

# **GENOCIDES: LAW, POLITICS AND HISTORY**

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**DOCTOR OF PHILOSOPHY**

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**DECLARATION**

This is to certify that the thesis titled “**Genocides: Law, Politics and History**”, submitted by me in partial fulfilment of the requirements for the award of the degree of Doctor of Philosophy of Jawaharlal Nehru University has not been previously submitted for the award of any other degree in this university or any other university.

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Khushboo Chauhan

## Abbreviations

AU: African Union

CPA: Comprehensive Peace Agreement

CPPG: Convention on the Prevention and Punishment of the Crime of Genocide

CSO: Civil Society Organisation

CUP: Committee of Union and Progress

ECOSOC: United Nations Economic and Social Council

GCIV: Fourth Geneva Convention

HAC: Humanitarian Aid Commission

ICC: International Criminal Court

ICJ: International Court of Justice

ICTR: International Tribunal for Rwanda

ICTY: International Criminal Tribunal for the former Yugoslavia

IMT: International Military Tribunals

INGO: International Non-Governmental Organisation

JEM: Justice and Equality Movement

LTTE: Liberation Tigers of Tamil Eelam

NATO: North Atlantic Treaty Organisation

NMT: Nuremberg Military Tribunals

R2P or RtoP: Responsibility to protect

RPF: Rwandan Patriotic Front

SD: Sicherheitsdienst

SLM: Sudanese Liberation Movement/Army

SS: Schutzstaffel

UDHR: Universal Declaration of Human Rights

UN: United Nations

UNGA: United Nations General Assembly

UNGC: United Nations Genocide Convention

UNHCR: United Nations High Commissioner for Refugees

UNMIS: United Nations Mission in Sudan

UNSC: United Nations Security Council

UNSG: United Nations Secretary General

US: United States

USA: United States of America

USSR: Union of Soviet Socialist Republic

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# Chapter I

## Introduction

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Genocide as a concept is dynamic in nature. Regardless of the reality that genocides have been occurring since pre historic times, there is still much to be understood about it as a concept. Even though the international community after the Holocaust determined to fight this menace, it has failed to do so. As genocide is a legal, political and a historic wrong, the study focuses on the conjoint “lens” of law, politics and history to study it by analysing genocidal incidents since the Holocaust, other cases which maybe recognised or contested. The Holocaust is seen as the “benchmark” for evil and a “prototype” for genocides, therefore, the study further uses it as a “tool” or “lens” to understand not only what genocide is but to compare the other two case studies of Darfur and Sri Lanka with it. This chapter provides an outline as to how the study will be carried out. It introduces the various sub-topics, debates and conceptual frameworks that the study is based on. It further provides a brief introduction of all the chapters that the study is divided into.

### Introduction

If we look into the history of any of the great power crimes, whether a war crime or ethnic cleansing or genocide we will realise that racism is the central theme that binds all these crimes. The powerful perpetrators of almost majority of these crimes have always held the belief of being “superior” to their victims. The conquest of nations around the world and the extermination of it’s indigenous people has been carried out over many centuries either in the name of religion or development. The powerful and dominating institutions of today maybe more complex than their predecessors of centuries or decades ago but there is no denying the fact that they work no differently than the ones before them. Great aggressors of the past times projected their victims as “savages” or “uncivilised” in order to justify their aggression and the great aggressors of today justify their aggression by claiming to uphold the principles of democracy, human rights, justice, etc. For example, invasions like that of Iraq in 2003 by the United States and it’s allies are considered an act of aggression by many around the world. The reason being the failure to justify the grounds on which it was carried out i.e. “to disarm Iraq of weapons of mass destruction, to end Saddam



Hussein's support for terrorism, and to free the Iraqi people"<sup>1</sup> The failure to provide evidence regarding the existence of weapons of mass destruction has forced many to question the real motives behind the attacks.

History is replete with examples of such power crimes where factors like racism, political and economic interests, personal vendetta, etc. have resulted into numerous forms of mass violence since the very inception of human kind. The many recognised or contested genocidal incidents are a culmination of these various factors coming together and ending up annihilating large groups of innocent civilians. Mass violence is a political tool used by the powerful for the fulfilment of their own strategic objectives. This tool is represented as acts of violence against a civilian population in a variety of contexts and forms. It is not an unpreventable or an unmanageable explosion of existing tensions. Mass violence and specially genocide result due to ethnic and other social divisions manipulated by the powerful and hence, don't occur spontaneously. That means that they can be prevented. Early preventive strategies by governments and the international community consisting of various actors such as the international organisations, civil society, etc. should build or use effectively the much needed capacities within countries, eventually making it harder for the perpetrators to resort to violence. This large scale and systematic violence is on rise around the globe by disrupting societies, creating spill over effects and stretching the international system thin. The consequences of failing to prevent such violence are too great to ignore and hence, the need to study crimes like genocide arises.

## **Genocide**

Genocide maybe a term newly coined in the 1940s but its existence in this world lies in antiquity. It is a word that has come to define a nefarious human rights infringement which is still very much in existence around the world. A long time has elapsed since the appropriation of the Convention on the Prevention and Punishment of the Crime of Genocide (CPPG), also known as the United Nations Genocide Convention (UNGC) in 1948, yet instances of various types of perpetrators killing their fellow human beings keep on mounting. Regardless of the UNGC and the pledge of the international community of "never again" inspired by the Holocaust, genocide

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<sup>1</sup> Office of the Press Secretary, The White House, "President Discusses Beginning of Operation Iraqi Freedom, released on March 22 2003, retrieved from the White House Archives, <https://georgewbush-whitehouse.archives.gov/news/releases/2003/03/20030322.html>, accessed on August 20, 2017.

has been a repetitive crime even in the post second world war period. On the contrary, a more suitable portrayal of the often chanted “never again” if truth be told, is “over and over, again and again”. Genocide has occurred on an unpleasant scale covering almost all the continents of the world and with much severity such as in the cases of Cambodia and Rwanda, two of many such incidents. The rundown of casualty gatherings amid this "Century of Genocide" is long.<sup>2</sup> Many have been killed due to this noteworthy indefinite infringement of human dignity regardless of nationality, ethnicity, religion, etc. like the Armenians, Jews, Gypsies, Romas and Tutsis to name a few.

Even decades after the Nazi extermination camps had been discovered, the world has witnessed genocide incidents numerous times. Disappointingly, even after each of these incidents it is still difficult to come to any definite conclusion as to why and what brought about any or each of these remarkable atrocities. One of the main reasons behind studying genocide is to know the why and how? The answer to both these questions seems to be elusive till now. This failure to fully understand a concept like genocide can be easily observed for example in the case of the Holocaust, where even after seventy two years later, there is still no consensus as to its explanation. Hence, it is not at all surprising that it is hard to interpret any of the other incidents like Cambodia, Rwanda, Darfur, etc. even today. In case of any attempt to explain something as complex as a genocide like Holocaust or Darfur or the contested case of Sri Lanka, parallels with other incidents of mass violence whether state supported or not are unavoidable. Drawing such parallels is even more desirable if the aim is to identify the particular dynamics of genocide in any particular given case, like that of Rwanda.<sup>3</sup> As Prunier also justifies by commenting that

understanding why they died is the best and most fitting memorial we can raise for the victims. Letting their deaths go unrecorded, or distorted by propaganda, or misunderstood through simple clichés, would in fact bring the last touch to the killers' work in completing the victims' dehumanisation.<sup>4</sup>

Therefore, in order to understand the why and the how, the study aims to examine the concept of genocide through the conjoint lens of law, politics and history. It becomes imperative to understand the role played by each of these processes in creating the

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<sup>2</sup> R.J. Rummel, *Democide: Nazi Genocide and Mass Murder*, New Brunswick, 1992, p. 6.

<sup>3</sup> A. Destexhe, *Rwanda and Genocide in the Twentieth Century*, London, 1995, p. 45.

<sup>4</sup> G. Prunier, *The Rwanda Crisis 1959-1994: History of a genocide*, London, 1995, p. xii.

circumstances for a particular genocide due to their discrepancy. Law, politics and history are not only three distinct fields of study but they are also interconnected and so each of these three will be studied in detail here in order to find answers to an array of important questions such as: firstly, what constitutes genocide?; and secondly, why do genocides still occur? Law, politics and history have influenced the interpretation and development of the concept of genocide not only over the years but also in the present times. This study is the culmination of an investigation into how the different legal, political and historical discourses not only define but provide meaning and understanding to the concept of genocide as well as the Holocaust. These three discourses are not only interconnected but they also provide the base for examining as to how human rights can be practically attained and the obligations fulfilled in relation to the issue of genocide.

The study will wherever desirable analyse genocides since the Holocaust as examples to understand the various conceptual frameworks like the state, human rights, the Holocaust in respect to bringing more clarity to the central framework of genocide. Genocide is not just the product of a deranged perpetrator but it's a systematic exercise undertaken to first eliminate the different important components of a victims' life whether political, economic, cultural, social or biological, etc. The more devastating reality is that the perpetrators do not halt till both the victims and their way of life are exterminated. Even though the law to prevent genocide has been laid down, it is not being enforced successfully as politics does not let the world community come together in fighting this menace and history is interpreted to one's advantage by each of the various actors involved. The inability or reluctance of the international community to intervene or protect innocent victims of atrocity crimes due to various political motives has been previously observed both in the cases of Rwanda and Darfur, when it provided little help and that also too late. Hence, regardless of the reoccurrence of incidents of genocide nearly every decade no lessons have been learnt from the past. Thus, in order to find answers to all the above questions, the study further focusses it's attention on the institutions of global governance from the perspective of law, politics and history with the prime focus on genocide and the Holocaust, by engaging with the complex threads that constitute the scholarship in this area.

The failure of the international community in combating genocide cannot be studied in a vacuum; hence the attention on these three areas becomes paramount. Studying any of these interconnected threads in isolation will never let us understand this concept clearly nor will it be able to offer realistic remedies that may be able to prevent this crime in the future. While this does seem difficult but without studying the failure to fulfil the collective responsibility to identify, prevent or stop genocide, there is an unrealistic likelihood of a global community ever formulating a feasible, realistic action plan in the future. Clearly, our understanding of the future genocides cannot be based singularly on the Holocaust alone. We need to understand genocide along with other discourses and concepts which influence it. The study of genocides from antiquity to modernity and previous failures on the part of various actors involved is a necessary precursor to eventually formulating a clear and coherent action plan for both currently occurring and future cases of genocides.

Past incidents of genocide such as Armenia, Holocaust, Cambodia, Rwanda, Darfur etc. strengthen the apprehension that fierce clashes, including genocide, will be as predominant in the present century, as they were in the last, unless there is a concerted action by the world community as a whole to keep them from being repeated. What is more startling and unsettling, nonetheless, is the manner by which genocide has regularly occurred, as well as that whenever it has happened it has frequently been ignored by the international community. Not just have genocidal occasions yielded essentially no activity or intercession on behalf of the world community but even significant forces and powerful nations such as the United States (US) and Russia to name only a few, have as a general rule, avoided censuring or recognizing that such violations have or are occurring. The cases of Rwanda and Darfur and recently Syria in 2013 are prime examples of the failure of the international community to recognise the makings of a genocidal incident in time. This ignorance resulted not only in deaths of millions of innocent civilians but also forced mass displacements. The ingenuity of genocide, the ruthlessness with which it occurs, and the failure of the world community to end it, has incited intrigue and made it essential for the improvement of the measures meant to distinguish, avert and stop such future occurrences of state supported mass homicide. Sadly, merely studying past genocides is not enough; action must be taken to make "never again" more than an idealistic phrase.

It was after the devastating occasion of the Second World War that the world community, through the comity of nations under the auspices of the UN, acknowledged Genocide through the UNGC in 1948, which was confirmed in 1951.<sup>5</sup> It was in this Convention that the legal meaning of genocide was expressed at length. As laid down in the Convention and indicated through large amount of genocide literature and discourse, it is the duty of the world community to stop genocide from happening if indications of it's occurrence are available in any part of the world. It has been widely observed through many case studies and other works that genocide is not a sudden occurrence; it must be arranged, planned and implemented, and, hence in this way it can be avoided.<sup>6</sup> Still shockingly, a number of genocides or making of genocides can be found in the post-Second World War period. One could translate this as a disappointment of the Convention and the UN, as a result of their detachment.<sup>7</sup>

The international community undoubtedly seems to have not fully realised the repercussions of a genocidal incident and that is why they are reluctant to prevent it. States around the world feel that a particular genocidal incident cannot impact the politics or law or history of their nations. But the truth is much more dreadful. For example, in the very recent times many countries of Europe have faced a threat to their security, law and order and peaceful community life due to an influx of Syrian refugees. Many of these refugees are indulging in violence whether physical or sexual and are a looming threat to the security of many of these nations. If only the international community had taken definitive and preventive measures in time against the Syrian government of President Assad, Europe would not have been living under the present cloud of terror. What it did was stand divided based on it's own interests whether political or economic with Russia supporting Syria in killing it's own citizens. Countries like Germany have welcomed the refugees with open arms but it would have been better had they taken timely action and prevented this tragedy.

Genocide suffers from many vital conceptual issues such as the ever going debate on how to define genocide or what does "genocide" mean in different societies where genocide is taking or has taken place. These various contentions make it harder to

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<sup>5</sup>Samuel Totten, William S Parsons and Israel W. Charny (eds.), *Century of Genocide Critical Essays and Eyewitness Accounts*, New York, 2004, p. 89.

<sup>6</sup>Helen M. Hintjes, 'Explaining the 1994 Genocide in Rwanda' in *The Journal of Modern African Studies*, vol. 37 no. 2, 1999, pp. 241-286.

<sup>7</sup>Albert J. Jongman (ed.), *Contemporary Genocide: Causes, Cases, Consequences*, Leiden, 1996, p. 61.

fully understand the concept even today. The term genocide has emerged at a given moment in time and in a particular context, distinguishing itself from the concept of mass violence but the question remains as to what do we miss when we label mass violence as “genocide” without seeking to ask what such violence means in a given context? Another important question that emerges is as to what are the categories that victims and perpetrators use to label and understand one another? As it is claimed that history is written by the victorious, it is vital to understand that genocide cannot be studied by ignoring history. Many times the historical interpretation of any genocide may be totally in contrast to what international law lays down or international politics may claim it to be. Moreover, there can also be no doubt that both international law and international politics are greatly influenced by history and vice versa. Hence, the objective is to study the discrepancy and the relation between the three in the conceptual framework of both genocide and holocaust as the tools being used to understand this dynamic relationship. Studying genocide also becomes obligatory to understand how to separate genocide and Holocaust as these two distinct concepts are used synonymously for each other.

### **The Holocaust**

As the Holocaust is in itself a huge historical phenomenon or “lens” with much available literature, it is being used as an “instrument” or “tool” in the responses towards cases of genocide with special reference to Darfur and Sri Lanka. It is in response to the aim of attaining the various involved actors of the international community such as the United Nations (UN), civil society, etc. that the states either decide to act or not act to prevent and punish genocide. It has been observed that many states use the Holocaust in justifying or validating their chosen responses towards the conflicts which are reflected, influenced or critiqued by various actors involved. There is no doubt that these responses are very much influenced by the law, politics and history of genocide and the member nations and hence, the study aims to study these responses in detail in order to understand the nexus between law, politics and history. These three discourses very clearly affect the manoeuvres and participation of the world states in discussions, debates, talks and decisions pertaining to genocide.

The reason why the study focuses on the Holocaust and holds it as the “lens” for comparing the other two case studies is that historically the Holocaust has become the

face of evil. It is viewed as one of the main influences on morality and ethics in the post second world war and is often seen as a standard to measure good and evil.<sup>8</sup> Hence, it has become an important tool that can be used by the actors of international politics in order to influence the interpretation of both international law and history to achieve their goals. It has helped in interpreting genocide in post-war politics. The role played by the Holocaust and it's importance in the various discourses can be more clearly understood in detail by comparing it with the other case studies of Darfur and Sri Lanka. The study further aims to investigate as to how the Holocaust is being used in the argumentation and rhetoric surrounding different occurrences of genocide and what effect this has on the fulfilment of human rights under international law, especially in relation to the international community's obligation as set out in the Genocide Convention.

It is while studying genocide that the realisation dawns as to whether helping the victims of an incident of genocide happens to be dependent more on the interests, gains and characteristics of nations rather than on principles of justice and morality. If it would not have been the case, then genocides such as Rwanda and Darfur would not have been ignored by the international community in the first place. The foundation of this belief lies in the recognition of the reality that even strong nations place themselves on the defensive and when they do they act just like the weak ones. Nations whether weak or strong try and have an equal right to defend themselves with their own resources and maybe not offer them if they themselves are in dire need. Both the nations who form together an international community and the international organisation such as the UN have individual approaches towards combating this menace. The lack of a proper authority in the international community is one of the main reasons for the failure in preventing genocide – there is no higher authority that can interfere when a state decides to act in a certain way. The international community, for example the United Nations, consists of several powerful nations that are trying to offer a platform for agreed decision making among themselves. However, the power of the UN is not stronger than the strongest member of the organisation. Therefore, the issue becomes more complex and politics comes to play a major role as the UN's general assembly and the Security Council seem to be on opposite ends of the genocide spectrum. For example, during the Syrian crisis in

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<sup>8</sup>David. B. MacDonald, *Identity Politics in the Age of Genocide: The Holocaust and Historical Representation*, New York, 2008, p. 21.

2013, Russia stood by the Assad government regardless of the firm evidence of chemical attacks on its own citizens. Ironically, the Security Council, a world authority which is expected to behave impartially in order to safeguard world peace has been accused of taking unfavourable decisions due to dynamic group politics, making international organizations like UN seem mere puppets in the hands of the powerful nations.

### **The Research Methodology**

The approach adopted for this study is a theoretical analysis which will utilise the existing data and material in the form of books, journals, web sources such as websites, blogs, legal documents, pre-recorded interviews, talks, documentaries, conferences etc. The reason for choosing to conduct a theoretical research is the easy availability of literary sources, genocide studies is a vast subject with enormous literature. Hence, it was not only possible to access a large number of related works through the vast resources available at the university's disposal but due to easy and continuous availability and access to internet a large portion of both literally and documentary research was freely available without any requirement of permission for access.<sup>9</sup>

The reasons for not conducting a primary research for this particular problem are manifold: firstly, genocide is a dangerous phenomenon and conducting field work in relation to it can pose security threats both to the researcher as well as the target group to be studied especially in areas like Sri Lanka or Darfur. Secondly, genocide is a hugely sensitive topic both for the survivors who may get stressed while recalling genocide related events of their lives and those who study it. It has been observed that those who investigate genocide can get impacted both psychologically and emotionally<sup>10</sup> during the study while reading many of the testimonies and other genocide related documents. In order to have a neutral approach towards the research problem throughout the study, a theoretical research is an appropriate means to an end. Thirdly, as the research basically focuses on the discrepancy between law, politics and history and not on the incidents as such, a theoretical approach is apt.

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<sup>9</sup> L. Noaks and E. Wincup, *Criminological Research: Understanding Qualitative Methods*, London, 2004, p. 81.

<sup>10</sup> Adams Jones, *Genocide: A Comprehensive Introduction*, London, 2006, p. 102.



It is this discrepancy which comes across whenever there is an attempt to understand the concept of genocide. It is astonishing that not only does genocide keep reoccurring but there seems to be no fear in the heart of the perpetrators while they are planning to or committing this crime. Due to the large number of people who fall victim to this heinous crime and the ever growing presence of media and other sources of information due to globalization, the perpetrators are unable to hide any kind of human rights infringement. For example, in recent history the Rohingya, a predominantly Muslim minority group based in the Rakhine State of Myanmar are the latest victims of alleged genocide. Regardless of the fact that recently a commission was set up by Myanmar's government said that it had so far found no evidence of genocide against the Rohingya Muslims, the media seems to be reporting the opposite.<sup>11</sup>

Sadly, but not surprisingly, the world community once again seems to have turned a blind eye towards the decades of human rights abuse against this community even though recently the situation seems to have reached almost the alarming makings of a genocide. Though the situation has drawn global condemnation as over a dozen Nobel laureates have written to the United Nations Security Council (UNSC) demanding action to stop the "human tragedy amounting to ethnic cleansing and crimes against humanity" in northern Rakhine<sup>12</sup> but for now the world community stands silent. This blatant overlooking of such human rights abuses was also recently observed in 2013 when a newspaper reported that according to the United Nations High Commissioner for Refugees (UNHCR), it was observed in February of 2013 that the death toll in Syria was approaching nearly 70,000<sup>13</sup> without an attempt to commit genocide by the President Bashar Al-Assad regime. It further remarked that eventually when the Syrian opposition claimed that nearly 1300 deaths had occurred in the suburbs of Damascus of the civil war worn country's capital, the United Nations Secretary General (UNSG) Ban Ki-moon had instructed the investigation team, led by Swedish

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<sup>11</sup> Anonymous, Myanmar says 'no evidence' of Rohingya genocide', published online on 4<sup>th</sup> January 2017, <http://www.bbc.com/news/world-asia-38505228>, accessed on 5<sup>th</sup> January 2017.

<sup>12</sup> Ibid.

<sup>13</sup> Nick Cumming-Bruce and Michael R. Gordon, 'Syria Meets Deadline for Submitting Destruction Plan for Chemical Weapons', New York Times, 27<sup>th</sup> October 2013, retrieved from [www.genocidewatch.org/syria.html](http://www.genocidewatch.org/syria.html), accessed on 31<sup>st</sup> October 2013.

expert Ake Sellstrom, “to focus its attention on ascertaining the facts of the August 21 incident as its highest priority”.<sup>14</sup>

These two latest incidents are the examples of how the discrepancy between law, politics and history does not let genocide fade away from human history. If we dig deep into both these incidents, we will realise that there is a combination of domestic and international politics that has resulted in these two incidents being responsible for a large number of deaths already. There is also to blame the lacuna in the law that lets other nations run away from their responsibility to protect these innocent people. As for history, we just do not seem to have learnt any lessons, regardless of the facts that genocides in Rwanda and Darfur started off on very similar lines and the international community by taking a cue from previous cases of genocide can and should take action in both these cases. But all we will see is this discrepancy which will either never result in any action or in such late action that nearly all will be lost by then. Hence, as Alvarez argues, “turning the empty rhetoric of “never again” into a promise and reality”<sup>15</sup> is the need of the hour, as by conducting research, the hope remains that timely actions will be taken and both national and international policies on genocide will be reformed.<sup>16</sup>

### **The Central Postulate**

There exists a discrepancy between international law, international politics and history regarding genocides from the Holocaust to the present times. The focus of this study will be on studying this discrepancy with special reference to the role of the Holocaust in interpreting genocide through the conjoint lens of international law, international politics and history. The Holocaust will further be compared to the incidents of Darfur and Sri Lanka as the brutality associated with it has turned it into not only one of the major incidents of the post-war world but has also given it the status of one of the greatest moral wrongs ever committed. The Holocaust also plays a very important part in the study due to its inseparable relationship with the very concept of genocide throughout post-war politics and history. This has resulted in another array of important issues to be discussed and researched. Hence, in order to

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<sup>14</sup>First Post, ‘Syria: UN mission to probe alleged chemical weapon attacks’ published on 26 August 2013, retrieved from <http://www.firstpost.com/world/un-mission-to-probe-syria-chemical-weapon-incident-1059779.html>, accessed on 31<sup>st</sup> Oct’13.

<sup>15</sup>A. Alvarez, *Governments, Citizens and Genocide: A Comparative and Interdisciplinary Approach*, Bloomington, 2001, p. 115.

<sup>16</sup>*Ibid.*

find answers to these questions the aim is to undertake a full-fledged study of the law, politics and history of genocides from the Holocaust onwards.

### **Conceptual Frameworks**

Genocide is an extensive, comprehensive and complex concept. It is an amalgamation of a number of concepts and theories interwoven together belonging to various areas of study but here we will only be concentrating on the legal, political and historical perspectives of these concepts and theories. Due to the vastness of the genocide discourse, in order to streamline the study, the foundation for a coherent method and conceptual framework is of major importance in this study. The two conceptual frameworks of genocide and the Holocaust that have been used for conducting a comparative analysis between the three case studies have been used to understand the why and how of genocides, specially when it comes to analysing incidents that can turn into genocides in the coming future. The international community in the present times has been emphasising the importance of prevention of genocide. Due to various political, social, economic reasons it is the need of the hour that genocides should be prevented.

Genocide and Holocaust cannot be studied in vacuum and hence they need the support of other conceptual frameworks to find answers to various questions that have been gnawing at them for decades now. Both human rights and state play a very important role in this as conceptual anchors. On one hand the state is the perpetrator in many cases of genocide, on the other hand it is the victim. Scholars like Hannah Arendt, whose works, which are no doubt relevant to this study as the current debates about equality, democracy, citizenship, totalitarianism; pluralism and bureaucracy combined with the place of today's politics in society are very much a point of discussion here. Her works are not confined only to the above mentioned topics but address other relevant issues too. Though Ardent herself and the secondary literature on her has exponentially tried to answer the question "What is Politics", there seems to be a neglect of the question "What is Law". Though she never developed any detailed theory of law maybe due to the fact that she lacked the legal background to do so, yet a close reading of her work shows that she had a keen interest in law and in particular the relationship between law and politics.

Her understanding of the concept of state along with that of many other scholars through various approaches to genocide are fully equipped to bring out this discrepancy to light. The state is a unbreakable part of the study of genocide whether it is as a perpetrator or victim or in case of state sovereignty as is human rights. The concept of genocide and the Holocaust share a very paradoxical relationship with human rights. On the one hand the states claim to provide human rights to their citizens on the other it itself infringes upon these rights specially in cases of genocide. Genocide sees both infringement and protection of human rights. The various case studies showcase as to how these rights are being infringed upon by the very state that it claims to be their protector and if one looks keenly one will observe that it is not only totalitarian or authoritarian states that are responsible for genocides but many of the genocidal incidents have taken place under democratically elected governments such as in Darfur.

