



NEAR EAST UNIVERSITY
INSTITUTE OF GRADUATE STUDIES
DEPARTMENT OF INTERNATIONAL LAW

**MAIN VICTIMS OF GENOCIDE: A CASE STUDY OF ISIS CRIMES AGAINST
YAZIDI CHILDREN**

M.S.c. THESIS

Przha Saleem

Nicosia

May, 2022



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May, 2022

Approval

We certify that we have read the thesis submitted by **Przha Saleem** titled “**Main Victims of Genocide: A Case Study of Isis Crimes Against Yazidi Children**” and that in our combined opinion it is fully adequate, in scope and in quality, as a thesis for the degree of Master of International law.

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Declaration

I hereby declare that all information, documents, analysis and results in this thesis have been collected and presented according to the academic rules and ethical guidelines of the Institute of Graduate Studies, Near East University. I also declare that as required by these rules and conduct, I have fully cited and referenced information and data that are not original to this study.

PRZHA SALEEM

10 May 2022

Dedication

I dedicate my dissertation work to my family and many friends. I also dedicate this dissertation to my many friends who have supported me throughout the process.

Acknowledgements

Thank you to my supervisor, Percem Arman, for your patience, guidance, and support. I have benefited greatly from your wealth of knowledge and meticulous editing. I am extremely grateful that you took me on as a student and continued to have faith in me.

Przha Saleem

Abstract**Main Victims of Genocide: A Case Study of Isis Crimes Against Yazidi
Children****PRZHA SALEEM****M.S.c. International Law****10May 2022, 92 pages**

The study vividly discusses genocidal activities on the Yazidis and aims to educate the readers about ISIS' the victimization that has been recently shifting to children and putting Yazidis people at a high extinction rate. The study objective was attained through the application of a combination of a doctrinal technique of investigation. The findings showed that the Yazidi mass murder by ISIS could be classified as a genocide under all circumstances. As a result, the commitment to avoid genocide grows and persists throughout the life of the transgression towards the victims' population. Therefore, it is recommended that perpetrators of genocidal acts should be held accountable for committed offences to deter future violations and award compensations to the victims. It was revealed that the responsibility to avoid genocide grows stronger and lasts for the time period of the criminal activities against the victimized population. Additionally, the study concludes that Iraq, Syria, and the United States, cannot be faulted for the lack of prevention. As a result, the findings infer that other states may be held responsible for their lack of intervention based on geographical and relationship factors.

Keywords: Children, genocide, ISIS, the genocide convention, Yazidi.

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Abbreviations

ICC:	International Criminal Court
ICJ:	International Court of Justice
ICTR:	International Criminal Tribunals for Rwanda
ICTY:	International Criminal Tribunals for the Former Yugoslavia
IHL:	International Human Rights Law
ILO:	International Labour Organization
IPEC:	International Programme on the Elimination of Child Labour
ISIL:	Islamic State of Iraq and the Levant
ISIS:	Islamic State in Iraq and Syria
ND:	No Date
NP:	No Page

CHAPTER I

Introduction

The Islamic State of Iraq and Syria (ISIS) started its operation around 1999 under Abu Musab al-Zarqawi and joined Al-Qaeda in October 2004¹. ISIS is known and identified as a terrorist group and it has been recognized internationally due to its various terrorist attacks. Moreover, it is generally known that whenever the name is mentioned around the world, it is associated with panic, pain, and cruelty. ISIS can be seen as an example of modern terrorism's growth, having succeeded in elevating terrorism to the status of a war operation, which is why it was once regarded as the world's largest contemporary security threat². ISIS-inspired attacks outside Syria and Iraq occurred after a caliphate was declared in June 2014, killing over 1,300 people and injuring over 2,000 individuals³. As a result, ISIS ideologies started spreading around the world as can be seen in countries such as Nigeria, the Philippines, Afghanistan, Indonesia, and Pakistan⁴.

ISIS' political purpose is to free the Muslim world from oppression and unlike Al-Qaeda, ISIS' territorial assertion, which entails fighting local and regional opponents, is at the centre of this turnaround⁵. ISIS has implemented a range of administrative initiatives in its conquered territories to establish legitimacy and enhance its territorial position but some of them have improved living circumstances for the local population (road restoration, electricity provision, etc.). However, ISIS' positive achievements pale in comparison to its well-known manner of operation, which is documented as incidents of abuse, terror, kidnappings, and enslavement, with ethnic and religious minorities being the primary targets⁶. It is vital to note that suicide bombings, beheadings, armed attacks, transportation hijackings, and other acts of extreme brutality carried out by ISIS, the

¹ Tim Lister and others, 'ISIS goes global: 143 attacks in 29 countries have killed 2,043' (*CNN*, 12 February 2018) <<https://edition.cnn.com/2015/12/17/world/mapping-isis-attacks-around-the-world/>> accessed 7 November 2021.

² *Ibid.*

³ *Ibid.*, n.p.

⁴ *Ibid.*, n.p.

⁵ Dorica Pascalau and Sirbu Letitia, 'Considerations Regarding the ISIS' (2021) *SLSSS* 1, 2.

⁶ *Ibid.*, n.p.

majority of which target government officials and people, should also be highlighted. ISIS is also notorious for kidnapping and beheading several hostages, including numerous international journalists, and then publishing recordings of the events on social media⁷. It should, however, be noted that people living in ISIS-controlled areas are compelled to follow ISIS' extremist ideology or face execution⁸.

Background of the Study

In consideration of the current discourse, it is worth mentioning that the Yazidis are an endogamous Kurmanji, a Northern Kurdish-speaking group native to Iraq, Iran, Syria, and Turkey's Kurdish territories, who speak Kurmanji or Northern Kurdish⁹. Throughout history, people of various religions have persecuted the Yazidi people and a majority of them were carried out by Muslims, who controlled the majority of the Yazidi region¹⁰. Facts have it that the Ottoman Empire murdered the Yazidi people in the 18th and 19th centuries when the Ottomans collaborated with Leaders of the Kurds to persecute them religiously and the Yazidis were likewise persecuted by Saddam Hussein's Iraqi army in the 1970s, but they were not massacred¹¹. This occurred as a result of Hussein's "Arabization Campaign" against the Kurds, which affected the Yazidis as well because they speak Kurdish¹². Hussein wished to alter the Iraqi people's way of life, especially Yazidis. As a result, he forced them to live in cities, and in the northwestern region of Iraq, he established Sinjar for them when the US invaded Iraq in 2003, Kurds relocated to Iraq's northeast region, and, the campaign came to an end¹³. Additionally, in August 2007,

⁷ Stern Jessica and Berger James M, '*ISIS: The state of terror*', (HCP, 2015) 281

⁸ Ibid, p. 282.

⁹ Hafiz Yasmine, 'No, They Aren't Devil Worshipers: The Yazidi's Misunderstood Religious Beliefs' (*The Huffington Post*, 6 September 2016) <www.huffingtonpost.com/2014/08/13/yazidi-religious-beliefs_n_5671903.html?guccounter=2> accessed 2 November 2021

¹⁰ Ibid.

¹¹ Ibid, n.p.

¹² Ibid, n.p.

¹³ Avi Asher-Schapiro, 'National Geographic, Who Are the Yazidis, the Ancient, Persecuted Religious Minority Struggling to Survive in Iraq?' (*National Geographic Society*, 11 August 2014) <<https://www.nationalgeographic.com/history/article/140809-iraq-yazidis-minority-isil-religion-history>> accessed 2 November 2021.

cases of suicide car bombings occurred in four different places within a city in Iraq at the same time killing nothing less than 800 Yazidis¹⁴.

ISIS kidnapped about 6,417 people of Yazidi origin in congruence with the available information, of whom 3,451 people have been rescued, while 2,966 are still unaccounted for¹⁵. A total of 2,745 children are now orphaned¹⁶. Moving forward to the attack carried out on the Yazidis in 2014, it is presumed that there were around 3100 victims, and those that were abducted were around 6800¹⁷. It is estimated that the number of people affected in any way by the massacre is estimated to be around ten thousand¹⁸. ISIS assaulted and occupied Sinjar with brutality and 200,000 or thereabout Yazidis fled to Mount Sinjar, and ISIS swiftly surrounded them¹⁹. A lot of Yazidis died as a result of dehydration, hunger, and suicide as a result of being stranded in the heat.

The saddest part about this atrocity is that it has not finished and will not end because many Yazidis are being abducted, abused, and coerced to fight for ISIS and for things they know nothing about. However, the Yazidis continue to suffer, because they are afraid that if they return to Sinjar, ISIS will return, and there remains instability on the Sinjar Mount, where they were formerly dominant²⁰. ISIS which is internationally known for its inhumane activities to those who do not support their assertion has now gone rogue and is no longer limiting its victimization of adults but has now extended its activities to children, killing them right in the presence of their parents, enslaving them, sexually

¹⁴ Wander Andrew, 'How Suicide Bombings Shattered Iraq' (*Al Jazeera GCC News*, 24 October 2010) <www.aljazeera.com/secretiraqfiles/2010/10/20101022161025428625.html> accessed 2 November 2021.

¹⁵ Wander, n.p.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Lizzie Dearden, 'Three Years on, ISIS Genocide against Yazidis Continues' (*The Independent, Independent Digital News and Media*, 9 May, 2017) <www.independent.co.uk/news/world/middle-east/isis-islamic-state-yazidi-sex-slaves-genocide-sinjar-death-toll-number-kidnapped-study-un-lse-a7726991.html> accessed 2 November 2021.

¹⁹ Ibid, n.p.

²⁰ Morris Loveday, 'Yazidis Who Suffered Genocide Are Fleeing Again, but This Time Not from the Islamic State' (*The Washington Post*, 21 Mar, 2017) <www.washingtonpost.com/world/middle_east/yazidis-who-suffered-genocide-are-fleeing-again-but-this-time-not-from-the-islamic-state/2017/03/21/6392fe26-0353-11e7-9d149724d48f5666_story.html?noredirect=on&utm_term=.779d11ac31e9> accessed 2 November 2021.

abusing them, forcefully training them to be fighters and using them as suicide bombers²¹. Moreover, ISIS carried out its plans directly by executing non-converting men and transporting women and children and was well aware that its acts would cause the Yazidi to vanish. Above all, living under the control of ISIS for both men and women is geared towards Yazidis' degeneration and, as a result, the group's survival in the medium-long term.

The most notable attack on the Yazidis was carried out and now, some villages remain inaccessible, and no significant effort has been made to help thousands of Yazidis rebuild their lives and businesses. The attacks have continuously rendered the Yazidis homeless, fugitives, and desolate with no definite hope for tomorrow because ISIS might decide to launch an attack at any time. And till now, about 2600 girls and women are still missing and about 200000 still displaced and living in crowded camps²².

Statement of the Problem

The incessant genocidal act by ISIS: The genocidal act on the Yazidis keeps growing every day and gradually reducing their population, chasing them out of their homes and land, and rendering them fugitives scattered in nearby countries they could run to. And at times, they are cornered whereby they cannot go back to where they were coming from and likewise, they cannot go forward, thereby leaving them with no option but to submit to ISIS²³. Adults are at times shot dead on the spot and children are turned into slaves, sex mates, etc. by the terrorists²⁴.

Children's involvement in military practices: Most of the children captured in the areas in which ISIS attacks are either trained to join their fighters or immediately equipped with weapons of mass destruction²⁵. Some of these children are however brainwashed and at times operated on and used as suicide bombers²⁶. To properly understand this, it is

²¹ Morris, n.p.

²² Ibid.

²³ Stern and Berger, p. 2.82.

²⁴ Ibid.

²⁵ Ibid, p. 286.

²⁶ Ibid.

pertinent to pay special attention to child labour, as it is the initial stage of child maltreatment. It is however notable that not all tasks given to children are deemed child labour, according to International Labour Organization (ILO)²⁷. It is expedient that we must distinguish between the two because we cannot talk about child labour when children assist their parents, support home businesses, or mere work part-time after school. When these activities harm their well-being, personal development, or education, it is considered child labour²⁸. ILO describes child labour as the term that applies to work that inflicts mental, physical, social, or moral harm to children, creates obstacles to their educational process by making it impossible for them to go to school, or causes them to leave school early or requires excessive and inhumane work while attending school²⁹. As a result, children play a direct role in wars across the globe, and there are a plethora of reasons why they became soldiers. A number of them are enlisted in the military, where they murder, some become chefs, undercover agents, manual labourers, couriers, and sexually assaulted, particularly the female gender³⁰.

Has there been any law in action to combat the effect of infringement on the right to life of a child: Every State across the world has its laws governing the different operations within the State and stipulates punishment for anyone found wanting to these laws. Moreover, there are international treaties, laws, and conventions which every State of the world is expected to adopt and apply within its legal system.

Research Objectives

To vividly discuss genocidal activities on the Yazidis and also educate the readers that the victimization of ISIS has in recent years been shifting to children and is believed to put the Yazidis at an extinction rate because the children who are viewed to be the

²⁷ Noguchi Yoshie, 'ILO Convention No. 182 on the worst forms of child labour and the Convention on the Rights of the Child' (2002) *Int'l J. Child. Rts.* 10, 355

²⁸ Ibid.

²⁹ Ibid, p. 355.

³⁰ Wander, n.p.

transcendent of the present generation are being murdered and brainwashed into suiting the desires of ISIS in these controlled areas and the entire world at large³¹.

The research also seeks to educate the readers and those who are chanced to come upon the research on the various provisions for protecting children's rights internationally and on the various ways to curb this menace and protect the future of these children.

Research Questions

There are two research questions in the thesis, which were given in the introduction as the instrumental issues of this work and these are;

- 1) What are the advantages of international humanitarian law, which was established to defend the rights of children?
- 2) What is the fate of these children being deprived of their rights to life following the provision of international treaties and laws?

Proposed Methodology

The study uses a doctrinal investigation technique involving the use of primary and secondary sources to gather information. Primary sources used include case laws and legislation while secondary sources include journals, articles, newspapers, scholarly textbooks, seminar and conference sessions, law reform commission reports, government publications, and internet sources. This is because interpreting the treaty is a traditional issue of treaty law, however, not a strong side of international law³². Studies on this topic have evolved through time, similar to other areas of international law and a majority of the interpretative arguments were brought into existence before international courts, and tribunals and were utilized in judicial adjudication that was referenced in the early stages

³¹ Morris, n.p.

³² Wallace Rebecca M and Olga Martin-Ortega, '*International law*', (SM, 2020) 33.

of the writing of attorneys like Hersch Lauterpacht and subsequently in the articles of the UNILC, which brought the Vienna Convention on the Law of Treaties³³.

Scope of the Research

The scope of this research shall be confined to genocide activities against the Yazidis people. The work in its entirety examines the legal framework internationally on genocide and the protection of children, relevant statutes, case laws, and agencies implementing laws governing children's health, security, and well-being in these affected areas in the world.

This study shall only deal with topics and subtopics on the provision of genocide conventions 1948, genocide before the international organizations, the legal framework on child's rights, the protection of child rights, the provision of child labour and children military recruitment, and all the relevant topics to the subject matter.

Significance of the Research

The research seeks to find and provide a lasting solution to the infringement of the child's right to life carried out by ISIS on the Yazidis. This right is indispensable in any society and it is necessary for much of the happiness, creativity, and productivity that each person derives from life. Hence the popular aphorism, that health is wealth and economic prosperity and provides for common defence and security³⁴. Therefore, the significance of the study aims at giving insight into the need to promote and protect the health, safety, and welfare of a child which is paramount to their well-being.

Structure of the Study

The study is divided into five chapters. The foundation of the research is laid in the first chapter under a general introduction, which contains the background to the study;

³³ Dörr Oliver and Schmalenbach Kirsten, *Vienna convention on the law of treaties. Berlin* (Springer; 2011) 3.

³⁴ Bloom David E and David Canning, 'The health and wealth of nations' (2000) 287 *Sci* 5456, 1207.

a statement of the problem, the objective of the study, the methodology of the study, the significance of the study, as well as the scope of the study.

- Chapter two identifies and reviews the Yazidi Genocide vis-à-vis reactions of the International Bodies and Community.
- The third chapter vividly portrays a comprehensive examination of instances whereby children were the main victim.
- Chapter four focuses on the different legal frameworks for Child Protection.
- The final chapter is the conclusion, comprising findings, recommendations, contributions to knowledge, and suggestions for further research.

CHAPTER II

A Comprehensive Examination of the Genocide from the Standpoint of International Law

Introduction

This chapter examines the legal framework of genocide in the context of international law and explores its underlying precepts regarding what constitutes genocide and how international bodies deal with perpetrated genocidal acts. Additionally, it also explores the jurisdiction and competence of domestic courts to preside over genocide crimes and conditions under which international courts can preside over related matters. Such is analysed using related cases, conventions and statutes and thus, created a platform examining issues related to children the main victim of genocide by drawing ideas from ISIS' crimes against the Yazidi people. Such is essential for answering the questions (a) what are the advantages of international humanitarian law, which was established to defend the rights of children but are not really doing anything to defend the sole purpose of its creation?, and (b) what is the fate of these children being deprived of their rights to life following the provision of the international treaties and laws?

