as the children's future will be affected by the change. The prohibition of the use of national language in private schools ensured that children are not being trained in their languages. The destruction of destruction or dispersion of documents and things with have artistic, religious, ethnic values, and historical significance is genocide which affects the future. It destroys the cultural and social values which should be transmitted to the next generations.⁷³

4.4 Charging ISIL for Genocide and Crimes Against Humanity Under the Rome Statute

Iraq and Kurdish Regional Government have the right and authority to prosecute ISIL under Rome Statute of ICC for committing Genocide and Crime Against Humanity. The Kurdish Regional Government according to the domestic enforcement by Article 6 of the Genocide Convention needs international assistance, not just financial but technical and professional to prosecute ISIL for committing and for pursuing justice for the Yazidi people.

4.5 Need for Accountability and Challenges of the law

The rise of the Islamic state in Syria and Iraq has fostered not just terrorism but crimes of concern including, Genocide, Crimes Against Humanity, and Crimes of Aggression. However, the international criminal law is yet to be prepared for such crimes given the scale and degree of the groups committing these crimes. Thus, the question is how these individuals or groups can be held accountable for the crimes they are responsible for. Therefore, the presence of significant domestic prosecutions and establishment of fanatical accountability mechanism is a need for exercising accountability.⁷⁴

⁷³ Kara Anderson, 'Cubs of the Caliphate: The Systematic Recruitment, Training, and Use of Children in the Islamic State in International Institute for Counter-Terrorism ' [2016] PL 46

⁷⁴ C  man Kenny, 'Prosecuting Crimes of International Concern: Islamic State at the ICC in Utrecht J. Int'l & Eur. L ' [2017] PL 120

International Criminal Court (ICC) is the one of the resort for prosecuting the crimes committed by such groups like ISIL. The ISIL members can be held for trials through the legal jurisdiction that ICC has through Rome Statute. However, there are some challenges that ICC may face while prosecuting such crimes as (i) jurisdiction; (ii) applicable crimes; (iii) modes of liability.

The ascent of the Islamic State (IS) speaks to an uncommon test to global criminal law. Dissimilar to non-State on-screen characters completing genuine yet moderately contained occasional assaults, IS has prevailed with regards to catching and holding State-run an area utilizing supported and outrageous viciousness. The gathering's expressed point of building up a caliphate in western Iraq, eastern Syria and Libya is a reason to which a large number of outside warriors have flocked. Additionally, IS has supported for the commission of assaults around the world with extremist gatherings and people completing psychological militant acts for the sake of IS in Europe, South East Asia, Africa, and North America.⁷⁵

The scale and gravity of ISIL wrongdoings have been regarded as a danger to global harmony and security by the United Nation Security Council (UNSC), raised the genuine desire for a lawful reaction. In spite of the fact that the UNSC has the ability to build up a specially appointed council that could mediate these crimes, as it did in the circumstances of Yugoslavia (ICTY) International Criminal Tribunal for the Former Yugoslavi and Rwanda (ICTR) International Criminal Tribunal for Rwanda and previous, the probability of that incident with regards to IS seems constrained. Under these conditions, it is to be seen whether the International Criminal Court set up to end the exemption for the culprits of the most genuine wrongdoings of worry to the universal network should assume a job. While an enticing arrangement, there are various potential impediments to the Court's contribution. The ICC works based on complementarity, with the essential obligation regarding practicing criminal locale over those in charge of worldwide violations laying on States Parties. The ICC will just advance in where there are no national procedures happening in States with a locale, or where such States can't or reluctant really to examine or arraign. With the conspicuous nonattendance of arraignments in Syria, Iraq, and Libya, some residential indictments of IS individuals and sympathizers have occurred in the purview of ICC States Parties. These cases perpetually include nationals representing a residential risk because of either being associated with

⁷⁵ Mark Bovens, *Public Accountability* (Oxford University Press 2004) p.84

enrollment or supporting exercises for IS inside the State or coming back to the State subsequent to battling for IS. The distinguishing proof and confinement of returning contenders likewise present a test. Where indicated, offenses in the residential circle, accordingly, will, in general, be breaks of household hostile to dread laws rather than offenses submitted in maybe a holding area. Consequently, there is a close total responsibility hole for IS individual's dynamic in Syria, Iraq, and Libya. Center trouble for household specialists who may somehow declare locale is that of catching such people in regions under IS control.⁷⁶

Regardless of whether suspects were to be kept, removal for the reasons for local arraignment might be hampered, given the constraints of the current lawful structure battling psychological oppression through removals. Different issues liable to emerge incorporate the contrasts between lawful frameworks as to grouping of offenses and disciplines. This incorporates conceivable inquiries of prosecutorial honesty and the maintaining of fair treatment rights.