In order to compare the three case studies of the Holocaust, Darfur and Sri Lanka, the theory of “ten stages of genocide” introduced by American sociologist Dr. Gregory H. Stanton is being brought to use. It shows the step by step development of an incident of human rights infringement into genocide and afterwards. It starts by analysing, studying and making detailed observations of events that are related to the newer and older history of genocide whether recognised such as the Holocaust, Rwanda, Darfur or contested such as Iraq or Sri Lanka. What is recognised as genocide by either law, history or political policy, Professor Stanton has defined ten distinct elements which are recognizable in the preparation, implementation and denial of acts of genocide. He has gone a step further and also offered recommendations as to how to prevent the development of genocide in the preparatory phases itself. He has also painstakingly worked on making suggestions for actions that the international community could and should take against perpetrators of genocide to combat each of the distinct phase. This theory focusses on bringing out the similarities and the differences between the three case studies while also comparing them. This theory also provides an opportunity to analyse the case of Sri Lanka and making an informed decision as to whether it should be recognised as a genocide or not regardless of the divided position over it’s status around the world.

Given above are just some of the concepts and theories that will be interconnected with discourse analysis and comparative study method to conduct this study. Many of the various concepts related to the study will be mentioned as the study progresses.

### **Comparative method of study**

The comparative case study here helps the conclusion to bring forward answers to questions that have been asked each time such an incident takes place. The discourse analysis itself will work in coherence with numerous concepts related to human rights, international relations, law, politics, history and many others as the analysis itself will show how important the opinions of powerful nations are in terms of facing and reacting to genocide. As this will be historical frame worked study it is possible to analyse how these actions have changed, or not, over time in each of the three case studies. The study is comparative in nature and aims to bring out the discrepancy by discussing the multitude of genocidal incidents and the international community's response to them. The choice of a comparative study will be visible throughout the analysis as this study will compare the diverse cases of the Holocaust, Darfur and Sri Lanka. This also shows how the quantitative approach would once again not be suitable for this topic – an in depth conclusion requires an in depth analysis of material which the quantitative approach does not offer. The critical discourse analysis brings forward the information needed from the perspective of the previous colonies and the external interests.

Due to three different fields of law, politics and history as well as genocide studies involved in the study and a variety of research methods being used such as discourse analysis, critical discourse analysis and comparative study, the conceptual framework is based on a number of concepts related to them in order to do full justice to the research and conduct an in depth study.

### **Delimitation of the Study**

The genocide discourse is vast and though this particular study is a wide-ranging undertaking, it can only be helpful and useful in increasing our understanding of the concept of genocide if it is both narrow and deep. It has to be narrow in the sense that the division and level of analysis must be limited and deep in the sense that the

research should eventually demonstrate analytically relevant findings as opposed to speculations and loose interpretations. In order to achieve and ensure that the study has enough narrowness and depth, several limitations are being placed on the scope of the study.

Primarily the level of analysis is to be limited in two ways. Firstly, the analysis will be limited to and divided using both international and other state organisations. The actions and the interactions of states and bodies representing their interests in international society are very much a point of interest of this study and though it is also acknowledged that other actors such as the civil society, individuals, etc. have an impact on the actions of the state, thereby impacting international society, these roles and such relationships cannot be explored in depth here. The impact of the above mentioned actors will be assessed as they play a role in formation of norms which enable and constrain behaviour, thereby impacting state action. Secondly, examining state behaviour in international society is an important part of this study but it will only be limited to the interaction of states at the multilateral and bilateral levels. This will be done by analysing formal and informal workings of the state agencies, foreign affairs machinery, other means of engagement and also looking into domestic factors wherever relevant as it is fully understood that state behaviour at the international level is not only governed by interaction with other states in the system but also domestic politics. However, it is not feasible to include an assessment of each and every domestic development that impacts the behaviour of the states at the international level, only the ones that are relevant for better understanding of the concept of genocide.

A further limitation placed on the research is in its focus of analysis. The international organisations such as the United Nations have played an important role in development of genocide as a concept but it also holds the mandate for the maintenance of international peace and security. Genocide cannot be studied without a thorough research of its role in international law, international politics and history. An analysis of these actions of the UN is also relevant to the present research as compared to any other regional organisation. Even if one tries to narrow the focus of the analysis to actions of other international or regional or national organisations that have played a role due to law and politics being involved in the study, it would not be possible to assess all actions of each of these organisations at every juncture. Hence,

emphasis will only be placed on such actions, as well as instances of inaction, that are relevant to the focus of this particular study, which will eventually serve to both validate and detract from the line of argumentation being presented here.

Finally, the research is also limited in terms of the timeframe under review as regardless of the fact that genocides have been taking place since antiquity, due to the vastness of the literature and time constraints, the study will only focus on the Holocaust and genocides after it to fully understand the role of law, politics and history in relation to genocide with special reference to Darfur and Sri Lanka, due to their unique circumstances. No doubt, the Holocaust has gained an iconic status since its occurrence and much of the genocide discourse is related to it, thereby becoming the “lens” to understand genocide as a concept.

## **Chapterisation**

### **Chapter I: Introduction**

The chapter gives a preview to the study by discussing the various essential features of the study to be undertaken. It will define the various methods chosen to conduct the study and also lay the plan as to what is to be undertaken under the main topic as well as the sub topics.

### **Chapter II: Crime without a Name: Historiography of Genocide**

Genocide is an ancient crime but it had neither been recognised as a unique concept nor as a crime till the 1940s. It is crucial to understand the historiography of this ancient happening to fully understand it in the contemporary times. The chapter dwells into the historical roots of this crime from antiquity to modernity in order to understand the development of genocide both as a concept and a crime. It further underlines the identification of genocide as a unique concept conceived by Raphael Lemkin and mentions significant contributions made by other scholars such as Leo Kuper. Though, Lemkin through his contribution towards the drafting of UNGC has influenced the future development of genocide but there is no dearth of scholars who have developed it much further than what he could have imagined. Genocide was not recognised as a crime in the Nuremberg trial, instead the term crime against humanity was used. It was the UNGC which legally recognised genocide as a crime but this recognition was not brought about easily. From the status of a “crime without a name” to a significant part of international law, genocide as a crime has been able to gather

much attention due to its legal complexity and uniqueness. The third part of the chapter tracks this development of genocide as a distinct crime from other atrocity crimes such as war, ethnic cleansing, etc by studying the history behind its drafting to legal recognition under a number of legal instruments. There is also an examination of the legal components of genocide which make it a crime under international law.

### **Chapter III: Understanding Evil: Definitions, Approaches to Genocide and Conundrums**

It no doubt becomes essential to understand the general connotation of this concept which has been provided by some great thinkers and authors with a background in diverse fields like politics, international relations, anthropology, etc. This exercise becomes mandatory as Genocide is not only a legal wrong but it is a political, cultural, social wrong which results in the systematic annihilation of a particular component of human race. It must be noted that many scholars disagree with each other on defining genocide on multiple grounds such as they either find the list of possible victim groups too narrow or the need to prove intent too demanding. Hence, there is no dearth of definitions on genocide pertaining to different contexts. It was the late Leo Kuper, widely revered as the doyen of genocide studies, who doubted the feasibility of ever developing “a general theory of genocide”, on the grounds of “the great variety of historical and social contexts” in which they occur.<sup>17</sup> Even though there may never be a generic definition of genocide nor there may ever be a general theory, it is essential to study genocide as Frank Chalk and Kurt Jonassohn have also put it “the major reason for doing comparative research on genocides is the hope of preventing them in the future”.<sup>18</sup> This chapter analyses both the various definitions of genocide and the approaches that have come up over the years since the genocide convention came into being. It further discusses the various lacunas that plague each of these definitions and approaches

### **Chapter IV: The Many Faces of Evil: The Holocaust, Darfur and Sri Lanka**

The various scholars have understood and defined genocide by closely linking it with their understanding of the Holocaust. Genocide and holocaust are synonymous to each other for many laymen and scholars. Another important question that arises here is

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<sup>17</sup> Leo Kuper, ‘Theories of Genocide’ in *Ethnic and Racial Studies*, Volume 4 Issue 3, 1981, pp. 320-333.

<sup>18</sup> Mark Levene, *Genocide in the Age of the Nation State: The Meaning Of Genocide*, New York, 2008, p. 9.



whether the Holocaust can and should stand as the prototype of genocide? As these questions arise repeatedly, one is left to reflect on issues concerning what constitutes the Holocaust and why the Holocaust is understood and used in the ways that, this chapter studies it is in relation to law, politics and history. Therefore, the chapter aims to bring some flow to the different themes involved in the study by linking them together by providing a chronological outline of the main developments leading up to and since the holocaust and it's interpretation in relation to the question of genocide in the post-war politics. The chapter further examines the Holocaust alongside the Darfur genocide and the "contested case" of Sri Lanka. The aim of the analysis is not to make an comparison in itself but analysing these three case studies will provide us with a starting point as to how do various cases of mass violence evolve over time. Darfur stands out as an example of the blending of circumstances and context which have mostly already taken place whereas the second one has still not been officially declared as genocide.

#### **Chapter V: The Paradigms of Genocide: Comparative Analysis of the Holocaust, Darfur and Sri Lanka**

There are some researchers who argue that other genocides are not in a position to stand the comparison with the Holocaust. One of the grounds supporting this argument is that because each of these incidents of genocide has occurred in different circumstances. Some scholars, such as historian Yehuda Bauer, accept the comparison but acknowledge the fact that the Holocaust was unparalleled in many ways.<sup>19</sup> This chapter analyses genocides after the holocaust to discover common patterns and differences, ultimately contributing to the existing body of knowledge on genocide. The analysis will also provide us with similar characteristics such as shared ideology, a regime with revolutionary and utopian ambitions, internal division and circumstances of war.<sup>20</sup> On the other hand, the many existing differences such as in general context, ideology, the political consequences, the international context and the nature of the conditions of each case study will be quite helpful in understanding the concept of genocide. Each case of genocide carries with itself a unique character and context and hence one has to be diligent while comparing the Holocaust to other cases. Comparing the three cases on the criteria set by the "ten stages of genocide"

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<sup>19</sup> Yehuda Bauer, ' *On the Holocaust and Other Genocides*' presented at the Joseph and Rebecca Meyerhoff Annual Lecture, 5 October 2006, First Printing, 2007.

<sup>20</sup>Eric D. Weitz, *A Century of Genocide. Utopias of Race and Nations*. Princeton, 2003, p. 138.

will bring out all the above mentioned differences and similarities. This is important for tracing the background and tracking the events of outbreaks of mass violence, as they allow for in depth knowledge of the societal and historical roots of the problem.<sup>21</sup> The chapter aims to find out whether each occurrence of genocide is unique in itself or whether there are shared factors, enabling the application of universal criteria for prediction and intervention in comparison to the Holocaust as the “lens”.

### **Chapter VI: Complicity of Evil: Law, Politics and History**

This chapter investigates the contributions made to the study of genocide representations and politics by examining how the conjoint lens of law, politics and history has been used in relation to the genocidal incidents from the holocaust onwards and its consequences on the development of the genocide discourse. The chapter further scrutinises the relationship between the Holocaust and the concept of genocide in relation to the state, human rights, international organisations and the practicalities of the implementation of the UNGC. It further tries to check the fact whether the way the holocaust is used in relation to other genocidal incidents is utilised by the actors in the international community to justify and achieve certain political goals or not? If the answer to that question is yes then it paves the way for possible reinterpretations of the problem of genocide. The chapter therefore focused on the complexity prevalent between law, politics and history which is brought to the forefront by studying it in connection with other concepts such as the state, human rights, UN, etc.

### **Chapter VII: Conclusion**

The study will come to an end by drawing conclusions based on the role played by law, politics and history in relation to genocide and also make recommendations for doing away with the discrepancy prevalent between the three. This chapter will further analyse the current situation prevalent around the world in relation to genocides and suggest realistic remedies for bring an end to this barbaric crime once and for all.

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<sup>21</sup>Peter Suedfeld (ed.), *Light from the Ashes: Social science careers of young Holocaust refugees and survivors*, Ann Arbor, 2001, p. 148.

## **Conclusion**

This study argues that to some extent studying genocide and trying to produce a written work on it not only makes the world remember the constant threat that it poses to world peace but unbiased research conducted by scholars around the world may deter and influence the various actors involved in finding some realistic solutions in the coming future. Each of the three case studies i.e. the holocaust, Darfur and Sri Lanka have a certain “uniqueness” attached to them. Regardless of the fact that since the occurrence of the holocaust, it has been seen as the “prototype” of genocide and the benchmark for measuring other genocidal incidents, there can be no denying the fact that every genocidal incident whether recognised or contested should be treated as a benchmark of evil on it’s own. The thought of every time comparing an incident to the holocaust is an insult to the suffering of those innocent victims. It is to prove that other cases of genocide can also stand on their own that the study is comparing the two incidents of Darfur and Sri Lanka with the Holocaust. This comparison is not being solely done to judge whether both these incidents pass the test to be declared as genocides based on the benchmarks set by the holocaust but it is being done to bring out the discrepancy between law, politics and history to the forefront. Each of these incidents can be used as a prototype in their own right. A large number of genocidal incidents whether recognised or contested have occurred since the holocaust; both Darfur and Sri Lanka will be studied along these other incidents with them being the benchmark. Due to the timeline, geographical, political, social, economic differences of these case studies, they are best suited to bring out the discrepancy. It is these differences or similarities if any between these three case studies that will unveil the complexity which has made the reoccurrence of genocides a common phenomenon even today.

Although the whole of the world community has not proven particularly successful at curtailing genocide or becoming active participants in stopping it when it does occur, there is a possibility that the mere fact that nations around the world are beginning to acknowledge its existence will send a message to both the perpetrators as well as others nations. For example, the acknowledgement of what was happening in Sudan by countries such as the US was a huge step as the previous policy of denial and

disbelief only allowed the perpetrators to further their actions. Previously, it has been observed in most cases of genocide like Rwanda or Darfur, that due to the neglect or refusal of powerful nations to take timely action or take action at all or intervene in cases of human rights infringements have ultimately resulted in genocides in which a large number of innocent people have lost their lives and homes around the world in these past decades. This inaction has also given the perpetrators the courage to carry on their atrocities without fear of any kind of punishment. However, the fact that nations now are taking an initiative to talk about and plan how to deal with genocide would possibly (in an idealistic world), at least start to deter others. As the world community is willing to discuss the genocidal actions and think about taking action, research such as this hopefully can get the conversation on genocide in motion. Hence, it becomes essential to study genocide in order to prevent it. It is with this hope that I undertake this study as a tribute to those numerous victims of genocide around the world and also hope that this study can raise a voice on their behalf.

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## Chapter II

### Crime without a Name: Historiography of Genocide

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Genocide is not only ancient in occurrence, is also a complex concept. Therefore, in an attempt to understand the complexity of this concept, it is important to look more closely at the origins, historical contexts and development of genocide as a crime. The chapter focusses on the components of genocide: the origins, historiography and it's development as a crime while also aiming to highlight the relationship between law, politics and history in connection to the concept, which no doubt has been very much in existence since antiquity. Of course, regardless of the fact that at that time neither law, politics, history or genocide existed as a distinct field of study but this inter-connection and influence can be easily noticed throughout. Hence, this chapter is based on the historiography of genocide, while also analysing the various debates surrounding it's different components. The chapter is divided into various sections such as studying the progression of genocide as a concept, it's distinction from mass violence, the origin of it's historic roots, Raphael Lemkin's inception of the term, genocides in modernity and genocide as a crime under international law.

#### Introduction

One of the major issues since time immemorial has been mass violence inflicted on groups of people belonging to a particular nation, race, religion, etc. through murder or torture or just general mistreatment. Not surprisingly, mass violence has a long history as can be supported by the available historical literature since pre-historic times. Our shared history provides ample evidence of imperial or other rulers indulging in wars or attacks in the historic times which resulted in cities being razed to the ground, it's inhabitants massacred, women raped and children turned into slaves. Though we seem to believe that with the passage of time we have become "civilised" but this notion seems to be far from the truth. Therefore, we can still not afford to ignore the conceptions of social difference among humanity which differentiate races or groups based on hierarchies of superior and inferior or good and

evil or insiders and outsiders. It is due to these differences that mass violence and especially genocides occur. To make matters worse these incidents of mass violence are justified by the perpetrators based on various reasons such as survival of the fittest or creation of a greater civilisation to manifest destiny or civilising the “savages”. But, in reality they are just excuses given to justify the mass destruction around the world, of fellow human beings and their way of life because they are considered as an inferior or a worthless race, religion, ethnicity or nationality.

From twentieth century onwards, our civilisation has witnessed two world wars, mass killings by colonial powers all over the world, the Holocaust and the genocides in Armenia, Rwanda, Cambodia, Darfur, etc., the destruction of Iraq, Syria, Sri Lanka in wars, and so on. Much of this violence which took place during the second half of the century was within states, between groups differing on the grounds of ethnicity, religion, political ideology, agenda, power and privilege.<sup>22</sup> Such incidents of mass violence do not seem to stop even today. The question that arises is that regardless of human beings being taught not to murder their own kind, how can we kill multitudes of men, women and children without remorse? There seem to be psychological, cultural, societal, political and economic roots to this ever occurring problem of mass violence.<sup>23</sup> The prevention of mass violence in the current times becomes essential whether in the case of conflicts or mass killings or genocide as due to the dynamic changes in technology, information systems, values, social organisations, political systems, globalisation, overpopulation and the ever increasing divide between the rich and the poor mass violence is and will remain a significant problem in the coming times.<sup>24</sup>

Though, such mass violence has been prevalent since time immemorial there has been much complexity in naming and defining its different forms such as genocide even today. Hence, before moving on to study genocide through the conjoint lens of law, politics and history, it is vital to understand mass violence and how genocide is distinct from it even while being a part of it. It is further crucial that various

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<sup>22</sup>Ervin Staub and Daniel Bar-Tal, ‘Genocide, Mass Killing, and Intractable Conflict: Roots, Evolution, Prevention and Reconciliation in David O. Sears, Leonie Huddy & Robert Jervis (ed.), *Oxford Handbook of Political Psychology*, New York, 2003, p. 710.

<sup>23</sup> Ervin Staub, *The Roots of Evil: The Origins of Genocide and Other Group Violence*, Cambridge, 1989, p. 4.

<sup>24</sup> Ervin Staub, ‘The origins and prevention of genocide, mass killing, and other collective violence in *Peace and Conflict: Journal of Peace Psychology*, vol. 5 no. 4, 1999, pp. 303-336.

components of the concept of genocide such as its inception and history are first studied in detail to get a clear idea of the development of genocide as a concept of the modern times.

## **Violence**

According to Alexander L. Hinton violence is “any type of physical, symbolic, psychological or structural force exerted against someone, some group, or something”.<sup>25</sup> This definition stands out due to two features: firstly, there is no mention of who the perpetrators are, therefore, it maybe a reference to structural violence as ascribed by Johan Galtung, which he introduced in the article titled ‘*Violence, Peace and Peace Research*’ in the year 1969, wherein he described structural violence as a form of violence where some social structures or institutions may harm people by preventing them from meeting their basic needs.<sup>26</sup> The infliction of any kind of violence whether structural, political, or any other kind is deemed to be humiliating for the victim, as it places him/her in an inferior position as compared to the perpetrator. It shakes the very physical, mental and moral foundations of a victim. As we are examining the concept of genocide here, the modern state is the repository of legitimate violence and actually is defined by the monopoly of such violence.<sup>27</sup> In the case of genocide though, when the state becomes a perpetrator it uses violence illegitimately.

This legitimate use of violence by the state when applied in international relations manifests itself differently. As there is no existence of monopoly of violence in the global arena, the rules of international law if not followed by other institutional actors as in the case of genocide can only be enforced through negotiation or manifest use of violence. In such circumstance the threat of use of force is also implicit in the process of negotiation and the possible ensuing compromise.<sup>28</sup> However, the use of such force is supposed to emanate only from recognised sovereign states and no other type of

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<sup>25</sup> Alexander L. Hinton, ‘The Dark Side of Modernity. Toward an Anthropology of Genocide’ in Alexander L. Hinton (ed.), *Annihilating Difference. The Anthropology of Genocide*, London, 2002, p. 6.

<sup>26</sup> Johan Galtung, *Peace: Research- Education- Action. Essays in Peace Research*, Copenhagen, vol. I, 1975, pp.109-134.

<sup>27</sup> Reinhart Kossler, ‘Violence, Legitimacy and dynamic of genocide- Notions of mass violence examined’ in *Development Dialogue*, no. 50, December 2008, pp. 33- 52.

<sup>28</sup> *Ibid.*

actor, which are under restrictions of the UN charter.<sup>29</sup> In the modern day the state is recognised as the nation state which is under the imposed standards of the international community in terms of legitimate use of violence. For example, in democratic states there is legitimate use of force through enforcement of law by the legislative, executive and judicative branches of government.<sup>30</sup> In case of genocide though, the state uses violence illegitimately which is punishable under criminal law.

Since most cases of mass violence are a state run affair as can be vouched by a number of genocide cases, the perpetrators of such violence in many cases claim state sanction behind their acts.<sup>31</sup> For example, even when the Nazi's were being tried for their crimes, their defence was that they were acting on military or administrative orders and hence were innocent. This defence was not accepted by the courts. Hinton points out that the state also plays a pivotal role in defining the group targeted for destruction in processes of genocide, which by definition is directed against a collectivity.<sup>32</sup> Almost all the forms of mass violence including genocide are seldom impulsive occurrences and have strategic planning behind them. The groups targeted comprise of two categories: active grouping and passive grouping.<sup>33</sup> Passive grouping consists of forcible, bureaucratic subsuming under a category which does not necessarily reflect the victims' self-identity or where "class" is framed not so much as a social category but combined with political orientation as happened in the case of both the Jews and the Rwandan victims.<sup>34</sup> The active grouping is at the other end of the spectrum where the victims are chosen for who they are, such as extermination of groups who took up arms against their colonial masters.

Though the aim of both mass violence and genocide is total annihilation of a particular targeted group but it is rare that the perpetrators are able to successfully do so. But the scars that these incidents leave behind cannot be forgotten for centuries. Even though the Jews or the Tutsis or the Tamils are alive today, but they will never forget these atrocities. Violence of any kind is abhor able but mass violence is taking

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<sup>29</sup> Reinhart Kossler, 'The Modern Nation State and Regimes of Violence. Reflections on the Current Situation', in *Ritsumeikan Annual Review of International Relations*, vol. 2, 2003, pp. 15-36.

<sup>30</sup> *Supra*.

<sup>31</sup> *Supra*.

<sup>32</sup> *Supra*.

<sup>33</sup> Rogers Brubaker, 'Ethnicity without Groups' in Andreas Wimmer, Richard J. Goldstone, et al (eds), *Facing Ethnic Conflicts*, Oxford, 2004, pp. 34-52.

<sup>34</sup> *Ibid*.

violence to the highest level of depravity where large number of innocent victims have and are losing their lives daily around the world.

### **Mass Violence and Genocide**

Before making a distinction between mass violence and genocide, we need to understand the concept of mass violence. Mass violence are incidents where a large number of people are killed in a short time. There are other forms of violence too that make incidents examples of mass violence such as when a large number of people are maimed or starved or sexually harassed and killed. All these acts show that mass violence has reached another level of depravity. There are two points to ponder upon here: firstly, how to assess measure or compare incidents of violence? Can brutality be ever measured? Where the Nazis more brutal or the Turks? The Belgian, German and the Portuguese colonial regimes are remembered for being the most brutal of the colonial masters but does that exonerate the British? Even though the time of conquest wars is far over but slavery and colonial rule has been followed by periods of increased mass violence rather than the opposite. The second point is that for every story that comes to light in relation to mass violence there are many which don't. Hence, is it correct to set a particular incident as a "benchmark" of brutality then, as has happened with the Holocaust?

Events of mass violence have been diverse in nature such as the Holocaust or the killing fields in Cambodia or the civil war in Sri Lanka, but our understanding of mass violence and genocide is poorer due to the lack of clarity both in defining each one of them in addition to making a distinction between them and other forms of mass violence.<sup>35</sup> Mass violence is a dangerous phenomenon which can spill over geographical boundaries, thereby threatening not only the security of the nations of its origin but also of the neighbouring nations. It also brings into conflict the moral status of the international community, as in the case of genocides where it plays a passive role by either not identifying the conflict or not acting by citing reasons such as state sovereignty, especially in cases where the perpetrators are supported by the native government. Mass violence consists of a number of acts and processes, of which genocide is one form. Though genocide is a form of mass violence but they are distinct from each other on a number of grounds. Both mass violence and genocide

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<sup>35</sup> Gavin Moore, 'How does genocide differ from mass killing?' in *Queen's Political Review*, vol. 1 no. 1, May 2013, pp. 95-108.

have been a part of academic controversy for long. Any form of mass violence is as devastating as genocide but as Colin Tatz concludes based on his criteria, genocide differs from mass killings primarily in its intent and motivation. On the other hand, scale and scope are less helpful in distinguishing between the two concepts.<sup>36</sup>

Mass killings by government are widely considered to have been occurring for centuries.<sup>37</sup> What made genocide carve a distinct place for it as a form of mass violence was its codification under the UNGC in 1948. It was Raphael Lemkin who wanted to distinguish the atrocities suffered by Jews, Romas and other minorities during the Second World War from other forms of mass killings. Genocide as defined under Article II of the convention only projects those mass killings as genocide where the intent to destroy the members of a particular group is based on uncontrollable factors such as one's ethnicity, nationality or religion as compared to other forms of mass killings which maybe carried on based on groups having a particular political allegiance or grouping. For example, the mass killings in Rwanda, Darfur have been carried out due to the ethnicity of these particular groups whereas the Great Purge or the Great Terror was a campaign of political repression in the Soviet Union, carried out by Joseph Stalin, the leader of communist Russia, against his political rivals from 1936 to 1938, which resulted in millions of people being executed or sent to labour camps in Siberia.<sup>38</sup>

Genocide and/ or mass killing can develop out of conflict between groups such as in the case of Rwanda or may develop without any real conflict such as the holocaust. Mass killing can best be described as killing of large number of people but without the intent to eliminate a particular group completely but the motivation behind this act maybe similar to that of genocide.<sup>39</sup> Mass killing and genocide may also differ as it maybe less precise in its chosen victims as compared to genocide, whereas the number of victims can be both large or small. Though they may seem very similar to each other but both mass killings and genocide are two distinct forms of mass violence and one of the most important reasons for distinguishing them is to develop effective policy responses in preventing their re-occurrence by understanding the

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<sup>36</sup> Colin Tatz, *With Intent to Destroy: Reflecting on Genocide*, London, p. 20.