Genocide

According to Article 2 of the Genocide Convention, genocide is defined as any of the ensuing acts perpetrated with the purpose of partially or wholly destroying a religious, racial, ethnical, or national group like³⁵:

- 1) Forcibly transferring one group's children to another group;
- 2) Imposing measures to prevent births within the group;
- 3) Intentionally imposing on the group conditions of life calculated to bring about its partial or entire physical destruction;

³⁵ Cassese Antonio, Guido Acquaviva and Alex Whiting, *International criminal law: cases and commentary* (OUP, 2011) 13.

- 4) Inducing severe mental or bodily damage to members of the group;
- 5) Massacring members of the group³⁶.

It is vital to note that genocide is an undesirable act that is prohibited either during war or at times of peace and attracts punishment based on guidelines set forth by the Genocide Convention or the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Consequently, Article 3 provides a list of punishable acts of genocide as follows:

- 1) Complicity in genocide;
- 2) Attempt to commit genocide;
- 3) Direct and public incitement to commit genocide;
- 4) Conspiracy to commit genocide³⁷;

Though 146 States ratified the Convention in June 2015, the International Court of Justice (ICJ) codified customary international law and considers its provisions as applicable irrespective of whether a State ratified it or not³⁸. This implies that the convention is legally binding on all States and follows additional efforts made through the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY)³⁹. Nonetheless, it is also vital to note that there is a distinct demarcation between crimes against humans and genocide. Crimes against humanity include crimes such as intentional attacks against civilians, persecutions, and massacres.

Interpretation of the Definition of Genocide

Defining genocide as a crime is associated with several controversial elements. Besides, genocide's peculiarity is established when examined in relation to war crimes or crimes against humanity on many bases such as *mens era* (the offender's specific intent), categories constituting the targeted group, and the acts covered⁴⁰. As a result, ICTY

³⁶ Cassese, Guido and Alex, p. 13.

³⁷ Ibid.

³⁸ Cassese Antonio, *The Oxford Companion to International Criminal Justice* (OUP, 2009) 332.

³⁹ See the Secretary-General of the UN Report S/25704 of 3 May 1993.

⁴⁰ Cassese, Guido and Alex, p. 13.

decisions and the Convention's *travaux préparatoires* are applied in providing insightful guidance on how to address these problems⁴¹.

- **Eventual or immediate biological destruction:** It is significantly vital to note that genocide crimes far outweigh acts of murder. Studies contend that genocide crimes encompass crimes that may not imply instantaneous death but rather lead to the eventual disappearance of the group⁴². In other words, these are intentional actions aiming to eradicate a group instantly or ultimately. Consequently, it covers acts like inducing severe mental or bodily harm and rape to group members, forcibly transferring children, setting measures planned to discourage birth within the group, and intentionally imposing on the group requirements of life to destroy the group.
- **Destruction of a group:** The definition covers acts targeting individuals because they are members of a religious, ethnic, racial, or national group⁴³. Additionally, the Convention provides objective benchmarks according to which one belongs to one of these groups but is neither scientifically nor legally absolutely determined⁴⁴. As a result, the ICTY must interpret such benchmarks. Based on the Tribunals' stipulations, the existence of a group can be based on impressionistic standards according to which those who stigmatized the members of the group and perpetrated the determined offences. Such measures incorporate what the perpetrators perceived as being religious, national, racial, ethnic, and religious species of the group affected⁴⁵.
- **Destruction in part or in whole:** The concerned criminal acts must be committed intentionally to partially or wholly destroy the group⁴⁶. However, the major concern pertains to the interpretation of this clause about whether the condition of partial or whole obliteration pertains to the intent or the destruction. Besides, such

⁴¹ Cassese, p. 14.

⁴² Ibid, p. 15.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Case 1T *The Prosecutor v. Clément Kayishema and Obed Ruzindana* [1999] ICTR 95.

⁴⁶ Cassese, p. 16.

an issue is partially connected to the inquiry about the qualities of the group. Based on the ICTY case law, the plan is to eliminate must live a considerable portion of the affected group. Such is assessed based on what occurred to the remainder of the group⁴⁷ and estimated using the victimised group members' stature or the number of victims relative to the group⁴⁸. Certainly, certain acts amounting to genocide do not necessarily cause instantaneous death but render it inconceivable for the group to survive in the middle or even short term.

- **Evidence of specific plans to destroy:** Given the above-disclosed details, the notable challenge in defining genocide is that the acts concerned must show a specific intent to destroy beyond particular individuals or a group. The partial or whole destruction of the affected group must be proven as the end outcome of the crime and this implies that it is insufficient to just consider that the offender has committed the act⁴⁹. Based on the jurisprudence, the related intent can emerge from either those observing the directives or current genocide policies. Therefore, genocide policies can be deduced from a more comprehensive plan and a certain plan to destroy a protected group can allude in special cases from the International Criminal Court's (ICC) Elements of Crimes, the accurateness of planning encompassing the perpetration of offences, the level and type of the crimes perpetrated, and public comments made by the authorities⁵⁰. Additionally, the presence of knowledge and intent can be extrapolated on a case-by-case basis.

Jurisprudence of Genocide

The jurisprudence of genocide can be analysed in the context of its definition as well as its general elements. Previous details provided in the previous armed sections revealed that genocide can be defined based on Article 2 of the Genocide Convention ideologies⁵¹. However, another definition derived from the ICTY Trial Chamber can also

⁴⁷ Case 1T/33A *The Prosecutor v. Krsti Radislav* [2004] ICTR 98.

⁴⁸ Case 1T/10 *The Prosecutor V. Goran Jelusic* [2001] IT 95.

⁴⁹ Case 23A *Jean Kambanda v. The Prosecutor* [2000] ICTR 97.

⁵⁰ Cassese, Guido and Alex, p. 14.

⁵¹ *Ibid*, 1.

be incorporated. As a result, the ICTY considers genocide to be criminal Parties desiring to partially or wholly destroy a particular kind of human group, as such, by certain means⁵². Such a definition is similar to that proposed by the Genocide Convention but reveals two essential aspects of the genocide's intent requirement. Foremost, is the idea that the perpetrated acts should be targeted at a religious, racial, ethnic, or national group and secondly must seek to partially or wholly destroy a group⁵³? Furthermore, the ICTY acknowledges the limitations imposed on the definition of genocide by customary international law to part or the entire groups' biological or physical destruction⁵⁴. Similar judgements and limitations have been observed in the courts of law and the ICTR further confirmed and asserted that genocide crimes are a norm of *jus cogens* and part of international customary law⁵⁵.

Regarding the general elements, interpreting the ICTR Statute's Article 2.2.b reveals that genocide relates or is restricted to severe mental or bodily harm to certain group members⁵⁶. The trial judgements result in elements such as rape and other forms of sexual violence, torture and non-fatal physical violence causing severe injuries or disfigurement to internal or external senses or organs being incorporated⁵⁷.

Meanwhile, there is a lack of a numeric threshold that is attached to the number of victims to consider that genocide has been committed. The importance of such an argument is practically observable and has legal traces in the courts of law⁵⁸. Other elements such as establishing the *mens era* (establishing the genocidal intent) are of concern and carry huge significance in dealing with genocide cases⁵⁹. One of the requirements is that genocide crimes must be proven at all costs that they have been perpetrated beyond any reasonable doubt⁶⁰. The other requirement is that the act must be

⁵² Case 1T/33A *The Prosecutor v. Krsti Radislav* [2004] ICTR 98.

⁵³ *Ibid.*

⁵⁴ Case 20T *The Prosecutor v. Semanza* [2003] ICTR 97, para. 315.

⁵⁵ Case 1T *The Prosecutor v. Clément Kayishema and Obed Ruzindana* [1999] ICTR 95, para. 88.

⁵⁶ *Ibid.*, 17.

⁵⁷ Case 1BT/ *The Prosecutor v. Mikaeli Muhimana* [2005] ICTR 95, para. 762.

⁵⁸ *Ibid.*, para. 514.

⁵⁹ Cassese, Guido and Alex, p. 13.

⁶⁰ Cassese, p. 333.

targeted at a specific religious, racial, ethnical, ethnic or national group⁶¹. Mostly, it is this specific description of the concept of intent that distinguishes genocide from other crimes like the substantial murder of civilians⁶². As a result, there are two crucial elements, namely the *dolus specialis* (specific genocidal intent) and prohibited underlying acts⁶³.

Practical legal proceedings have continuously proven that genocide occurs within specific grounds listed by the Genocide Convention. For instance, aspects, like (i) acts perpetrated in violation of the group's very foundation and considered highly the same by the perpetrators, (ii) continuous engagement of discriminatory and destructive acts, (iii) political doctrines stirring a surge in genocide acts, (iv) systematic and deliberate exclusion and/or selection of other groups' members based on their specific group membership, (v) regional or country execution, (vi) standard nature of genocide, (vii) the committed atrocities' scope and scale, and (viii) a consistent pattern of conduct⁶⁴.

The jurisprudence of genocide can also be analysed in the context of other aspects such as manner and methodical ways of killing, weapons used, derogatory language as well as weapons used⁶⁵. In other circumstances, the physical targeting of property can also be included as part of such criteria⁶⁶. Furthermore, examinations can be extended to incorporate various precepts. For example, it is required that the *mens rea* hold validly for a genocide crime to be considered as evident before commissioning any genocidal act⁶⁷. However, certain conditions can disregard crimes of genocide from being charged against an individual. For instance, cases, where only substantial evidence exists and denoting that plans to commit genocide, are significantly observable do not constitute sound judgement that the accused should be held accountable for genocide. Such decisions have vital implications on future observable cases of genocides as potential perpetrations can actually arise in the event that no measures were placed to halt the plans after their

⁶¹ Ibid.

⁶² Case 1T *The Prosecutor v. Clément Kayishema and Obed Ruzindana* [1999] ICTR 95, para. 91.

⁶³ Case 1AA *The Prosecutor v. Ignace Bagilishema* [2002] ICTR 95, para. 55.

⁶⁴ Case 66A *The Prosecutor v. Athanase Seromba* [2008] ICTR 2001, paras. 175, 176.

⁶⁵ Case 64A *Sylvestre Gacumbitsi V. The Prosecutor* (Case 64A) [2006] ICTR 2001, para. 40.

⁶⁶ Case 23A *Jean Kambanda v. The Prosecutor* [2000] ICTR 97, para. 113.

⁶⁷ Case 76A *The Prosecutor v Simba Aloys* [2007] ICTR 2001, para. 266.

discovery. Besides, perpetrators are bound to change their approach in the event that they are aware that their acts have been revealed and will possibly resort to other forms of attacks.

As noted by the provided definition, genocidal acts are either partially or wholly targeted at a specific group⁶⁸. Thus, perpetrators should or can regard victims as part of the targeted group and inflict either mental or physical harm on them in part or wholly. The major challenge with this proposition lies with the need and challenge to identify the victim group. This is because victim groups can be difficult to identify and such circumstances can result in partial or biased ruling and the victims being not properly compensated for the damages suffered. Besides, the Genocide Convention through the *travaux préparatoires* acknowledges the existence of subjective definitions of genocide. Additional, challenges are also observable regarding the ruling over cases of genocide. This is because the ruling procedures can be complex and require certain procedures to be followed before final rulings can be made. For instance, cultural, social and political contexts have to be examined on a case-by-case basis before a ruling can be made⁶⁹.

As indicated in the previous sections under the criteria of genocide crimes, the perpetrated crimes must be capable of bringing either partial or full destruction of a targeted group. Moreover, the victims must be specifically targeted because of their membership in the concerned group⁷⁰. As a result, tangible evidence is required to prove that the crimes or acts constitute genocide. As such, intentions to perpetrate a crime do not constitute an act of genocide and must be highly linked to the majority of the affected group. Therefore, the victims' stature in the group (qualitative criteria) and the number of the victims relative to the group's total is used to determine such aspects (quantitative measures of genocide)⁷¹.

Based on the details that have been presented in this section, it, therefore, becomes clear that genocide crimes transpire in two basic forms. The initial case relates to

⁶⁸ Victims have to be members of the targeted or slated group.

⁶⁹ Case 66A *The Prosecutor v. Athanase Seromba* [2008] ICTR 2001, paras. 175, 176, para. 318.

⁷⁰ Cassese, p. 335.

⁷¹ Case IT/33A *The Prosecutor v. Krsti Radislav* (Case IT/33A) [2004] ICTR 98, para. 561.

intentions to eliminate a group en masse. Under similar circumstances, the acts can be regarded as undermining the survival and leading to the eventual disappearance of the targeted group. Additionally, there are criteria regarding the intention to commit genocide that is considered before they are fully considered as constituting a genocide offence. As such, such intentions must be directed towards a specific group either based on its national, religious or ethnic values. Moreover, the intentions can also be directed to the leaders of that particular group.

Conspiracies to perpetrate genocide are also of huge concern and command significant attention in both academic and legal fields. Conspiracies are related to individuals agreeing to perpetrate genocide⁷². But this must meet two crucial criteria. The first is the agreement to perpetrate such offences (*actus reus*) and the second is the intention to partially or wholly destroy a group (*mens rea*)⁷³.

There is a remarkable difference between public and direct incitement and instigation to perpetrate genocide. These demarcations surrounding public and direct incitement to perpetrate genocide, and hate speech are also clear. Thus, speech must not be an indirect suggestion and vague but rather must directly appeal to perpetrate acts stipulated by the Statute's Article 2(2). Nonetheless, the ICTR Statute through Article 2.3.c prohibits public and direct incitement to perpetrate genocide⁷⁴. It is crucial and noteworthy to establish that public and direct incitement to perpetrate genocide is characterised by hate speech. However, certain aspects like language and culture must be considered when deciding to include hater speech as part of a genocide offence as observed in Rwanda⁷⁵. Meanwhile, instigation entails that the accused will engage its criminal responsibility⁷⁶. Moreover, the related crimes or supposed offences should be covered under the Statute's Articles 2 and 4 for tangible reasons to establish without reasonable doubt that the instigation constitutes a genocide offence⁷⁷. The notable feature

⁷² Case 1BT/ *The Prosecutor v. Mikaeli Muhimana* [2005] ICTR 95, para. 344.

⁷³ Cassese, p. 18.

⁷⁴ Case 1BT/ *The Prosecutor v. Mikaeli Muhimana* [2005] ICTR 95, para. 692.

⁷⁵ *Ibid*, para. 698.

⁷⁶ *Ibid*, para. 699.

⁷⁷ *Ibid*.

is that public and direct incitement acts are punishable and inchoate offences irrespective of whether they resulted in genocide or not⁷⁸. Similar cases such as the *Nahimana and others* have incorporated such provisions resulting in offenders being held accountable for genocide crimes⁷⁹.

Prevention and Enforcement Provisions in the 1948 Genocide Convention

Genocide is undesirable and its existence leaves unwanted memorable traces of pain that cannot be erased. As a result, genocide is prohibited regionally or worldwide either during war or peace and the Genocide Convention through Article 3 provides cases under which the complicit, attempt, public and direct incitement, and conspiracy to commit genocide are punishable⁸⁰. Therefore, perpetrators of genocide are to be punished for related crimes as stipulated by the Genocide Convention under Article 4⁸¹. This does not regard the position of the offenders as equality of law requires any perpetrator to be punished for criminal offences committed.

Genocide is a criminal offence that violates international law and States Parties consider the same and are obliged to observe related laws in preventing future incidences and punishing offenders (Art. 1)⁸². Therefore, States Parties must enact rules and laws supplementing existing frameworks so as to effectively enhance efforts aimed at curbing genocide at regional and global levels. On the other hand, Arts. 5 and 7 stipulate that genocide is a punishable offence and provide guidelines on how offenders can be extradited to face the levied charges, hence, in such cases, the ICJ presides over genocide cases on a global level of the accused toward the requesting countries (Arts. 5, 7)⁸³. That is, the ICJ has jurisdiction to preside over genocide matters, especially when it pertains to matters involving a controversy between States about interpreting the Convention⁸⁴.

⁷⁸ The Genocide Convention's proceedings through the *travaux préparatoires* makes it clear that public and direct incitement is punishable act of genocide.

⁷⁹ Case 1BT/ *The Prosecutor v. Mikaeli Muhimana* [2005] ICTR 95, para. 694.

⁸⁰ Cassese, p. 21.

⁸¹ *Ibid.*

⁸² *Ibid.*, p. 22.

⁸³ *Ibid.*

⁸⁴ *Ibid.*, p. 23.