4.5.1 Jurisdiction

The job of the UNSC in the domain of worldwide criminal equity and its relationship to the ICC has been plagued with worries since the arrangement of the Rome Statute. The UNSC's capacity to concede purview to the Court where it may somehow have been unfit to act is a critical power. This area talks about the unspecified and indistinct thought of a 'circumstance' for the motivations behind a UNSC referral, the naturally tied inquiry of conceivable impedance in crafted by the ICC, lastly takes a gander at the conceivable cover between contemporary demonstrations of IS and a current UNSC referral. In the first place, it is promptly clear that any potential UNSC referral to the ICC with respect to IS faces an apparently unrealistic, non-legitimate, trouble. Referrals giving purview over Syrian State powers or restriction figures are sure to be vetoed by Russia and China who are unflinching in their resistance to goals identifying with occasions amid the six years of bloodletting in Syria. This incorporates vetoing a past draft goal alluding the circumstance in Syria to the ICC. The conspicuous however combative option is to outline the topic of a referral exclusively as far as IS's activities.⁷⁷

⁷⁶ Ibid, note 28 .

⁷⁷ . Kenneth C Randall, *Federal Jurisdiction over International Law* (University of Alabama 2000) p.155

On a very basic level, this brings up the issue of whether a referral may elude a characterized gathering rather than a progression of criminal occasions or occurrences, accordingly blocking people who are not individuals from the gathering; however, who have conceivably carried out wrongdoings, from conceivable mediation. Neither the Rome Statute nor the Court's Rules of Procedure and Evidence characterize a 'circumstance'. The sole constraint on the parameters of a circumstance, contained in Article, is that it ought to incorporate 'at least one' wrongdoings falling under the Statute. The drafters along these lines seem to imagine the Court as conceivably having ward over solitary wrongdoing. Looking forward, the alteration of the Rome Statute to incorporate purview over the wrongdoing of hostility is important in such a manner.

The Prosecutor's 2015 explanation on conceivable locale over IS noticed the obvious nearness of 'a few thousand outside warriors including critical quantities of State Party nationals', before presuming that such figures don't seem, by all accounts, to be inside the IS initiative and along these lines, not among those 'most dependable' for the motivations behind arraignment. As a fundamental direct, this reference to the potential culpability of any individual seems untimely, as it adds up to an evaluation of tolerability instead of an assurance onward.⁷⁸

Advancements since 2015 are significant. Initially, it has turned out to be evident that IS's authority isn't completely ruled by Iraqis or Syrians. For instance, in July 2016, IS reported the passing of a 'top administrator', Abu Omar Al-Shishani, who was viewed by US authorities as may be 'pastor of war'. Al-Shishani, otherwise called 'Omar the Chechen' for having battled in military tasks in Chechnya, was conceived in Georgia and served in the Georgian national military before leaving to go to Turkey and after that Syria. Georgia is involved with the Rome Statute and in this manner, the ICC could hypothetically have practiced ward over a senior figure, for example, al-Shishani under Article 12(2)(b) based on his nationality. Second, and all the more fundamentally, in September 2016 The Office of the Prosecutor

⁷⁸ Michael Akehurst, *Jurisdiction in International Law* (Keele University 2003) p.56

("Office" or "OTP") of ICC embraced a strategy paper on case choice in which it flagged the need, in specific occasions, to indict a set number of mid-level culprits to guarantee that adequate evidentiary establishments are built up for bodies of evidence against those regarded 'generally dependable'. This new bearing likewise incorporates the likelihood of indicting lower-level culprits where their lead is especially grave. This move adjusts with the wording of the Rome Statute, which alludes to the 'most genuine wrongdoings' rather than the most genuine culprits. As expressed by the Appeals Chamber, 'had the drafters of the Statute expected to restrict its application to just the most senior pioneers associated with being most dependable they could have done as such explicitly'. In this manner, outside contenders who are nationals of State Parties and who may not really rank among the order of IS's association could be focused for arraignment both due to the genuine violations for which they are charged, and furthermore with the end goal of guaranteeing that solid wrongdoing base proof is gathered for conceivable related instances of more elevated amount IS figures in future.