<sup>37</sup> R.J. Rummel, *Death by Government*, New Jersey, 1994.

<sup>38</sup> Retrieved from the British Broadcasting Corporation , <http://www.bbc.co.uk/schools/gcsebitesize/history/mwh/russia/stalinpurgesandpraisesrev1.shtml>, accessed on 15<sup>th</sup> August 2017.

<sup>39</sup> Supra.

driving forces behind them.

### **Role of History**

In order to understand a concept such as genocide, there arises the need to dig deep into its roots. As the British historian, E. H. Carr remarked that

to learn about the present in the light of the past means also to learn about the past in the light of the present. The function of history is to promote a profounder understanding of both past and present through the interrelation between them...<sup>40</sup>

Therefore, it becomes vital to unravel the journey of this ancient concept and crime from the pre-history times. This historical journey will play a dual role: firstly, it will result in aptly understanding the meaning of a concept or an event such as genocide or the holocaust, as it becomes impossible to use any of them if they are devoid of any kind of coherent meaning. Further, it also becomes vital to understand the way in which history is being used by different actors in relation to genocide, depending on and determined by existing understandings, interpretations and representations of each of these events in question. Secondly, the role of history in the study is to examine the ways in which a specific historical event like the holocaust, Darfur or the controversial events in Sri Lanka are used to achieve different kinds of objectives whether in relation to law, politics or history itself. Therefore, there is no contradicting the fact that history influences the understanding of the concept of genocide enormously.

History is not a concern of historians alone and is not a simple study of facts, but it is surprising to find that a historical event may carry more meaning and depth behind it due to the conjoint influence of law, politics and history. History is produced and used in a variety of environments with as many purposes as there are creators of history.<sup>41</sup> Therefore, whenever we dig deep into the historical journey of a particular concept, in this case genocide, we unravel the story not only behind the development of that particular concept but also the reasons as to how and why is it understood and projected in a particular light at any point of history whether past or present. That is why one of the main focuses of this study is on the role of history both as a distinct field of study and in the genocide and the holocaust discourse. It aims to rather unravel the meaning and function of history in relation to both law and politics especially in the international sphere. The inter-connection between these three and

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<sup>40</sup> Edward Hallet Carr, *What is History?*, London, 1967, p. 68 .

<sup>41</sup> Peter Aronsson, *Historiebruk- att använda det förflutna*, Lund, 2004, p. 119.

the practical consequences of this connection have ultimately resulted in debates surrounding the very understanding of the concept of genocide including the holocaust. There is no denying the fact that history has several functions within the purview of both law and politics. It can not only be used as an analogy but also to draw parallels and precedents in relation to both law and politics. This all can be achieved through the effect of the various involved actors' own understanding and experiences of history and also through linear projections of historical trends<sup>42</sup>. The relationship between law, politics and history is one of interaction with each other, i.e. the interaction between these three which paves the way as to how we view the past or future, in addition to how it is being projected at us.

It is this projection of history by actors such as international organisations, media, governments, civil society, etc. that both influences and gets influenced by law and politics. Hence, in this historical process the present understanding of a complex concept like genocide does not exist independently or objectively of the past. Whenever we construct our view of the past we also have to adjust our perception of the reality in the present and vice versa and it is this perception that is influenced by the interconnection of law, politics and history. The view of the past can surely influence the perception of the present and especially in this case, the definition of its political problems as well the codification of genocide under international law.<sup>43</sup> It is during this process that not only history is revised in relation to both old and new historical experiences, but conclusions about the present can be reviewed in the light of a historical incident like the various genocidal incidents that have taken place from the holocaust onwards which evoke the same type of imagery and hence are reminiscent of the current situation. This is why studying the holocaust as a historical incident and then comparing or amalgamating it with other cases of recognised genocide like Cambodia, Rwanda or Darfur or alleged incidents of genocide like Iraq, Sri Lanka, etc. give us a much clearer picture about genocides both past and present. It will also help us in analysing current incidents around the world which may have the makings of a future genocide and try preventing them from happening. Though of course, preventing a future genocide is dependent more on the role of politics and law, history can only come up with the warning signs of a looming catastrophe.

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<sup>42</sup>Rystad Göran, *Prisoners of the Past? : The Munich Syndrome and Makers of American Foreign Policy in the Cold War Era*, Lund, 1981, p. 56.

<sup>43</sup> *Ibid.*



## Origins of Genocide

Although the term genocide was invented in 1944, genocide is not a twentieth century phenomenon; it has been practiced throughout history, since ancient times. Since time immemorial it has been observed that the so called superior civilisations or societies like the British or other European races have claimed the right to rule over other “savage” races or nations. As Chalk and Jonassohn have also observed

historically and anthropologically peoples have always had a name for themselves. In a great many cases, the name meant “the people” to set the owners of that name off against all other people who are considered of lesser quality in some way. If the differences between the people and some other society were particularly large in terms of religion, language, manners, customs and so on, then such others were seen as less than fully human: pagans, savages or even animals...<sup>44</sup>

These “developed” races have tried and acquired territories around the world through intentionally exterminating the indigenous people of those territories especially in Africa, the Americas, the Middle East, Asia, etc. For example, the North American Indians, the Aborigines of Australia and New Zealand, the Mayans of Central America are some of the civilisations or societies which fell victim to the destruction unleashed by other so called superior civilisations or societies against them which resulted in their whole or part extinction.<sup>45</sup>

The 1948 UN Genocide Convention explicitly refers to the trans-historical character of genocide. Though genocide is widely regarded as a phenomenon of domestic politics and society, it was the UNGC which recognised it internationally.<sup>46</sup> Indeed, genocide has always been part of human history. What really have changed are the ideologies and cleavages on which genocide is perpetrated. As has been claimed by Martin Shaw, different patterns of genocide are broadly synchronized with major historical changes in the international system.<sup>47</sup> It can be easily observed in cases of genocide, that it often occurs under conditions of war, colonization or tribal conflict,<sup>48</sup> whether it was the holocaust or Darfur or the contested case of genocide in Sri Lanka. Due to the fact that most of these conflicts are domestic in nature, political scientist Robert Melson refers to genocides as “total domestic genocides like the Armenian Genocide and the Holocaust, including the extermination of the Gypsies... the

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<sup>44</sup> Frank Chalk and Kurt Jonassohn, *The History And Sociology Of Genocide: Analyses And Case Studies*, USA, 1990, p. 28.

<sup>45</sup> Adam Jones, *The Origins of Genocide*, New York, 2006, p. 46.

<sup>46</sup> Martin Shaw, ‘The International Relations of Genocide: From Twentieth-Century Europe to the Twenty-First Century World’, Unpublished draft.

<sup>47</sup> Martin Shaw, *Genocide and International Relations*, Cambridge, 2013, p. 13.

<sup>48</sup> Jack Nusan Porter (ed.), *Genocide And Human Rights A Global Anthology*, 1982, p. 55.

destruction of the Kulaks and the Cambodian ‘auto genocide’<sup>49</sup>. On further examination it becomes clear that this “domestic” characterisation cannot be sustained as not all genocides fall pass this test. For example, the Armenians had resided in areas across both the borders of the Ottoman and Russian empires, and their implication in the international conflict between the two states in the First World War was the catalyst for their destruction by the Ottomans as did the Jews who were targeted across a continent by the Nazis. There are many other scholars such as Christian Scherrer who also distinguish “foreign” and “domestic” genocides, putting the Holocaust in the “domestic” category,<sup>50</sup> while René Lemarchand remarks that both Jews and Rwandan Tutsis “have been the target of a “total domestic genocide”, to use Melson's phrase”.<sup>51</sup>

It becomes compulsory to understand that genocides should be understood in international terms because of the far reaching effects they have on the larger frameworks of law, politics and history. Disappointingly in most of the cases of genocide such as in Rwanda or Darfur the international community failed to see them as ‘international’ and shamelessly refused to take any action. Therefore, it becomes imperative to study history together with law and politics to understand not only genocide as a concept by dwelling into it’s historic interpretations but also it’s influence on other recognised and alleged incidents of genocide. Genocide is a not only a crime that generates unmatched moral opprobrium but also has a well-documented destructive impact on societies around the world. Further, it is also responsible for hindering the progressive enforcement of human rights norms in the international community. Therefore, it is a concept which has more than a historical relevance. An alarming truth is that genocide has a staying power which is easily corroborated by tracing these genocidal incidents from antiquity to modernity. Hence, any study of genocide whether conducted from a legal, political or historical perspective has a contemporary dimension which starts from the pre-historic times.<sup>52</sup>

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<sup>49</sup> Robert Melson, *Revolution and Genocide*, Chicago, 1992, p. 18.

<sup>50</sup>Christian Scherrer, ‘Towards a theory of modern genocide. Comparative genocide research: Definitions, criteria, typologies, cases, key elements, patterns and voids’ in *Journal of Genocide Research*, vol. 1 no.1,1999, pp. 13-23.

<sup>51</sup>Rene Lemarchand, ‘Disconnecting the threads: Rwanda and the Holocaust reconsidered’ in *Journal of Genocide Research*, vol. 4 no. 4, 2002, pp. 499-518.

<sup>52</sup> George J. Andreopolous (ed.), *Genocide: Conceptual and Historical Dimensions*, Philadelphia, 1994, p. 127.

## History of Genocide: From Antiquity to Modernity

Since historic times there have been numerous incidents of genocide as violence was very much a part of our evolution as a civilisation. Sadly, as Chalk and Jonassohn have also pointed out that there is not only a dearth of authentic historical sources but even the historical records that do exist are ambiguous and undependable.<sup>53</sup> Therefore, it becomes difficult to historically prove each and every incident of genocide that has taken place since the very inception of human kind. Many of these genocidal incidents have not been able to be remembered but whatsoever information regarding genocides has been found in history is sufficient to corroborate the fact that it is an antique phenomenon. Adam Jones in his book *Genocide: A Comprehensive Introduction* has dedicated a full chapter to the origins of genocide. He elaborates as to how even the biblical old testament depicts god and his followers as genocidaires (genocidal killers) as God in the Book of Genesis decides to destroy all living beings except Noah.

There are such other examples which are cited by various others in relation to other religions also in order to prove that genocide has been a part of the very story of the creation of mankind since pre-history. A number of other wide-ranging historical events which are mostly wars are evidence that the seed of genocide have been sowed in historic times. Chalk and Jonassohn have mentioned many of these events in their book such as Assyrian Empire's depredations in the first half of the first millennium BC.<sup>54</sup> Leo Kuper has also traced the origins of genocide to as far as the seventh century BC. He further elaborates by saying that "many cities were razed to the ground and entire populations carried off or brutally exterminated" during the forging of the Empire of Assyria. Further, there was the destruction of Melos by Athens during the Peloponnesian War in the fifth century BC, a genocidal rampage described by Thucydides in his "Melian Dialogue."<sup>55</sup> Yale scholar Ben Kiernan has labelled Rome's siege and eventual razing of Carthage at the close of the Third Punic War (149–46 BC) as "The First Genocide". "Of a population of 2–400,000, at least 150,000 Carthaginians perished," writes Kiernan. Though the designation of being the

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<sup>53</sup> Supra.

<sup>54</sup> Supra.

<sup>55</sup> Supra.

first genocide is highly debateable but labelling this siege as genocide is relatively less disputable. Many such similar incidents can be found in subsequent centuries.<sup>56</sup>

Rome has been held responsible for a number of mass massacres over the centuries and one of the other victims during the heights of its imperial might were the followers of Jesus Christ. After the death of Jesus Christ at Rome's imperial hands in 33 AD, Christ's growing numerous cohorts of followers were subjected to barbaric persecutions and mass massacre. With the passage of time, history once more became a witness to these very scenes of torture and public spectacles of death when they were replicated by the followers of Jesus themselves later on during Europe's medieval era (approximately the ninth to the fourteenth centuries AD). This period produced numerous violent onslaughts such as the "Crusades", which were religiously sanctified campaigns against "unbelievers," whether in France (the Albigensian crusade against heretic Cathars) or in the Holy Land of the Middle East. As Andrew Bell-Fialkoff writes that the First Crusade (1096 to 1099) left "a trail of blood and destruction, throughout the Rhine and the Moselle valleys, as well as in Prague and Hungary. Entire communities, perhaps tens of thousands of people in all, were wiped out. The Crusade culminated in a wholesale massacre of all non-Christians in Jerusalem."<sup>57</sup> These religiously-cast wars for access to trade routes which are famously known as the "crusades" were replete with similar butchery, as a large number of Jewish and Muslims lost their lives to torture.<sup>58</sup> Further génocidaires arose on the other side of the world too. For example, the campaigns of Genghis Khan of Mongolia where "entire nations were exterminated, leaving behind nothing but rubble, fallow fields, and bones."<sup>59</sup>

Many incidents of genocide such as mentioned above have not been recorded in history as a crime because we have glorified conquerors for their invasions, thereby letting the crime be committed for centuries without any kind of recognition. Regardless of the fact that conquests have been a part of human history since antiquity it has only been recently realised by the human race that such conquests were and are a crime. These conquests not only resulted in genocides that very often ended up eradicating enemy ethnicities from the very face of this planet and history as well but

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<sup>56</sup> Ben Kiernan, 'The First Genocide: Carthage, 146 BC' in *Diogenes*, 203, 2004, pp. 27–39.

<sup>57</sup> Bell-Fialkoff, *Ethnic Cleansing*, New York, 1999, p. 13.

<sup>58</sup> Anthony Pagden, *Worlds At War The 2,500 – Year Struggle Between East and West*, 2008, p. 17.

<sup>59</sup> Eric S. Margolis, *War at the Top of the World: The Struggle for Afghanistan, Kashmir, and Tibet*, New York, 2001, p. 155.

also aimed at exploiting some of the weaker sections of the conquered population such as women and children. As in most cases of any kind of violence it is the women and the children who bear the brunt of a crime. They are physically, mentally and sexually assaulted. For example, genocidal rape or ethnic rape is an instrument of war aimed at securing political control. It has been used as an effective instrument to destroy ethnic and gender groups during several internationally recognised genocides such as the holocaust, the Armenian genocide, the genocide in Yugoslavia, the genocide in Rwanda and many more.

One of the biggest concern or hurdle regarding exploring the roots of genocide is that there is not much authentic information of genocides having occurred in pre-history or antiquity. In the present times there is still access to historical sources of information but the same cannot be said about history of the pre-historic era. Ancient history is more ambiguous and undependable in nature. Till we don't have a clear genealogy of genocide since the pre-historic times, the roots of genocide cannot be unearthed properly. Many past historical accounts happen not to be objective in nature as they were written down with the aim of praising the writer's patron or with the aim of showing off the superiority of their religion or race over others or it may be just a fictitious made up tale. Hence, their account of history will forever be under doubt. Still, very amazingly the concept of genocide can be found in antiquity, specially as example of it's roots can be found in religious texts of Christians, Jews and Muslims. Though, such mass atrocities have been prevalent since time immemorial only the first part of the chapter will deal with the historical details of various genocides since antiquity. There are a number of reasons for doing so: firstly, as the study is primarily concerned with the holocaust, the Darfur genocide and the contested case of Sri Lanka, it becomes more important to give attention to the events leading up to the UNGC. Secondly, the genocides of antiquity will only lengthen the chapter without providing much support to the questions at hand such as the discrepancy between law, politics and history. Therefore, this part of the chapter concentrated on giving a brief introduction to some of the most horrific "genocides" that took place in antiquity.

Hence, there are numerous such violent incidents that took place around the world. Some of them are historically recorded, some of them have become fable tales and others have been completely forgotten. Not all incidents can be discussed here but the conclusion that can be drawn is that genocides have been taking place since antiquity

even though they were not recognised as genocides but seen as a part of wars. It was no surprise that races became extinct at the hands of their conquerors but nobody batted an eyelid as there did not exist any concept of human rights or genocide as a crime. These total or partial annihilations of races or societies were just a part and parcel of many violent incidents that took place regularly. It was a time when the might was right but this discovery of the antique roots of genocide raises some disturbing questions such as why did it take so long for human kind to firstly recognise genocide and secondly to recognise it as a crime. To answer that does we need to study the discrepancy between law, politics and history.

### **Colonialism and Genocide**

Eventually these wars gave way to the era of colonialism which led to the inception of modern empires, where the “whites” did not leave the conquered territories after plundering or looting them but made them their colonies. A series of studies has documented widespread genocidal violence throughout the history of European colonisation in the Americas, Asia and Africa.<sup>60</sup> According to Shaw, genocide has been shown to be:

1. associated with the inherently international relationships of colonialism,
2. manifested not in a few isolated and exceptional catastrophes but in extensive patterns of violence, and
3. implicated in complex state-society relations between settlers and imperial centres.<sup>61</sup>

These modern empires were invariably associated with violence and are viewed by some scholars as constituting or containing some genocidal episodes such as the European conquest of the Americas or the British colonisation of Australia.<sup>62</sup> It was from the period of 1500 to 1910 AD in which it can be said that genocide and colonization were closely linked.<sup>63</sup> There were historical relations, not just between different colonial episodes of genocide, across time and space, but also between colonial and European genocide, particularly in the lines of connection in German militarism and nationalism leading from the genocide of the Herero and Nama in German South-West Africa in 1905 to the Holocaust.<sup>64</sup> Colonialism started another

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<sup>60</sup> A.D. Moses (ed.), *Genocide and Settler Society*, New York, 2004.

<sup>61</sup> *Supra*.

<sup>62</sup> Nafeez Mosaddeq Ahmed, ‘Colonial Dynamics of Genocide Imperialism, Identity and Mass Violence’ in *Journal of Conflict Transformation and Security*, vol. 1 no. 1, 2011, pp. 9-36.

<sup>63</sup> *Ibid*.

<sup>64</sup> Michael Perraudin and Jurgen Zimmerer (eds.), *German Colonialism and National Identity*, New York, 2009.

era of bloodshed and brutality. The same kind of violence was witnessed during colonialism, as was firstly observed within Europe with the aim of conquering non-Christian cultures and it later spilled on to other parts of the world when the superior “white” races started to conquer the “savages” in order to “civilise” them. Though the real motivation behind doing so was the greed for power and control over the rich resources of countries such as India, etc. for their own benefit. This use of violence has been clearly explained by Nancy Scheper-Hughes who has remarked that modern anthropology

was built up in the face of colonial and postcolonial genocides, ethnocide, population die-outs and other forms of mass destruction visited on the “non-western” peoples whose lives, suffering and deaths provide the raw material for much of our work.<sup>65</sup>

During the colonial period, almost all the genocidal incidents were characterised by small-scale violence and were executed by local authorities and militias. As the European powers such as the British, the Portuguese, the Spanish and the French started enlarging their empires through colonisation, they also ended up committing one of the largest ever genocide in modern history in a part of the world which was later called the Third World. Over many centuries of colonial rule a number of large-scale genocides were committed against American Indians, Africans, the Australian Aborigines and a large number of other subjugated people such as Indians in European colonies.<sup>66</sup> According to Darcy Ribero, Indians of the Americas were reduced by the Spaniards in the South and European settlers in the North from 80 million in 1492 to 3.5 million in 1750.<sup>67</sup> Sadly and astonishingly, genocidal incidents that had started occurring during the colonial times have been found to be continuing until today, for e.g. in countries such as Paraguay, Guatemala, and Brazil where the local population is still being targeted. According to Bloxham from the 1870s an important shift was felt first in the south-eastern Europe and later across Europe after the disintegration of the Ottoman, the Romanov and the Hapsburg empire, there was a surge in nationalism becoming genocidal.<sup>68</sup> The dynamics and forms of inter-imperial conflict themselves increasingly determined the further development of genocide. The surge in nationalism had resulted in the Armenian Genocide. Ironically, the current times are also experiencing a surge in nationalism around the world, as can be

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<sup>65</sup>Nancy Scheper-Hughes, ‘Ishi’s brain, Ishi’s ashes: anthropology and genocide’ in Nancy Scheper-Hughes and Philippe Bourgois (eds), *Violence in war and Peace: An Anthology*, Oxford, 2004, p. 61.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> *Supra.*

observed in Trump's call to "Make America Great Again" and his anti-immigrant policies; one can't help but wonder will history repeat itself?

Colonialism has both negative and positive connotations to it. It is negative as it strives to dissolve native societies, it is positive as it constructs a new colonial society on the rubble of the last one.<sup>69</sup> The negatives though outnumber the positives by a mile. Colonialism has resulted in destruction of races not only physically but economically and even culturally. The ruling policies practiced by the colonisers tried to eradicate the very essence of the conquered population. All these practices will today fall under different forms of genocides. Though almost all parts of the world fell prey to genocidal incidents whether triggered by colonialism or other perpetrators but the most devastating example is the continent of Africa, which has suffered centuries of bloodshed whether through colonialism or betrayal of its own elected governments or mass violence. Rwanda and Darfur, two of the most horrific incidents of genocide have occurred within nearly a decade of each other. In the case of Africa, history just seems to keep on repeating itself as it has been estimated that since 1500 AD, Africa alone had lost one hundred million of its people first to European slavery and then a much larger number to genocidal incidents supported by its own leaders or government. Most of the enslaved Africans had died under genocidal conditions during mass transportation from Africa to the Americas. Genocide against Africans was continued even in the USA by the infamous lynching campaigns in the southern part of the country.<sup>70</sup> Shockingly, though Africans are no longer falling prey to genocidal incidents in the USA, but they are still victims of large scale racism. It is important to remember that during the colonial period genocide was an inherent part of the general practice or policy employed by virtually all European powers whether it was Belgium, Germany, Britain or Spain. In the late nineteenth and early twentieth centuries the largest genocide went on for decades in the Congo Free State where heinous techniques were used by the Germans against the Herero and Nama in Southwest Africa and against the people of South Tanganyika.<sup>71</sup> These incidents have all ended up becoming part of the chronicles of modern genocides.

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<sup>69</sup> Patrick Wolfe, 'Settler colonialism and the elimination of the native' in *Journal of Genocide Research*, vol. 8 no. 4, December 2006, pp. 387-409.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*



Colonialism gave way to the cold war era. A state of geopolitical tensions after the second world war between powers of the Eastern block (the USSR and its allies) and the western block (the USA, its NATO allies and other supporting states) instigated by the ambition of the US and the USSR to be recognised as the superior world power. This era was no exception where genocidal incidents were concerned.

### **Genocides during and post-cold war era**

During the cold war era some characteristic examples of genocide include the massive violence in the Chinese Civil War (1946-1950) and the limited though destructive removal of Palestinian Arabs following the 1948 Arab–Israeli War.<sup>72</sup> The second half of the twentieth century witnessed the Cold War hostilities between two great powers, the US and the Soviet Union. Cold War was a period linked to conflicts and state-sponsored violence as well as other indirect reflections of Cold War polarisation.<sup>73</sup> The phenomenon of state sponsored violence against secessionist groups was apparent in Asia in the newly independent states of India, Sri Lanka, Pakistan, Burma (Myanmar), Thailand, Indonesia and Philippines. The Cold War period was also characterised by a Cold War polarization between secular ideologies and adversaries inclined to destroy each other. Characteristically, the Indonesian killings of 1965 -66 between the Indonesian army and the Indonesian Communist Party resulted in half a million lives. The Cambodian killings during the rule of the Khmer Rouge (1975-1979) claimed twenty-five per cent of a population of eight millions. And the killings during the Cultural Revolution of 1966 in China claimed a million lives.<sup>74</sup>

In many cases, postcolonial states did develop new quasi-imperial rule, where ruling elites sought to expand state's territory or opposing elites threatening to break it up.<sup>75</sup> Typical cases of this reality form the secessionist wars in Pakistan in 1971, Nigeria (1967-1970), Sudan (1955–1972 and 1983-2005) and Iraq (1980-1988). Cold War genocidal violence was, consequently, different in location, context and form from the genocide of the imperial period in Europe. However, the definition of genocide remained unchanged, no reform was implemented to accommodate the new international parameters in order to punish and prevent accordingly mass atrocities.

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<sup>72</sup> Retrieved from Middle East Research and Information Project, <http://www.merip.org/primer-palestine-israel-arab-israeli-conflict-new> , accessed on 1<sup>st</sup> August 2016.

<sup>73</sup> Retrieved from Library of Congress, <https://www.loc.gov/exhibits/archives/sovi.html> , accessed on 1<sup>st</sup> August 2016.

<sup>74</sup> Michael Vickery, *Cambodia 1975-1982*, Bangkok, 1984, p. 175.

<sup>75</sup> Supra.