Article 8 of the genocide convention states that there are cases where State Parties can have the liberty to deploy the UN's organs to suppress and prevent genocide⁸⁵. Such called organs are mostly highly competent to handle such matters. But States, on the other hand, have jurisdiction over related matters that occurred within their boundaries or territories. The ICC will take precedence over related matters when they occur within the scope of its 1948 agreement⁸⁶. Nonetheless, States are often compelled to punish offenders for perpetrated genocides and this requires that national authorities through domestic courts assume legal authority and precedence over such matters. But this does not necessarily entail that domestic courts will be well-positioned to punish offenders. In most cases, domestic courts are reluctant to punish offenders fearing that it may trigger uprisings or result in social and political instabilities. For example, the 1994 Rwandan and 1975 Cambodia genocides have seen offenders going scotch free and denote a major loophole about why genocide acts are not always punished, and amendments have been made to cater for such incidences⁸⁷. Matters of the genocide convention's jurisprudence are also characterised by a lack of support from States. This can be traced to the similar cases observed with the ICC that did not receive any form of financial support from member states ever since it was adopted in 1998⁸⁸.

Other Existing Enforcement Mechanisms

Enforcement mechanisms are vital and their existence serves to enhance the designated laws against genocide. That enforcement mechanism seeks to enforce genocide laws into practice and ensure that perpetrators are brought to the book. In other words, a lack of enforcement mechanisms creates more room for perpetrators not only to go scotch free but to continue perpetrating genocide crimes. One of the most important established enforcement mechanisms is Tribunals for the Former Yugoslavia (ICTY) and Rwanda

⁸⁵ Cassese, p. 22.

⁸⁶ Ibid.

⁸⁷ See the Organization of Prosecutions for Offences Constituting the Crime of Genocide following the enactment of the Organic Law No. 08/96 of 30 August 1996.

⁸⁸ Cassese, p. 23.

(ICTR), which were enacted following the dismal performance by national courts against perpetrators of genocide crimes⁸⁹.

On the other hand, enforcement mechanisms also serve to provide details about the genocide crimes over which they have jurisdiction⁹⁰. Additionally, their adopted definition of genocide excludes the elimination of political groups. Art. 6 of the ICC holds the power to prosecute punishable offences stipulated by the Statute of the ICC and among such crimes are crimes against humanity and war crimes⁹¹. However, only state members that ratified the Statute provide an avenue through which the ICC can have precedence over such matters. Additionally, the other requirement is that the crimes have to be committed within member states or territories⁹². As a result, either the ICC or Security Council is liable to exercise its jurisdiction over crimes committed outside states that ratified the Rome Statute. There are cases where concerned States accepted the court's jurisdiction even though they had not ratified the statute. This normally occurs when there are discrepancies or controversies between states regarding the handling and legal procedures of supposed genocide crimes. As a result, the ICC can assume overall control over such matters.

Domestic courts are allowed to handle genocide crimes, especially when they have the necessary competence and provisions catering for offences perpetrated by non-nationals outside their national boundary⁹³. Besides, the concept of universal jurisdiction accords power and responsibility to domestic courts to deal with such crimes.

Meanwhile, both crimes against humanity and war crimes are exonerated from the Non-applicability of Statutory Limitations by the 1968 Convention but do not exclude genocide acts committed during times of war or peace⁹⁴. As a result, legal proceedings can be engaged irrespective of the time the crimes were perpetrated.

⁸⁹ Cassese, p. 23.

⁹⁰ See Art. 6 of ICC Statute and Art. 4 of ICTY Statute.

⁹¹ Stern and Berger, p. 17.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid, p. 18.

Close Examination of the Yazidi Killing in Light of the Characteristics Constituting a Genocide

Back in 2016, the UN Security Council issued a report on ISIS' threat to the world community, both in terms of tranquility and safety and the report was written in response to Resolution 2253 of the UN's Security Council adopted in 2015, which recognized the gravity of ISIS' development by issuing a 'first strategic-level report'⁹⁵. It should however be noted that the Yazidis were only referred to, in one portion of this report, the one about how ISIS is funded. One of the many ways in which ISIS obtains funds to support its conflicts is through the payment of ransom from the relatives of captives, many of whom are Yazidis⁹⁶. With the aforementioned, affected Yazidi families attempt to reclaim their relatives who have been kidnapped by ISIS by paying the jihadists the cash demanded⁹⁷. This, however, is to portray the grievous activities of ISIS, vis-à-vis how the Security Council views them and finds ways to combat them. Nevertheless, the Council not being perfect has a defect. What it did not do, as Marina Mancini points out in her article "*La Furia dell'ISIS contro le minoranze etniche e religiose: il genocidio degli Yazidi*"⁹⁸ was to intervene and propose a solution to the Yazidi genocide to defend the minority that ISIS had so vehemently assaulted. However, the biggest question is whether the prerequisites for genocide are satisfied in the case of the Yazidis as well or not?

Yazidis as a Protected Entity

The first ingredient of the explanation of genocide is Article 2 of 1948⁹⁹. The "Convention on the Prevention and Punishment of the Crime of Genocide"¹⁰⁰ must be

⁹⁵ Report of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat (*United Nations Security Council*, 29 Jan 2016) <<https://undocs.org/S/2016/92>> accessed 7 November 2022.

⁹⁶ Ibid.

⁹⁷ Ibid, n.p.

⁹⁸ Lemma Alessandro, 'Case study about the Yazidi genocide committed by ISIL started in 2014 from an international law perspective' Master thesis (*LUIS*, 2019) 3 <http://tesi.luiss.it/24456/1/082392_lemma_alessandro.pdf> accessed 7 November 2021.

⁹⁹ OHCHR, 'Prevention and Punishment of the Crime of Genocide' (*OHCHR*, n.d) <www.ohchr.org/en/professionalinterest/pages/crimeofgenocide.aspx> accessed 7 November 2021.

¹⁰⁰ Lemma, p. 5.

examined to classify the Yazidi as a protected group. The mental factor is another name for this initial element, otherwise known as the *mens rea*¹⁰¹. However, to have a proper understanding of the subject matter under discussion here, the first step is to understand how Yazidis became a protected group. The Yazidi have the traits to be labelled a religious group without a doubt. The International Criminal Tribunal for Rwanda's judgment in the Akayesu case on September 2, 1998, defined a religious organization¹⁰². Even though the definition of the Yazidis' horrors as genocide is meaningless because they are already defined as a religious community, the debate about their ethnic nature remains fascinating¹⁰³. The Yazidi, as we have seen before, despise the term "Kurdish" but a bulk of Yazidis speak a Kurdish dialect, and as a result, they are frequently mistaken for Kurds¹⁰⁴. As a result, their classification of the Yazidis as an ethnic group is questionable from an international law viewpoint.

Genocide classification based on physical factors

To classify ISIS' actions toward the Yazidis as genocide, there is a need to analyse the second part of the 1948 UN Genocide Convention's definition of genocide. This is the physical element and as we can see from the first chapter's portrayal of what ISIS did to the Yazidis, a lot was done in an attempt to transform them into true Islam, beginning with the family split. The men were told that if they refused to convert, they would be killed while children and women, on the other hand, were relocated, and in a couple of weeks, the Sinjar location was almost depopulated¹⁰⁵. This method or pattern, if you can call it that, was repeated in Kocho shortly following the evacuation of Sinjar Mount, the final settlement in the Sinjar area where nearly 1200 Yazidis lived¹⁰⁶. The Yazidis who were relocated received different treatment. As reported in the Dabiq article "The Revival of

¹⁰¹ Report of the Secretary-General, n.p.

¹⁰² Case 23A *The Prosecutor v. Jean-Paul Akayesu* [1998] ICTR 2, pp. 132.

¹⁰³ Lemma, n.p.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid, n.p.

¹⁰⁶ Dabiq Al, 'The Revival of Slavery Before the Hour' (*Clarion Project*, 14 April 2014) <<https://clarionproject.org/docs/islamic-state-isis-magazine-Issue-4-the-failed-crusade.pdf>> accessed 14 November 2021.

Slavery Before the Hour,"¹⁰⁷ minors aged 12 and above were forced to fight for ISIS, while women were sold to jihadist militants, and a tiny portion was collectively held by ISIS and distributed to ISIS bases in Syria and Iraq¹⁰⁸. Consequently, all of the acts listed in Article 2 of the 1948 Convention have been completed¹⁰⁹. Many Yazidi people were slaughtered or forced to die because they were denied access to water, food, or medicine. As I found on the second page of the International Criminal Court's "Elements of Crime," the latter is also considered a kind of murder as follows: "*the term killed and caused death are used interchangeably*"¹¹⁰. According to the jihadists' treatment of the Yazidis, the severe physical or psychological injury to people, they suffered the consequences outlined in Article 2 of the Convention¹¹¹. The harm does not have to be permanent to meet this condition, but the causes of the harm must result in the victims' inability to live a normal life for a long time as implied by case law which is a gateway to the jurisprudence of the ICTY and ICTR¹¹². Many Yazidi women were enslaved and suffered all forms of enslavement like sexual enslavement and endured maltreatment and torture. This is a major physiological and mental trauma with effects that last a long time.

The final action that can constitute genocide, according to Article 2 of the 1948 Convention, is imposing on the group circumstances of existence with the intent of causing bodily harm in whole or in part¹¹³. The reason for its inclusion is because it is a mix of sexual slavery and other forms of exploitation, a lack of medicine, and a meagre diet that results in situations that cause a person's bodily and mental well-being to deteriorate, and also included in this category of genocide is what happened on the Mountains¹¹⁴. The fact that ISIS has confined numerous Yazidis in the Mountains and

¹⁰⁷ Dabiq, n.p.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid, n.p.

¹¹⁰ International Criminal Court, 'Elements of Crimes' (*International Criminal Court*, 2021) <<https://www.icc-cpi.int/resource-library/Documents/ElementsOfCrimesEng.pdf>> accessed 14 November 2021.

¹¹¹ Ibid.

¹¹² Ibid, n.p.

¹¹³ Robinson Nehemiah, 'The genocide convention' (2007) *Case W. Res. J. Int'l L.* 40: i.

¹¹⁴ Ibid.

refused to allow them to leave to obtain water, food, medicine, and other necessities has led to their mental and physical ruin.

Yazidi households were divided to avoid additional Yazidi births and given the fact that a Yazidi must be the offspring of two Yazidis, ISIS intended to convert the men¹¹⁵. Women's rape and sexual abuse were also used to prevent new Yazidis from being born because a Yazidi who is born to a raped Yazidi woman cannot be a Yazidi on account of his father's involvement with terrorism¹¹⁶. But rape can psychologically harm women, causing them to stop reproducing and this is the position of the Akayesu case verdict¹¹⁷.

The plan to exterminate the Yazidis

All of the aforementioned elements would not amount to genocide if ISIS did not intend to exterminate the Yazidis as a religious or ethnic community. This goal might be described as the biological and physical extermination of the Yazidi people. This unique intent, also known as *dolus specialis*, is what sets genocide apart from other internationally well-known crimes. In the event of genocide, the aggressor is aware that his acts may result in the annihilation of a group but continues to carry them out anyhow¹¹⁸. The purpose cannot usually be demonstrated, as decided by the ICTY in the Karadzic case and later confirmed by the ICTR, and as a result, of the lack of cogent evidence, there are a variety of factors that indicate genocidal intent, among other things, systematic acts of culpability against a group of survivors, a specific scope of the crimes perpetrated against the innocent, systematic targets based on the identity of the victim, recurring acts of aggression, or the occurrence of an organized plan or program¹¹⁹. Of all, this is exactly what ISIS believed that the Yazidis should be physically exterminated. They explicitly carried out this intention by murdering non-converting men and transporting women and

¹¹⁵ Robinson, p. 13.

¹¹⁶ Ibid.

¹¹⁷ Case 23A *The Prosecutor v. Jean-Paul Akayesu* [1998] ICTR 2, pp. 133.

¹¹⁸ Katherine Goldsmith, 'The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge-Based Approach, *Genocide Studies and Prevention*' (2010) 5 *AJIAGS* 3, 238.

¹¹⁹ United Nations, 'Requirements for Inference of Genocidal Intent: International Residual Mechanism for Criminal Tribunals' (*United Nations*, 2021) <<https://cld.irmct.org/notions/show/793/requirements-for-inference-of-genocidal-intent>> accessed 7 November 2021.

children. They were well aware that their actions would physically eliminate the Yazidi. Above all, the living conditions for boys and girls under ISIS are geared at preventing the Yazidis from regenerating and, as a result, preventing the group's survival in the medium-long term¹²⁰.

The destruction of Yazidi places of worship is another example of this goal to exterminate the Yazidi community and the destruction of a religion's houses of worship after mass killings of its adherents reveals a desire to eradicate that religion. This was mentioned in the Krstic case verdict, where the ICTY verified and was not so far from the truth that burying the remains of the dead individuals in mass graves, which was also the narrative of the Yazidis, is just one more way in which the purpose of to eliminate a religious group¹²¹. In this manner, ISIS had to have a massive antecedent organization and the jihadist magazine Dabiq, wrote about this massive organization once more¹²². According to the article, the Yazidis were viewed as a group of religious believers to be eradicated before the attack in the wake of a thorough examination of the Quran, and this archaic perspective emerged¹²³. This evidences of a massive strategy behind such attacks confirm the Yazidi religious group's past intent to be destroyed. The number of Yazidis targeted by ISIS also demonstrates this goal quantitatively. Indeed, as mentioned in the opening chapter, the population of Yazidi in the targeted Sinjar region was the world's largest¹²⁴.

The state's obligation in the prevention of genocide

Signatories to the 1948 Convention on the Prevention and Punishment of Genocide have an additional duty to mitigate genocide and the Genocide Convention's first article outlines that under international law, genocide is a crime and that Parties must prevent and punish genocide perpetrators, regardless of when it occurs¹²⁵. We must examine not just

¹²⁰ Robinson, p. 14.

¹²¹ Case 1T33A/ *The Prosecutor v. Krsti Radislav* [2004] ICTR 98, para. 561.

¹²² Elbaum, n.p.

¹²³ Ibid.

¹²⁴ Ibid, n.p.

¹²⁵ OHCHR, n.p.

Iraq, where Sinjar is located, but Syria inclusively, where the majority of Yazidi women and children have been sent. The most contentious issue in the argument over genocide prevention is whether the commitment to abrogate applied just to the state in which the genocide occurred or to all parties to the Convention. Of course, the final viewpoint appears to be preferable because it is more inclusive and more accurately reflects the aim of the Convention's signatories to prevent genocide.

In the case of *Bosnia and Herzegovina v. Serbia and Montenegro*, the International Court of Justice stated in 2007 that each State thus has to mitigate and sanction the crime of genocide, which is not territorially confined by the Convention¹²⁶. The Court said that while success is not a requirement, nations must utilize all feasible methods to avert genocide¹²⁷. For states that signed the Genocide Convention, the commitment to prevent genocide comes after a specified period. As stated previously in the ICJ's jurisprudence,

*States are responsible for averting and correspondingly are required to act at the moment they become aware that genocide is likely to occur or normally should have become aware of an imminent threat such as this*¹²⁸.

The responsibility to stop genocide begins only when a threatening risk is identified, as stated above, but also when one or more genocide acts begin. This responsibility relates to all forms of genocide. This is stated in the third paragraph of Article 14 of the Convention on the Rights of the Child, 'Responsibility of States for Internationally Wrongful Acts'¹²⁹. As a result, state culpability for genocide non-prevention begins in the absence of any prevention in the event that the prevention is not continuous throughout the genocide and when the state avoids using every one of its obtainable methods to prevent the genocide¹³⁰. Moreover, it must also be determined

¹²⁶ International Court of Justice, 'Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia Herzegovina v. Serbia Montenegro)' (2007) ICJ par. 79. (*International Court of Justice*, 2007) <www.icj-cij.org/files/case-related/91/091-20070226-JUD-01-00-EN.pdf> accessed 7 November 2021.

¹²⁷ Ibid.

¹²⁸ Ibid, par. 431.

¹²⁹ United Nations, 'Responsibility of States for Internationally Wrongful Acts' (*United Nations*, 2001) <http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf> accessed 7 November 2021.

¹³⁰ Ibid.

based on the state's ability to affect the genocide perpetrator(s)¹³¹. The greater such a level, the broader the scope of government activity. Thus, in order to determine the level of influence between the State and the perpetrator, the State must have a geographical presence in that area, as well as any form of relationship between the State and the perpetrators. Taking this genocide prevention explanation into account and how the state takes responsibility for genocide non-prevention, we move on to examining the Yazidi genocide. Iraq and Syria are the two countries that have been and continue to be geographically capable of preventing genocide acts posed by ISIS.