Maybe more hazardous than the troubles related with the other potential types of purview, regional locale over IS figures is naturally testing given the way that the primary regions being referred to lie in States which are not gatherings to the ICC. In any case, there remains a potential, however the dubious, premise of purview to indict regionally.

4.5.2 Applicable Crimes

Demonstrations of psychological warfare reflect the fundamental quintessence of wrongdoings against humankind, specifically, that an assault is coordinated against a non-military personnel populace. It is likewise promptly obvious from the material discharged by IS into the open space, that assaults it does are submitted as per the gathering's approach. IS's very much reported violations have all the earmarks of being both broad and efficient, incorporating proceeding with wrongdoings in involved regions and incessant huge scale abominations somewhere else. IS acts would consequently by all appearances come extremely close to violations against mankind. Continuing on the premise that these components are met, the

composite demonstrations engaged with fear assaults could, contingent upon the realities, be arraigned under the different wrongdoings against mankind contained in Article 7(1) for example, murder, elimination, torment, oppression or assault. Like indictments continuing under the rubric of war wrongdoings, notwithstanding, arraignments of this sort would neglect to catch the twofold plan of demonstrations of dread: the expectation to spread fear among a regular citizen populace and to do as such to achieve a specific ideological target.⁷⁹

4.5.3 Modes of Liability

The changing scenario of global equity since the revulsions created in different clashes at the last end of the twentieth century provoked the foundation of different specially appointed establishments and eventually the ICC. These advancements prompted a desire for arraignment for wrongdoings of global concern. While the ICC can't manage the majority of the world's ills and, in reality, is explicitly intended to be corresponding to national locales, the danger presented by IS and clear absence of genuine legal retribution for its violations relentlessly prompts the end that the ICC should seek after every single imaginable road to guarantee equity is finished. While there are genuine down to earth contemplations in regards to the politicization of the Court were it to indict fear based oppression, just as the trouble of verifying and acquiring proof without State collaboration from Syria, Iraq, or Libya, these issues will dependably exist for a criminal foundation arbitrating violations on a universal dimension, especially a Court without a devoted authorization system. The ICC seems impossible right now to attempt the wrongdoings of IS because of the arrangement of obstructions confronted. However, on the off chance that the other way to pick is an exemption, at that point the inquiry is appropriately asked — is it worse for the foundation explicitly settled to deliver still, small voice shaking

⁷⁹ William A Schabas, *Genocide in International Law*, (National University of Ireland 2000) p. 68

wrongdoings to attempt to conquer the hindrances so as to guarantee responsibility.⁸⁰

4.6 Current International Legal Developments

On 15 December 2017, the jurisdiction of ICC through Rome Statute was extended to crimes of aggression from July 2018 and onwards. The amendment for extending the jurisdiction was named as Kampala amendment on aggression crimes. The fundamental aim of the amendment was to avoid the use of force to sustain world peace.⁸¹

Two bits of the tried and true way of thinking rule the global law network's perspectives about national sway. The first is that national power is an essential lawful rule. It characterizes nationhood. It underlies worldwide law's prerequisite of state agree to bargains and standard global law. Furthermore, it clarifies why countries regard regional fringes, give and deny acknowledgment and respect conciliatory invulnerability. National Sovereignty is among the strongest of universal lawful standards, practicing a ground-breaking effect on national practices. The second bit of the standard way of thinking is that the lawful standard of power has changed in essential regards since the Second World War. National sway so imagined seems to have reduced fundamentally in the past 50 years because of financial globalization, transportation and correspondences propels, the ascent of nongovernmental associations and the spread of worldwide human rights law.⁸²