US ratified the 1948 Convention only in 1988; interestingly, years after Iraq, Colombia or even China ratified the Convention.<sup>76</sup> As after 1945, after 1989, there was a huge optimism about a more peaceful world. Ideas of “humanitarian intervention” and the “responsibility to protect” (R2P or RtoP), although in a rhetoric sense at that time, started to shape Western discourse and policies and started to be tested too.<sup>77</sup> Indeed, UN for the prosecution of persons responsible for genocide established new international criminal tribunals as the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTR) created in 1994. Some sort of normalisation was apparent too, as in China, where industrialisation took place. China expanded into world markets and achieved a rapprochement with the US and Russia. In such a context, neither international nor domestic tensions had real genocidal outcomes.<sup>78</sup>

Since the very inception of the concept of genocide, varied academic definitions of genocide have come up, given by scholars belonging to diverse fields. Disappointingly, as large in number are the definitions, so are the ambiguities surrounding both the Genocide Convention and its historical interpretation. Therefore, there always seems to be confusion regarding the status of an incident as genocide as it is not surprising that nearly every posited case of genocide is discounted by some scholar. Even the “classic” genocides of the twentieth century such as the holocaust have found their systematic minimizers and deniers.<sup>79</sup> Therefore, some of these recognised and contested cases are being discussed below as they give an insight into the development of genocide both as a concept and a crime.

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<sup>76</sup>Retrieved from International Committee of the Red Cross, <https://ihl-databases.icrc.org/ihl/INTRO/357?OpenDocument>, accessed on 1<sup>st</sup> August 2017.

<sup>77</sup> Howard Adelman and Astri Suhrke, *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience*, Steering Committee of the Joint Evaluation of Emergency Assistance to Rwanda, Odense, 1996, pp. 1-109.

<sup>78</sup> Supra.

<sup>79</sup> Supra.

## The Armenian Genocide, 1915-1923

In the first half of the twentieth-century, events often cited as genocide include the infamous Armenia genocide of 1915 by the Turkish-led Ottoman Empire. In fact, failing to match the power of the Western empires, the old Ottoman, Romanov and Habsburg empires disintegrated amidst increasingly destructive nationalist rivalries, which exercised genocidal violence, as witnessed in Armenia. The Young Turk Movement and most particularly its Committee of Union and Progress (CUP) or known as Ittihad ve Terakki Jemiyeti in Turkish, which was formed in 1895 espoused a form of Turkish nationalism which was xenophobic and exclusionary in its thinking. Young Turks eventually ended up in suppressing all competing parties and movements as well as population groups that were seen as hostile to their plans.<sup>80</sup>

I am confident that the whole history of the human race contains no such horrible episode as this. The great massacres and persecutions of the past seem almost insignificant when compared with the sufferings of the Armenian race in 1915.

Henry Morgenthau,  
American ambassador to the Ottoman Empire, 1913–1916<sup>81</sup>

Approximately 1.5 million Armenians or more than half of the Ottoman Empire's Armenian population died due to deportations, starvation, serial massacres and mass executions between the onset of the First World War and the founding of the Turkish Republic. Not only were the Armenians killed but even the surviving elements of their cultural heritage, including churches and works of art, were either obliterated or incorporated into the dominant culture—which now claimed that they were of Muslim or Turkish provenance. These events constitute what has come to be known as the Armenian Genocide.<sup>82</sup> The Turkish “provocation thesis” blames the Armenian victims for the genocide, asserting that Armenian peasants living in the eastern “vilayets” (provinces of the empire) had nationalist aspirations and were thus prepared to join the Russian invaders at the beginning of First World War.<sup>83</sup> The Armenian genocide is a case of contention even today.

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<sup>80</sup> Supra.

<sup>81</sup> Henry Morgenthau, *Ambassador Morgenthau's Story*, London, 2000, p. 213.

<sup>82</sup> Robert Melson, ‘Introduction’ in *Holocaust and Genocide Studies*, pp. 1-6.

<sup>83</sup> Robert Melson, *Revolution and Genocide: On the Origins of the Armenian Genocide and the Holocaust*, Chicago, 1992, pp. 152–159.

It is the example of the first modern genocide. Even today Turkey and the Turks have not admitted that they are responsible for this gruesome tragedy. They view it as an act of self-defence described as the “provocation thesis” by Melson. This is the reason that this genocide deserves our attention. It is a prime example of how regardless of the availability of evidence the international community forgot and was unable to bring the perpetrators to justice. Shockingly, the victims of this atrocity are still struggling to be recognised as victims of a genocide. The Holocaust is looked upon as the “prototype” of genocides but many scholars believe that this status should have been granted to the Armenian Genocide. There are a number of significant differences between the Holocaust and the Armenian Genocide. The Holocaust made use of bureaucratic management and advanced technology in the framework of a totalitarian system whereas in the case of Armenia, the genocide was less planned with limited bureaucratic organisation and very limited advanced technology used in its execution.<sup>84</sup>

### **Genocides from the Holocaust onwards**

It was from 1910 onwards that genocide underwent a paradigmatic change under which, foreign colonial powers were no longer responsible for these incidents but the local governments started indulging in state-organized domestic genocide. As the study is based on studying genocidal incidents starting from the holocaust onwards, most of the recognised cases of genocide fall under the type of total domestic genocide which involved aggression of the state, in the hands of a dominant ethnic or political group, against one or more minorities on the territory of the state.<sup>85</sup> In it's Second World War nadir, appallingly genocide became more large-scale, state-centric and systematically murderous, perpetrated by governments and national armies.

### **The Holocaust**

The dissolution of empires led to the rise of radical totalitarian regimes in the Soviet Union and Nazi Germany too. Their genocidal tendencies were visible before 1939 but reached an unprecedented climax in the Second World War. Genocide in the Nazi Empire originated in a series of theories and facts. Most particularly, anti-Semitism, racism, imperialism and eugenics provided the ideological underpinnings for

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<sup>84</sup> Supra. pp. 3-12.

<sup>85</sup> *Ibid.*

genocide. Anti-Semitism, with its origins in the Christian-Jewish adversarial relationship, dates back two millennia. The dual revolution of the 19th century: democracy and nationalism plus urbanization and industrialization broad economic opportunity for Jews, allowing Jews now to be portrayed in an updating stereotype as exploitative capitalists. Between 1914 and 1933, Germans experienced a series of disasters: a prolonged war and a defeat, leading to a humiliating treaty settlement, hyperinflation and finally the unprecedented unemployment of the Great Depression. Jews persecution was, initially, part of the biological-racial purification within the Third Reich and the massive population destruction project within German *Lebensraum* (“space of life”) leading, finally, to a systematic and total mass murder of every Jew. Until today, the destruction of the Jews has become the paradigmatic example of absolute genocide. (Holocaust will be discussed in detail in Chapter IV and V of the study).

### **Cambodia**

The violence inflicted upon the victims of the Khmer Rouge is incomprehensible. In less than four years nearly 1.5 million people perished under this regime only due to their political beliefs.<sup>86</sup> The notorious regime, who would later identify themselves as the Communist Party of Kampuchea, set out to achieve a revolution which would establish a pure Maoist agrarian society, self-sustaining and immune to foreign influence.<sup>87</sup> The Cambodian genocide was different in comparison to the previous cases of genocide as it was carried out by Pol Pot due to political affiliations; he targeted people who he considered to be politically against him as opposed to the grounds of religion, caste, etc.

### **Genocides in the post-Cold War era**

As after 1945, after 1989, there was a huge optimism about a more peaceful world. Ideas of “humanitarian intervention” and the “responsibility to protect” (R2P or RtoP), although in a rhetoric sense at that time, started to shape Western discourse and policies and started to be tested too. Indeed, UN for the prosecution of persons responsible for genocide established new international criminal tribunals as the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and the

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<sup>86</sup> Thomas Karl Forster, *The Khmer Rouge and the Crime of Genocide- Issues of Genocidal Intnt with Regards to the Khmer Rouge Mass Atrocities*, University of Berne Thesis, 2011.

<sup>87</sup> J.D. Ciorciari, “‘Auto-Genocide’” and the Cambodian Reign of Terror’ in D.J. Schaller DJ and others (eds), *Enteignet - Vertrieben - Ermordet, Beiträge zur Genozidforschung*, Chronos-Verlag, 2004, p. 416.

International Criminal Tribunal for Rwanda (ICTR) created in 1994. Some sort of normalisation was apparent too, as in China, where industrialisation took place. China expanded into world markets and achieved a rapprochement with the US and Russia. In such a context, neither international nor domestic tensions had real genocidal outcomes.

A changed pattern of genocidal war could be seen following the end of the Cold War. The dissolution of the Soviet Union and the following Yugoslav conflicts did produce a series of genocidal incidents that can be linked directly to the post-Cold War transition. The wars of Yugoslav succession, in Slovenia in 1991, Croatia in 1991-92, Bosnia-Herzegovina in 1992-1995 and Kosovo in 1998-1999 saw large-scale forced removals of populations accompanied by extensive violence against civilians.<sup>88</sup> Nonetheless, the Srebrenica massacre in 1995, killing more than 8,000 Bosnian Muslims, was the only incident ruled to have been genocide.<sup>89</sup> “Ethnic cleansing” seemed a more adequate term for the international community to describe the destruction and anti-population policies that took place during 1991-1999 in Yugoslavia.<sup>90</sup> Humanitarian interest taken by the international community in some of these genocidal incidents was also influenced or shaped by the nationalist interests of some nations. It was only when both these interests coincided, as in the case of Kosovo, where the conflict was escalating dangerously, baring a great risk of spreading to other countries, the international community acted united. NATO’s intervention in the Kosovo case did bring to an end effectively all military action and violence against the Kosovar Albanians by the Serbian forces. Eventually, later on the UN Western institutions hoped to supervise the post conflict developments thereby offering a guarantee for avoiding a repetition of 1990s genocidal atrocities.

## **Rwanda**

This guarantee period expired very soon as one of the most horrific case of genocide came to light. Though the holocaust is considered a “benchmark” for comparing genocides but many scholars believe that Rwanda was even more devastating than the holocaust.<sup>91</sup> Another catalyst for a new regional pattern of war was Rwandan civil war that led to the 1994 genocide of ethnic Tutsis by ethnic Hutus, resulting in almost

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<sup>88</sup> Supra.

<sup>89</sup> Supra.

<sup>90</sup> Supra.

<sup>91</sup> Supra.

800,000 people deaths. Post-Cold War era witnessed an increased tendency of regional African states to make military interventions such as the Rwandan Patriotic Front (RPF), running Rwanda. Further, the second Congo War involving nine African nations saw the rise of armed groups. Since a long time international institutions and policies had failed to act decisively for uplifting human rights in Africa. The genocidal incident of Rwanda forms a characteristic example of this failure, where a complete lack of political will by the world's leaders to end the genocide was apparent and shameful. Colonialism has played a very important role in bringing about this devastating series of events which ultimately lead to one of the deadliest genocides of the twentieth centuries.

Regardless of likely having shared ancestry, the Hutus and the Tutsi have likely originated from common ancestors, i.e. as offshoots of the Bantu people, their dispute has resulted in one of the lethal genocides of the twentieth century. This dispute can be easily traced back to the arrival of the German and the Belgian colonisers. There was in fact little delineation between the Hutus and the Tutsi at all before the arrival of these imperialists. As part of their ruling style, the Europeans divided these two groups mostly by economic status, with Tutsis being wealthier (as the ownership of ten cattle being the base requirement for being considered wealthy). Surprisingly enough the groups were quite flexible as if a Hutu came into money, he could change his status to that of a Tutsi. Hence, due to their status as the wealthier group the Tutsi were the prevailing class in Rwanda for many years. As part of this dominance they enforced their rule over the Hutu people, in some cases with great violence. Eventually, in the early 1990s a revolt began, which saw Hutus engaging in the wholesale slaughter of the Tutsis. It resulted in the killing of hundreds of thousands of Tutsis. The preferred method of execution being the "machete", as the perpetrators did not have access to ammunition and it was expensive as well. To make matters worse rape, mutilation, and the deliberate spread of disease among the Tutsis were also used as tools for causing torture to the victims.

This resulted in a huge death toll. Though, there are highly conflicting varying accounts of the final body count, with some people claiming that there were five hundred thousand victims, and others that there were well over a million.<sup>92</sup> The UN and peacekeeping forces placed in Rwanda were largely ineffective and, surprisingly,

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<sup>92</sup> Supra.

were removed before the end of the atrocities and utterly failed in their duty towards the innocent victims. The international community is to be held responsible for these numerous deaths as no due recognition was given to this massive infringement of human rights for a long time and by the time the international community realised its mistake the damage had been done. Shockingly history repeated itself in Darfur within nearly a decade of the Rwanda genocide. The international community once more failed in its duty to protect the innocent civilians of Darfur and that is why it has been chosen as a case study here as it brings out the discrepancy between law, politics and history to the surface.

### **Bosnia-Herzegovina**

Although many different ethnic and religious groups had been residing in Yugoslavia for a long time, it was when the provinces of Slovenia and Croatia declared independence from Yugoslavia's repressive communist government that war broke out between the two sides. In April 1992, the Serbs set out to "ethically clean" the Bosnian territory by systematically removing all Bosnian Muslims known as Bosniaks. According to a United Nations Commission estimate by the late 1994 around 200,000 people had probably lost their lives.<sup>93</sup>

### **Darfur**

Darfur genocide has been chosen as a case study; as the analysis of this initial rejection by the international community of a genocide taking place in Darfur provides us with an opportunity to understand the role played by law, politics and history in relation to genocide. Studying the factors which ultimately led to the Darfur incident being recognised as genocide provides an insight in this discrepancy and also how the interpretation of holocaust is interpreted according to the whims and fancies of the international community. It was in February 2003, that the struggle that had been brewing for a long time for control over the land and power in the western Sudanese region of Darfur eventually erupted into violence between the Sudanese government forces and rebel groups. The rebel groups had been protesting the marginalization of the region's black African ethnic groups by the Muslim central government. In response to this protest, the Sudanese government supported Arab militias (Janjaweed) began enacting policies of ethnic cleansing against the rebels.

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<sup>93</sup> Norman Cigar, *Genocide in Bosnia: The Policy of "Ethnic Cleansing"*, Texas, 1995.



These policies included forced displacement and starvation, murder, torture and rape against Darfur's civilian population. Darfur is an example of one of the most violent genocides of our times which left hundreds of thousands of people dead and more than two million displaced from their homes. Regardless of such atrocities the international community failed to recognise it as genocide in time and this led to a huge loss of human life and property. This very failure makes this case study a very good example to bring out the mutual influence and discrepancy between law, politics and history in relation to genocide.

### **The contested case of Iraq**

Another key post-Cold War development has been democratisation, which has been in some ways linked to new genocidal dangers. Indeed, in political upheavals, there is always a possibility that democratisation may enlarge the potential of ethno political mobilisation and subsequently genocidal violence as implicated in the power struggle wars in Yugoslavia, Rwanda or even Iraq. The US-UK war on Iraq in 2003 led to 105,000 deaths, the majority of which have resulted not directly by the US attack but from its indirect consequences. Apparently, Iraq's Shia majority took power leading to a sectarianisation of Iraq politics with violent consequences. Last but not least, it should be underlined that this period was also marked by some important institutional developments: the establishment of international criminal tribunals, the International Criminal Court (ICC), which came into force on 1st of July 2002, and the UN responsibility to protect (R2P or RtoP) initiative of 2005. Though the controversy firstly, whether Iraq should have been invaded in the first place and secondly, as to whether Iraq should be recognised as an on-going genocide was and is still being debated upon, another controversial case glared at the world community i.e. of Sri Lanka having also joined this long list of "contested cases" of genocide.

### **The Contested Case of Sri Lanka**

On the other hand, Sri Lanka is one such incident whose recognition as a case of genocide is marred in huge controversy. Though, it has been alleged by a number of actors that even in this narrowest theoretical approach possible, Sri Lanka's treatment of its Tamil community constitutes genocide. These allegations have specially garnered support around the world after the military action taken by the Sri Lankan government for the annihilation of the Liberation Tigers of Tamil Eelam (LTTE) in

2009. These notions are allegedly based on the politics of race that have dominated Sri Lankan elections since independence. It has been claimed that Sri Lankan governments that have come to power are invariably those that had espoused the anti-Tamil card. Civil rights activists have claimed that when Tamil families were being hacked to death or burnt alive on the streets, in their homes, their workplaces and temples, It has been claimed by human rights activists around the world that President Jayawardene's speech where he talked about "suspicion between the Sinhala and the Tamil people" during the pogrom against Tamilians was being carried on made no rational sense outside of genocide theory. Therefore, Sri Lanka provides us an opportunity to further understand the role to how international law, politics and history keep on influencing the world states and regardless of the mistakes committed in cases such as Darfur the international community does not learn a lesson and conduct a thorough investigation of the crisis and decide once and for all whether it falls under the category of genocide or not. It is this unique position and status of Sri Lanka that presents it as a very interesting case study.

Though genocides have been taking place since antiquity regardless of the geographical area or the ethnicity or nationality, the twentieth century has come to be known as the century of genocide. Both before and after the Holocaust a number of recognised and alleged incidents of genocide have taken place. As going into details of each one of them will be too time consuming, a brief discussion of genocides from antiquity to modernity was done to give us a rough idea regarding the evolution of genocides since pre-historic times and to also prove that genocide is ancient in nature. Although the Holocaust is often the most well-known case of genocide, other genocides around the world are equally significant. Hence, if we go through history we will realise that there are numerous number of genocides that have taken place since the very inception of mankind and an end to such incidents does not seem to be near. And this reality would have been a huge blow to Raphael Lemkin, undoubtedly the father of genocide studies, who dedicated his entire life to getting not only a name to this ancient crime but also legal recognition as a crime. To better understand as to why genocides still take place we need to explore the development of the concept of genocide as it came into existence.

### **Environments sustaining mass violence**

After analysing the historical roots of genocide since pre-historic times it is easy to

comprehend that there are certain types of environments which are more conducive to communal conflicts or mass violence. As genocide is also a form of mass violence these environments have been found to be present in nearly all the genocidal incidents. Given below are the four kinds of environments M.J. Wyszomirski has suggested that sustain communal conflict during the last two centuries. These four environments have resulted in cases of genocides too.

Firstly, a number of incidents of communal violence occurred during the emergence of nation states in the West. For example, it included conflicts between the English and the Welsh and Scots, and some that arose in the Netherlands, Belgium, Switzerland and Canada. Luckily though, in all these cases of conflict in almost all the above mentioned countries, the conflict was not only managed effectively and stable democratic governments have been ruling there for centuries now. Sadly, the same cannot be said about the other parts of the world though. For example, during the partition of India and Pakistan in 1947 as two separate nations a large number of Hindus and Muslims were butchered while they left their respective homes and shifted to the other country based on their religion. This massacre is still marred in controversy after 70 years of independence and it's status as a genocide is still contested by scholars.

The second environment in which communal conflict emerges is that of post-colonial societies. Ofcourse, as nearly all of the colonies existed in the third world, this environment characterises the situation in multi-communal societies such as Sudan, Sri Lanka, India, Myanmar to name a few. All these countries have been victims of communal violence at some point of history. The contested case of Sri Lanka has communal conflict to blame for genocide that had been brewing between the Sinhalese and the Tamils for centuries. In all these societies, prior to independence, all the competing communal groups had come together and played down their differences in the interest of winning freedom from their colonial masters. For example, all parts of undivided India came together to fight against the Britishers regardless of their massive difference in language, culture, etc. but once independence was achieved, the bubble of unity burst. Due to the scarcity of resources to cope which the colonial masters had left these countries in, a struggle ensued within these communities to gain power and wealth. The newly formed nations with deplorable conditions but high aspirations, rapidly led to the establishment of communal

coalitions to ensure the maximum allocation of the existing resources to their own groups. The consequence of such acts were hard hitting as elites of communally based groups engaged in tactics of outbidding each other through any method. This in turn fostered hate and extremist positions, which were further supported by the disappearance of brokerage institutions and lack of law and order, therefore resulting in the breakdown of all former management and regulatory procedures and causing communal conflicts or mass violence.

The third type of environment in which communal conflicts have flourished over the last two centuries, has been that of former polyglot empires which have now disintegrated. One of the most contemporary and apt example is disintegration of the former Union of Soviet Socialist Republics (USSR). In the case of the USSR, as it was a communist federation, the political authorities for many years had either kept in check, submerged, or endeavoured to eliminate any kind of communal identities in the interests of the formation of an integrated national identity. But after the collapse of the federation, the central communist rule also collapsed and was quickly superseded by the re-emergence of regional, ethnic, and religious identities that had been lying dormant for years. Another example was the disintegration of the Austro-Hungarian Empire during the nineteenth century which produced similar results in terms of an intensification of communal conflicts. The disintegration of the Ottoman Empire during the same timeline too led to burgeoning of communally based conflicts in the Balkans as well as in the eastern provinces of Turkey, the region where the Armenian population was concentrated. Hence, we can easily comprehend from all these three examples that whenever the nationalist identities are allowed to disintegrate, the underlying communal identities come to the surface and result in conflicts. This disintegration results in cases of genocide too as happened in the case of Yugoslavia. On April 5, 1992, the government of Bosnia declared it's independence from Yugoslavia, which resulted in "cleansing" of Bosnia of it's Muslim civilian population by the Serbs.<sup>94</sup>

The fourth environment is that of post-industrial states. This will also be discussed in the section approaches to genocide as a type of approach. This is because that in such cases there is a quest for new forms of identity. As struggle with the new identity has in some instances given rise to communal conflicts and aspirations which until now

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<sup>94</sup> *Ibid.*

had been managed effectively. The conflict between French and Anglo Canadians is an instance of this category of communal conflict. It is, however, probably necessary to add a fifth category to this list. It is necessary to do so as due to the changing social and economic conditions in the world. This environment should include patterns of communal conflicts arising from flows of economic migration. This fifth category is very similar to one of the approaches of genocide which will be studied in the next chapter. Such flows have resulted in communal conflicts in certain countries of Western Europe, notably Germany and France where refugees from countries such as Syria are having conflicts with the native population which have and can result in communal conflicts anytime. The burden of Wyszomirski's argument is that communal conflicts are likely to erupt whenever and wherever common identities do not exist between communities coexisting in proximity to each other, or within the same socio-political system, because of the presence of basic divisions between them on the basis of language, religion, or race. This has been observed in almost all cases of genocides. It is these environments which result in genocidal incidents and almost all the incidents in the last two centuries can be attributed to one of the above mentioned categories.

### **Genocide as a Concept**

History has seldom borne witness to the unrelenting efforts of an individual who brings about a change influencing millions of lives around the world. One such prime example is of Raphael Lemkin. No study of genocide can start without paying homage to this man who undoubtedly is recognised as the father of the concept of genocide around the world. It was due to his diligent efforts towards the development of this concept that in a rare acknowledgement in the history of a discipline like international law an individual's work has been recognised for profoundly shaping it. His legacy is embodied forever in the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>95</sup> Lemkin was a Polish-Jewish jurist who not only coined the word "genocide" but is also responsible for its recognition around the world.

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<sup>95</sup> United Nations General Assembly Resolution, 260A (III), passed on 9<sup>th</sup> Dec. 1948 and came into force on 12<sup>th</sup> Jan. 1951, 78 UNTS 277.

## Crime without a Name

Lemkin's interest in this ancient "crime without a name" had started in the early 1930s. He eventually perceived the need to outlaw this particular crime in international law as there was a tendency of different governments around the world of destroying ethnic groups as not only a part of their nation building but also based on their biases against the indigenous people. Therefore, as he started participating in various conferences on the unification of criminal law in various European countries by the early 1930s, he started making efforts towards the codification of international law. The very first International Conference for the Unification of Criminal Law under the auspices of the League of Nations was held in Warsaw in 1927 but it was the year 1933 that proved historically important for him. The organizing committee had invited Lemkin who was Polish public prosecutor at the time to the conference as a speaker and he prepared a report entitled "*Les actes constituent un danger general (interetatique) consideres comme delist de droit des gens*" for this occasion which consisted of a list of five crimes of international law and differing rationales for their repression by the international community.<sup>96</sup> While addressing the International Conference for Unification of Criminal Law in Madrid in 1933 he invoked the interlinked concepts of "barbarity" and "vandalism" in urging the international community to join together in order to ban the cultural and physical annihilation of the human groups.<sup>97</sup>

Lemkin thereafter submitted a proposal to the conference to declare the destruction of racial, religious or social collectives a crime under the law of nations.<sup>98</sup> It was the practices of the National Socialist Government in Germany and the Young Turks in the Ottoman Empire that pushed Lemkin with the impetus to reconsider certain principles of international law. One of the most important questions that arose in Lemkin's mind regarding the recognition of genocide was "whether sovereignty extends so far that a government can destroy its own citizens with impunity without

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<sup>96</sup> R. Lemkin, (Translated) *Les actes constituant un danger general (interetatique) consideres comme delits de droit des gens, Rapport spécial présenté à la V-me Conférence pour l'Unification du Droit Pénal à Madrid (14–20.X.1933) (explications additionnelles)*, (Acts Constituting a General (Transnational) Danger considered as Crimes under the Law of Nations) (1933), P-154, Box 1/11 and Box 5/3, Lemkin Collection, AJHS.

<sup>97</sup> Rashed Haifa and Damien Short, 'Genocide and Settler Colonialism: Can a Lemkin-inspired genocide perspective aid our understanding of the Palestinian situation?' in *The International Journal of Human Rights*, vol. 16 no. 8, 2012, pp. 1142-1169.