Since 1959, Iraq has been part of the 1948 Genocide Convention and ISIS and the Iraqi government have had a tense relationship since 2012 when the two armies began fighting on the ground¹³². The situation became much more difficult in June 2014, when ISIS took over the Governorate of Ninawa, Iraq's second-largest province, which includes the Sinjar region¹³³. It is worth looking into this takeover because ISIS was warmly welcomed in the Sunni-dominated area. As a result, ISIS had no trouble in the area for nearly a year, partly due to the Iraqi government's inability to reclaim the province. ISIS first started to have problems at the beginning of 2016 as a result of the Iraqi government's successful intervention, backed by international allies¹³⁴. It is worth mentioning, however, by occupying such a province, the capital of that province, Mosul, Iraq's second-largest city, was also occupied a few days later¹³⁵. According to the UNAMI report from August 2016, the occupation of Mosul by ISIS was a famous incident that made headlines in Iraq because an estimated total of about 500,000 people are said to have fled from the country in the wake of the mass exodus¹³⁶. The report also stated that the fight between ISIS and Iraqi forces, as well as the Kurdish Peshmerga, continued after Mosul¹³⁷. These facts should have been sufficient to predict ISIS' arrival in Sinjar and the ensuing ill-treatment

¹³¹ United Nations, n.p.

¹³² Elbaum, n.p.

¹³³ Ibid.

¹³⁴ Ibid, n.p.

¹³⁵ Muniqith Dagher, 'Iraq Current Political Situation and the Possibility of ISIS Reappearance' (*ISPI*, 13 September 2018) <https://www.ispionline.it/sites/default/files/eu-18-sept.final_.pdf> accessed 14 November 2021.

¹³⁶ Ibid.

¹³⁷ Ibid, n.p.

and sexual assaults. Among other things, due to what occurred following all of the jihadist fighters' city invasions, the Peshmerga forces aggravated the situation by leaving the Sinjar Mount on the night of August 2nd when they realized ISIS was approaching, without even informing the Yazidis¹³⁸. This last detail is what convicts the Kurdish forces of genocide prevention despite all that could have happened and anyone in the Yazidi minority was not notified about ISIS' impending arrival. However, because Kurdistan is not recognized as a state under international law, we can only look at how Iraq and Syria responded¹³⁹.

After a few days of ISIS holding Sinjar, the Iraqi government addressed a note to the UN Security Council requesting global assistance, citing the deterioration of the situation¹⁴⁰. As mentioned in the second chapter, the United States became the only nation that aided the Yazidis stranded on the Sinjar Mount. Syria's government has also been directly embroiled in a fight against ISIS on the other side of Iraq's western border. The conflicts between Jihadists and the Syrian government began as a result of Syria's civil war, which has engulfed the country since 2011, with numerous insurgent groups, including ISIS, attacking Al-Assad's government¹⁴¹.

Syria signed the 1948 Genocide Convention before Iraq, in 1955 and Syria likewise had a responsibility to avoid genocide, but, as with Iraq, they was no ground to hold the state responsible for non-interference and hence a non-preventive approach¹⁴². As a result, intervening to prevent the genocide, in this case, could have resulted in a full-fledged war between ISIS and the two states, resulting in far more victims than the genocide itself. Nevertheless, the decision of the government of Syria was influenced by the conception that the country's militaries were overburdened¹⁴³. They were already engaged in a civil war in their nation, where they had concentrated all of their troops, and

¹³⁸ Muniqith, n.p.

¹³⁹ Ibid.

¹⁴⁰ Elbaum, n.p.

¹⁴¹ Marina Mancini, 'The fury of ISIS against ethnic and religious minorities: the genocide of the Yazidis' (2016) 1 *HRILQM* 1, 638.

¹⁴² Edeko Maria Omozele, 'Human rights and humanitarian cost of the Syrian war' (2019) *AJLHR* 3, 2.

¹⁴³ Ibid, p. 3.

lacked the resources to sustain another war against ISIS on the Iraqi border. As has been well discussed, the United States is the only country that has effectively taken action. After a lengthy debate with the Senate, the US fully accepted the Genocide Convention in 1988¹⁴⁴. In 1986, the Senate agreed to ratify the Convention, bringing the issue to a close because the Genocide Convention is a treaty that does not carry out its own provisions, it requires legislation to be implemented, which in the United States was the "Proxmire Act" enacted by Ronald Reagan in 1988¹⁴⁵.

From the beginning, the United States was actively involved in preventing the Yazidi genocide and as previously said, Obama was particularly interested in preventing genocide, as seen by his statements in his White House statement on August 7, 2014, in response to Iraq's plea for assistance; where he made it clear that *"The US cannot afford to remain blind in the face of atrocities committed against them. In practice, the government of the US have the opportunity to engage prudently and responsibly to prevent a possible act of genocide. As such, they are undertaking that procedure on that mountain"*¹⁴⁶. President Obama was passionate about not only preventing atrocities but also destroying ISIS. As previously stated, on September 10, 2014, the United States formed a coalition known as "the Global Coalition to Defeat ISIS." As Obama clearly stated in his remarks on September 10th, 2014, the Coalition's strategy to destroy ISIS was comprised of numerous goals;

In the first instance, the government would launch a systematic airstrike campaign to eliminate the threat against the perceived terrorists, in this case, ISIS. Secondly, they would step up support for ground forces battling terrorists to ensure utmost success. Their counterterrorism efforts would also be instrumental in stopping ISIL attacks...

¹⁴⁴ Backes Emily, 'On This Day: U.S. Fully Adopts Genocide Convention' (*The Enough Project*, 4 November 2010) <<https://www.enoughproject.org/blog/day-us-ratifies-genocide-convention>> accessed 14 November 2021.

¹⁴⁵ Backes, n.p.

¹⁴⁶ National Archives and Records Administration, 'Statement by the President' (*National Archives and Records Administration*, 7 August 2014) <<https://www.obamawhitehouse.archives.gov/the-press-office/2014/08/07/statement-president>> accessed 14 November 2021.

*That will also assist in stopping the movement of hostile forces across the Middle East*¹⁴⁷.

Italy is one of the Coalition's 79 members and this US-led coalition was and continues to be critical in limiting ISIS' rise in Iraq and Syria, and preventing a repeat of genocidal acts¹⁴⁸. This is because, according to the Coalition's website, the Coalition not only attacked ISIS physically (militarily) but also financially, focusing on its finance and infrastructure for economic growth¹⁴⁹. The coalition's effectiveness in providing aircraft support to PKK, YPG, and Peshmerga Kurdish troops to retake Sinjar in 2015 is noteworthy¹⁵⁰. The most pressing problem for this partnership was and continues to be Turkey's precarious position as a party to the Genocide Convention starting from 1950¹⁵¹. As previously stated, its relations with the Kurds began to deteriorate anew in 2015, when the terrorist group called PKK launched its first terrorist strike in Ankara¹⁵². Attacks began to grow after that, reaching three attacks in Ankara in a year and these conflicts were mirrored in the country's measures to stop ISIS from expanding¹⁵³. Turkey, in reality, utilized its military forces against ISIS fighters in Syria, which were near Turkey's borders.

Russian troops have been fighting alongside Assad's government since September 30, 2015, as the above-mentioned Roberta Mancini article points out¹⁵⁴. In addition, as a signatory to the Genocide Convention in 1954, Russia is obligated to prevent genocide¹⁵⁵. However, for obvious political reasons, Russia has no membership with the US-led coalition. Despite this, it has formed its coalition, as previously stated, by establishing a

¹⁴⁷ National Archives and Records Administration, 'Statement by the President on ISIL' (*National Archives and Records Administration*, 10 September 2014) <<https://www.obamawhitehouse.archives.gov/the-press-office/2014/09/10/statement-president-isil-1>> accessed 14 November 2021.

¹⁴⁸ Ibid.

¹⁴⁹ The Global Coalition, 'The Global Coalition against Daesh' (*The Global Coalition*, September 2014) <<https://www.theglobalcoalition.org/en/>> accessed 14 November 2021.

¹⁵⁰ Ibid.

¹⁵¹ Cassese, p. 14.

¹⁵² Ibid.

¹⁵³ Ibid, p. 15.

¹⁵⁴ Edeko, p. 17.

¹⁵⁵ Ibid.

shared information centre in Baghdad that coordinates anti-ISIS efforts¹⁵⁶. Russia's main assistance came in the form of aircraft bombardments aimed at countering all parties fighting against Assad's regime, including ISIS. Nonetheless, the Russian assistance assisted in the liberation of many ISIS-controlled cities, including Palmira, which was liberated in early 2016¹⁵⁷.

The UN Security Council Resolutions passed to stop the rise of ISIS

Regularly mindful of its mission to avoid genocide, the Security Council, headed by its member, took steps to uphold this mandate through Resolutions. These Resolutions attempted to prevent ISIL from violating international human rights legislation, as well as preventing ISIL from functioning properly. On the 15th of August, 2014, the Security Council passed Resolution n. 2170 against them¹⁵⁸. This Resolution condemns ISIS' terrorist acts as well as its abuses of international human rights and law in general. This is the Resolution that establishes the Security Council's overall goal, after which subsequent Resolutions get more explicit on this topic. Furthermore, we can see in the case of Resolution no 2170 how the US-led Global Coalition to Defeat ISIS is concerned about what is said in the document¹⁵⁹. In reality, this Resolution indicates that one approach to forestall them is to disrupt their economy, limiting their money by blocking any of them or any of the assets that may be linked to them. The Resolution, on the other hand, concentrates on their ability to go from one state to another from a bodily standpoint. This must be done by the UN parties, per the Security Council, by prohibiting their citizens from entering and leaving the country, particularly foreign fighters¹⁶⁰. However, mitigating 'terrorists' access to weapons and funding that would support terrorists' is equally important. As a result, the Security Council reminds Member States of their obligation to comply with the previous Resolution n. 2161, which imposed an arms

¹⁵⁶ Edeko, p. 18.

¹⁵⁷ Ibid, p. 19.

¹⁵⁸ United Nations Security Council, 'Resolution 2170' (*United Nations Security Council*, 15 Aug 2014) <<http://unscr.com/en/resolutions/doc/2170>> accessed 3 December 2021.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid, n.p.

embargo against ISIS¹⁶¹. However, Resolution 2170 only served as a springboard for subsequent Resolutions that not only reinforced but also expanded, the tools available to combat ISIS.

Resolution n. 2178 was the first to focus on a particular aim of Resolution n. 2170. The latter was completed only a few days after the former: September 24th, 2014¹⁶². Foreign fighters, who make up a large portion of ISIS' terrorists and jihadist warriors moving between nations, in general, were the focus of Resolution n. 2178¹⁶³. The cited Resolution's paragraph 5 "decides" that the Member States must prevent and eliminate foreign fighter recruitment, organization, transport, and equipping¹⁶⁴. As stated in paragraph 3, it also "urges" Member States to share information about terrorists' movements. The Resolution instead asserts what has yet been stated in Resolution n. 2170 in the second paragraph: *'effective border control shall be used by all States to prevent terrorists or terrorist groups from moving'*¹⁶⁵. On the other hand, on the 12th of February 2015, Resolution n. 2199 was passed, which added to the focal point of Resolution no 2170 on restricting ISIS from an economic standpoint¹⁶⁶. The first paragraph of Resolution n. 2199 stands against the oil trading with terrorists, including ISIS, Al-Nusra Front, and Al-Qaida affiliates, even if it is indirect¹⁶⁷. The assets of terroristic groups must be frozen, and they must not be made available to individuals associated with them, as discussed in the following paragraphs. The 1267/1989 Committee is mentioned in Paragraph 12 of this Resolution. ISIS, al-Qaida, and all of its human resources, entities, or projects associated with them are all subject to this Security Council Committee¹⁶⁸. The Committee, in

¹⁶¹ United Nations Security Council, 'Resolution 2161' (*United Nations Security Council*, 17 Jun 2014) <[https://www.undocs.org/S/RES/2161\(2014\).par.1c](https://www.undocs.org/S/RES/2161(2014).par.1c)> accessed 3 December 2021.

¹⁶² United Nations Security Council, 'Resolution 2178' (*United Nations Security Council*, 24 September 2014) <[https://www.undocs.org/S/RES/2178\(2014\).par.2,3,5](https://www.undocs.org/S/RES/2178(2014).par.2,3,5)> accessed 7 November 2021

¹⁶³ Ibid.

¹⁶⁴ Ibid, n.p.

¹⁶⁵ United Nations Security Council, 'Resolution 2170' (*United Nations Security Council*, 15 August 2014) <<https://www.un.org/securitycouncil/s/res/2170-%282014%29>> accessed 3 December 2021.

¹⁶⁶ United Nations Security Council, 'Resolution 2199' (*United Nations Security Council*, 12 February 2015) <<http://www.unscr.com/en/resolutions/doc/2199>> accessed 3 December 2021.

¹⁶⁷ Ibid.

¹⁶⁸ Feinberg Myriam, 'The Impact of Case Law on the EU and UN Sanctions Regimes: Sovereignty in the Age of Global Terrorism' (2016) *Brill Nijhoff*, 160.

particular, oversees the Security Council's anti-terrorism efforts and those of its associates. The Committee is alluded to in paragraph 12 of the Resolution because the Member States must notify it within 30 days of any material provided to terrorist organizations entering their territory¹⁶⁹. Furthermore, paragraph 12 "invite[s]" the parties to "submit" to the Committee the outcome of the cases brought against those responsible for such acts¹⁷⁰. It is worth noting that a tiny portion of cultural heritage is included in this Resolution (paragraphs 15, 16, 17) because ISIS and the Al-Nusra Front are well-known for the destruction of cultural heritage sites, the Security Council decided to "condemn" such actions as well as Resolution 2199¹⁷¹. This action was taken because terrorist organizations profit from attacking these places and then selling a large number of the items confiscated. As a result, the Resolution reaffirms the need to avoid these raids and take appropriate action against them, as they may be construed as acts of genocide because they reveal a purpose to eradicate a national, racial, ethnic, or religious group¹⁷².

With Resolution 2379, adopted on September 21, 2017, the Security Council achieves a significant milestone in victim's rights and justice for ISIS atrocities¹⁷³. The investigative team established by the Resolution, as indicated by the US Ambassador Nikki Haley, is crucial, as noted briefly in the second chapter¹⁷⁴. Above all, it helps to hold ISIS accountable for the atrocities it has committed to the annihilation of the Iraqi people, including the Yazidis, as the Ambassador herself has stated¹⁷⁵. In collaboration with its allies and the Iraqi people, the Team produces an "indispensable record of their (ISIS') criminality"¹⁷⁶. The Secretary-General established an investigative team in response to the Security Council's petition, as stated in paragraph 2 of the Resolution, and

¹⁶⁹ Feinberg, p. 62.

¹⁷⁰ Ibid.

¹⁷¹ Ibid, p. 63.

¹⁷² United Nations Security Council, Res. 2199, 16, 17.

¹⁷³ United Nations Security Council, 'Resolution 2199' (*United Nations Security Council*, 12 February 2015) <<http://www.unscr.com/en/resolutions/doc/2379>> accessed 3 December 2021.

¹⁷⁴ U.S. Department of State, 'Explanation of Vote Following the Adoption of UN Security Council Resolution 2379 on Accountability for ISIS Atrocities' (*U.S. Department of State*, 21 September 2017) <<https://www.usun.state.gov/remarks/7988>> accessed 3 December 2021.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid, n.p.

it is led by an Adviser¹⁷⁷. In addition, this Adviser enforces ISIS's responsibility for human rights abuses, acts of terrorism, and even mass genocides (paragraph 3). The Resolution further states that the Investigative Team's experience should be used to assist the Iraqi government by exchanging information and providing support in the form of technical or judicial assistance as needed¹⁷⁸. As indicated in paragraph 11 of the Resolution, other states may seek this team's services. In reality, if a fellow party has been in the area of human rights abuses, acts of terrorism, or genocide, that Member State may ask the Team's assistance in locating evidence of these crimes after the Security Council has approved the request¹⁷⁹.

The United Nations Committees Observations

The Human Rights Committee

The Committee constituted in 1967 was saddled with the responsibility of supervising the enforcement of the "1966 International Covenant on Civil and Political Rights"¹⁸⁰. This Committee issued concluding conclusions on Iraq's fifth periodic report on December 3, 2015, just a few months after the genocide began. A minor but important section of this paper is devoted to 'counter-terrorism measures'¹⁸¹. The Human Rights Committee requests that the Iraqi government undertake new anti-terrorism measures in this section (paragraph 10)¹⁸². The new strategies should not entail the death penalty imposed and must be in complete compliance with the Covenant's responsibilities. The Committee makes this point in particular since, as noted in paragraph 9¹⁸³, the Iraqi government continues to employ the 2005 Counter-Terrorism Act. This Act continued to use a broad definition of terrorism and made the death sentence mandatory for many conducts that constituted terrorism. In addition, the Committee was concerned by the

¹⁷⁷ U.S. Department of State, 2017, n.p.