States are the essential subject of worldwide law. Be that as it may, global law can likewise direct the activities of different elements, in particular: worldwide associations, non-state performers (counting national freedom developments and people), universal non-legislative associations, and global organizations. All can be characterized as subjects of global law and can be considered as having a lawful identity. This implies they have the two

⁸⁰ Chantal Meloni, *Command responsibility in international criminal law*, (TMC Asser press, 2010) p. 85

⁸¹ Pavel Sturma, *The Rome Statute Of The ICC At Its Twentieth Anniversary* (BRILL 2019) p.115

⁸² Yuval Shany, 'General Margin of Appreciation Doctrine in International Law?' In *European Journal of International Law* [2005] PL 907,940

obligations and rights accommodated by global law. A few parts of open worldwide law consolidate to ensure all-inclusive qualities identifying with human pride. Each speaks to an apparatus of insurance and all ought to be considered as corresponding and should be connected extensively. These branches are worldwide helpful laws, global displaced person law, universal criminal law, and global human rights law.

Open International law involves a collection of principles which is concerned exclusively with the rights and commitments of sovereign states. For instance, the United Nations Charter is a focal instrument of open worldwide law. Private universal law likewise alluded to as 'strife of laws', comprises of tenets that oversee relations between private substances and choose which local law and additionally courts can arbitrate issues with a "global" segment. For instance, if a Chinese organization was to sign an agreement with the United States, private universal law would manage the material law if that agreement was disregarded.

The connection among household and global law on a procedural dimension can be intricate, especially where a national court is applying universal law legitimately. Remember that residential law can't be utilized as an avocation for an inability to meet a global duty. In the expressions of Hersch Lauterpact, who is perceived as one of the authors of present-day global law: ⁸³

The standards and tenets of universal law are systematized in the scope of arrangements and different materials. The primary wellsprings of worldwide law are:

Settlement law: Such as the United Nations Charter and the Geneva Conventions
Standard global law: Established by state practice and lawful aim

General standards of law perceived by humanized countries: Seen as rousing as opposed to coordinate wellsprings of the law. Instances of this are the standards of estoppel and value.

⁸³ J. Allain, *International law In The Middle East: Closer To Power Than Justice* (Routledge, 2017) 56

One of the central standards of universal law gives that any expression that abuses its global commitments must be considered responsible for its activities. All the more solidly, as per the thought of state obligation, expresses that don't regard their worldwide obligations are obliged to promptly stop their unlawful activities and make reparations to the harmed gatherings. The standard of state duty frames some portion of global standard law and is authoritative upon all states. The third States additionally has a commitment not to help different states who are damaging worldwide law and have a lawful obligation under Common Article 1 of the Geneva Conventions to guarantee regard for IHL.⁸⁴

Numerous universal legal advisors endeavored to re-conceptualize worldwide law in connection to global governmental issues, looking to relate the two controls without giving up one altogether. This section depicts the Institutional motivation; an exploration program previously being sought after by conspicuous researchers in the two controls. The Liberal plan will require worldwide legal counselors to update their most major originations of the global framework.⁸⁵

The Liberal motivation supplements the Institutional plan as the examination fundamentally of law among liberal states. In entirety, the double motivation is a bound together plan, offering incredible assets and a cornucopia of research open doors for all understudies of global law and legislative issues. The boss lawful or jurisprudential reaction to the Realist challenge was the reconceptualization of the connection between worldwide law and legislative issues. An end product to the global legitimate procedure approach is the accumulation of exact proof showing the job of universal law in explicit worldwide emergencies.

Some pros and cons of the International Law can be Universal Law sets up a diagram that Nations can look to while deciding how to manage each other in issues of business, transportation, financial issues, in managing lawbreakers,

⁸⁴ Richard J. Goldstone and Adam M. Smith, *International Judicial Institutions: The Architecture Of International Justice At Home And Abroad* (Routledge, 2015) p. 98

⁸⁵ Florian Wagner-von Papp, David Viros, Daniel Zimmer, William E. Kovacic, and Andreas Stephan, 'Individual Sanctions for competition Law infringements: Pros, cons and challenges in Concurrences Review' [2016] PL 14,44

oppression and animosity. International Law should by definition address all Nations similarly to anticipate treachery. That is basically difficult to achieve without making hatred, perplexity, contentions, and protection from their fundamental plan. The explanation behind that is basic enough to get it. All Nations have their tons of qualities, ethics, morals, religious convictions, and related inside made laws. Every country will locate any sweeping ideas that endeavor to cover everybody similarly will cause issues inside any one Nation.⁸⁶

⁸⁶ Tung-Lung Steven Chang. , 'An international collaboration of Law firms: Modes, motives, and advantages in Journal of World Business' [1998] PL 78

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter represents the some set of recommendations and conclusion based on the findings and discussion of the study.