<sup>98</sup> Raphael Lemkin, 'Genocide as a Crime under International Law' in *American Journal of International Law*, vol. 41, 1947, pp. 145-151.

any consequences, and thus whether these acts of destruction should be a matter of domestic concern or international concern.<sup>99</sup> This concern was highly relevant as it had been observed that nearly all the incidents of genocide had the state turning a perpetrator against its own citizens”.<sup>100</sup>

Eventually, it was in a famous radio speech in 1941 during the Second World War, Winston Churchill, then the Prime Minister of Great Britain had described the events of the war and the intensification of the war as it opened up on the Eastern front in the following way along with identifying genocide:

“The aggressor ... retaliates by the most frightful cruelties. As his Armies advance, whole districts are being exterminated. Scores of thousands - literally scores of thousands - of executions in cold blood are being perpetrated by the German Police-troops upon the Russian patriots who defend their native soil. Since the Mongol invasions of Europe in the Sixteenth Century, there has never been methodical, merciless butchery on such a scale, or approaching such a scale. And this is but the beginning. Famine and pestilence have yet to follow in the bloody ruts of Hitler’s tanks. We are in the presence of a crime without a name.”<sup>101</sup>

The holocaust had a devastating effect on Lemkin also as most of his family fell victim to. He miraculously had escaped from Nazi-occupied Poland by traversing nearly ten thousand miles across the Baltic Sea, Siberia, Japan, the Pacific Ocean, finally entering United States of America.

### **Crime of Barbarity and Vandalism**

It was in this particular conference that Lemkin brought to light his observations that there were certain crimes which not only threatened the very existence and security of an individual but also the group of which he/she was a part off. He further argued that such acts of extermination which included massacres, pogroms or acts designed to destroy the economic existence of a particular group, were mainly directed against ‘ethnic, religious or social groups’ irrespective of the motive. These harsh acts aiming the extermination of the very existence of a group went beyond relations between individuals because “they shook the very basis of harmony in mutual relations between particular collectivities. Such acts directed against collectivities constituted a general transnational danger.”<sup>102</sup> This proposed list of crimes by Lemkin which he wanted to be codified in international law had two such crimes i.e. the crime of

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<sup>99</sup> *Ibid.*

<sup>100</sup> *Supra.*

<sup>101</sup> Winston Churchill, Radio Speech on August 24, 1941, quoted in John Quigley, *The Genocide Convention: An International Law Analysis*, New York, 2016, p. 4.

<sup>102</sup> *Ibid.*

barbarity, consisting of the physical extermination of the groups, and the crime of vandalism which concentrated around the destruction of the culture and artistic works of the selected groups.<sup>103</sup>

Sadly, on this particular occasion Lemkin's proposal was denied. Lemkin had during the entire Second World War, closely monitored the German occupation policies, especially in his native Poland. Lemkin realised the importance of evidence that could support the development of the two crimes of barbarity and vandalism, and hence started to collect documents containing publicly available occupation decrees and laws from Occupied Europe during his refuge in Sweden. These documents helped Lemkin to further develop his crimes of barbarity and vandalism into what was to become the concept of genocide.<sup>104</sup> It was these documents collected by him that enabled Lemkin's to reach the conclusion that Nazis were not only conducting a regular war but they were engaged in a war against people. After thorough interrogation of the material available to him Lemkin finally concluded that the Nazis were framing policies to engage in a demographic restructuring of the European population in order to fit the ideals of the Third Reich. Hence, Lemkin concluded that these realities of European life in the years 1933-1945 were way beyond the sphere of the crimes of barbarity and vandalism and called for the creation of a term and the formulation of a legal concept of destruction of human collectives.<sup>105</sup>

Lemkin was totally invested in his idea that there needed to be a more inclusive and broader formulation for the crime that was going on in Germany as he did not view the Final Solution as being solely a Jewish centric catastrophe, but a catastrophe with a much wider target victims which included "Poles, Gypsies and others."<sup>106</sup> Consequently, this realisation of his resulted in the view there were particular types of groups which should be protected by international law in the future, as he defined it from the perspective of the perpetrator as "individuals are selected for destruction only because they belong to these groups,"<sup>107</sup> i.e. the individuals was selected and targeted by the perpetrator merely because they were members of a particular group not because of their own individual characteristics. Lemkin hoped that the events in

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<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.*



Nazi occupied Europe would create a law that would ensure that such crimes could not be repeated, something that has been achieved but does not seem to work at all.

Lemkin thought that by making this barbaric act of human right infringement a crime under international law it would become a problem of international concern especially as it had occurred around the world without any hindrance since centuries. According to Lemkin, this international recognition will also grant the international community the right to intervene in cases in which minorities were selected and subjected to destruction.<sup>108</sup> For Lemkin had already realised that the Holocaust was not an isolated and unique historical event, but rather part of a growing tendency within nations in the twentieth century for building themselves on behalf of the governments by exterminating minority groups. Terms such as “mass murder, denationalisation or Germanisation” did not only adequately convey the full force of this new phenomenon to the civilized world but had become too small in their scope to cover the different kinds of methods being used to bring to extinction these minority groups. All these terms could signify was the replacement of the national pattern of the oppressor for the original national pattern, however not the annihilation of both the biological and physical structure of the targeted group.<sup>109</sup> Therefore, there was need of a new term which could include not only the various methods being used by the perpetrators but also how these particular groups were being destroyed politically, socially, legally, intellectually, spiritually, economically, biologically, physiologically, religiously, culturally and morally.

### **Coining of a new word**

This new word “genocide” was made from the amalgamation of an ancient Greek word “*genos*” meaning race or tribe and the Latin word “*cide*” meaning killing, thus corresponding in its formation to such words as homicide, infanticide, etc. It was in the preface to his book that he introduced this new word for the offence of destroying human groups.<sup>110</sup> He went on to describe his definition of the new concept of genocide as:

by ‘genocide’ we mean the destruction of a nation or an ethnic group...Generally speaking, genocide does not necessarily mean the immediate destruction of a nation,

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<sup>108</sup> *Ibid.*

<sup>109</sup> Raphael Lemkin, ‘Genocide- A Modern Crime’ in *Free World*, vol.4, April 1945, pp. 39-43.

<sup>110</sup>This was the first time that the word genocide appeared in print. Please refer to Lemkin, *Axis Rule in Occupied Europe* for more details. namely in *Chapter IX: “Genocide”, I. Genocide- A New Term and New Conception for Destruction of Nations.*

except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group....Genocide has two phases: one, destruction of the national anthem of the oppressed group; the other the imposition of the national pattern of the oppressor. This imposition, in turn, may be made upon the oppressed population which is allowed to remain or upon the territory alone, after removal of the population and the colonization of the area by the oppressor's own nationals.<sup>111</sup>

Hence, according to Lemkin genocide was directed against the national group as an entity, and the actions involved were directed against individuals, not in their individual capacity, but as members of the national group.<sup>112</sup> Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. According to Lemkin genocide signified a “coordinated plan” of different actions “aiming at” the destruction of essential foundations of the life of national groups, with the “aim” of annihilating the groups themselves.<sup>113</sup> Genocide was to be considered as a wide-ranging act, a composite of actions rather than one single defining act or mode by which a nation or a group could be destroyed forever. Hence, the objectives of such a plan were not only the disintegration of the political and social institutions but to add more horror to the destruction. Genocide also aimed at destroying the very foundations that the life of a group is based upon such as culture, language, national feelings, religion, and the economic existence of national groups along with the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. It was because of this overall aim at annihilating all the aspects of a group of individual's life.<sup>114</sup> Lemkin's definition of genocide will be analysed in the next chapter in comparison to the one laid down in the UNGC.

According to Lemkin genocide consists of two phases: the first one is the destruction of the national pattern of the oppressed group and the second one is the perpetrator

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<sup>111</sup> Lemkin, Op. Cit.

<sup>112</sup> Raphael Lemkin, *Axis Rule in Occupied Europe: Law of Occupation, Analysis of Government, Proposals for Redress*, Washington, 2005.

<sup>113</sup> Supra.

<sup>114</sup> Carnegie Council for Ethics in International Affairs, retrieved from [https://www.carnegiecouncil.org/publications/archive/dialogue/2\\_12/section\\_1/5139.html#:pf\\_printable](https://www.carnegiecouncil.org/publications/archive/dialogue/2_12/section_1/5139.html#:pf_printable), accessed on 15<sup>th</sup> May 2016.

imposing its own national pattern on the oppressed group.<sup>115</sup> Hence, genocide became a war of conquering and destroying the very identity of the conquered population. Lemkin further argued that why should genocide be seen as an international problem was to firstly, because it had moral implications on our values as a civilisation and secondly in order to protect “all civilised people”. He also believed that if crimes like genocide were left unchecked they would spread like wildfire around the globe. Hence, making minorities vulnerable everywhere and threaten the security and constitutional status of nations as the post-Versailles treaties were inadequate to protect the minorities as they were limited to a small number of newly created nations. Further, these treaties did not protect the biological or cultural structures of these groups, only the civil and political rights. This can be observed today in Tibet. China is meticulously trying to eradicate not only the Tibetan population but their culture itself. This is the very situation that Lemkin was afraid of and sadly, not much has been done by the international community in safeguarding the rights of the Tibetans except grant them refuge in countries like India.

Lemkin’s understanding of the term genocide deserves a special mention in the study due to a number of reasons. Firstly, it is his understanding of the term that traces the origins of the meaning of genocide both etymologically and as a concept at the time of its inception. Secondly, it is his definition of genocide which formed the basis for the UNGC and a source to comprehend the “true” meaning of genocide whenever there arises any confusion. His book the *Axis Rule in Occupied Europe* has been widely referred to not only during the Nuremberg Trials but also the ICTR and the ICTY. Though there have been a number of prominent scholars like Leo Kuper, Yehuda Bauer, Israel Charny who have contributed to the genocide discourse immensely, Lemkin no doubt is the father of the genocide studies. As a concept genocide is dynamic in nature and hence a new meaning or component or understanding gets added to it with the passage of time as well as every new genocidal incident.

After examining the historical roots and the journey of “genocide” being recognised as a crime under the UNGC, a question arises as to why is “genocide” international? Is it because it occurs in countries around the world or because it is a crime recognised under International Law? The most simple and straight forward answer

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<sup>115</sup> Supra.

would be because internationally “constituted” as a crime when it was recognised in both legal and political terms in 1948 under the auspices of the UNGC. It is also deemed international because it is a part of a much more complex set of international movements whether political, legal, historical, social or economic. For example, genocides like Cambodia, Rwanda or Darfur have influenced are understanding and perception of the concept of genocide regardless of their differences. All these complexities will be discussed as the study progresses.

### **Crime of Genocide and International Law**

Though the Second World War was replete with examples of human rights infringement such as the Holocaust, it was the term crimes against humanity and not genocide that was used during the Nuremberg and the Tokyo trials. Eventually, under the UNGC, genocide was finally recognised as a crime in 1948. It was a huge step forward as the crime was not even recognised by a name previously. Since then there has been a rapid growth in its recognition as a crime under international law through inclusion in various legal instruments, case judgements, criminal tribunals and other scholarship. The chapter traces the development of all these various components of genocide from its drafting history to the present day. It also discusses as to how it is distinct from crimes against humanity and the various case law related to it.

There can be no denying the fact that previously, international law was mainly only concerned with the action of states. It had no concern with the individuals through whom the states acted as they had been left totally outside its purview. Regardless of the establishment of individual criminal responsibility for grievous mass atrocities and violations of human rights under international law (genocide had not come into existence at that time though crimes against humanity had been legally recognised), it emerged during the Nuremberg and the Tokyo trials that due to the failure of the municipal laws in prosecuting the culprits huge injustice to the victims. It could only happen due to the unwillingness or inability of the municipal laws in holding the perpetrators accountable for the numerous human rights violations that they had indulged in. This failure created a fear in the hearts of the nations who were still reeling under the horror and shock of the Second World War that due to lack of proper international law, many of these perpetrators could walk free today and in the future, thereby, posing a threat to world peace by executing crimes such as the Holocaust. This fear resulted in the legal recognition of genocide as a crime so as to

safeguard the future generations from ever witnessing such a crime again. Sadly, it was not to be so and a series of genocidal incidents have occurred and are still occurring since the Holocaust.

The legal, moral and political fields intertwine at the concept of “responsibility” which rendered complexity as to who should be held responsible in collective crimes such as ethnic cleansing, crimes against humanity or genocide? International criminal law finally cleared this confusion through the principle of individual responsibility affirmed in the Nuremberg and the Tokyo Trials and currently the part of the ICC Statute under Article 25.<sup>116</sup> As the crime of genocide is a multifaceted offence it combines both the notions of collective as well as individual responsibility. Instances of genocide provoke emotional responses and an array of questions regarding the political and historical merits of any genocidal case or the concept of genocide itself. This chapter though will only be looking at the legal side of genocide.

### **Crime of Genocide**

Genocide after being coined as a term by Raphael Lemkin and recognized by the international law and made a part of international law instruments first appeared in the judgement of several cases dealt with under Control Council Law No. 10, beginning with the Justice Case.<sup>117</sup> In this judgment, genocide was described as “the prime illustration of a crime against humanity”.<sup>118</sup> It should be remembered that, at that time, the crime of genocide was, and, in contrast to the Genocide Convention, crimes against humanity could only be committed in association with an international armed conflict.<sup>119</sup> The case law however, is still very much in its infancy. It is so as even after being codified under the UNGC, genocide largely remained a symbolic offence. It was only after the setting up of the ICTY and the ICTR that it came into prominence. With further advancement of international law and legal recognition of genocide, it was cases like the all-important Bosnia v. Serbia case<sup>120</sup> that came up

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<sup>116</sup> O. Sara Liwenrant, ‘Mass Murder Discussing Criminological Perspectives’ in *Journal of International Criminal Justice*, vol. 5, 2007, pp. 917-939.

<sup>117</sup> United States of America vs. Josef Altstoetter et al. (Case 3). This trial has become known as the Justice Case, because all of the defendants held positions in the Reich system of justice, as officials of the Reich Ministry of Justice or as judges or prosecutors of the Special Courts and the People’s Courts.

<sup>118</sup> Retrieved from the United States Holocaust Memorial Museum website, <http://www.ushmm.org/conscience/analysis/details/orentlicher.pdf>, accessed on 1st August 2013.

<sup>119</sup> William A. Schabas, *An Introduction to the International Criminal Court*, Cambridge, 2001.

<sup>120</sup> Bosnia and Herzegovina v. Serbia and Montenegro, I.C.J. Reports 2007.

with the first opportunity for international adjudication of state responsibility for the crime of genocide.<sup>121</sup>

Once genocide was recognised under the UNGC there was a marked difference between the ‘lay’ meaning of genocide as compared to the one defined under International Law. To an average lay man “genocide is any organized, planned mass murder of human beings on account of their race, ethnicity, religion or other personal characteristic”<sup>122</sup> but to a scholar of international law it’s meaning has been strictly defined as was laid down on the 11<sup>th</sup> of December 1946 by the UN General Assembly resolution 96(1)<sup>123</sup> in which the Assembly outlawed genocide and later codified it under the UNGC in 1948 which came into force on 12<sup>th</sup> January 1951.<sup>124</sup> The assembly had declared:

Genocide is a denial of the right of existence of entire human groups, as homicide is denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity...and is contrary to moral law and to the spirit and aims of the United Nations.

Many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part.

*Affirms* that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices – whether private individual, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds – are punishable;

*Invites* the Member States to enact the necessary legislation and punishment of this crime;

*Recommends* that international co-operation be organized between States with a view to facilitating the speedy prevention and punishment of the crime of genocide...<sup>125</sup>

Hence, the crime of genocide was manifested in international customary law. The legal definition of genocide does not only cater to international law but also provides the basis for much of the ongoing modern debate. Most of the scholars as will be discussed in detail in the next chapter have a number of contentions against this particular definition and do not agree with its universal application. Legal scholars have expressed the fear of an over extension of the use of the concept of genocide on

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<sup>121</sup>Marko Milanovic, ‘State Responsibility for genocide’ in *The European Journal of International Law*, vol. 17 no. 3, 2006, pp. 553-604.

<sup>122</sup> Ibid.

<sup>123</sup> UN Doc., GA/RES/96(1), 11 December, 1946.

<sup>124</sup> UN Doc., GA/RES/260(III), 9 December, 1948.

<sup>125</sup> UN Doc., GA/RES/96(1), 11 December, 1946.

to any kinds of mass murder which will bring down its importance and the shock that such incidents carry with them. Luckily, as the legal understanding of concept of genocide is growing, the various judicial organisations such as the ICC, the criminal tribunals have been very diligent with their judgements in order to bring more clarity to this misinterpreted crime.

### **Drafting History**

Though the legal concept of genocide goes back to the World War II, genocide was, unfortunately, neglected in the judgments of International Military Tribunals (IMT). None of the accused in Nuremberg was convicted of genocide and the word 'genocide' did not even appear in the text of any judgment. However, the prosecution in its indictment presented to the IMT tried to press the charges on the crime of genocide despite the omission in the text of the Charter of the IMT defining the crime as "extermination of racial and national groups, against the civilian populations of certain occupied territories in order to destroy particular races and classes of people and national, racial or religious groups, in particular Jews, Poles and Gypsies and others"<sup>126</sup>. The same is true to the Tokyo Tribunal, war criminals were not charged with the crime of genocide.<sup>127</sup> In order to describe the nature of committed crimes, other terms and expressions were used, namely, extermination, mass murder, annihilation of certain groups of individuals or populations. One of the reasons that the crime of genocide was not included in the IMT Charter as the punishable act could be the Allies' reluctance to deal with individualized victim groups due to the concept accepted by the Nuremberg Trial that it was individuals who were victims but not groups or nations per se. Another reason of the exclusion of genocide could be the fear of manipulation of trial by certain groups of victims as a revenge tool. The IMT attempted to approach the situation in a way to show the destruction of millions of human beings but not of particular ethnical, national or religious group.<sup>128</sup>

One more logical explanation could be provided that is the very absence of the crime of genocide as the crime per se; it was of unique nature and it was impossible to argue

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<sup>126</sup>Indictment presented to the IMT, the USA, The French Republic; the UK and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al., 18 October 1945, p. 43.

<sup>127</sup> R.J. Pritchard and S. Magbanua, *The Tokyo War Crimes, The complete transcripts of the proceedings of the IMT for the Far East*, NY/London: Garland, 1981, vol. 1.

<sup>128</sup> D. Bloxham, *Genocide on Trial: War Crimes Trials and Formation of History and Memory*, Oxford University Press, 2001.

that the crime had existed under the international law before. Nevertheless, the very absence of the reference to the crime of genocide in the IMT Charter and jurisprudence developed by the International Military Tribunals undoubtedly influenced the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>129</sup> The Preamble of the Draft Genocide Convention referred to the IMT and its judgments stating “having taken note of the fact that the IMT at Nuremberg in Its Judgments of September 30-1 October 1946 has punished under a different legal description certain persons who have committed acts similar to those which the Present Convention aims at punishing”. However, the aforesaid provision was removed in the original convention text, for genocide not to be equated with the crimes against humanity considered by the IMT Charter.<sup>130</sup>

### **Nuremberg Trial**

After the second world war came to an end the American, British, French and Soviet prosecutors who were part of the trials between the years of 1945 and 1949, collectively referred to today as “the Nuremberg Trials”, successfully indicted and tried approximately two hundred and seven former Nazis for both war crimes and crimes against humanity at the Palace of Justice in Nuremberg.<sup>131</sup> The trials consisted of thirteen different trials and even though Lemkin’s definition of “genocide” was in circulation at that time, the Nuremberg prosecutors did not fully employ it at the trial. The International Military Tribunal (IMT) was the first and most well-known of these trials. Under this tribunal the four allied powers jointly prosecuted twenty-two of the highest ranking Nazis, which included Martin Bormann, who was a prominent official in Nazi Germany being the head of the Nazi Party Chancellery, tried in absentia.<sup>132</sup> The list of convicts also included “Reichmarschall” Hermann Wilhelm Goring, highest ranking commander in the “Wehrmacht” of Nazi Germany, Albert Speer, Minister of Armaments, a number of military leaders and the heads of several important Reich and party offices. After the conclusion of this ground-breaking trial in the autumn of 1946, the Americans also indicted one hundred and eighty five

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<sup>129</sup>The Genocide Convention, 78 UNTS 277, opened for signature on December 8, 1948 and entered into force on January 12, 1951.

<sup>130</sup> Official Record of the 3 Session of the GA, Part I, 6th Committee, Summary records of the Meetings, 21 September – 10 December 1958, UN Doc. A/C.6/SR.109.

<sup>131</sup> International Military Tribunal, *Trial Of The Major War Criminals Before The International Military Tribunal*, Nuremberg, 1947, p. 22.

<sup>132</sup> Ibid.



additional Nazis of which one hundred and seventy seven were tried in twelve additional trials also held at Nuremberg. These trials are sometimes also referred to as the Nuremberg Military Tribunals (NMT).<sup>133</sup>

As Lemkin had already conceived the concept of genocide at the time of these trials, hence it did influence the drafting of the London Charter of the IMT at Nuremberg (also referred to as the Nuremberg Charter). It was a promising beginning for Lemkin who was working hard for legal recognition of genocide as a crime and though his definition was not being used in the ideal form, he was hopeful that the crime would further develop during the IMT trial and hence had made himself available to the Nuremberg prosecutors for consultation.<sup>134</sup> Even though none of the war criminals under the Nuremberg trial were indicted specifically for the crime of “genocide”, the term genocide itself made its presence felt in the record papers of all the thirteen trials. Finally, the judgment of the International Military Tribunal was handed down on starting from 30<sup>th</sup> September to 1<sup>st</sup> October, 1946. Among notable features of the decision was the conclusion, in accordance with the London Agreement, that “to plan or instigate an aggressive war is a crime under the principles of international law. The tribunal rejected the contention of the defence that such acts had not previously been defined as crimes under international law and that therefore the condemnation of the defendants would violate the principle of justice prohibiting ex post facto punishments. As with the Dostler case,<sup>135</sup> it also rejected the contention of a number of the defendants that they were not legally responsible for their acts because they performed the acts under the orders of superior authority, stating that “the true test . . . is not the existence of the order but whether moral choice (in executing it) was in fact possible”.<sup>136</sup>

With respect to war crimes and crimes against humanity, the tribunal further found overwhelming evidence of a systematic regime of violence, brutality and terrorism by the German government in not only in Germany but even in the territories occupied by its forces. Millions of persons whether Jews, Romas or members of other “inferior” sects were murdered in the Nazi concentration camps, many of which were

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<sup>133</sup>Hilary Earl, ‘Prosecuting genocide before the Genocide Convention: Raphael Lemkin and the Nuremberg Trials, 1945–1949’ in *Journal of Genocide Research*, 2013, 15:3, pp. 317-337.

<sup>134</sup>Hilary Earl, Interview with Benjamin Ferencz, 24 April 1997.

<sup>135</sup> Dostler Case (Trial of Dostler) : 1 LRTWC 22; 13 Ann. Dig. 280 (U.S. Military Commission 1945).

<sup>136</sup> Ibid.

equipped with gas chambers. Under the slave-labour policy of the German government, at least five million people had been forcibly deported from their homes to Germany. Many of them died due of inhumane treatment meted out to them. The tribunal also found that atrocities had been committed on a large scale and as a matter of official policy. Of the seven indicted organizations, the tribunal declared as criminal the leadership corps of the National Socialist Party, the Schutzstaffel (SS), the Sicherheitsdienst (SD), a branch of the SS and the Geheime Staatspolizei, popularly known as the Gestapo, the official secret police of Nazi Germany as well as the German-occupied Europe.<sup>137</sup> The Nuremberg trial was one and first of it's kind. Never before had various countries come together to punish perpetrators and make such a huge impact on both international law and international diplomacy.

The Nuremberg trial was no doubt a path breaking step and brought about a new era in international law and international diplomacy. But sadly it has not been able to live upto the expectations. Though there has been a huge influence of the trial which finally resulted in passing a number of conventions with the promise of the nations that they will not let such a barbaric crime against humanity like the Holocaust ever happen again but in reality this trial was not able to deter future perpetrator. The biggest contribution of the Nuremberg trial is bringing into existence the concept of genocide with a legal backing but a lot needs to done even today. To bring into effect the principles of justice that nations around the world tried to stand up for through this trial have not totally become effective even today. It is high time that both nations and citizens around the world realise and work towards world peace so that we don't have to face such trials ever again. But NMT cannot be branded a total failure as the influence of this trial was witnessed for years to come on various aspects related to international law.

### **Convention on the Prevention and Punishment of the Crime of Genocide**

While the Holocaust still is and essentially will remain the reason as to why both the concept of genocide and the Genocide Convention exist, they are slowly but steadily moving away from it's influence. Whereas the Genocide Convention is, of course, somewhat more static than the scholarly concept of genocide, the Convention too is being read differently nowadays than it was in the beginning. The most important

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<sup>137</sup> *Ibid.*

problem the Genocide Convention has had since it was signed, was the exclusive character it described to the different protected groups as laid down in article two of the Convention. Earlier efforts to include, for example, political groups were swept aside because the then signatory states, mostly the communist countries, did not wish to see this group included. However, since political groups are one of the most persecuted categories of groups these days, this can be seen as a significant problem concerning the definition given by the Genocide Convention. As such, it is noteworthy that the ICTY determined in the famous Akayesu case that all “stable and permanent groups” were to be protected by the Convention and as such reinterpreted the Convention to apply to all those people who were to be victimized merely on the basis of their perceived membership of a certain stable and permanent group. While it did not directly include political groups, for these groups do not have a concrete nature and can be flexibly and easily changed, this does open the way for a broader interpretation of the Genocide Convention by other international tribunals and courts. Although neither the ICC nor the ICTY have developed this judgement further as of now, there is quite some potential in this landmark case as to further develop which groups exactly are entitled to protection under the Genocide Convention. Hopefully more research into the effects and follow-up of this case is underway and it will provide the scholars and other courts and international tribunals the opportunity to move further with the definition of genocide under the Convention and broaden it’s base.