¹⁷⁸ Ibid.

¹⁷⁹ United Nations Security Council, 'Resolution 2379' (*United Nations Security Council*, 21 September 2017) <<http://www.unscr.com/en/resolutions/doc/2379,par.2,3,8,9,1>> accessed 3 December 2021.

¹⁸⁰ Concluding observations on the fifth periodic report of Iraq", Human Rights Committee, United Nations, 3 Dec 2015, p. 2, 3.

¹⁸¹ Ibid.

¹⁸² Ibid, n.p.

¹⁸³ Ibid.

widespread application of this Act to children and women who failed to disclose their husbands' acts of terrorism¹⁸⁴.

The Committee's observations contain a segment known as "Allegations of human rights abuses as regards the current armed conflict," with reference to ISIS and its affiliates' violations of international law¹⁸⁵. Part of these violations, according to paragraph 19, include genocide, as evidenced by the 92 war crimes and crimes against humanity committed by the Yazidis in 2014 as related by the Office of the UN High Commissioner for Human Rights¹⁸⁶. In this matter, the Committee requests that the State of Iraq see to it that those accountable for the violations receive suitable punishment. However, the state should make every effort to stop this from occurring and, in particular, should provide enough support to the children and women released by ISIS. Of course, after ISIS captured Sinjar, the majority of these women and children would be Yazidi women and children.

The convention on the elimination of discrimination against women

The Committee on the Convention on the Elimination of Discrimination against Women sees to the execution of the '*Convention on the Elimination of All Forms of Discrimination against Women*' of 1979¹⁸⁷. This Committee is critical in the wake of the Yazidi Genocide, as a majority of the victims are still alive or have been released by ISIS¹⁸⁸. In reality, in June 2016, the Committee issued concluding remarks on the combined fourth and sixth Iraqi periodic reports to the Human Rights Council. In this paper, under the heading protection of women's physical health and economic security, and respect for their human rights' section it is stated that in the aftermath of wars, terror attacks, and military mistakes, transitional justice institutions have been formed¹⁸⁹. Women from Yazidi communities should be protected in this way, and they are specifically mentioned in the following section. According to reports, Yazidi women who

¹⁸⁴ Ibid, par. 9,10.

¹⁸⁵ United Nations High Commissioner For Human Rights , 'Report of the Office of the United Nations High Commissioner for Human Rights on the human rights the situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups, (*UNHCHR*, 13 March 2015).

¹⁸⁶ Ibid.

¹⁸⁷ Lemma, p. 4.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid, p. 5.

were rescued after being sexually assaulted by ISIS jihadist warriors could benefit from an unrestricted social safety net¹⁹⁰.

Committee on the rights of the child

It showcases how the conflict scenario in Iraq became conducive not to children, and how it was exacerbated by the development of ISIS terrorist attacks. This committee was formed to oversee the implementation of the law. According to the Committee as stated in the *'An analysis of the Iraqi combined second and fourth periodic reports'* in 2015, shortly after the massacre began. The materials also stress how different limitations of children's rights have exacerbated the situation for children, preventing the convention's duties from being properly implemented¹⁹¹.

ISIS is generally blamed for many of the violations of the Convention that concerns the infringement of children's rights, and the Committee acknowledges this by referring to ISIS' activities to justify the infractions. For instance, in the document's piece of writing dedicated to the 'Right to life, survival, and development' in paragraph 23, the Committee has compiled a list of ISIS' abuses of human rights¹⁹². The killings on a large scale of Yazidi children, as well as the murder of children as a result of ISIS' battles, children forced to fight for ISIS, children killed by ISIS' induced dehydration, and children who have been abused children in the Iraqi society, are all grave infractions of the rights listed above, as well as the General Principles enumerated in Article 6 of the previously mentioned Convention¹⁹³.

Another right that the Committee made some remarks about is the right to "freedom of thinking, conscience, and religious belief," which is found in Article 14 of the Convention on the Rights of the Child¹⁹⁴. Children from religious minorities are frequently subjected to discrimination, according to paragraph 34¹⁹⁵. Of course, Yazidi

¹⁹⁰ Ibid.

¹⁹¹ Concluding observations on the combined second to fourth periodic reports of Iraq, Committee on the Rights of the Child, United Nations, 3rd Mar 2015, p. 2, par. 6.

¹⁹² Ibid, p. 5, par. 24.

¹⁹³ Committee on the Rights of the Child, United Nations, 3rd Mar 2015, p. 2, par. 6.

¹⁹⁴ Lemma, p. 5.

¹⁹⁵ Committee on the Rights of the Child, p. 3.

children who were kidnapped by ISIS are included in this group, as they were prohibited from practising their faith and believing in anything they want. Another issue that the Committee is keenly interested in is the inability of children whose parents converted to Islam to return to their original religion¹⁹⁶. Of course, the Yazidi youngsters benefit from this as well. In addition to these rights, ISIS has perpetrated widespread (physical) violence against Yazidi children. The Commission, however, did not mention it specifically in the section on "torture and other cruel or humiliating treatment or punishment" and instead focuses on police aggression against children¹⁹⁷. Also, paragraph 37, makes certain recommendations to the Iraqi government that can be applied to children who have been victims of ISIS violence¹⁹⁸. For example, the one conducting inquiries into all cases of violence that fall under the section's jurisdiction. The Commission also recommended that a complaint process for children be established, as well as proper psychological and physical assistance for kid victims¹⁹⁹.

ISIS is partly to blame for the children's inability to live in their natural habitat. This was part of the evidence of ISIS' goal to exterminate the Yazidi, for all the children were forced to reside in a geographical region that was not representative of their culture²⁰⁰. Again, this could also be the reason for the parents' deaths, as a way of allowing them to grow up not in a similar pattern and not conform to their cultural lifestyle. Moreover, ISIS forced the children to grow up and get used to a contrasting family environment to their own. This has a relationship with the fact that they are minors from a group that is a minority under the plan of being wiped out. In the part on children's rights, the Committee discusses this and advises the government of Iraq to make attempts to address it under children of the minority or indigenous groups. The Commission discusses how ISIS compelled children to convert to "true Islam" through torture.

¹⁹⁶ Committee on the Rights of the Child, p. 3

¹⁹⁷ Ibid.

¹⁹⁸ Ibid, p. 4.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

CHAPTER III

A Comprehensive Examination of Instances Whereby Children were the Main Victims

Rape as a Genocide Crime

Although rape is a weapon of war utilized in many discourses, it has traditionally been regarded as a side effect of war. Rape did not become a distinct war crime until the twentieth century, and the concept of genocidal rape did not reach international consciousness until then. The genocide of the Yazidi people is a horrific reality. The use of institutionalized rape as a genocidal strategy to eliminate the Yazidi people is a glaring example. Rape is now a crime under international humanitarian law²⁰¹. In 1993 and 1994, the International Criminal Tribunals for the former Yugoslavia and Rwanda established rape and sexual assault as war crimes²⁰². Rape and sexual violence were established as separate and distinct crimes for the first time by the ICTY²⁰³. Rape and other forms of sexual violence were declared crimes against humanity by the Roman Statute of the International Criminal Court in 1998²⁰⁴. Two years later, on October 31st, 2000, the United Nations Security Council passed a resolution titled "Women and Peace and Security," which outlines how violent sexual conduct is used as a tool to wage war against those who oppose it to demoralize, control, imbibe fear, and scatter and coarsely migrate members of a settlement or ethnic group²⁰⁵. The classification of rape as a war crime represents a significant shift in how we think about, analyse, and resolve genocide. Although rape and sexual assault are not specifically included as forms of genocide, they are increasingly widely accepted as a method of genocide²⁰⁶.

²⁰¹ David Scheffer, 'Rape as a War Crime' (*Peace Women*, 8 February 2015) <<https://www.peacewomen.org/node/90353?msclkid=011ee7d5cf7b11eca5f8cfb62259bd64>> accessed 19 November 2021.

²⁰² Miriam Cooke, 'Murad vs. ISIS: Rape as a Weapon of Genocide' (2019) 15 *JMEWS* 3 265.

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*, p. 266.

²⁰⁵ Allison Ruby Reid-Cunningham, 'Rape as a Weapon of Genocide' (2008) 3 *GSP* 3, 280.

²⁰⁶ Bakes, n.p.

What makes the Yazidi genocide stand out is that it was both a sexual conquest and a territorial conquest²⁰⁷. The Islamic State's fundamental assumptions about the Yazidi population were especially devastating to the community's women and girls as Yazidi women and girls were doubly persecuted throughout the genocide because of both their religion and their sex²⁰⁸. The systematic enslavement of women and girls from the Yazidi minority was pre-planned and well-organized. Meanwhile, the Islamic State's focus on the Yazidis originates from the Islamic State's fundamental rejection of non-believers, which is codified in its key doctrines²⁰⁹. Simply put, ISIS formalized sex slavery in ISIS-controlled areas of Iraq and Syria based on Yazidis' religious beliefs, all while claiming sanctions from the Quran. To support its campaign of systematic mass rape, the Islamic State quotes particular Quranic texts, "*If the victim is not a Muslim, they are not only allowed but encouraged to engage in acts of rape, according to their restricted interpretations of Islamic beliefs*". Thus, ISIS used organized rape to "purify" Yazidis from non-Islamic influences²¹⁰.

Yazidi women and girls were mandated to a slew of sexual assaults, unbridled horrors, and unfathomable human rights violations within the architecture of the Islamic State's sex slave trade. Close to 6000 Yazidi women and girls were abducted and transported on trucks to warehouses that resembled animal holding cages²¹¹. Yazidi women were chained and imprisoned for days in captivity, where they were subjected to unimaginable physical and sexual abuse, as well as being denied access to food, water, and basic hygiene²¹². The selection of Yazidi women by top ISIS commanders was the initial stage of the sex slave trade. To put it another way, prominent ISIS members got "first dibs" on captured Yazidi women and these ladies were raped, beaten, and sold as a

²⁰⁷ Rukmini Callimachi, 'ISIS Enshrines a Theology of Rape' (*New York Times*, 3 August 2015).

²⁰⁸ The Cairo Review of Global Affairs, 'The Yazidi Genocide' (*The Cairo Review of Global Affairs*, 2016) <<https://www.thecaireview.com/essays/the-yazidi-genocide/>> accessed 19 November 2021.

²⁰⁹ Paula Castellan San José, 'The Rapes Committed Against the Yazidi Women: a Genocide?; A Study of the Crime of Rape as a Form of Genocide in International Criminal law' (2020) 18 *CJIR* 61.

²¹⁰ *Ibid.*

²¹¹ *Ibid.*, p. 62.

²¹² Vicken Cheterian, 'ISIS Genocide Against the Yazidis and Mass Violence in the Middle East' (2019) 48 *BJMES* 4, 629.

war souvenir to future ISIS militants²¹³. The Yazidi women were crowded back onto the same fleet of vehicles and sent in smaller groups around Syria and Iraq once the leaders of the Islamic State completed their initial selection²¹⁴. Within ISIS-established sex slave marketplaces in both nations, women were purchased and sold by the general population²¹⁵. Younger, more attractive females were purchased during the first few weeks of being on the market, however older, married women were frequently transferred from location to location and held in human holding cages for months until they were purchased²¹⁶. Warehouses were constructed around Iraq and Syria to hold the collected victims, some of which kept women in solitary confinement for months and others which had viewing rooms where women could be viewed and sold. Yazidi women were being bought in quantity by wholesalers who assigned them tracking numbers, photographed them, and ran promotional efforts to sell them off²¹⁷. In essence, the Islamic State established a vast trading network that profited from the financial transaction of Yazidi women into sex slavery.

The Yazidi community was decimated by ISIS' sex slavery and mass rape tactics and this caused extensive family breakup and displacement, embarrassment for the victims and their communities, and terror among the Yazidi survivors²¹⁸. Sexual violence caused significant physical harm to women, including short and long-term disease, severe bodily harm, and death²¹⁹. Furthermore, the trauma caused by mass rape systems has severe psychological consequences on Yazidi victims' mental health and stability. Aside from the acute mental health consequences for Yazidi women who survived sexual abuse, suffered from trauma caused by sexual violence and this has generational consequences that are still underappreciated. To begin with, rape trauma frequently acts as a barrier to reproduction, reducing the Yazidi population immediately. Even if survivors can

²¹³ Vicken, p. 629.

²¹⁴ Ibid, p. 630.

²¹⁵ Ibid.

²¹⁶ Ibid, p. 631.

²¹⁷ The Cairo Review of Global Affairs, n. p.

²¹⁸ Ibid.

²¹⁹ Ibid, n.p.

reproduce, they are still subjected to genetically altered trauma, which has been shown to result in poor mental health consequences in future generations²²⁰.

Child Labour and Military Enlistment

Non-state armed groups often employ minors in their militaristic activities and others by forming specialized brigades for young people or youth wings, with the primary goal of ideologically preparing and uniting them. Children are recruited for front-line operations in many armed groups when they reach the age of 16, but it has been discovered that ISIS engages children as early as eight years old, and even youngsters as young as 6 years old are sent to front-line operations by ISIS²²¹. One of the most prevalent methods for involving youngsters in hostilities and allowing them to join the organization is to mandate them to kill or commit some inhuman acts against their relatives²²². This has a huge mental impact because when a minor carries out a brutal act, it leads to a mental breakdown, thus, making them more likely to associate themselves with an entity newly formed, as is the case with ISIS²²³. The development of child soldiers and their recruitment in Uganda and other African countries was primarily accomplished by stealing them from their homes and then providing them with training or specific responsibilities. In the case of ISIS, minors are brought up as warriors from a young age, and they are frequently subjected to degrading punishment by captives or others who do not believe in ISIS' theology. As a result, the vast majority of them have developed a resistance to brutality and violence and have also appeared in ISIS propaganda videos, where they commonly portray soldiers wielding guns and instructing others on how to carry out their duties²²⁴.

Due to the group's kidnapping, enslavement, or trafficking of children, the Islamic State poses a serious threat to children. According to the United Nations, ISIS kidnapped

²²⁰ Peter Nicolaus and Serkan Yuce, 'Sex-Slavery: One Aspect of the Yezidi Genocide' (2017) 21 *IC 2*, 212.

²²¹ Elbaum Rachel, 'What is ISIS? What you need to know about Islamic State in Iraq and Syria' (NBC News, 18 April 2018) <<https://www.nbcnews.com/storyline/smart-facts/what-isis-what-you-need-know-about-islamic-state-iraq-n859996?msclkid=344ea46ccf7711ecad9a425a58ae28e9>> accessed 7 November 2021.

²²² Ibid.

²²³ Ibid, n.p.

²²⁴ Bloom Mia, 'Child Soldiers in Armed Conflict' (2018) 4 *ACS 1*, 36.

around 800-900 children in Iraq (Mosul) in 2015²²⁵. Furthermore, most parents without coercion let their children and were forced to claim membership in ISIS because they have been instigated by ISIS by providing information that makes them believe these children will turn out to be leaders of the next generation. When they are abducted by terrorists, they are frequently placed in religious camps, with those who have clocked to the age of ten years old being sent to military school. Children who become rebels or disobey their leaders are frequently punished, if not killed²²⁶. Researchers have examined the citizenship, age, role, and reason for mortality among child soldiers and their findings show that eighty-nine boys aged eight to eighteen were employed for ISIS propaganda, and their nationality was predominantly Syrian or Iraqi²²⁷. These youngsters were deployed as suicide bombers, and they were responsible for almost 20% of all documented deaths²²⁸. The most concerning issue appears to be the large number of toddlers enlisted by ISIS, which more than skyrocketed in 2015 when compared with 2014²²⁹. These ISIS-backed strategies are extremely harmful because they want to establish a true continuum state, and enlisting minors, teaching these minors, and providing them with the education they become a significant problem in society and make it so difficult to reintegrate or eliminate this generation.

Reasons for the recruitment

ISIS has included children in its operations from its inception, and children can join the group in one of two ways: voluntarily or compulsorily and there are several reasons why children are recruited, as well as ways for ISIS to gain control of many of them. For instance, ISIS refers to the children it recruits as "Cubs of the Caliphate," a word also utilized by the worldwide-media²³⁰. One of the most significant advantages of ISIS recruitment is that many of the children's parents are active members of the group,

²²⁵ Ibid, p. 37.

²²⁶ Collet Agnes, 'ISIS and child soldiers: what future for the Islamic State' (*Humanium*, 30 November 2016) <<https://www.humanium.org/en/isis-child-soldiers/8.4.2019>> accessed 19 November 2021.

²²⁷ Ibid.

²²⁸ Bloom, p. 36.

²²⁹ Ibid.