5.2 Recommendations

1. Iraq shall ratify the Rome Statute of the International Criminal Court, in case of non-signature and accession on the basis of Article 12(3) of the Statute of the International Criminal Court, to file a declaration with the registrar to give the prosecutor the right to exercise in the case of the Court.
2. Iraqi authorities ratify through national legislation the crimes of genocide, crimes against humanity as defined in the Rome Statute;
3. Iraqi cimmunity can try developing victim and support programs for Yazidi community (with specialized support to victims of Sexual and Gender-based violence SGBV and children).
4. Iraqi authorities must ensure that the legal proceedings against the criminals are established and the support to victims is ensured .
5. UN assistance in Iraq ensure that the national authorities are taking stand on providing justice to the victims therefore, the national authorities should also response to the assistance ffectively to terminate international crimes to be committed in Iraq.
6. Office of the Prosecutor of the ICC must establisha an initial examination into the injustice and inequality of the Yazidi in Iraq;

7. The home state must be able to prosecute members of ISIL for committing crimes genocide and crimes against humanity in international territory;
8. Domestic laws must be ensured by the state authorities for adequately providing universal jurisdiction over international crimes and that such laws are implemented in practice.
9. The Security Council refers the matter to ICC, as it has done in the cases of Darfur by resolution 1593 (2005) and Libya by resolution 1970 (2011) .
10. The Security Council could also create a special tribunal for the purpose of prosecuting ISIL for genocide and crimes against humanity , which the council did for the crimes committed in Yugoslavia by resolution 827 (1993) and in Rwanda by resolution 977 (1995) .

5.3 Conclusion

ISIL has executed Yazidi people in Sanjar, Iraq during 2014-2017 . The militant group confidently committed crimes like: brutally executed ,sex slavery, abduction, forced conversion, imprisonment and torture against Yazidi people. These crimes are considered as international crimes, crimes of Genocide in accordance with Article 2 of the Convention on the Prevention and punishment of the Crime of Genocide of 1948 and Article 6 of the Rome Statute of the International Criminal Court, as well as crimes against humanity in accordance with Article 7 of the Rome Statute of the International Criminal Court.

The results of the study found that the images of the elements of the crime of genocide and crimes against humanity, material and moral are available in the acts committed by the ISIL. It has been evident by the analysis of ICC and Sinjar case that the obligations of prevention and responsibility contained in the International Convention on the Prevention of Genocide and the Rome Statute as well as the rules of the Yazidi people in Sinjar threaten the international peace and security. Therefore, the groups committing these crimes must be prosecuted as to sustain humanity and peace in the international arena.

The findings of the study suggested that the ICC has no direct jurisdiction over the Islamic State of Iraq and the Levant however, the jurisdiction of the court can be extended and strengthened as the country extends its support and jurisdiction over such crimes. The study concluded that there is an imperative need for the active role of the countries that are experiencing crimes like Genocide and against humanity but are not a member of ICC.

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PLAGIARISIM

LEGAL DESCRIPTION OF INTERNATIONAL CRIMES COMMITTED BY ISIL AGAINST YAZIDIS IN IRAQ

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ETHICS COMITE



YAKIN DOĞU ÜNİVERSİTESİ

BİLİMSEL ARAŞTIRMALAR ETİK

KURULU

14.06.2019

Dear Saman Ahmad

Your project "Legal descriptions of international crimes committed by the ISIL against Yazidis in Iraq" has been evaluated. Since only secondary data will be used the project it does not need to go through the ethics committee. You can start your research on the condition that you will use only secondary data.

Assoc. Prof. Dr. Direnç Kanol

Rapporteur of the Scientific Research Ethics Committee

Direnç Kanol