The prohibition of the crime of genocide rests on the conventional and customary rules of international law. The centrepiece of the law of genocide is the UNGC adopted by the UN General Assembly in 1948. Moreover, the ICJ in its Advisory Opinion on Reservations to the Convention on Genocide Case emphasized that “the origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as “a crime under international law”<sup>138</sup>. The outcome arising from the conception is that principles underlying the Convention are principles recognized by civilized nations as binding on states, even without any conventional obligation and thus the rules applying to the crime of genocide are part of customary

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<sup>138</sup>Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (Advisory Opinion), 1951, ICJ Reports 16, p. 23

rules of international law which have reached the level of *jus cogens*<sup>139</sup>. The obligation of states to prevent and punish the crime of genocide is “*erga omnes*” in its nature<sup>140</sup>. Regardless of the extensive prohibition of the crime of genocide both under conventional and customary rules of international law, the Genocide Convention had not been applied for over forty years due to the principle of sovereignty of states and non-existence of an international criminal court or tribunal having the jurisdiction over the crime of genocide.

Keeping in mind that sufficient justice could not be meted out to the Nazi perpetrators, the UNGC was finally adopted in 1948 and the term genocide was legally recognised in the second half of the 20<sup>th</sup> century. The UNGC’s preamble very clearly re-affirmed that “genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world”.<sup>141</sup> Although the definition was framed as a crime, implying that it applied to individuals only, the Convention imposes duties on states to prevent genocide and their liability before the International Court of Justice (ICJ) in case of failure on their part. Yet, whether a state actually commits crimes or not still remains a point of debate under international law. To add further fuel to the debate is the ever going feud over a universally acceptable definition of genocide (this controversy will be discussed in detail in the next chapter while defining the term genocide) and the fact that since 1948 the definition of genocide has neither been enlarged nor been revised. Shockingly, states all over the world continued their participation in genocidal incidents even during the convention’s drafting, practising genocidal violence in Europe, Asia, Latin America and Africa.

One of the main contentions regarding the definition is that there is a huge marked difference between the meaning and definition of genocide as laid down by any of the social sciences in comparison to international law. To an average lay man “genocide is any organized, planned mass murder of human beings on account of their race, ethnicity, religion or other personal characteristic”<sup>142</sup> but to a scholar of international law it’s meaning has been strictly defined as laid down on the 11<sup>th</sup> of December 1946

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<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.* See also: Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections, Bosnia-Herzegovina v. Yugoslavia (July 11, 1996), ICJ Reports 595, para. 31.

<sup>141</sup> Convention on the Prevention and Punishment of the Crimes of Genocide (1951), 78 UNTS.

<sup>142</sup> *Ibid.*

by the UN General Assembly resolution 96(1)<sup>143</sup> in which the Assembly outlawed genocide and later as codified under the UNGC in 1948 which came into force on 12<sup>th</sup> January 1951.<sup>144</sup>

Though the crime of genocide had not been explicitly recognized by the Nuremberg and Tokyo International Military Tribunals, the idea of the possibility to render international justice influenced the adoption of the UNGC. Nevertheless, the Convention being in force had been dormant more than forty years and thus the rules applicable to the crime of genocide were not applied due to the nonexistence of any international criminal tribunal having jurisdiction over the crime of genocide and non-interference principle to the sovereignty of states. It was believed that such horrific events that took place during the second world war would never be repeated again. Nevertheless, a temporary return to the past has been witnessed by the entire world community as a striking ‘dépà vu’ during the Yugoslav war and the Rwandan conflict. Ad hoc tribunals (the ICTY and the ICTR), created as a challenging response to the gross human rights violations in Yugoslavia and Rwanda, have proved to play a key role in the establishment of the international criminal justice system. The crime of genocide has been construed and applied extensively by both ad hoc tribunals. The crime per se turned out to be applied as an effective tool to punish those who aimed at the destruction of a group simply on the basis of its ethnicity, and the concept of genocide stepped aside from being a purely legalistic non-applicable provision prior to the creation of the ad hoc tribunals.

In reality though no matter how air tight the provisions of UNGC sound and how stringent the punishment for genocide looks on paper, there is no doubt that it has failed in combating the nuisance of genocide. This failure to achieve what the UNGC aimed for will be studied in detail in the study. Though the crime of genocide had not been explicitly recognized by the Nuremberg and Tokyo International Military Tribunals, the idea of the possibility to render international justice influenced the adoption of the UNGC. Nevertheless, the Convention being in force had been dormant more than forty years and thus the rules applicable to the crime of genocide were not applied due to the nonexistence of any international criminal tribunal having jurisdiction over the crime of genocide and non-interference principle to the

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<sup>143</sup> UN Doc., GA/RES/96(1), 11 December, 1946.

<sup>144</sup> UN Doc., GA/RES/260(III), 9 December, 1948.

sovereignty of states. It was believed that such horrific events that took place during the World War II would never be repeated again. Nevertheless, a temporary return to the past has been witnessed by the entire world community as a striking ‘d  ja vu’ during the Yugoslav war and the Rwandan conflict. Ad hoc tribunals (the ICTY and the ICTR), created as a challenging response to the gross human rights violations in Yugoslavia and Rwanda, have proved to play a key role in the establishment of the international criminal justice. The crime of genocide has been construed and applied extensively by both ad hoc tribunals. The crime per se turned out to be applied as an effective tool to punish those who aimed at the destruction of a group simply on the basis of its ethnicity, and the concept of genocide stepped aside from being a purely legalistic non-applicable provision prior to the creation of the ad hoc tribunals.

Although “the fact of genocide is as old as a humanity”<sup>145</sup>, current developments of the crime are necessary to be studied carefully, for the appropriate punishment for the crime of genocide is serving as the deterrent effect to criminals contemplating to commit the crime and thus preventing the occurrence of the crime in future. Successful prosecution for the crime of genocide would prevent perpetrators to commit such a crime and help to punish those responsible for the crime of genocide leaving no ground for impunity. The work poses many important questions and dilemmas that are of the great concern to both academicians and practitioners in the field of the international criminal law. It is essential to study the development of genocide as a crime as it will not only give us an idea about how the international community has tried to recognise it as a crime in order to deter future incidents but also a sneak peak into the reasons for its failure in achieving that.

### **Genocide and Crimes against Humanity**

In order to understand genocide as a crime, it is important to understand how it relates to other international crimes. Initially both in the Nuremberg and the Tokyo trials there was no use of the term genocide, instead the term crimes against humanity was used. This has led to a lot of confusion as to whether genocide is a crime against humanity and how are the two crimes related? Both these concepts can be looked at from two angles; the first angle pertains to conceptual differences or similarities based

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<sup>145</sup> Jean-Paul Sartre, On Genocide”, in Richard A. Falk, Gabriel Kolko and Robert Jay Lifton,(eds.), *Crimes of War*, New York, 1971, pp. 534-49, at 534.

on their origin and the broader context that they are based on. On the other hand, both of these crimes have been defined under conventions and instruments relevant to international criminal law that very clearly demarcate the boundaries in their application. Genocide can trace back its origins to the crimes against humanity as at that time it had not been recognised as a crime in its own right. It should be duly noted that though genocide is a crime against humanity in essence, it is an “extreme and the most inhumane form of persecution”.<sup>146</sup> Genocide is understood by the larger public to be uniquely and supremely evil as compared to crimes against humanity, this further seems to show that it is accepted that the former is worse than the latter.<sup>147</sup> Though legally, both of them are distinct crimes and none of the statutes of ICTY or the ICTR have placed them in any kind of a hierarchical position.

The offence of genocide is comprised of two components. First of all, the conviction of genocide requires the “actus reus” or material element of the offence, consisting of one or more of the acts enumerated in the Genocide Convention, ICTY Statute, ICTR Statute or Rome Statute. Secondly, the conviction of genocide requires the “mens rea” of the offence, consisting of the special intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.<sup>148</sup> *Actus reus* for persecution in the ICTY Statute does not require a link to crimes enumerated in the Statute, but on the other hand, its definition may encompass crimes not listed in the Statute because of its broad concept. However, there must be undoubtedly defined limits on the extension of the persecution type crimes.<sup>149</sup> As described above, a specific intent offence requires *actus reus* (sometime referred to as the external elements of a crime, the Latin term for the “guilty act” which, when proved beyond a reasonable doubt in combination with the *mens rea*, i.e., the “guilty mind”, produces criminal liability in common law based on criminal law jurisdictions) in association with a purpose that reaches beyond the mere performance of the act<sup>150</sup> or in part, or of preventing its preservation or development.’<sup>151</sup> As far as *actus reus*, *mens rea* and victim requirements are concerned, it can be concluded that the level of concentration of

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<sup>146</sup> Kupresic (TC) [2000] ICTY para 636

<sup>147</sup> Ratner Evils (2007) 583

<sup>148</sup> Trial Chamber, *Prosecutor v. Radislav Krstic, Judgment*, Case No. IT-98-33 (2 August 2001).

<sup>149</sup> Kupreskic Judgment, 14 January 2000

<sup>150</sup> Please refer to Schabas, p. 216.

<sup>151</sup> Ibid.

crime of persecution is higher than crimes against humanity but lower than crime of genocide.

### **Principle of Jus Cogens**

The crime of genocide under the UNGC is perceived as one of the fundamental rules of international law and has therefore been granted the status of “Jus cogens”. The principle of Jus cogens is given to those rules and principles that are seen as so fundamental in the eyes of law that all nation states have accepted and recognised them and no exceptions to the rule are accepted, i.e. attempts to contract out of them through treaties. Hence, all states are obligated to follow Jus cogens rules under all circumstances.<sup>152</sup> Ironically, it seems that regardless of the crime of genocide being awarded this coveted status it has not made much difference to it’s getting enforced. Though both the ICTY and the ICTR have been doing commendable work with the ICC in trying to curb this menace as much as possible, nations around the world have not been following the principles laid down in the UNGC. If it would not have been so then no new cases of genocide would have occurred. The UNGC has not been able to scare the nations into abiding by the law.

### **Statute of the ICTY and the ICTR**

The case law with regard to genocide developed only when both the ICTY and the ICTR delved into many of the basic issues concerning this crime, thereby bringing clarity to it’s understanding under the international criminal law. Though many of the interpretations or clarifications are in reference to particular genocidal incidents but there is no doubt that all of these judgments have brought about clarity regarding important questions such as the structure and nature of the crime of genocide. Both the structures of the ICTR and the ICTY ARE basically the same.<sup>153</sup> There are three trials chambers and an appeals chamber, composed of sixteen judges, each a national from a different state.<sup>154</sup> Beyond this lies a massive bureaucracy of support staff and administrative groups. The ICTR has jurisdiction over those accused of crimes against humanity and war crimes; specifically, the ICTR tries those who were responsible for

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<sup>152</sup> Please refer to the Vienna Convention on the Law of Treaties, Art 53, 1969, United Nations, *Treaty Series*, vol. 1155, p. 331.

<sup>153</sup> Rwanda Abolishes Death Penalty, AGENCE FRANCE PRESSE, July 26, 2007.

<sup>154</sup> Retrieved from The Chambers of International Criminal Tribunal For Rwanda (ICTR), <http://69.94.11.53/ENGLISH/geninfo/chambers.htm>, accessed on 11<sup>th</sup> October 2015.



the genocide.<sup>155</sup> The establishment of the ICTY<sup>156</sup> and ICTR<sup>157</sup> under the Chapter VII of the UN Charter and the development of the case law of these ad hoc tribunals have demonstrated the applicability and enforceability of the rules governing the crime of genocide at the international level. The international community has witnessed some landmark cases on the crime of genocide. Charges of genocide and punishment of individuals responsible for this grievous crime have been imposed effectively showing that there is no ground for impunity in future. However, there has been a large scale of condemnation of the international community that genocide has not captured enough attention to prevent and punish responsible perpetrators. The latest developments of international criminal law and its allegiance to evolving international human rights law look promising enough that grotesque human rights violations will no longer be tolerated by the international community. The practice of the ICTY and ICTR has contributed significantly to the development of the substantive body of the international criminal law on the crime of genocide. The said ad hoc tribunals, having the jurisdiction over the crime of genocide under their respective statutes, have interpreted and applied the provisions of the Genocide Convention, for the elements of the crime of genocide were definitely very vague and needed to be construed.

### **The crime of genocide in the Rome Statute and the ICC<sup>158</sup>**

The concept of establishment of the permanent international criminal court has been debated by the international community for many years. However, the implementation of such an idea involved considerable efforts of the international community. Why did it take such a long time to create the permanent institution of criminal jurisdiction aimed to achieve the global justice? The idea of global justice was finally achieved with the adoption of the Rome Statute at the Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court held in Rome in July 1998. Although the establishment of the ICC “marked an important milestone in the quest for an international criminal justice system”<sup>159</sup>, the important

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<sup>155</sup> Supra, S.C. Res. 955

<sup>156</sup> Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), of 25 May 1993, UN Doc. S/RES/827.

<sup>157</sup> Statute of the International Criminal Tribunal for Rwanda (ICTR), of 8 November 1994, UN Doc. S/RES/955.

<sup>158</sup> See: Aksar, Yusuf, *Implementing International Humanitarian Law: From the Ad hoc Tribunals to a Permanent International Criminal Court*, New York, 2004.

<sup>159</sup> Selected Basic Documents Related to the International Criminal Court , ICC Publication, 2005.

questions remain to what extent the system could be self-sustaining and how it would be able to harmonize existing and developing international criminal law. The key element of the international criminal justice system that operates under the Rome Statute is the principle of complementarity. The Court exercises its jurisdiction only when a member state to the Rome statute is unable or unwilling to carry out an investigation or prosecution<sup>160</sup>.

Comparing to the ad hoc tribunals, the ICC does not have primacy over domestic courts while applying its jurisdiction and it is aimed merely to supplement domestic proceedings. The states drafting the Rome Statute agreed that the crime of genocide needed to be absolutely included within the jurisdiction of the Court as the Rome Statute itself aimed that “the most serious crimes of concern to the international community as a whole must not go unpunished”<sup>161</sup>. Article 6 of the Rome Statute is verbatim article II of the Genocide Convention. Of regret is the fact that the article III of the Genocide Convention has not found its reflection in any provision of the Rome Statute and hence, conspiracy, incitement, attempt and complicity in regard to the crime of genocide have not been taken into account. Different explanations could be offered on the exclusion of aforesaid terms in the text of the Rome Statute. Nevertheless, the general provisions on incitement<sup>162</sup>, attempt<sup>163</sup> and complicity<sup>164</sup> are provided in the Rome Statute and consequently, they could be applied to all criminal offences enlisted in the Rome Statute. The first genocide cases have been tried before the ad hoc tribunals and thus the ICC cannot undermine their role in the development of the substantial body of international criminal law. The ICC will definitely rely upon the practice developed by the ad hoc tribunals as latter not only applied the elements of the crime of genocide, but also clarified the substantive content of the crime of genocide.

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<sup>160</sup>Rome Statute, Article 17(1) (a).

<sup>161</sup> Rome Statute, Preamble.

<sup>162</sup> Rome Statute, Article 25 (3) (e).

<sup>163</sup> Rome Statute, Article 25 (3) (f).

<sup>164</sup> Rome Statute, Article 25 (3) (d).

### **Is the list of crimes constituting the crime of genocide exhaustive?**

The drafters of the Genocide Convention agree on the fact that the list of crimes enumerated in the Article II of the Genocide Convention is exhaustive but, however, not limited in its scope<sup>165</sup>. Rape, torture, forced disappearances can be regarded as the genocidal offences if they meet the requirements of, for example, “killing”, “causing serious bodily or mental harm to members the group” or “imposing measures intended to prevent births within the group”. Aforesaid crimes could be regarded sooner or later as the part of international customary law as discrete categories of underlying offences<sup>166</sup>.

### **Conclusion**

The historiography of genocide is no more confined to the recognised cases of genocide such as the Armenian genocide or the holocaust or the Cambodian genocide or the Rwandan genocide. On the contrary there has been a steady growth of interest which has resulted in literature on other genocides as well like the colonial genocides especially in countries like North America (the Indians), Australia (the aborigines), etc. Surprisingly, there has also sprung an interest in other forms of mass atrocities as the partition of India or various civil wars such as the one which took place in Sri Lanka, to be studied through the lens of genocide studies. But we cannot fully understand the growth of genocide as a concept if we do not dwell in its historiography. Genocides have been occurring since antiquity and the various incidents are the examples that not enough has been done to prevent them even today. Here, history can teach us a lesson and we can learn from our past mistakes by analysing the various genocidal incidents and come up with realistic preventive measures to fight this plague.

Studies like this one aim to probe both the interrelation between law, politics and history and the discrepancy between them to fully understand the concept of genocide. Though fighting the plague of genocide should be one of the priorities of the international community, a journey through the historiography of a concept like genocide make for an uneasy exercise as it brings to the forefront the failure and non-seriousness of the international community in fighting this menace. Anyways, it is

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<sup>165</sup>N. Robinson, *The Genocide Convention: A commentary*. New York, 1960, pp. 57, p. 64.

<sup>166</sup>Mettraux, Guenael, *International Crimes and the Ad hoc Tribunals*, Oxford, 2005 p. 244.

essential to dwell into the historiography of genocide because it provides us with an opportunity to not only understand the different forms of mass violence but to study whether a particular incident of violence can and should be recognised as genocide or not? If yes, then why and if no, then why? Thereby bringing into attention various aspects of law, politics and history that lie behind each of these incidents and the genocide discourse as a whole.<sup>167</sup>

There is no doubt that any and every type of explanation behind genocide has some basis in reality as well as some blind spots. It has been observed that during the second half of the twentieth century, despite the hope after the holocaust that such horrors would not be repeated, there has been a great deal of violence within states between groups based on the differences in ethnicity, religion, political ideology, agenda, power and privilege.<sup>168</sup> The level of violence in many of these cases has been intense irrespective of the geographical position of these sites, whether it is the former Yugoslavia or Sri Lanka or Rwanda or other countries in Africa, the Middle East, and elsewhere. Due to an overall increase in the intensity of violence all around the world, this century has already been preoccupied with terrorism and violent responses to it. With continuous changes in technology, values, and political systems; increased differences between rich and poor; globalization; overpopulation; aspirations by groups for self-determination; and an increase in fundamentalism; conflicts and violence between groups is a significant problem plaguing this century. Hence, preventing such violence is essential regardless of the reason of origin or the place of origin. To combat this problem there is likely to be a set of universal principles of prevention<sup>169</sup>. However, they have to be applied and adapted to particular circumstances as each case is unique in itself, so that practices will vary depending on the specifics of culture, current social conditions, and the history of group relations. Preventing conflict between groups from becoming intractable, halting the evolution of intense violence, dealing with the aftermath of great violence between groups, and preventing new violence have both overlapping and differing requirements.<sup>170</sup> For this to happen, exploring the historiography of genocide was essential.

Regardless of genocides occurring since pre-historic times, it was the Holocaust that

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<sup>167</sup> Dan Stone (ed.), *The Historiography of Genocide*, New York, 2008, pp. 1.

<sup>168</sup> Supra.

<sup>169</sup> Supra.

<sup>170</sup> Supra.

was the inspiration behind it getting recognised internationally as a crime. Due to the fact that the world had not witnessed the degree of violence used by the Nazis before, the Holocaust has become a “unique” incident. Though a number of scholars believe that the Armenian genocide and not the Holocaust should be given the status of the “prototype” of genocides, it is the Holocaust eventually that drew the world’s attention as never before and thus earned a cult status as compared to any genocide before it. With the passage of time though as knowledge regarding the genocidal incidents increased day by day the Holocaust could no longer stay insulated as the prototype of genocide. The study of other cases has uncovered new categories of experiences and analytical problems that had never been encountered during the Holocaust.

The twentieth century has witnessed a number of genocide but the good news is that it has also witnessed large scale mobilizations by nations, international organisations, human rights activists, civil society, and many other actors to protect the rights of civilians whose human rights are under the threat of being infringed whether it was the Holocaust, the Armenian Genocide or cases of mass killings in Bosnia, Kosovo or any other part of the world. These sustained efforts on the parts of all those involved marks an important shift from the laid back attitude of the previous era. The aim of the international community is no more to only help victims of genocide but their aim is to prevent it. In order to do so enormous amount of resources are being dedicated towards these efforts.

## **Chapter III**

### **Understanding Evil: Definition, Approaches to Genocide and Conundrums**

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Genocide is not only a horrible phenomenon but as mentioned previously, it is also an exceedingly complex concept that occurs across a wide timeline and geographical locations. Defining genocide is as difficult today as it was previously due to the fact that it is equally difficult to identify genocide. These definitional issues are one of the main causes as to why intervention and punishment of genocide is rare and hard even after the enforcement of the UNGC. The difficulty in recognising a particular incident as genocide or as some other crime is indicative of the political, legal and conceptual complexities involved. From the time of it being named as genocide, this brutal crime has raised a lot of legal, political and historical hassles. Therefore, this chapter not only analyses the origins of genocide but also examines the evolution of the concept by unravelling the etymology and the definitional conundrums. It further focuses on the approaches intended to account for the causes of genocide and the processes of genocidal destruction. It attempts to categorise and critically evaluate the most prominent theoretical approaches used to explain the origin and processes of genocide.

#### **Introduction**

Sociologist Leo Kuper has aptly remarked that in case of genocide “the word is new, the concept is ancient”,<sup>171</sup> echoing the words of Raphael Lemkin, the father of the genocide studies, who declared that “Genocide is a new word, but the evil it describes is old”.<sup>172</sup> Genocide has an ancient history. It is not a newly developed crime even though the term “genocide” came up in the 1940s. The post-holocaust plea of “never again” has consistently fallen on deaf ears and it raises the most important vexing question of all i.e. why do genocides keep on occurring “again and again”? In order to find an answer to this pressing question scholars began to examine the origins and

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<sup>171</sup> Leo Kuper, *Genocide: Its Political Use in the Twentieth Century*, Harmondsworth, 1981, p. 9.

<sup>172</sup> Raphael Lemkin, *Lemkin on Genocide*, New York, 2012, p. 145.

processes of the concept of genocide. Hence, it also becomes very essential to figure out as to why is there so much debate as to what is and what isn't genocide in order to understand the various theoretical approaches used to explain the origin and the processes of genocide. To understand this conflict it first becomes essential to understand what is genocide or what all comprises genocide? Genocide has been and is being studied under a number of disciplines. There are many scholars belonging to various fields of study who are concerned with the issue of defining the term genocide. Many of these scholars understand and define the term genocide in close connection to the term holocaust, as their understanding of genocide is linked to the holocaust.

Sadly, due to the continuous scholarly debate over the issue of defining genocide, many other important issues such as finding explanations, categorising and critically evaluating the most prominent theoretical approaches to genocide and solutions to the problem of genocide have been almost ignored. It further becomes essential to understand as to what interests are reflected in the discourse pertaining to genocide and why? Thus, this lack of exploration regarding the various components of the concept of genocide creates a vacuum in the research area. It is high time that above mentioned questions are addressed in order to realistically conduct credible contemporary research on genocide. After coining the term genocide one would have thought that it will become easier to not only define and recognize genocidal actions but also to punish the perpetrators. Sadly, this has not been the case. One of the biggest controversies that the discourse on genocide has to suffer from is the continuing lack of definition and theoretical approaches commonly agreed upon by both law and social science. Though in this past century the use of the term genocide has fast entered common parlance and is now vividly used to point fingers at any type of state repression, for example, even the now obsolete one child policy of China was considered as genocide by some, regardless of the fact whether the acts being referred to fit the definition or not.

Whenever there is any discussion on defining genocide the first definition that is referred to is the one laid down in the UNGC. It provides us with a political and legal description of what determines and constitutes genocide but there is no denying the fact that to understand the concept of genocide it is imperative to decipher the general connotation of this term provided by great thinkers and authors with a background in

other diverse fields such as history, international relations, anthropology, sociology, etc. too. This exercise becomes all the more essential as genocide is not only a legal wrong but a political, cultural and social wrong which results in the systematic annihilation of a particular human race. Hence, there is no dearth of definitions or theories on genocide pertaining to different contexts. The only problem is that there is no general consensus on any of them which ultimately defeats the very aim of fighting genocide.

### **Purpose of defining Genocide**

Recognising genocide legally as a crime and framing a convention especially for it is proof enough of how menacing genocide is. There are a number of purposes of defining genocide whether in the generic sense or under the UNGC: Firstly, academics belonging to the different fields as well as policymakers since the holocaust have defined genocide in conflicting, sometimes contradictory and even mutual exclusive terms. Due to the lack of consensus in defining genocide or what makes up genocide, individual scholars belonging to the different fields have tailored their own definitions for genocide. A general definition of genocide also becomes essential as the broader the definitions are, the more crimes can end up as being recognised as genocides which is a very volatile situation and innocent parties can also end up as being labelled as genocidists. Secondly, the United Nations and the international community wanted to legally and politically punish the perpetrators involved in committing genocide at any level and to any degree and lastly, they wanted to try to organize interventions to prevent genocide in future.

Regardless of the UN and the international community having these three pious aims by which they wished to eradicate genocide from the face of the earth, the very first step of defining a particular conflict as genocide is marred with controversy. It has been observed over the years that defining genocide is an arbitrary affair and is solely based on political play and power games in the corridors of the UN.<sup>173</sup> For example, regardless of the large amount of killing of innocent citizens in Darfur, the international community for a very long time refused to accept it as genocide. It makes us sit up and realize the fact that due to the nexus between international law and international politics, most of the times the political and economic status of a

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<sup>173</sup> Kristian Gerner and Klas-Göran Karlsson, *Folkmordens Historia*, Stockholm, 2005, p.52.



country play a much more important role in conflicts being recognised as genocides as compared to the actual injustice that is witnessed by nations around the world. This injustice glares into our faces and makes us understand the naked truth that many times the so called powers of the world, the UN and the mass media do not come to rescue innocent citizens from persecution because it does not fare well for their personal interests.