²³⁰ Ibid.

residing or employed in ISIS territory, and frequently accept the group's philosophy and violent indoctrination of their children²³¹. It has been found that ISIS seeks to accommodate youngsters into their culture by teaching them about weapons, brutality, and the group's ideology and worrisomely, all these heinous acts are backed up by the Caliphate's educational scheme²³². These youngsters are frequent observers of unbearable circumstances, and they have to cope with the psychological trauma of witnessing physical violence, torturing, abusing, and killing regularly in an ultraviolent environment.

ISIS messaging is one of the most effective ways to recruit children. The group has published multiple movies showing young soldiers exercising, worshipping, learning their ideology, and practicing weaponry, particularly in volatile areas such as ISIS Raqqa and Syria-Iraq border regions²³³. The movies circulated with the aim of targeting both minors and their parents, demonstrating that child violence is a normal occurrence and that it is appropriate in the parenting and teaching of children²³⁴. They also emphasize the importance of children in ISIS society because they are the state's future leaders but children who are recruited do not become members who are meant to receive religious education or receive instruction in weaponry²³⁵. However, they are frequently exploited as human shields acting as suicide bombers or as a member of a military force, which means that a very small number of them become adults. As a result, the rhetoric of ISIS in its propaganda that it urges its leaders of tomorrow is a simple attempt to cover up their recruitment, influence, and manipulate even more children to accomplish their mission. Similarly, it is known that their recruitment targets youngsters rather than adults because children are still developing morally, so ISIS may easily change their personality and strengthen their mistrust of non-believers, including their parents²³⁶. It is important,

²³¹ Lowry Melanie, 'Rehabilitating the Children of ISIS: A Comparative Case Study of Armed Groups and Child Soldier Reintegration. Center for Security Studies' (CSS ETH Zurich, 11 March 2019) <<https://isnblog.ethz.ch/security/rehabilitating-the-children-of-isis-a-comparative-case-study-of-armed-groups-and-child-soldier-reintegration?msclid=139d4a2fcf7611eca21a590c41cfd395>> accessed 19 November 2021.

²³² Ibid.

²³³ Lowry, n.d.

²³⁴ Ibid.

²³⁵ Ibid, n.p.

²³⁶ Collet, n.d.

therefore, to note that ISIS treats children as adult fighters, ignoring the concept of childhood, and without disclosing the ages of youngsters in propaganda videos. Moreover, children lose the most essential lifetime's worth of years as child soldiers, notably when they are in their school time period because this creates barriers to their rehabilitation after the battle. Besides, ISIS children do not have specific abilities that would allow them to continue their antisocial and illegal behaviour²³⁷. Many NGOs and government agencies are grappling with these issues and the approach to use to reintegrate former ex-children soldiers when family and religion have been hijacked and instituted by the terrorists.

Training process

ISIS training camps are thought to have enlisted the help of around 2000 children²³⁸. The use of light and medium weapons has been taught to children, fire the weapon, dismantle it and reassemble it and perform some needful work for the group's support, and this includes undercover work, logistics, cooking, and providing security services, among other things. Amongst the organization's primary methods is to teach the children about meditating on the precept of Islam, as well as making the good news about Islam ideas and influencing unbelievers with viewpoints held by extremists²³⁹. Apart from educating and socializing children religiously, children are frequently coerced to engage in violence, whether it is the torturing, killing, maiming, or anything that involves brutality and inhumane treatment, and to become military threats, they must participate directly in violent acts, often against their families²⁴⁰. In general, if they commit such a crime, their families will refuse to welcome them back, and as a result, the children will become more associated with a new entity. ISIS prevents them from fleeing by engaging in violent acts.

According to OHCHR reports, ISIS has created numerous training camps in Aleppo and its environs, primarily to recruit youngsters and assign them various types of

²³⁷ Bloom, p. 38.

²³⁸ Ibid.

²³⁹ Hanoush, n.d.

²⁴⁰ Hanoush Fers, 'Rehabilitating ISIS' Child Soldiers' (*Atlantic Council*, 21 September 2017) <<https://www.atlanticcouncil.org/blogs/syriasource/rehabilitating-isis-child-soldiers,9.4.2019>> accessed 22 November 2021.

tasks in combat activities²⁴¹. The gang mainly recruits minors between the ages of 14 and 15, but they can employ even children of a younger age as evidenced by what transpired in Al-Raqqah, where children as young as ten years old are recruited and trained²⁴². It is vital to note that while ISIS violates the IHRL if they recruit minors not up to 18, they recruit minors under 15 years old, and they are committing a war crime²⁴³. ISIS child soldiers go through adult troops training, and in exchange, leaders provide financial prizes to them or their families. ISIS child soldiers are categorized into five categories, according to Bloom: those born to foreign combatants or immigrants, orphans or abandoned children, as well as those born to local fighters, those taken from their families, and those who actively joined the organization²⁴⁴. Military and religious instruction are frequently combined during the training process. These two patterns are the most essential since minor soldiers are expected to preach Sunni Islam and to assist in military operations in which they usually play the role of suicide bombers²⁴⁵. It was recently discovered that youngsters with strong communication skills and a thorough understanding of how the ISIS' ideology works as recruiters, take on public-speaking roles, or participate directly in ISIS' propaganda videos to influence other children²⁴⁶. They also motivate adults to take action and urge other youngsters to join ISIS to earn prestige, target, or praise from leaders and the general public. Newly trained ISIS youngsters are paraded in front of the general public wearing adult-style clothes and wielding a variety of weapons to demonstrate their might and discipline. They are encouraged to remain still while being beaten by elder officers in propaganda videos and other young children are frequently fascinated by this process²⁴⁷. With each wave of newly taught children, the entire process repeats itself.

²⁴¹ Elbaum, n.d.

²⁴² Ibid.

²⁴³ UN General Assembly, 'Report of the independent international commission of inquiry on the Syrian Arab Republic' (*UN General Assembly*, 13 August 2014) <https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A.HRC.27.60_Eng.pdf> accessed 22 November 2021.

²⁴⁴ Bloom, p. 36.

²⁴⁵ Ibid.

²⁴⁶ Elbaum, n.d.

²⁴⁷ Ibid.

Abuse of children

ISIS recruits youngsters in two ways either freely or forcibly, as previously stated. They are deployed as troops who perform a variety of roles, mostly in warfare, for example, warriors, suicide bombers, security personnel, or arms transporters after they have completed a training program in which this line is blurred²⁴⁸. Aside from military tasks, children are a significant advantage for ISIS because they appear frequently in their propaganda videos, causing a significant psychological impact on viewers, particularly because they perpetrate grave violence that is completely unexpected and unnatural for someone as young as a child²⁴⁹. Many studies believe that there are six phases of children affiliation to ISIS: enticement, hiring, picking, enslavement, specialization, and deployment²⁵⁰. Among these children are immigrant families who have become familiar with ISIS' orientation and child-soldiering in the long run²⁵¹. On the other hand, neighbouring families frequently willingly send their offspring to join the armed group due to a lack of funds or other societal issues²⁵². Similarly, in Uganda, ISIS youngsters have been directly involved in several heinous crimes. A gang of child warriors in their adolescence, for example, beheaded a group of Alawite detainees in March 2015²⁵³. Another example is an event that took place in a Castle in Syria in December 2015, when a group of young boys was seen playing "hide-and-seek" to locate and assassinate a hostage held captive²⁵⁴. For example, in January 2016, the organization posted images of an 11-year-old youngster kissing his father's hand before being deployed on a suicide attack mission against an explosives-laden truck²⁵⁵. Those military actions, like suicide missions, are typically carried out by boys, and as a result, girls are not allowed to

²⁴⁸ Ibid.

²⁴⁹ Lowry, n.d.

²⁵⁰ Ibid.

²⁵¹ Vicken, p. 629.

²⁵² Karasapan Omer, 'Rehabilitating child soldiers in the Middle East' (*The World Bank*, 21 May 2017) <<https://blogs.worldbank.org/arabvoices/rehabilitating-child-soldiers-in-the-middle-east?msclkid=8930dc75cf7411ecb239b71411ea5e3a>> accessed 2 December 2021.

²⁵³ Ibid.

²⁵⁴ Ibid, n.p.

²⁵⁵ Marcus Jeffrey, 'U.N. Report Details ISIS Abuse of Women and Children' (*The New York Times*, 3. October 2014) <<https://www.nytimes.com/2014/10/04/world/middleeast/un-report-isis-abuse-women-children.html?msclkid=ec9187d8cf7311ecacadd3a4e1210ab3>> accessed 2 December 2021.

participate in the recruitment and training procedure. Nonetheless, at school, both sexes are impacted by an extreme version of Sunni Islam, and children are indoctrinated at a young age, denying them the opportunity to learn other critical skills²⁵⁶. As a result, the group pays special attention to indoctrinated females, as they are expected to become future ISIS commanders' wives, and their primary mission is to assist the armed group in establishing a caliphate and spreading and supporting its ideology.

Girls are not only raised as ISIS servants but they are also abducted, as was the case in southern Sinjar when the armed group abducted two hundred females who are young and old, 150 of whom were transferred to Syria as a payoff for combatants and then raped and put on sales in a market²⁵⁷. To prevent such atrocities, the global community, in collaboration with governments and NGOs, should act, as the situation will only get worse in the future. The process of reintegration remains one of the most difficult challenges, thus it is critical to pay particular attention to DDR programs which are in line with the requirements of the ISIS ex-minor soldiers.

The legal protection of Iraqi and Syrian children

The children of Iraq are frequent victims of war; vulnerable to items that are explosive, vehicle ammunition, and anti-personnel mines, accounting for around 8.1 percent of those killed in hostilities²⁵⁸. Aside from that, armed groups and terrorist organizations frequently recruit them as child soldiers, and they are frequently coerced into child labour despite the existence of laws. Articles Nos. 29, 30, and 37 of Iraq's 2005 constitution mention the legal protection and duty of children. Article 29 states that:

*The state shall ensure that mothers are protected, including children and older people, as well as the care and development of children and youth*²⁵⁹.

Article 29 also states that;

²⁵⁶ Karasapan, n.p.

²⁵⁷ Marcus, n.p.

²⁵⁸ Elbaum, n.p.

²⁵⁹ WIPO IP Portal, 'Iraq's 2005 Constitution (WIPO IP Portal, 2005). Iraqi Constitution <<https://wipolex.wipo.int/en/text/230001,6.4.2019>> accessed 2 December 2021.

*Parents have a responsibility to raise, care for, and educate their wards. Children deserve respect and care, even when the parents are in need, disabled, or old*²⁶⁰.

And lastly, Article 29 states that;

*Economic exploitation of minors in any form is banned, and the state is required to take the necessary precautions to ensure their safety*²⁶¹.

It is clear from these articles that the Iraqi authorities have to ensure children's protection from engaging in child labour and victimization by giving them adequate educational support and other necessary help. Meanwhile, children are responsible for making sure that their parents are well taken care of when there is a need for assistance. However, Article 30 states that;

*The State shall provide social and health security to individuals and families, particularly children and women, as well as enough income and shelter*²⁶².

And Article 37 connects to liberties which clearly states;

*Trafficking in women and children, sexual exploitation, and forced labour are all illegal*²⁶³.

Article 37 has a practical problem and the reason is that a lot of Iraqi children, particularly in the Kurdistan region, are victims of human trafficking, particularly teenage female children sold-out as prostitutes or servants at their service²⁶⁴.

Iraq accepted the 1949 Geneva Conventions and the 1977 Additional Protocol I to the Geneva Conventions, the 1989 Convention on the Rights of the Child, and the 2000 Optional Protocol on children's engagement in armed conflict²⁶⁵. Iraq committed to following their standards by ratifying these agreements, which connotes that recruitment

²⁶⁰ Ibid, n.p.

²⁶¹ Ibid.

²⁶² WIPO IP Portal, n.p

²⁶³ Ibid.

²⁶⁴ Ibid, n.p.

²⁶⁵ Skiaire, Michael R. 'The Security Council Blockade of Iraq: Conflicting Obligations Under the United Nations Charter and the Fourth Geneva Convention' 2011 6 *AUILR* 4, 5.

should be at the age of 18 years²⁶⁶. Nonetheless, based on some studies, Iraq welcomes voluntary enrolment as early as the age of 15 years, and entry into the military officer training academy begins at the age of 16 years old, therefore other military officers could be as young as 17 years old²⁶⁷. Furthermore, the 1983 Juvenile Welfare Act postulates the age at which a child becomes criminally liable is 9 years old, that children below 14 cannot be detained but detaining them can only happen if they kill and the court of law where they are to be prosecuted can only be a Juvenile Court, and the court has the power to send them to a rehab centre for youth to spend minimum and maximum of 5 and 15 years respectively²⁶⁸. Syria is in an even worse and more dangerous scenario. Since the inception of the Syrian city, which has spanned eight years, children are among the most vulnerable victims because around 2.6 million children are estimated to be internally displaced, with 2.5 million having to live as refugees in countries nearby²⁶⁹. Furthermore, 2018 was the deadliest among all years that children suffered the most during wartime, with terrible abuses of children's rights occurring regularly.

Syria has collaborated with the International Committee of the Red Cross (ICRC) to educate the enlisted personnel of the military in IHL which is among the practice to integrate the legal instrument into military training in both theory and practice as well as society as a whole²⁷⁰. Although groups on Children's rights are working in other to raise awareness of the Convention on Children's Rights, Syria would need to brush up on its strategies for systematically enforcing some of these programs. Although both countries have legal protection, ISIS has spread disorder in various areas of Iraq and Syria, and both countries have failed to support the rights of children and prohibit their ill-treatment and recruiting.

²⁶⁶ Child Soldiers International, 'International Standards' (*Child Soldiers International*, 2016a) <<https://www.child-soldiers.org/international-standards,10.12.2018>> accessed 3 December 2021.

²⁶⁷ Ibid.

²⁶⁸ Elbaum, n.p.

²⁶⁹ Elbaum, n.d.

²⁷⁰ Ibid.

Forced Imprisonment

Sexual and Gender-Based Violence

According to the findings and sampling of opinions, the captives were imprisoned in a broad area after being taken to Al-Raqqa city and Nineveh province to be sold as slaves later²⁷¹. ISIS created a biography of each lady that contained her age, number of children, beauty level, and other details, according to the participants²⁷². ISIS soldiers then dragged the women from the prison one by one to sell them as slaves. The slave markets resembled an auction house where women and girls were shown as a bounty or a piece of property and young girls aged between 18 and 26 are typically given as bounties to ISIS soldiers or suicide bombers, while other women and those recognized as mothers or less attractive are considered as war spoils and sold as property²⁷³. The differences between the gift and the property depended on the beauty of the girls and women. For example, if she was beautiful, she would be a reward by ISIS suicide soldiers and the remaining ladies will be sold as slaves²⁷⁴. It is further documented ISIS members would sit in a circle arrangement on their chairs and a soldier stood in the centre of the circle, holding a list of the girls' and women's names, as well as information and costs²⁷⁵. ISIS would force everyone to enter the circle and go around so that all of the purchasers could examine and grope their bodies when this soldier began calling out their names²⁷⁶. Some girls would pass out due to shock and humiliation and on the other hand, seemed unconcerned and splashed water on their faces as they were forced to walk in a circle over and over²⁷⁷.

There is documented evidence provided by the interviewed ISIS victims concerning the victimisation and torture they went through at the hands of ISIS and all of the participants were not spared from ISIS soldiers' regular acts of torture and rape. For

²⁷¹ Elbaum, n.d.

²⁷² Hassen, Suha Hazeem, 'Investigating Sexual and Gender-Based Violence as a Weapon of War and a Tool of Genocide against Indigenous Yazidi Women and Girls by ISIS in Iraq' Master Thesis, (2016) *OSU* 1.

²⁷³ Hassen, p. 13.

²⁷⁴ Hassen, p. 14.

²⁷⁵ Ibid.

²⁷⁶ Ibid.

²⁷⁷ Murad Nadia and Jenna Krajeski, 'The last girl: my story of captivity, and my fight against the Islamic State' (TDB, 2017) 4.

instance, a book by Murad and Krajewski documents that the survivors were also repeatedly raped and threatened with weapons²⁷⁸. Furthermore, it was reported that after becoming bored with rapping the same woman, ISIS fighters would trade and sell women among themselves²⁷⁹. The survivors were also repeatedly raped and threatened with weapons, according to the findings. After becoming bored with rapping the same woman, ISIS fighters traded and sold women among themselves and worse the level of torture, humiliation, and rape went up²⁸⁰. In addition, all of the survivors who had children claimed that ISIS tortured their children ruthlessly as a form of retaliation for their mothers' rape defiance. The findings also revealed a link between rape and child torment²⁸¹. For instance, one interviewed lady, Noaha indicated that she was sold twice to Saudi Arabian soldiers, the second of whom, Abu-Waleed, was particularly nasty and intimidating²⁸². She also stated that; *“although I was six months pregnant, he dragged me to an empty house and raped me there. He was a sex maniac who employed brutal rape methods, and he was ecstatic when I shouted or hurt. Anally and orally, he raped me. He would lock the doors and rape me three or four times a day. He kept me with him for at least two to three hours, despite my pleadings for him to feed my wailing 15-month-old boy (Caesar). Because I was nearing the end of my pregnancy, I was screaming in anguish. Manaer said she was in the slave market with 16 other girls, similar to Noaha’s experience. A hard-hearted 18-year-old skinny soldier with a long beard received her award. He chained me and covered my eyes when I refused to get up and leave with him, then drove me to a camp and locked me in a small room. He slapped my face and ordered me to convert to Islam. If he touched me, I resisted and threatened to kill myself. After a few hours, he attacked me, ripping my clothes and robbing me of my anal and mouth. I begged him not to touch me because I was a virgin, but he chained me and raped me four times in a row. Then he told me that he would show me how to ruin your virginity and fuck you as in a pornographic film. Even though I was on my period, he raped me. Manaer was forced to*

²⁷⁸ Ibid.

²⁷⁹ Ibid, p. 5.

²⁸⁰ Ibid.

²⁸¹ Hassen, p. 15.

²⁸² Hassen, p. 16.

live like this for ten months. She considered suicide and went days without eating. Manaer was then sold to another Arab soldier with four children and a wife. "I spent 11 months with him." He raped me four times till I bled or passed out. He warned me that my entire family had been eaten by dogs and that I should never consider returning home," Manaer explained²⁸³.

ISIS soldiers slaughtered or gruesomely tortured the majority of the youngsters who survived the initial carnage by uprooting their eyes, crushing their bones, poisoning them, or using them as human shields²⁸⁴. These were all examples of violence against children. As a result, it is critical to call attention to all of these types of child abuses and explain how they connect to ISIS' systemic rape. Some of the most heinous consequences of ISIS' are child abuse and infanticide because the level of pain and emotional distress after being raped is severe and the ISIS soldiers are reported to have raped women in front of their children so that they could take pleasure in both the rape and their shame²⁸⁵.

²⁸³ Murad and Krajewski, p. 23.

²⁸⁴ Ibid.

²⁸⁵ Murad and Krajewski, p. 24.

CHAPTER IV

Legal Framework for Child Protection

The Geneva Conventions and Additional Protocols I, II, III

The Geneva Conventions and their Additional Protocols are international treaties containing vital rules that were established in 1949 with the aim of restricting the barbarity of war²⁸⁶. As such, their aim is to protect individuals who cannot fight (prisoners of war, shipwrecked, sick and wounded troops) and those not participating in the fighting (aid workers, medics, civilians)²⁸⁷. These conventions are a product of the 1948 Stockholm conference that resulted in the approval of four conventions in Geneva 1949 namely: (1) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, (2) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, (3) the Convention Relative to the Treatment of Prisoners of War, and (4) the Convention Relative to the Protection of Civilian Persons in Time of War²⁸⁸.

Additional protocols to the Geneva Convention were introduced to enhance its effectiveness of the Geneva Conventions. Additional Protocol I on international conflicts strives to protect people who are vulnerable in international armed conflicts²⁸⁹. Also, there is Protocol II on non-international conflicts in addition to the Geneva Conventions 1949, which protects people who are vulnerable in non-international armed conflicts²⁹⁰. Again, there is Protocol III on an additional distinctive emblem approved in 2005, introducing an additional symbolic representation of the Red Crystal which has similar status within the Red Cross international community²⁹¹. The provision stipulates that children under 15-

²⁸⁶ Focarelli Carlo, 'Common Article 1 of the 1949 Geneva Conventions: a soap bubble?.' (2010) 21 *ELIL* 1, 125-171.

²⁸⁷ *Ibid.*

²⁸⁸ *Ibid.*, p. 126.

²⁸⁹ Henckaerts Jean-Marie, 'Bringing the Commentaries on the Geneva Conventions and their Additional Protocols into the twenty-first century' (2012) 94 *IRRC* 888, 1551.

²⁹⁰ *Ibid.*

²⁹¹ *Ibid.*

year-old must be directly exempted from war or battles and that states should not enlist them into armies, as is enshrined in Protocol I²⁹². When a scenario necessitates the use of a minor, their age must be considered. However, the convention's fundamental flaw is that anyone below age 15 can voluntarily join the military because the question of volunteering was not addressed, and for this reason, it was highly criticized²⁹³. Consequently, Protocol II established that under-aged children, who fall into the category of 15 years and below are to be exempted from being involved in recruitment exercises into the armed forces, and they must not be enlisted in combat, under any guise²⁹⁴. There were documents of deaths available after World War II to order intrastate conflicts and this is because there is the presence of interstate character. Accordingly, the cornerstone for tackling conflicts at the national level is established by Common Article 3 of the Geneva Conventions and Additional Protocol II²⁹⁵. This article enabled the use of the Geneva Conventions in conflicts that feature a non-international actor. Again, based on the name given to the Additional Protocol II, it is conspicuous that international conflicts are not its focus²⁹⁶. The Articles of Additional Protocols I and II are particularly relevant because they are reasoned as the rule of customary international law. It means these rules have legal force and effect on the member state, even in states where they have not yet been ratified²⁹⁷.

It is vital to stress that Article 8 (a) of Protocol I treats the same newborn children as the "wounded"²⁹⁸. This implies that newborn children are not to be attacked by any means during armed conflicts. Meanwhile, Article 78 of the same Protocol contends that children should be accorded the right and privilege to move to safety during conflicts²⁹⁹. Besides, Articles 17 and 41 of the Fourth Geneva Convention state that children evacuated from the affected areas as well as be accepted in safety zones or hospitals during times of conflicts, respectively, especially those that have not reached fifteen years³⁰⁰. Article 3,

²⁹² Henckaerts, p. 1552.

²⁹³ Ibid.

²⁹⁴ Ibid, p. 1553.

²⁹⁵ Ibid.

²⁹⁶ Ibid, p. 1554.

²⁹⁷ Ibid.

²⁹⁸ Focarelli, p. 133.

²⁹⁹ Ibid.

³⁰⁰ Focarelli, p. 134.

which is common to all the four Geneva Conventions, states children should be and are protected by the essential warranties connecting to the treatment of individuals not involved in the hostilities in non-international armed conflicts³⁰¹. That is, Article 3 implies that it is children's right to be treated humanely. Additionally, Article 77 of the Additional Protocol I contends that children shall be protected against any form of indecent assault and shall be the object of special respect³⁰². Meanwhile, Article 4 of Protocol II awards exclusive '*fundamental guarantees*' to children regarding the required aid and care in non-international armed conflicts³⁰³. Thus, Article 4 of Additional Protocol II serves as an affirmation about the protection of children during conflicts. Furthermore, Article 4.3a of Protocol II highlights that children are entitled to receive moral and religious education in the absence of those responsible for their care or parents³⁰⁴. Such is an essential provision, especially during armed conflicts and has not been the case with the Yazidis. This is because such privileges were extended to children during the terrific period of ISIS terror.

In overall, children are not totally protected from conflicts between armed groups by the Geneva Conventions and its Additional Protocols, particularly when intra-states are at war. Initially, international conflicts involving minors were certainly not in existence, so Additional Protocol I is ineffective. However, no prohibitions on the enlisting or engagement of children in war are included in Common Article 3 of the four Geneva Conventions. It states that all those in enemy hands to be treated humanely, without any unfavourable discrimination between them³⁰⁵. Common Article 3 of the Geneva Conventions specifies that murder, inhumane treatment, suffering, cruel, degrading treatment, abduction, and biased trials are all particularly prohibited. Salient points include but are not limited to³⁰⁶:

- a) Provision for the wounded, sick, and shipwrecked to be collected and cared for;
- b) Providing ICRC with the right to offer its services to the parties to the conflict;

³⁰¹ Focarelli, p. 144.

³⁰² Bugnion François, 'Geneva conventions and their additional protocols' (2011) *TEW* 1.

³⁰³ Bugnion, p. 2.

³⁰⁴ *Ibid.*

³⁰⁵ *Ibid.*, p. 3.

³⁰⁶ Henckaerts, p. 1554.

- c) Mandatory implementation of the Geneva Conventions by parties to a conflict through special agreements;
- d) Recognition that the implementation of these rules has no effect on the rights or legal standing of those involved in the conflict³⁰⁷.

On the whole, in consideration of the nature of many armed conflicts nowadays which are not international; the application of Common Article 3 should not be overlooked. Full adherence to it is essential. However, difficulties are likely to arise when it comes to Additional Protocol II also, as the state facing a civil war is unlikely to sign it. Moreover, the clause on the recruitment of children under 15 is not clearly defined. Additional Protocol II, Article 4(3) highlights that every child deserves the right to receive the care and assistance they need, including³⁰⁸:

- a) Parents or, in the absence of parents, those responsible for their care shall provide education to children including religious and moral training;
- b) Reuniting families separated temporarily shall be made as easy as possible;
- c) Under no circumstances shall children under the age of 15 be drafted into armed forces or groups, nor will they be permitted to participate in armed conflicts or hostile operations;
- d) When children are taken directly into hostilities, without regard to subparagraph (c), and are taken captive, they enjoy the provisions of this article that gives them special protection;
- e) In the event that children must be evacuated from areas of hostilities, they must be with someone capable of ensuring their safety and well-being and if necessary with parental consent or with assistance from individuals who are by law their primary caregivers³⁰⁹.

³⁰⁷ Henckaerts, p. 1554.

³⁰⁸ Bugnion, p. 4.

³⁰⁹ Ibid.

Protecting the Rights of Refugees and those Internally Displaced

Violent conflicts are often accompanied by large-scale population moves, and there exists an obvious range of possible risks facing children who are refugees or internally displaced³¹⁰. On top of this, they may face detrimental circumstances such as family separation, trafficking of children, abduction by military forces, and food insecurity, which could result in abuse and exploitation. As a result, the International Human Rights Law (IHL) framework was established to safeguard children in such circumstances³¹¹. It incorporates the 1951 Refugee Convention and its 1967 Protocol, which provides, among other things, regional refugee mechanisms³¹². The Convention was primarily centred on European refugees due to the consequence of WWII when it was adopted; however, the Protocol's tools were eventually expanded worldwide³¹³. These documents specify the situation under which individuals or minors might be granted refugee status, as well as the types of protection available to refugees, such as legal protection, social rights, and other forms of support. It is worthwhile to briefly summarize the basic child protection provisions of the Convention Relating to the Status of Refugees so as to know the basic legal aspects of their protection; right of protection against expulsion, subject to a few stipulated conditions (Article 32); Right to gain entry into a contracting state's territory without being punished (Article 31); housing rights (Article 21); educational rights (Article 22); aid and relief in times of need right (Article 23); on-punishment for illegal movements right.

The Mine Ban Treaty

In 1996, Canada initiated the "Ottawa Process," which eventually resulted in the formation of the Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on Their Destruction³¹⁴. The Mine Ban Treaty, as

³¹⁰ De Schutter, Olivier, *'International human rights law'* (CUP, 2019) 4.

³¹¹ Ibid, p. 5.

³¹² Cassese, p. 44.

³¹³ Ibid.

³¹⁴ Cottrell M. Patrick. 'Legitimacy and institutional replacement: The convention on certain conventional weapons and the emergence of the mine ban treaty' (2009) 63 IO 2, 217.

it is known, was signed in 1999³¹⁵. The signing of the Geneva Deed of Commitment, which prohibits the use of anti-personnel mines, by 156 states was the Convention's most significant achievement³¹⁶. In addition, 34 non-state groups signed the Geneva Deed of Commitment³¹⁷. The remaining states that are not signatories to the conventions do so because there is a replica of these rules entrenched in the national laws, and a lot of them go on to stockpile anti-personnel mines while the ban remains in place. As a result, a new Protocol on Explosive Remnants of War was approved in 2003³¹⁸. Anti-personnel mines and a variety of explosives with similar properties were used by non-state armed groups in 13 countries between 2005 and 2006³¹⁹. The Protocol, which went into effect in 2006, mandates that parties to a conflict clean off war debris that exploded, issue warnings to the civilian population, alert the public, and aid people who have survived the battle in order to reduce post-conflict deaths and injuries³²⁰. The presence of weapons clustered together in battle zones or post-conflict zones is another severe issue that puts children and their lives in jeopardy.

The Declaration of the Rights of Children and the Convention on the Rights of Children

The Declaration of the Rights of Children was adopted in 1959, ten years after the Geneva Conventions were established³²¹. This proclamation established that every child has the same rights as other individuals, irrespective of race, language, gender, ethnicity, religious belief, or ideological conviction and consists of ten principles in total, all of which were created to ensure that children enjoy a happy childhood while also requiring society to respect and adhere to these laws³²². The Child's Rights Declaration was followed by the Child's Rights Convention which was passed by the UN General

³¹⁵ Ibid.

³¹⁶ Cottrell, p. 218.

³¹⁷ Ibid.

³¹⁸ Cottrell, p. 219.

³¹⁹ Cottrell, p. 220.

³²⁰ Ibid.

³²¹ Lee-Koo Katrina, 'The Universal Declaration of Human Rights at 70: children's rights' (2019) 73 *AJIA* 4, 326.

³²² Ibid, p. 327.

Assembly in 1989 with a primary focus on children's civil, political, economic, cultural, and social rights³²³. These rights are accessible to all children around the world and the Convention is divided into three sections, each of which contains 54 articles³²⁴. The Convention on the Rights of the Child is a fairly comprehensive document, with the following main rights summarized: the fundamental right to life, name and nationality, protection of children from physical and/or mental violence, sexual assault, slavery, and child abduction, health care, education, and standard living³²⁵. Furthermore, according to Article 38 of the CRC, children below 15 years old are not permitted to take part in sports³²⁶. Children that have reached the age of 15 years, but not yet reached 18 years, can only be enlisted if states elect to do so; nevertheless, states need to take into account the age of the children and must choose the oldest³²⁷.

The Optional Protocol to the Convention on the Rights of Children on the Involvement of Children in Armed Conflict

The Protocol's significance stems from states' agreements to bar children under the age of 18 from engaging in direct participation in the war, even if they have members of their armed services³²⁸. As a result, states' armed groups are prohibited from sending children below 18 years to war as the compulsory military service age was raised from 15 to 18 years old³²⁹. Prohibited armed groups which are not allowed to enlist minors below the age of 18 for conflict are also mentioned in the Protocol, along with armed forces³³⁰. Without mincing words, as the Protocol makes a considerable contribution to the reduction of some of the disadvantages of other armed conflicts, it raises the recruitment age for children, although the age to enter the recruitment pool for children remains at 16

³²³ De Beco Gauthier, 'The optional protocol to the Convention on the Rights of the Child on a Communications Procedure: good news?' (2013) 13 *HRLR* 2, 367.

³²⁴ *Ibid.*

³²⁵ *Ibid.*, p. 368.

³²⁶ *Ibid.*, p. 369.

³²⁷ *Ibid.*, p. 370.

³²⁸ Coomaraswamy Radhika, 'The optional protocol to the convention on the rights of the child on the involvement of children in armed conflict—towards universal ratification' (2010) 18 *TIJCR* 4, 535-549.

³²⁹ *Ibid.*

³³⁰ *Ibid.*, p. 536.

whenever they are not called to active duty³³¹. By employing children by states and armed groups, the Optional Protocol makes two significant adjustments, as well as modifying the mandatory and discretionary nature of recruitment. Here are the differences:

Recruitment by Armed Forces: Article 2 stipulates that States Parties must make sure that children who are below the age of 18 years are not compelled to join the armed forces³³². Similarly, Article 3 contains the following provisions³³³:

- 1) Article 38, paragraph 3, of the Convention on the Rights of the Child, imposes the responsibility atop States Parties of raising the age limit for enlistment into their national armed forces. In accordance with that article, the Convention accords special protection to children under 18 years of age.
- 2) In order to be bound by the Protocol, each State Party must ratify or agree to the minimum age at which it will permit recruitment into its national armed forces. And it must describe the measures taken to prevent coerced or forced recruitment.
- 3) Under 18 years of age can be voluntarily recruited into a State Party's military if the State Party adheres to certain procedures:
 - a) These recruitment efforts are truly voluntary;
 - b) Parents or legal guardians must give their informed consent before such recruitment takes place;
 - c) Those who serve in the military are provided with information regarding their responsibilities;
 - d) Those who meet this requirement are accepted into national military service after providing reliable proof of age³³⁴.

Recruitment by Non-state Armed Groups: Article 4 makes the following stipulations:³³⁵

- a) The use of people under the age of 18 by armed groups which are not part of a state's armed forces is prohibited.

³³¹ Coomaraswamy, p. 537.

³³² De Beco Gauthier, p. 368.

³³³ Ibid.