## **Genocide**

Genocide is understood to be one of the gravest crimes against humanity. Hence, it becomes very essential to figure out as to why is there so much debate as to what is and what isn't genocide? To understand this conflict it first becomes essential to understand what is genocide or what all comprises of genocide? Genocide has been and is being studied under a number of disciplines. There is a cluster of scholars who are mainly concerned with the issue of defining the term genocide. Due to this obsession with the scholarly circles to define genocide, many important issues such as finding explanations and solutions to the problem of genocide are almost ignored. This lack of attention towards other important aspects regarding genocide creates a vacuum in the research field that needs to be addressed, if the scholars want to give credibility to this concept. This exercise to define genocide becomes more essential as genocide is not only a legal but a political, cultural and social wrong which results in the systematic annihilation of a particular human race.

It is highly disappointing that scholars both belonging to genocide studies as well as other fields of study have not been able to agree on the meaning of its basic terms such as genocide. Some scholars are of the viewpoint that this problem is peculiar only to genocide studies and though these definitional conundrums are very much present even today in the genocide discourse, this lack of clarity shows genuine intellectual engagement and is not just a reflection of the conceptual confusion built into the concept since its inception by Raphael Lemkin.<sup>174</sup> The legal definition provided under the UNGC is many times used as a political tool also due to the fact that there is a continuous inconsistency between political condemnation of genocide and political inaction. The international community is burdened with labelling or not

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<sup>174</sup> See A. D. Moses, 'The Holocaust and Genocide', in *The Historiography of the Holocaust*, D. Stone (ed.), Basingstoke, 2004, pp. 533–55; A. Rabinbach, 'The Challenge of the Unprecedented: Raphael Lemkin and the Concept of Genocide' in *Simon Dubnow Institute Yearbook*, 4 (2005), pp. 397–420.

labelling conflicts or incidents as genocides. The community uses comparison with proclaimed genocides such as the Holocaust while deciding whether an incident falls under the category of genocide or not. Regrettably, it has been found that the international community often uses these comparisons for the purpose, so that it does not have to recognise a particular incident as a genocide in order to save themselves from acting or intervening. Now the question that arises is that regardless of the international community defining genocide, then why does it have a problem with recognising incidents which fit its definition?

### **International Law**

The first and foremost official definition of genocide was provided under the United Nations Convention on the Prevention and Punishment of the Crime of Genocide adopted in 1948. Genocide was defined in Article II of the convention as following:

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

This particular definition has come under much scrutiny and has been criticised by various scholars belonging to different fields of study based on a number of contentions. All these contentions will be discussed in detail a little later in the chapter along with the various theoretical approaches as genocide occurs across a wide variety of times and places and not only involves different kinds of collective actors, perpetrators, victims, collaborator, rescuers, etc and also a number of different variables, structures and processes that do not fall under simple generalised explanatory models.

### **Juxtaposition of Lemkin and the UNGC in defining Genocide**

Nearly seventy three years later, Lemkin's definition is still being contested though the significance of his concept has never been under any kind of contest or question. Ever since its conception the word genocide has not only been synonymous to the worst kind of crimes against humanity. As the "century of genocide fades into history, the world faces the challenge of both processing the calamities that took place and also preventing their repetition in the coming times. Sadly, mere words whether spoken or written cannot provide us the mechanisms to succeed in both these undertakings, yet it is the power of these words that can make us gauge our predicament and work towards tackling these challenges. There is no doubt that Lemkin has done a great service to mankind "by naming a pattern of violence that had long hung over the heads of the world's persecuted peoples"<sup>175</sup>.

It is his terminology and concept of genocide that provided a niche for a whole century which had descended into barbarity numerous times. It has also lead to prevention against genocide as a set of mechanisms to keep this kind of violence both under check and prevention have cropped up regardless of their infrequent use. Lemkin should be further thanked for the international legal order that he so vehemently helped to erect. Genocide has multifarious uses as "the word genocide functions not only as an empirical description for the nearly indescribable, but legally, as an accusation, morally, as a condemnation, and politically, as a call to action."<sup>176</sup> On the other hand, in context of international humanitarian law, genocide is described as "the crimes of crimes".<sup>177</sup> Regardless of this path breaking accomplishment, the wavering resolve of the international community in tackling such atrocities at almost every significant juncture has been an issue of utter disappointment the world over all these past decades. Though the genocide convention does not clearly lay down the exact obligations expected to be fulfilled by the nations, it is a huge let-down that even after nearly sixty nine years of the convention having come into effect the policymakers worldwide have shunned their responsibilities or duties. Genocides have

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<sup>175</sup> *Ibid.*

<sup>176</sup> *Supra.*

<sup>177</sup> William Schabas, *Genocide in International Law The Crimes of Crimes*, Cambridge, 2000, p. 103.

been greeted with uncertainty and indifference, with euphemism and moralization, but rarely with determinate action.”<sup>178</sup>

Since Lemkin’s death the definition has vastly developed as both the occurrence of genocides and the concepts of international law and politics has progressed. As a direct result, appreciation of Lemkin’s work has suffered, as looking instead to newer academics such as Fein, Charny, Chalk and Johansson, instead of to the UNGC itself. As a consequence Lemkin is often forgotten or worse, seen as irrelevant. While it is obvious that the definition and our understanding of genocide have progressed, notwithstanding some basic omissions, genocide remains largely as was defined by Lemkin. While it is reasonably clear that the current definition of genocide has not taken much of a departure from its conception, still retaining much of Lemkin’s ideology, there are a few main areas within which the Convention has appeared to have departed from its creator’s initial stance. These departures have been shown to be the basis for a large part of the criticisms levelled at the Convention and widely used definitions of the act of Genocide.

The most predominant of these are concerning the exclusion of ethnocide or cultural genocide as a provision in the Convention and secondly the obvious exclusion of social factors in the Convention’s ambit. As already evidenced Lemkin’s initial conception of genocide was that it was a two part act in which a group or collective were targeted with the intent being destruction. These two parts were barbarity and vandalism. The barbarity was the focus of the Convention; the act itself and the consequences. However vandalism played as much of a part in Lemkin’s view of genocide as the act itself as he saw cultural destruction as capable of forming genocide on its own merits. This is because Lemkin saw culture as the main focal point binding groups together, following the work of anthropologists such as Sir James Frazer and Bronislaw Malinowski who believed culture was key to a functioning society or community. Lemkin proposed that culture itself derives from the “pre-cultural needs of a biological life”. These cultural imperatives if undermined would destroy the very fabric of a collective: “These needs find expression in social institutions...or in the culture ethos. If the culture of a group is violently undermined, the group itself disintegrates and its members must either become absorbed in other

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<sup>178</sup> Ibid.

cultures, which is wasteful and painful...or succumb to personal disorganisation and, perhaps, physical destruction”.<sup>179</sup> Consequently to Lemkin ‘the destruction of cultural symbols is genocide.’

It is primarily on this point that the Convention’s definition and Lemkin’s perceptions of Genocide most differ. For example, on one hand the Convention does not mention culture or ethnocide at all, it is on the contrary central to most of Lemkin’s work. However, the Convention was not originally so far removed from Lemkin’s own understanding in this area, as the original draft and the Secretariat’s Draft of 1947 both placed culture as an element upon which genocide could be perpetrated, defining genocide as a crime which ‘directly resulted in great losses to humanity in the form of cultural and other contributions.’<sup>180</sup> The reasoning behind the decision to drop the former use and inclusion of cultural genocide as a component of genocide is therefore not clear. While a broader definition of genocide is unquestionably easier to interpret, it is often alleged that Lemkin realised that the idea of cultural genocide created too many issues with definitions and resulted in a lack of support from his peers. This is proposed by both Fein and Lippman who believe that Lemkin chose to omit cultural genocide in order to retain the momentum of the drafting process.<sup>181</sup> This appears untrue however as Schabas details that Lemkin was recorded as suggesting the inclusion of cultural genocide as a major part of the genocide convention; “cultural genocide is the most important part of the Convention.”<sup>182</sup> It appears then that Lemkin realised that cultural genocide as a condition or qualifier for genocide would encounter objections. He outlines these beliefs in a letter to the New York Times Editor stating that he accepted that, ‘for the purposes of international legislation the definition must be limited to more basic elements such as killing.’<sup>183</sup>

As a result, cultural genocide was not included in the final draft as per Lemkin’s initial definition. Even more confusing however was the United Nation’s choice to take an even bigger departure from Lemkin’s initial definition choosing not to include

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<sup>179</sup> Raphael Lemkin, “The Concept of Genocide in Anthropology.” NYPL, Box 2, Folder 2, as quoted in Lemkin, *Culture and the Concept of Genocide*, A.Dirk Moses.

<sup>180</sup> Ibid.

<sup>181</sup> Representative of this misunderstanding is Helen Fein, *Genocide: A sociological Perspective*, London, 1993; Mathew Lippman, ‘The Drafting of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide’, *Boston University International Law Journal* 3: (1985), 31

<sup>182</sup> William A. Schabas, *Genocide in International Law: The Crime of Crimes*, Cambridge, 2000, p. 36.

<sup>183</sup> Raphael Lemkin, Letter to the Editor, New York Times, 8th November 1946.

mass-killings instead listing the four (the fifth was added more recently) possible ways that genocide can be committed. As a result, barbarity as it was known to Lemkin is only 1/5th of the final convention. Another departure from Lemkin's idea of genocide in the finished Convention is very much related to the previous point of the last paragraph; in which the Convention appeared to be a streamlining of Lemkin's ideas. By using and adopting a Convention which only outlined barbarity as an act which amounted to genocide, the drafters effectively limited the scope of the act itself. While Lemkin's original definition was not only legal but sociological, economical and anthropological, the Convention is of course purely a legal document. The main differences then are thus apparent; while Lemkin chose to include every possible part of the crime of genocide, in creating a culmination of ideas and a representation of genocide in its entirety, the drafters chose instead to disregard the cultural-sociological elements and ethnocide and stick instead to the black and white legal aspects.

Whereas Lemkin saw these factors as combined to create genocide, the common opinion is that international criminal law should only concern itself with the purely legal act itself. Schabas explains that Lemkin's definition was, "broad, to the extent that it contemplated not only physical genocide, but also acts aimed at destroying the culture and livelihood of the group...physical genocide was only one dimension of the comprehensive attack."<sup>184</sup> As a result the Genocide Convention predominantly focusses on the physical act of killing and the restricted ways in which genocide is perpetrated. This is only right as Shaw explains, the "difference is largely explicable because the former [the Convention] was designed to apply and define genocide law: killing and physical harm were the sharpest ends of the destructive processes and thus obvious legal foci".<sup>185</sup> It is evident then that the main difference in the definition of genocide amounts to a select editing of Lemkin's work, resulting in a more appropriate working definition, more suitable to becoming an international legal instrument. This closed definition interestingly still has its roots firmly planted in Lemkin's work as all the major elements of the crime mirror Lemkin's points as explained previously. What is also interesting to note here is that the vast majority of critics of Lemkin's work also choose to streamline his work, some even going so far

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<sup>184</sup> Supra.

<sup>185</sup> Supra.

as to streamline the current definition even further.<sup>186</sup> On the surface, the current definition of genocide and Lemkin's initial definition seem rather at odds. In the previous section we saw how the genocide convention deviates from Lemkin in two substantial areas; not including any type of socio-economic conditions and the exclusion of cultural genocide or ethnocide as a condition creating genocide. As both of these are factors that Lemkin deemed intrinsic to the act of genocide it appears that the Convention and Lemkin have truly gone their separate ways, however that this is simply not the case. Although genocide currently has a much narrower scope than indicated by Axis Rule and Lemkin's initial definition, it has not fully deviated to the extent that is widely believed. Instead, it has concentrated and focussed on the most relevant aspect of Lemkin's ideology, retaining the key ideas which appear the most adaptable. As we have already seen Lemkin's genocide has two main elements. In Axis Rule this emphasis was placed on killing, bodily harm and physical destruction, coupled with issues which concerned group reproduction. This physical aspect of genocide was the initial focus on Lemkin's 1933 presentation in Madrid and is a component already discussed above: the barbarity.

Lemkin then went on to widen the issue, examining deeper issues and possible use of social, economic, political and cultural factors as tools of committing genocide, this is previously examined as the vandalism component. It is suggested that the definition of genocide most commonly used in the Convention and Article VI of the Rome Statute is in fact merely an edited version of Lemkin's earliest conception of the definition of genocide. It could be said that the Convention definition is just a simplified version of Lemkin's definition and has been modelled directly on those early ideas. Lemkin's early idea was simply that the act of genocide is 'a synchronised attack on different aspects of life of people towards an exclusive emphasis on killing and other measures of biological destruction.' Thus when we compare both Lemkin and the current definition it is clear to see that while the definition has developed it has not fully deviated from its roots or creator's ideas. In choosing instead to retain his definition as its core, yet choosing to omit his more in depth work on cultural genocide or ethnocide in the result is more suitable and

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<sup>186</sup> See Fein; is Helen Fein, *Genocide: A sociological Perspective*, London, 1993, Katz, *Genocide in the 20th Century: Essay: Quantity and Interpretation-Issues in the Comparative Historical Analysis of the Holocaust*. Holocaust Genocide Studies, vol 4 1989, pp.127-48. Chalk 'Genocide in the 20th Century' Definitions of Genocide and their Implications for Prediction and Prevention. Holocaust and Genocide Studies, Vol. 4, No. 2, pp. 149-160, 1989.

legislation friendly, an adaptable definition, stemming from that of barbarity not of vandalism.

This theory can be further proven by comparing the main thesis of both the Convention with Lemkin's texts. According to Lemkin, the definition of genocide requires "intent to destroy or cripple permanently a human group",<sup>187</sup> this he concludes is committed with the aim of destruction of a nation or ethnic group, or to cause substantial damage to the collectivity.<sup>188</sup> This required intent is represented succinctly by the "dolus specialis" and associated elements as; an intent 'to destroy' the group as detailed in the Convention where the 'act must be committed with intent to destroy in whole or in part a national, ethnical, racial or religious group.'<sup>189</sup> This is exactly what Lemkin's definition requires; harm to be done due to membership of a specific group; "The goal of the author [of the crime] is not only to harm and individual, but also to cause damage to the collectivity...these acts of humiliation have their source in a campaign of extermination."<sup>190</sup> The Convention's declaration that death need not solely be the aim of the crime but an inflicting of conditions calculated to bring about physical destruction, is also included in Lemkin's original writings, albeit phrased slightly differently: "Genocide is intended to signify a coordinated plan of different actions aimed at the destruction of essential foundations of the life of groups...and the obstruction of the personal security, liberty, health."<sup>191</sup>

It appears that the current definition is as directly in line with Lemkin's definition of barbarity as an element of the crime of genocide, that the current idea of Genocide as created through both academic and temporal influences is not a departure from this definition but rather a streamlining. This current definition of genocide is no more than an editing of the most relevant of Lemkin's work, creating a more sustainable and adaptable definition for use in international legal instruments, which are designed

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<sup>187</sup> Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. 1945.

<sup>188</sup> Moses, Lemkin, *Culture and the Concept of Genocide*, Dirk Moses, Ch. 1. Accessed at: < <http://fds.oup.com/www.oup.com/pdf/13/9780199232116.pdf>>

<sup>189</sup> Convention on the Prevention and Punishment of the Crime of Genocide. Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948.

<sup>190</sup> Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. 1945 and also Raphael Lemkin, "The Concept of Genocide in Anthropology." NYPL, Box 2, Folder 2, as quoted in Lemkin, *Culture and the Concept of Genocide*, Dirk Moses, Ch. 1. Accessed at: < <http://fds.oup.com/www.oup.com/pdf/13/9780199232116.pdf>> on 6th January 2015.

<sup>191</sup> The other conditions qualifying an act as genocide also appear to find the basis directly from Lemkin. The only exception here is perhaps the forcible transfer of children, however as Moses points out this issue was not seen as part of genocide at the time of drafting.



to be applied to a myriad of situations, and thus must be as broad as possible while still retaining a core idea. It can also be argued that vandalism (cultural genocide) could too be included here allowing for the full definition as created by Lemkin to be reflected in modern definitions of genocide. Certainly an inclusion of such would render much of the criticism of the Convention's narrow definition moot, opening up the groups and basis for the intent needed for the crime to be committed.<sup>192</sup> The idea that the definition remains true to Lemkin is reiterated through recent events and writings, such as Cassese's Introduction to the International Criminal Court which argues that the modern definition of genocide may be coming full circle: 'contemporary interpreters of the definition of genocide should not be bound by the intent of the drafters...the words 'to destroy' can readily bear the concept of cultural as well as physical and biological genocide.'<sup>193</sup> This idea of coming full circle is also evident in the cases of Krstic<sup>194</sup> and Nikolai Jorgic<sup>195</sup> which suggest that the law is evolving into a deeper inclusion of the elements of genocide and the inclusion of cultural and similar factors. This progression was further cemented by the Karadzic case where evidence of cultural genocide proved in particular to be an important indicator of the intent to perpetrate physical genocide in general.<sup>196</sup>

Although at first glance the Genocide Convention appears to have departed from Lemkin's initial ideas, on deeper reflection and examination, it is evident that much of Lemkin's initial theories and definition still remain and form an intrinsic part of the modern definition. The main differences between the initial definition and the current one is the omission of the vandalism element or cultural genocide, while we have seen the initial intention of the United Nations in drafting the Convention was to leave these to be covered by human rights declarations, it appears that this is no longer the case. The use of cultural genocide to prove physical genocide in the Karadzic and Krstic cases shows that the current definition is not as developed as previously thought and as Cassese believes, is perhaps returning back to Lemkin's original

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<sup>192</sup> For more on these criticisms see the pieces cited above by Fein and Chalk.

<sup>193</sup> Cassese. Introduction to the International Criminal Court, Ch. 6 of International Criminal Law. p. 127.

<sup>194</sup> Prosecutor v Krstic (Case No. IT -98-33-T), Judgment 2 August 2001.

<sup>195</sup> Nikolai Jorgic Bundesverfassungsgericht, Fourth Chamber, Second Senate, 12 December 200, 2 BvR 1290/99, Para (III) (4)(a)(aa).

<sup>196</sup> Prosecutor v Karadzic and Mladic (Case No. IT-95-5-R61, IT-95-18-R61), Consideration of the Indictment within the Framework of Rule 61 of the Rules of Procedure and Evidence, 11 July 1996, Para 94.

definition. Whilst it cannot be denied that the definition of genocide has developed in the past sixty years (the inclusion of rape and crimes of a sexual nature as acts of genocide evidence this development) it appears that in general the modern definition remains rooted in Lemkin's originally conception of the term. In conclusion it is prudent to note that notwithstanding natural development such as elaborations of above the terms, and the inclusion of new acts of genocide, that ultimately the definition of genocide is coming full circle, no longer remaining purely about the physical aspect of genocide, instead embracing culture as an element leading to genocide, not as an obscure, forgotten term. Therefore, although the definition has changed slightly that it has not developed much beyond its original ambit, choosing not to disregard its origins but instead to streamline, ultimately finding its roots firmly planted within Lemkin's original definition.

### **Contentions against the definition in the UNGC**

The main contentions or criticisms against the UNGC definition are: firstly, the exclusion of political and social groups from those deemed worthy of protection; secondly, the exact meaning of the intentionality clause in the contention (Article II)<sup>197</sup> and lastly, one of the biggest contentions against the UNGC since its inception has been the lack of enforceability. There is no doubt that it is a very big flaw in combating a crime which has been called the "crimes of crimes" by the ICTR in 1998. Some scholars have been of the view that it is the question of enforceability that should be first tackled rather than getting into the evils of "definitionalism", by which they imply exclusion and hierarchism of mass killing. This no doubt is an inaccurate contention as a standard, all inclusive, acceptable to both legal and social sciences scholars' definition of genocide will provide us with the opportunity to have successful enforceability. According to history scholar Frank Chalk "for the purpose of discovering their common elements and analysing the processes that brought them about", social science thus needs to study cases that fall under a defined boundary, thereby building a conceptual understanding of genocide. Unless this boundary between genocide and state terror is not clearly demarcated, they both will be interchangeably used for each other.

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<sup>197</sup> George J. Andreopoulos (ed.), *Genocide: Conceptual and Historical Dimensions*, Philadelphia, 1994, p. 17.

## Defining Genocide

Defining genocide remains a contentious issue for many scholars. It is not only so that debate continues over what constitutes genocide but even as to which events should be classified as genocide. There are two type of scholars who define genocide: those scholars who define it narrowly and those who use the word to describe a wide array of events. The use of the word genocide to condemn such diverse phenomena as abortion, dieting and urbanisation has led to the word genocide being —so debased by semantic stretch that its use stirs suspicion<sup>198</sup>. The dilemma arising over the use of the word is best expressed by Michael Ignatieff when he remarks that “those who should use the word genocide never let it slip their mouths. Those who unfortunately do use it, banalise it into a validation of every kind of victimhood”.<sup>199</sup> Virtually everything but genocide is called genocide and those in the international community refrain from using the term for fear that evoking it would create a legal obligation to act.

The UNGC created a legal responsibility on the member states of the United Nations to both stop and punish genocide. All the signatories to the UNGC agreed to do so by adding genocide as a criminal offense in their respective legal codes. Though this prohibition made genocide an international crime but unfortunately, most of the cases of genocide have gone unpunished. Legal scholars and lawyers approach genocide as a violation of international law but the very first obstacle to fighting genocide is to define it. The work of social scientists and historians have linked genocide to the advent of modernity<sup>200</sup>, radical, revolutionary and or racist political ideologies<sup>201</sup>, totalitarianism<sup>202</sup>, or the absence of liberal democracy<sup>203</sup>. Psychologists have focussed on the dehumanisation of the individual and the inaction of bystanders<sup>204</sup>. Sociologists have examined the societal conditions, which are necessary for the emergence of

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<sup>198</sup> Helen Fein, ‘Genocide by Attrition 1939-1993: The Warsaw Ghetto, Cambodia, and Sudan: Links between human rights, health, and mass death’ in *Health and Human Rights* 2/2, 1997.

<sup>199</sup> Michael Ignatieff in ‘Defining Genocide’, News Article by BBC News, February 1, 2005.

<sup>200</sup> Zygmunt Bauman, *Modernity and the Holocaust*, New York: Cornell University Press, 1989.

<sup>201</sup> Robert F. Melson, *Revolution and Genocide On the Origins of the Armenian Genocide and the Holocaust*, Chicago: Chicago University Press, 1992 and E. Weitz, *A Century of Genocide: Utopians of Race and Nation*, Princeton University Press, 2003.

<sup>202</sup> Irving Louis Horowitz, *Taking Lives: Genocide and State Power*, New Brunswick, Transaction Publishers, 1997.

<sup>203</sup> R. Rummel, *Death by Government*, London: Transaction Publishers, 1994.

<sup>204</sup> Israel W. Charny and Chanan Rapaport, *How Can We Commit the Unthinkable? Genocide The Human Cancer*, Westview Press, 1982 and E. Staub, *The Roots of Evil: The Origins of Genocide and other Group Violence*, New York: Cambridge University Press, 1989.

genocide<sup>205</sup>. Quantitative cross national studies have been carried out by political scientists, such as Brabara Harff<sup>206</sup> and Valentino and Huth and Krain<sup>207</sup>. Regardless, of all this understanding and efforts, no consensus has been formed among these scholars as to defining genocide. There are numerous contentions that do not let a generic definition of genocide be laid down. For example, Many observers have noted that there was an “under-the-table” compromise made during the Convention to exclude political groups. This was done to secure ratification by member states that feared that their internal suppression of dissents might be subject to external interference under the Convention. This is one of the biggest examples of the discrepancy between law, politics and history. Regardless of the historic evidence of targeting of political groups under genocide, and regardless of the legal need to add them to the definition for protection international politics of the member nations and their influence on the UN resulted in this huge injustice. As without the member states’ support, the Genocide Convention would not get off the ground hence this elimination. However, as Kuper noted, interference in a sovereign state to protect victimized groups was the main purpose of the Convention as it has been observed in almost all the cases of genocide and alleged cases of genocide that there is state support. This seems to suggest that not including political groups in the definition is a failure of the Convention.

### **Intent**

The most widely criticised and debated aspect of the legal definition of genocide is the emphasis laid on the intention of the perpetrators. The convention requires that genocide should be committed with an intent and not through negligence or recklessness. Fournet<sup>208</sup> is of the view that a general knowledge requirement should replace the strict need for specific intent. She further argues that criminal liability should attach to the perpetrators if they have the knowledge that their act is in pursuit

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<sup>205</sup> L. Kuper, *The Pity of it All: The Polarisation of Racial and Ethnic Relations*, University of Minnesota, 1977 and Helen Fein, *Accounting for Genocide: Victims and Survivors of the Holocaust*, New York: Free Press, 1979.

<sup>206</sup> Brabara Harff, ‘No Lessons Learned from the Holocaust’ in *American Political Science Review*, vol. 9 no. 1, Feb. 2003.

<sup>207</sup> B.P. Valentino, P. Huth and D. Balch-Lindsay, ‘Draining the Sea: Mass Killing and Guerrilla Warfare’ in *International Organisation*, vol. 58 no. 2, Spring 2004, pp. 375-407; M. Krain, ‘State-Sponsored Mass Murder: The Onset and Severity of Genocides and Politicides’ in *The Journal of Conflict Resolution*, vol. 41 no. 3, pp. 331-336, 1997.