³³⁴ Ibid, 369.

³³⁵ De Beco Gauthier, p. 370.

- b) To reduce such activities, each State Party shall adopt all necessary steps, including enacting laws prohibiting and criminalizing such acts.
- c) Any party to an armed conflict will not experience a change in their legal status under the present article.

ILO Conventions Nos. 138 and 182

Convention number 182, which addresses the worst types of child labour, came into effect on the same day as OPAC on 19 November 2000³³⁶. The Convention's major protagonists were ILO members, and their primary goal was to reduce the number of children aged 5 to 14 that have been coerced to engage in combative activities³³⁷. The Convention's information consists of the five works performed by children that are the worst possible, which are as follows: slavery which includes child labour practices and other forms of workers' exploitation, indentured servitude, or forced labour, particularly child involvement in hostilities, recruitment, sexual exploitation, criminal behaviour, and work that jeopardizes children's health, welfare, or values³³⁸. Furthermore, the International Labour Organization (ILO) established the International Programme on the Elimination of Child Labour (IPEC) in 1992³³⁹. This program focuses on the abolition of the inhumane types of labour, likewise, encouraging states to adopt and adhere to these standards³⁴⁰.

The establishment of Convention No. 138 on the age limit for the process of becoming employed and working was in 1973 as another method of protecting children from child labour³⁴¹. Article 3 of the ILO convention states that children less than 18 years are not to be employed in any circumstances because of the need to avoid jeopardising

³³⁶ Noguchi Yoshie, 'ILO Convention No. 182 on the worst forms of child labour and the Convention on the Rights of the Child' (2002) *Int'l J. Child. Rts.* 10, 355.

³³⁷ *Ibid.*

³³⁸ *Ibid.*, p. 356.

³³⁹ *Ibid.*, p. 357.

³⁴⁰ *Ibid.*

³⁴¹ Noguchi, p. 336.

their morals, safety and health³⁴². Unless they get to the age at which they can legally work, children are not allowed to work under this agreement. According to the type of labour, the minimum age was separated into three groups with light work being the first category, and youngsters who fall between the ages of 13 and 15 are permitted to conduct light labour and as a result, it does not jeopardize their safety, well-being or education³⁴³. Another category set forth by Article 2 of the ILO is the standard eligibility age, which sets out that children under the age of 15 years old, lower than the mandatory school attendance age, must be completed and dangerous is the final category³⁴⁴.

The African Charter on the Rights and Welfare of Children

The economic and sexual exploitation of women, mistreatment of women, and unequal accessibility to school are among the issues that African children face. Article 3 of the African Charter aims to ensure that every child has access to his or her fundamental rights (such as the right to life, education, liberty, and health care) while also being protected from the aforementioned negative circumstances³⁴⁵. There are various stipulations protecting children and safeguarding their rights in various circumstances. For instance, Article 16 sets protection against child abuse and torture, Article 22 deals with the protection of children during armed conflicts, Article 23 protects the rights of refugee children, Article 25 sets mandates against the separation of children from parents, and Article 26 strives to protect children against apartheid and discrimination, Article 27 averts sexual exploitation, etc.³⁴⁶. The Charter can also be compared to the Optional Protocol to the Convention on the Rights of the Child at times and its responsibility is to gather data

³⁴² International Labour Organization, 'C138-Minimum Age Convention, 1973 No. 138' (*International Labour Organization*, n.d)

<[³⁴³ Ibid.](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ilo_code:C138#:~:text=Article%203-1,2.> accessed 3 December 2021.</p>
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³⁴⁴ Ibid, n.p.

³⁴⁵ Chirwa Danwood Mzikenge, 'The merits and demerits of the African Charter on the Rights and Welfare of the Child' (2002) *Int'l J. Child. Rts.* 10, 157.

³⁴⁶ African Commission on Human and Peoples' Rights, 'African Charter on the Rights and Welfare of the Child' (*African Commission on Human and Peoples' Rights*, n.d) <

and examine the state of children's basic rights and safety, and it can also make suggestions to states³⁴⁷.

The Cape Town Principles

In 1997, a symposium in Cape Town attracted various specialists who were invited as a result of UNICEF and NGO working group collaboration³⁴⁸. Experts mostly discussed ways to reduce the number of youngsters engaging in armed conflicts, which is on the rise. The Cape Town Principles and Best Practices on the Prevention of Child Recruitment into Armed Forces, as well as the Demobilization and Social Reintegration of Child Soldiers in Africa, were the result of their discussions³⁴⁹. These publications detail techniques for preventing the recruitment of children under the age of 18, as well as the demobilization and reintegration of child soldiers back into society³⁵⁰.

The Paris Commitments and Principles

About 58 French states formally approved the Paris Commitments. The basic goal of these documents is to prevent illegal child recruitment, with specific aims of anticipating the issue, ensuring the freedom of children that have been participating, supporting the reintegration process, and providing them with the required protection³⁵¹. The Paris principles provide governments with thorough instructions for achieving these commitments and serve as a supplement to them³⁵². States that have embraced these principles pledge to refrain from recruiting minors because they are accountable for them. Additionally, the principles have continued to stress the importance of discouraging the enlistment of children below the age of 18³⁵³. Due to their intricacy, the Paris principles

³⁴⁷African Commission on Human and Peoples' Rights, n.p.

³⁴⁸ Snider Louis and Andy Dawes, 'Psychosocial vulnerability and resilience measures for national-level monitoring of orphans and other vulnerable children: Recommendations for revision of the UNICEF Psychological Indicator' (*UNICEF*, 2006) 2.

³⁴⁹ Ibid.

³⁵⁰ Ibid, p. 3.

³⁵¹ Hill Matthew, 'Keeping commitments: Examining the new principles in the Paris agreement' (2017) *NZJ Env'tl. L.* 21, 53.

³⁵² Ibid, p. 54.

³⁵³ Ibid.

are regarded as one of the most ground-breaking legal principles and also stress the significance of providing specific treatment to female victims³⁵⁴.

The Rome Statute of the International Criminal Court

Ideas for establishing an International Criminal Court to prosecute war criminals first surfaced during WWII but it had not yet been constituted, and individuals were judged by ad hoc courts, such as the Nuremberg and Tokyo Trials³⁵⁵. The demand for the construction of a permanent institution reappeared later in the 1990s, in conjunction with the Rwanda civil war and the former Federal Republic of Yugoslavia³⁵⁶. The International Criminal Tribunal was established respectively for the two countries and the move came about as a result of the UN's initiative, which saw the Statute of Rome becoming the foundation treaty of the International Criminal Court (ICC), ratified on July 17, 1998³⁵⁷. The Statute, on the other hand, became effective on July 1, 2002, when it received the required 120 votes³⁵⁸. The ICC's main goal is to prosecute those who commit the most serious international crimes³⁵⁹. The Court's seat is in Hague, Netherlands, and it has jurisdiction over genocide, crimes against humanity, war crimes, and aggression, as defined by its statute³⁶⁰. Crimes of aggression are handled by the Court under articles 121 and Article 123, which define the offence and establish the criteria where the Court operates and renders judgement in accordance with that definition³⁶¹. Furthermore, the clause has to be consistent with applicable United Nations Charter requirements.

The most crucial item that deals with children is Article 8, which states that the conscription of minors below the age of fifteen years into military service or utilizing them in hostile operations is criminal³⁶². Other offences, including but not limited to crimes

³⁵⁴ Hill, p. 55.

³⁵⁵ Arsanjani Mahnoush H, 'The Rome Statute of the international Criminal court' (1999) 93 *AJIL* 1, 22.

³⁵⁶ *Ibid.*

³⁵⁷ *Ibid.*, p. 23.

³⁵⁸ *Ibid.*, p. 25.

³⁵⁹ Cassese Antonio, Paola Gaeta and John Jones, '*The Rome statute of the international criminal court: A commentary*' (OUP, 2002) 4.

³⁶⁰ *Ibid.*

³⁶¹ *Ibid.*, p. 5.

³⁶² Cassese, Gaeta and Jones, p. 5.

against women, slave trading, abortions that were forced on women, physical abuse, and ill-treatment, are included in war crimes³⁶³. Furthermore, minors were frequently viewed as perpetrators rather than victims of crimes, as evidenced in countries such as Myanmar and Uganda where children in these countries were assaulted and labelled as deserters if they escaped from the army, and were then imprisoned³⁶⁴. This was altered by the establishment of the ICC because of the ICC's creation, no international court or legal proceeding may pass justice on children who have been implicated in armed conflict³⁶⁵.

International Standards and National Action

Even though there are several internationally recognized standards and practices, the implementation of these has proved difficult³⁶⁶. Their adoption at a national level appears to be the most difficult as States normally enact these laws through a constitutional provision or by adopting international treaty requirements into their domestic legislation³⁶⁷. It is of the essence to note, however, that this is not an adequate means of protecting children and their rights, or of preventing violations of those rights. Stopping the recruitment and abuse of children requires more than just passing laws. It is, without a doubt, the first step; nevertheless, other procedures must be implemented to put these laws into practice. For instance, the development of regulatory bodies and relevant institutions, as well as proper training and instruments by State and local governments is essential.

³⁶³ Cassese, Gaeta and Jones, p. 6.

³⁶⁴ Ibid, p. 7.

³⁶⁵ Ibid.

³⁶⁶ Swaine Aisling, 'Assessing the potential of national action plans to advance implementation of United Nations Security Council Resolution 1325' (2009) 12 *YIHL* 12, 403.

³⁶⁷ Ibid, p. 404.

CHAPTER V

Conclusion and Recommendations

Following this concise summary of the analysis' conclusions, the Yazidi mass murder by ISIS could be classified as genocide under all circumstances. As a result, the commitment to avoid genocide grows and persists throughout the life of the transgressions toward the victims' population. Iraq, Syria, and the United States, in this perspective, cannot be faulted for the lack of prevention. In addition, Turkey is one of the countries, which, although being a member of the US-led coalition to fight ISIS, has not participated in any efforts to save the Yazidis, opting instead to fight ISIS to prevent Kurdish forces from gaining further influence³⁶⁸. Although the fact that only a few states acted to prevent the genocide from occurring or continuing, numerous states have recognized the perpetrated genocidal acts³⁶⁹. Other states may be held responsible and surprisingly, the UN Security Council has failed to declare ISIL's massacre of Yazidis a genocide. Despite 2019 being its 'peak', the inquiry group established and authorized by the Security Council in September 2017 only began its official activities a year later³⁷⁰.

ISIS murdered Yazidi men, babies, youths, and senior citizens in a heinous crime. The Yazidi villages were also torched and destroyed, and the whole community was exiled. Many historic Yazidi temples and religious sites were also destroyed by ISIS, while various fighters enslaved, tortured, and Yazidi women and girls were systematically raped. Furthermore, many Yazidi women experienced miscarriages as a result of ISIS detention facility torture and abuse, and many children died of malnutrition and sickness³⁷¹. Therefore, atrocities committed against Yazidi women by the Islamic State are crimes against humanity and should be considered genocide.

³⁶⁸ The Global Coalition, n.d.

³⁶⁹ United Nations Security Council, Res. 2199, 16, 18.

³⁷⁰ Ibid.

³⁷¹ Committee on the Rights of the Child, p. 3.

The Islamic State meticulously and strategically planned the use of SGBV against Yazidi women and girls as part of their military strategy. SGBV was used by the Islamic State as a low-cost weapon of war to win several victories at the group, leadership, and individual levels of the ISIS militia³⁷². SGBV was used by the Islamic State to achieve hegemony, ethnic cleansing, destruction, humiliation, and retaliation against the Iraqi government and US troops. ISIS reportedly offered Yazidi women as war trophies in order to attract and recruit more warriors in order to strengthen their regional authority and build a reputation and other extremist groups from all over the world.

Moving ahead, the opinion and response of the Commission of Inquiry on Syria are the most important to the genocide. To substantiate this, the Commission published a report that dealt with the crimes against the Yazidi people committed by ISIL³⁷³. It was solely dedicated to ISIL's atrocities against the Yazidis. Although the fact that this report identified the ISIL's conduct as genocide, the commission was nonetheless denied assistance by the Human Rights Council. The commission requires the council's assistance in this matter since its legislation prevents it from beginning the inquiry necessary to determine if ISIL's actions may be concretely described as crimes of genocide, as Carla Del Ponte, a member of the commission stated³⁷⁴. According to a Nobel Peace Prize winner named Nadia Murad, it was explained that they all felt ISIS terror as their community was stricken by a violent ISIS storm that destroyed everything and there is no doubt that ISIS wanted the Yazidis exterminated. Isis planned a genocide³⁷⁵.

While the inquiry team was stepping up its work in 2019, it is only been a year since it began working after it was established and approved by the Security Council 105 in September 2017³⁷⁶. After a year of negotiations with the Iraqi government, which has

³⁷² Paula, p. 62.

³⁷³ Committee on the Rights of the Child, p. 2.

³⁷⁴ Ibid.

³⁷⁵ Nadia Murad, 'I Survived Isis. Now I Want to Rebuild the Yazidi Homeland' (*Financial Times*, 6 December 2018) <<https://www.ft.com/content/f28c4184-f823-11e8-af46-2022a0b02a6c>> accessed 8 December 2021.

³⁷⁶ Security Council Report, '*Security Council Report on Iraq*' (Security Council Report, 19 September 2019) <https://www.securitycouncilreport.org/monthly-forecast/2019-09/iraq-5.php>> accessed 3 December 2021.

been hardest hit by ISIL's atrocities, the investigation team was established by Resolution n. 2379 of September 21, 2017³⁷⁷. This group is tasked with gathering statistics and information about ISIL's actions, including crimes against humanity, war crimes, and genocide³⁷⁸. As a result, the investigative team's primary goal was to produce relevant information in order to bring those responsible for the crimes to justice. As a result, the information acquired is largely used by Iraqi authorities, who then decide whether or not to share the evidence with foreign courts working with the UN on an individual basis, as stipulated by the accord.

For a long time, the Yazidis, as well as those who supported their cause, have demanded an inquiry into the inhuman treatment carried out by ISIL towards them. In reality, many of them were irritated by the international authorities' failure to respond to their request and to form a team of investigators that can bring the Yazidis the justice they deserved for the atrocities committed by ISIL. I would rather suggest that irrespective of the years that those who perpetrated the grievous practices against the Yazidis should be fetched out based on the investigations carried out and made to face the law. This is because if care is not taken, history will repeat itself and this time, it might be in another location and the effect might be more grievous than the Yazidis and the perpetrators will get away with it just as those involved with ISIS did. I also suggest that additional mechanisms are required to enforce international laws aimed at protecting and compensating children as of genocidal victims. Prevent future attacks on children, especially in areas where genocidal attacks are prominent and an enquiry into the inhumanity carried out by ISIS is required not only to determine other victims of ISIS' genocidal crimes but to compensate them and serve justice. However, there have been substantial and commendable efforts placed by the international arena to prosecute ISIS offenders for genocidal acts perpetrated worldwide. This can be evidenced by the first-ever ISIS trial held in Frankfurt Germany following the prosecution of the first ISIS

³⁷⁷ United Nations Security Council, '*United Nations Security Council, 'Resolution 2199' (United Nations Security Council, 12 February 2015)* <<http://unscr.com/en/resolutions/doc/2379>> accessed 3 December 2021.

³⁷⁸ Ibid.

offender³⁷⁹. Taha was convicted of genocide under universal jurisdiction laws³⁸⁰. Addressing the questions posed at the beginning of this research;

- What are the advantages of international humanitarian law, which was established to defend the rights of children but is not doing anything to defend the sole purpose of its creation?
- What is the fate of these children being deprived of their rights to life following the provision of international treaties and laws?

Regarding[the first question, the laws have been advantageous enough in the sense that they recognized that even children like an adult, have rights they should not be deprived of. However, the laws have limitations as most of these laws are not implemented domestically and some of the States that have adopted them do not have enough mechanisms for achieving them. In normal parlance, it is one thing to have laws providing for some occurrences and punishment, but it is another to have enough mechanisms on the ground to make sure the knowledge of these laws is circulated and strictly adhered to.

Answering the second question, still there are several huge concerns about the mechanism provided to enforce international laws on genocide. There is a popular saying that where there is no law, there is no sin. Permit me to make an addendum to this, ‘where there is no law, there will be no sin and there will be no restitution for anybody.’ For children who have been victims and are still victims of genocidal attacks all over the world, there might be no restitution or compensation for them if the laws are not domesticated in states where these genocidal attacks are prominent. If this is not done, these children will continue to be subjected to these attacks unless the children decide to fight for themselves and that alone is suicidal.

³⁷⁹ See Trial International, ‘Jennifer W. and others’ (*Trial International*, 2021). <<https://trialinternational.org/latest-post/jennifer-w-and-others>> accessed 8 December 2021.

³⁸⁰ Ibid.

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