<sup>208</sup> Caroline Fournet, *The Crime of Destruction and the Law of Genocide Their Impact on Collective Memory*, Hampshire: Ashgate Publishing Limited, 2007.

of genocide as a whole.<sup>209</sup> She backs her argument by remarking that *génocidaires*<sup>210</sup> will be able to avoid punishment by claiming that they did not have the intent to destroy an entire group. The ICTR in the *Akayesu*<sup>211</sup> case had stated that “intent can be inferred from a certain number of presumptions of fact.”<sup>212</sup> It further explained that intent can be inferred both by words such as use of derogatory language towards members of the target group and actions such as the physical targeting of the specific group or their property, kind of weapons used and their extent, the methodological planning and systematic manner of the killing.<sup>213</sup> On the other hand the ICTY in the *Sikirica Case*<sup>214</sup> did not pay any heed to the above considerations and defined intent on the sole basis of the number of victims killed.<sup>215</sup> Though, it failed to put down any specific number of victims where intent can be reasonably inferred. Hence, the ICTR’s definition of intent is considered much more accurate. In 2007 the European Court of Human Rights (ECHR), noted in its judgement in the *Jorgic v. Germany case*<sup>216</sup> that in 1992 the majority of legal scholars took the narrow view that “intent to destroy” in the UNGC meant the intended physical biological destruction of the protected group and that this is still the majority opinion.

In this scholarly debate, roughly two schools of thought have emerged: one that considers intention a defining characteristic of genocide and the other which rejects the concept. Williman and Dobkowski<sup>217</sup> by taking a structural approach have rejected the very idea of intentionality. They are of the viewpoint that a “strictly intentionalist approach leads to the neglect of those processes of destruction which, although massive, are so systematic and systemic, and that therefore appear so “normal” that most individuals involved at some level of the process of destruction may never see

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<sup>209</sup> Ibid.

<sup>210</sup> *Génocidaire* is the French word for a person who commits genocide. Lacking an appropriate English translation of this word, the term *génocidaire* will be used to mean anyone who is involved in committing genocidal acts.

<sup>211</sup> *The Prosecutor v. Jean-Paul Akayesu (Trial Judgement)*, ICTR-96-4-T, International Criminal Tribunal for Rwanda (ICTR), 2 September 1998, available at: <http://www.refworld.org/docid/40278fbb4.html>, accessed on 21 August 2015.

<sup>212</sup> David Alonzo-Maizlish, ‘The Intent Element of Genocide, And The “Quantitative Criterion”’ in *New York University Law Review*, vol. 77, November 2002, pp. 1369- 1403.

<sup>213</sup> Ibid.

<sup>214</sup> *Prosecutor v. Dusko Sikirica, Damir Dosen, Dragan Kolundzija (Sentencing Judgement)*, IT-95-8-S, International Criminal Tribunal for the former Yugoslavia (ICTY), 13 November 2001, retrieved from <http://www.refworld.org/docid/414836664.html>, accessed on 21 August 2015.

<sup>215</sup> *Supra*.

<sup>216</sup> *The Prosecutor v. Nikola Jorgic*, 2 BvR 1290/99.

<sup>217</sup> I. Walliman and M.N. Dobkowski (eds.) *Genocide and the Modern Age: Etiology and Case Studies of Mass Death*, New York, 1987.

the need to make an ethical decision or even reflect upon the consequences of their action”.<sup>218</sup> Israel Charny also rejects the concept of intentionality on a moral basis that people should not be excluded from getting justice just because they do not “fit the criteria” set for genocide.<sup>219</sup> His generic definition of genocide is “the mass killing of substantial numbers of human being, when not in the course of military action against the military forces of an avowed enemy, under conditions of the essential defencelessness and helplessness of the victims”<sup>220</sup> and according to him such definitionalism leads to “assigning hierarchical value to different kinds of mass death”<sup>221</sup> This definition is vastly different from the humanistic one he proposed years earlier in which genocide was defined as “the wanton murder of a group of human beings basis of any identity whatsoever that they share national, ethnic, religious, political, geographical, ideological”<sup>222</sup>. The second definition actually seems to be the broader and more generic definition that Charny was had been looking for, as it includes the aspects that the Convention genocide had missed out on in addition to all the types of groups that have been targeted in past genocides.

On the other hand Kuper ignores but does not out rightly reject intentionality. He is of the view that

I shall follow the definition of genocide given in the [UN] Convention. This is not to say that I agree with the definition. On the contrary, I believe a major omission to be in the exclusion of political groups from the list of groups protected. In the contemporary world, political differences are at the very least as significant a basis for massacre and annihilation as racial, national, ethnic or religious differences. Then too, the genocides against racial, national, ethnic or religious groups are generally a consequence of, or intimately related to, political conflict”.<sup>223</sup>

He explains that it was motive primarily that was introduced as the essential element for committing genocide but it was rejected and hence the present incorporation of intent should not be taken in the same manner. Chalk though accepts the requirement of express intention in defining genocide, he is of the view that even if the intent is not verbalised it is enough to demonstrate the intent of a state if it is persistent in

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<sup>218</sup> Ibid.

<sup>219</sup> I.W. Charny, ‘Toward a Generic Definition of Genocide’ in George Andreopoulos (ed.) *Genocide: Conceptual and Historical Dimensions*. Philadelphia, 1994.

<sup>220</sup> Ibid.

<sup>221</sup> Ibid.

<sup>222</sup> Supra.

<sup>223</sup> Leo Kuper, *Genocide: It's Political Use in the Twentieth century*, Harmondsworth: Penguin, 1981, p. 9.

following policies that are clearly leading to the destruction of a group.<sup>224</sup> On the other hand, Fein while stressing upon the distinction between state terror and genocide insists upon the importance of the conception of intention because “there is a difference between a philosophy whose logic is monstrous and one which can be given a monstrous interpretation”.<sup>225</sup> She is against the generic definition laid down by both Chalk and Jonassohn and defines genocide as

“Genocide is a series of purposeful actions by a perpetrator(s) to destroy a collectivity through mass or selective murders of group members and suppressing the biological and social reproduction of the collectivity. This can be accomplished through the imposed proscription or restriction of reproduction of group members, increasing infant mortality, and breaking the linkage between reproduction and socialization of children in the family or group of origin. The perpetrator may represent the state of the victim, another state, or another collectivity”.<sup>226</sup>

It is one of the most respected and accepted definition of genocide. Though Fein comes up with a powerful logic but she also ends up talking of only the physical annihilation of the groups. She is a staunch supporter of the idea that intent is indeed the defining characteristic of genocide and any attempt to remove it would destroy its conceptual foundation.<sup>227</sup> Though this poses a bigger concern as to the danger that the concept of intention maybe taken to such an extent that was not primarily expected or aimed for. Martin Shaw therefore explains “Genocidists invariably have multiple goals and deviate from their rationalistic pursuit. The ideal-typical concept of ‘rational’, ‘intentional’ genocide can be no more than a heuristic tool enabling us to grasp the complexity of real cases”.<sup>228</sup> Similar arguments have been put forward by Bauman<sup>229</sup> and Mann<sup>230</sup> who say that genocide or “murderous cleansing” is usually not the original intention of the perpetrators but is a result of the policies that they embark on.

Eric Weitz<sup>231</sup> also agrees with Fein that the intention of the genocide is what "distinguishes genocides from civilian casualties that may occur in wartime, from pogroms, from massacres, from forced deportations-even if the number of victims is

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<sup>224</sup>Frank Chalk and Kurt Jonassohn, *The History and Sociology of Genocide: Analysis and Case Studies*, New Haven, 1990.

<sup>225</sup> Supra.

<sup>226</sup> *Ibid.*

<sup>227</sup> Supra.

<sup>228</sup> Martin Shaw, *What is Genocide?*, Cambridge, 2007.

<sup>229</sup> Supra.

<sup>230</sup> Michael Mann, ‘Explaining Murderous Ethnic Cleansing’, Working Paper, 1999, retrieved from <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.39.8623&rep=rep1&type=pdf> , accessed on 15<sup>th</sup> Nov. 2015.

<sup>231</sup> Eric Weitz, *A Century of Genocide*, Princeton, 2003, p. 9.

massive". In his book examines the high profile cases of the twentieth century. He has found that many of them contain similarities such as "their determination to remake fundamentally the societies and states they had either conquered or inherited... and their goals entailed much more than the establishment of new political elites or the creation of state-run industries and collectivized farms".<sup>232</sup>

As argued by Bassiouni: "Quite obviously in cases such as Germany's during World War II where there was a significant paper trail, evidence of specific intent can more readily be established than in cases where such a paper trail does not exist. It is not difficult to think of a number of contemporary conflicts such as those in Cambodia and Former Yugoslavia, where there is obviously no paper trail and where specific intent can only be shown by the cumulative effect of the objective conduct to which one necessarily has to add the inference of specific intent deriving from omission".<sup>233</sup> Even though some court rulings have accepted forms of evidence other than written documents, according to Schabas it is unlikely that courts will convict in the absence of proof of a plan (at the very least a plan which logically can be drawn from the actual conduct of the crime).<sup>234</sup>

## **Government**

Sociologists like Charny<sup>235</sup> and Chalk<sup>236</sup> have rejected this definition out rightly. Rummel in his paper comments that though genocide denotes government murder but it is not a concept that can cover the variety and extent of ruthless murder carried out by the government. According to him genocide has been defined in international conventions and the general literature "as the intentional killing by government of people because of their race, religion, ethnicity, or other indelible group membership".<sup>237</sup> He further talks about covering different kinds of murders by government such as shooting political opponents, purportedly creating a famine, etc. as "democide".<sup>238</sup>

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<sup>232</sup> Ibid.

<sup>233</sup> M. Cherif Bassiouni as quoted in Schabas, p. 225.

<sup>234</sup> Ibid.

<sup>235</sup> Supra.

<sup>236</sup> Supra.

<sup>237</sup> R.J. Rummel, 'Democracy, Power, Genocide and Mass Murder' in *The Journal of Conflict Resolution*, vol. 39 no. 1, Mar., 1995, pp. 3-26.

<sup>238</sup> Supra.



After being recognised under the UNGC genocide has been implied as a state crime. The drafters of the convention at that time were of the assumption that genocide could only be committed by a powerful institution such as the state. They most probably thought that the kind of violence needed to commit genocide was not available to any other type of organisation such as they had seen in the Holocaust by Germany, United States in the case of annihilation of the native Indians, etc. Hence, a number of definitions of genocide only talk about the state as the chief perpetrator of genocide. The fact that in most of the cases of genocide it is the state machinery that indulges in this crime does not help refute the notion either. As Howard Ball explains “Genocide is the planned, intentional extermination policy of a state that is implemented against a group of persons based on their religion, their nationality, their ethnicity, or their race”. Irving Louis Horowitz further elaborates by stating “Genocide is a structural and systematic destruction of innocent people by a state bureaucratic apparatus. . . . Genocide represents a systematic effort over time to liquidate a national population, usually a minority . . . [and] functions as a fundamental political policy to assure conformity and participation of the citizenry”.

Regardless of this belief academics belonging to the different fields as well as policymakers since the Holocaust have defined genocide in conflicting, sometimes contradictory and even mutual exclusive terms. Due to the lack of consensus in defining genocide or what makes up genocide, individual scholars belonging to the different fields have tailored their own definitions for genocide. A general definition of genocide also becomes essential as the broader the definitions are, the more crimes can end up as being recognised as genocides which is a very volatile situation and innocent parties can also end up as being labelled as genocidists.

Another important concept attached to genocide is the Holocaust. It has been observed that many times both of these terms are used interchangeably. Though the inception of the concept of genocide and the Holocaust nearly happened within a decade of each other, the study of these two concepts was very absent. It was four decades after the start of the Second World War which resulted in one of the most prolific and documented genocide ever i.e. the Holocaust, that a small group of social scientists began to study genocide and its different aspects such as meaning, causes, reoccurrence in the modern world. One would find it highly ironic that many scholars and observers until the 1990s were of the view that genocides occurred only in the

“Third World” regardless of the historical proof pointing to the contrary that the maximum incidents of genocide had taken place in Europe throughout the 20<sup>th</sup> century.

### **Leaders or Elites**

Barbara Harff, a professor of political science, states that “Genocides and politicides are the promotion, execution, and/or implied consent of sustained policies by governing elites or their agents – or, in the case of civil war, either of the contending authorities – that are intended to destroy, in whole or part, a communal, political, or politicized ethnic group”.<sup>239</sup> Dutch law professor, N. Pieter Drost defines “Genocide is the deliberate destruction of physical life of individual human beings by reason of their membership of any human collectivity as such”.<sup>240</sup> John L. Thompson (Historical Theology) and Gail A. Quets (Sociology) are of the opinion that “Genocide is the extent of destruction of a social collectivity by whatever agents, with whatever intentions, by purposive actions which fall outside the recognized conventions of legitimate warfare”.<sup>241</sup>

One simple way in which scholars have tried to both define and explain genocide is by examining the role played by the leader or the elite as the prime decision maker. For scholars who apply this approach leaders like Hitler, Stalin, Pol Pot, etc are of immense interest and are the analysis of their role before, during and after the genocide is the prime focus. The most intriguing part of this analysis is the investigation of the reasons such as psychological makeup or ideological experiences or life experiences which make these leaders evolve genocidal policies which result in deaths and displacement of millions. This theory raises some primary questions such as are leaders primarily responsible for the occurrence of that genocides? Or whether any of the genocides such as the holocaust or Cambodia or Rwanda or Darfur happened without the leaders held responsible for them? Would the scenario have been different if somebody else would have been at the helm of the affairs? This theory basically lays a lot of emphasis on the personality of the leader and tries to

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<sup>239</sup> Barabara Harff, ‘No Lessons Learned from the Holocaust? Assessing Risks of Genocide and Political Mass Murder Since 1955’, *American Political Science Review*, 93, 1 February, 2003.

<sup>240</sup> Peter Drost, *The Crime of State*, Volume 2, Leiden, 1959.

<sup>241</sup> John L. Thompson and Gail A. Quets, ‘Genocide and Social Conflict: A Partial Theory and Comparison’ in L. Kriesberg, *Research in Social Movements: Conflicts and Change*, Greenwood: JAI Press, 1990.

imagine whether a particular genocidal incident would have happened or not in case of change of leadership.

Aydin and Gates<sup>242</sup> also explore the authoritarian leader and genocide aspect where they find that "mass killing may become a tool for political survival in polities that do not limit the decision-making power of the executive". In addition, they unearth a trend where, looking at the distribution of mass killings on executive constraints, "most regimes where geno/politicides have occurred, institutional check on political power are substantially limited". The answers to the above questions are both complex and difficult to comprehend. There is just no method to prove, regardless of the truth that even though it was these political elites who played the central role in each of these genocidal events but they are not the only significant factor to influence a genocidal process. In each of the genocidal incidents these leaders or elite have varying roles and hence cannot be compared to each other by comparing different cases.

### **Frontline Killers or State Agents**

Other definitions to consider are ethnic cleansing and genocidal massacres. As stated above, Scherrer refers to "mass murder or massacres" as "genocidal acts committed by different types of perpetrators such as state agents"<sup>243</sup>. Ethnic cleansing is defined by the UN Commission of Experts Established Pursuant to Security Council Resolution 780, as "rendering an area ethnically homogenous by using force or intimidation to remove from a given area persons of another ethnic or religious group"<sup>244</sup>. Genocidal massacre is an emerging term that is used to describe massacres "that are not part of a continuous genocide but are committed by an authority or other organized group against a particular ethnic or other distinguishable group"<sup>245</sup>. This term "genocidal massacre" seems to merge how Scherrer operationally defines mass murder and organized state violence that may or may not reach the levels of what might be considered a genocide by the international community.

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<sup>242</sup> Aysegul Aydin and Scott Gates, 'Rulers as Mass Murders: Political Institutions and Human Insecurity', in Stephen Saideman and Marie-Joelle Zahar, *Insecurity In Intra-State Conflicts: Governments, Rebels and Outsiders*, Routledge Press, 2007, p. 21.

<sup>243</sup> Supra.

<sup>244</sup> Supra.

<sup>245</sup> Supra.

## State

After being recognised under the UNGC genocide has been implied as a state crime. The drafters of the convention at that time were of the assumption that genocide could only be committed by a powerful institution such as the state. They most probably thought that the kind of violence needed to commit genocide was not available to any other type of organisation such as they had seen in the Holocaust by Germany, United States in the case of annihilation of the native Indians, etc. Hence, a number of definitions of genocide only talk about the state as the chief perpetrator of genocide. The fact that in most of the cases of genocide it is the state machinery that indulges in this crime does not help refute the notion either. As Howard Ball explains “Genocide is the planned, intentional extermination policy of a state that is implemented against a group of persons based on their religion, their nationality, their ethnicity, or their race”. Irving Louis Horowitz further elaborates by stating “Genocide is a structural and systematic destruction of innocent people by a state bureaucratic apparatus. . . . Genocide represents a systematic effort over time to liquidate a national population, usually a minority . . . [and] functions as a fundamental political policy to assure conformity and participation of the citizenry”.

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The system is itself a root cause of modern genocide ... He suggests several ways in which the 'system' is causative:

1. 'all modern genocides [are] perpetrated with an eye to the integrity of the state vis-à-vis other competitor states';
2. 'the linkage regularly manifests itself in the way that regimes repeatedly accuse the targeted communal population of being collective agents of outside, extra-state forces whose alleged aim is the undermining of the state's own efforts towards covering up, or rectifying, its international weakness'
3. although 'the system, in principle, has been committed to a repudiation of genocide [in the Genocide Convention] ... [t]he system has colluded with genocide because to do otherwise would have been massively to destabilise the sophistry upon which the system rides: namely that it is a global family of bounded but equally sovereign states.<sup>246</sup>

Levene starts to recognise differences between states within the 'system' "while, thus, acts of genocide are mostly committed by states challenging or defying the system ground rules, the system leaders themselves - that is those with the power to respond - have either condoned, or turned a blind eye, or in some cases, even covertly abetted such acts in complete contradiction of their own UNC [United Nations Convention] rhetoric".<sup>247</sup> Frank Chalk (History) and Kurt Jonassohn (Sociology) have offered a more distinctive refinement in their widely quoted definition which lays down that "Genocide is a form of one-sided mass killing in which a state or other authority intends to destroy a group, as that group and membership in it are defined by the perpetrator".<sup>248</sup>

Isidor Wallimann (Economic Sociology) and Michael N. Dobkowski (Religious Studies and History) state that "Genocide is the deliberate, organized destruction, in whole or in large part, of racial or ethnic groups by a government or its agents. It can involve not only mass murder, but also forced deportation (ethnic cleansing), systematic rape, and economic and biological subjugation".<sup>249</sup> They both see the state and its agencies as the main culprits behind genocide.

Barbara Harff is one scholar who defines genocide based on these premises: "a particular state terror...mass murder, premeditated by some power-wielding group linked with state power". Furthermore, Harff clarifies her definition: "The Jewish

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<sup>246</sup> Mark Levene, *Genocide in the Age of the Nation State*, 2005, pp. 158-159.

<sup>247</sup> Ibid.

<sup>248</sup> Frank Chalk and Kurt Jonassohn, *History and Sociology of Genocide: Analyses and Case Studies*, New Haven CT: Yale University Press, 1990, p. 64.

<sup>249</sup> Isidor Wallimann and Michael N. Dobkowski, (Eds.), *Genocide and the Modern Age: Etiology and Case Studies of Mass Death*, New York: Greenwood Press, 1987.

Holocaust...is employed as the yardstick, the ultimate criterion for assessing the scope, methods, targets, and victims of genocides.<sup>250</sup> Harff together with Ted Gurr raise the issue of the exclusion of the non-killing aspects of the UNGC ‘because this extends the definition to innumerable instances of groups which have lost their cohesion and identity, but not necessarily their lives’.<sup>251</sup> Harff and Gurr are advocates of a specific branch of genocide sometimes referred to as politicicide, i.e. genocide which targets political groups.<sup>252</sup> The perspective of state authority and murder as part of the definition of genocide is also supported by Irving Horowitz and Vahakn Dadrian.<sup>253</sup> Irving Louis Horowitz, a sociologist, also supports the state as the main perpetrator by stating that “Genocide is a structural and systematic destruction of innocent people by a state bureaucratic apparatus. . . . Genocide represents a systematic effort over time to liquidate a national population, usually a minority . . . [and] functions as a fundamental political policy to assure conformity and participation of the citizenry”.<sup>254</sup> Jack Nusan Porter is a Ukrainian American sociologist, is again a supporter of the view that state has an important role to play or should one say the primary role to play in genocide. He states that

Genocide is the deliberate destruction, in whole or in part, by a government or its agents, of a racial, sexual, religious, tribal or political minority. It can involve not only mass murder, but also starvation, forced deportation, and political, economic and biological subjugation. Genocide involves three major components: ideology, technology, and bureaucracy/organization.<sup>255</sup>

Helen Fein, a noted genocide scholar, further developed her own definition of genocide. Her definition holds that genocide is the "sustained purposeful action by a perpetrator to physically destroy a collective directly or indirectly, through interdiction of the biological and social reproduction of group members, sustained regardless of the surrender or lack of threat offered by the victim"<sup>256</sup>. Fein also proposes a paradigm that lists specific conditions that she believes are explicit for

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<sup>250</sup> Barbara Harff, ‘Genocide as State Terrorism’ in *Government Violence and Repression* in M. Stohl and G.A. Lopez (ed.), New York, 1986, pp.165f. There are no signs of change in her more recent work. See for instance, ‘No Lessons Learned from the Holocaust? Assessing Risks of Genocide and Political Mass Murder Since 1955’ in *American Political Science Review*, vol. 97, no. 1, 2003, pp. 57-73.

<sup>251</sup>Barbara Harff & Ted R. Gurr, ‘Toward Empirical Theory of Genocides and Politicides’ in *International Studies Quarterly*, vol. 32, 1988, p.360.

<sup>252</sup> Ibid.

<sup>253</sup> See for some of their earlier work, Irving Horowitz, *Genocide: State Power and Mass Murder*, New Brunswick, 1976 and V.N., Dadrian, ‘A Typology of Genocide’ in *International Review of Modern Sociology*, 5, 1975, pp. 201-12.

<sup>254</sup> Irving Louis Horowitz, *Genocide: State Power and Mass Murder*, First edition, 1976.

<sup>255</sup> Adam Jones citing Jack Nusan Porter in *Genocide a Comprehensive Introduction*, 2006, p. 16.

<sup>256</sup> Ibid.

genocide to occur<sup>257</sup>. Examples include, “a sustained attack or continuity of attacks by the perpetrator to physically destroy group members,” “the victims were defenceless or were killed regardless of whether they surrendered or resisted,” and “the destruction of group members was undertaken with intent to kill and murder as sanctioned by the perpetrator”<sup>258</sup>. She has also developed a typology that identifies four kinds of genocide:

- 1) Developmental, in which the perpetrator intentionally or unintentionally destroys peoples who stand in the way of the economic exploitation of resources
- 2) Despotic, which are designed to eliminate a real or potential opposition, as in a new, highly polarized, multi ethnic state
- 3) Retributive, in which the perpetrator seeks to destroy a real opponent
- 4) Ideological, a category embracing cases of genocide against groups cast as enemies by the state's hegemonic myth or by its need to destroy victims who can be portrayed as the embodiment of absolute evil<sup>259</sup>.

Christian Scherrer<sup>260</sup> has also developed a typology of genocide in which he lists genocides as either domestic, intra-state, foreign, colonial and imperialist. He refers to mass murder or massacres as "genocidal acts committed by different types of perpetrators such as state agents or entire agencies, political extremists and interest groups against vulnerable groups who have been excluded from main-stream society"<sup>261</sup>. He defines modern genocide as "state-organized mass murder and crimes against humanity characterized by the intention of the rulers to exterminate individuals for belonging to a particular national, ethnic, religious, or racial group"<sup>262</sup>. Furthermore, his typology, although largely unknown, could be perceived as becoming more appropriate for today's world due to the increase in non-state actor influences and actions around the world.

Furthermore, Chalk and Jonassohn<sup>263</sup> also developed a typology of genocide in which they classify genocides according to their motives: “(1) to eliminate a real or potential threat; (2) to spread terror among real or potential enemies; (3) to acquire economic wealth; (4) to implement a belief, a theory, or an ideology”. It is worth discussing how

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<sup>257</sup> Supra.

<sup>258</sup> Supra.

<sup>259</sup> Supra.

<sup>260</sup> Supra.

<sup>261</sup> *Ibid.*

<sup>262</sup> *Ibid.*

<sup>263</sup> Supra.

genocide is different from other forms of organized violence. Shaw<sup>264</sup> cites Clausewitz's view of war as "a type of *action* carried out by a single (but of course collective) actor, and a type of *conflict* between two (or more) actors, in which the action of each is conditioned by that of the other". Revolutions are "mass social upheavals of largely unarmed civilian populations seeking social and political transformation, although they also involve revolutionary parties and organizations which are sometimes, to a greater or lesser extent, armed organizations"<sup>265</sup>. Terrorism involves "terrorizing civilian populations, usually through publicized killings of a number of civilians, so as to produce political effects" and can therefore be understood the warfare of the militarily weak<sup>266</sup>. Shaw views genocide as "a deviant form of war, involving a clash between armed power and unarmed civilian, which often occurs in the context of more conventional war and sometimes leads to new phases of it"<sup>267</sup>. It was this view that led him to formulate his definition as previously stated.

An attempt to find a compromise between intentionalists and functionalists is the theory developed by Robert Melson. He was one of the first to introduce a comparative perspective into genocide studies. His aim was to be able to find familiar traits between different genocides as a way of finding a heuristic tool to highlight the mechanisms and processes. Most of what Melson calls 'total genocide' has occurred as a result of war, revolution or other types of social upheavals: Nazi Germany, Stalin's Soviet Union and Cambodia, for example.<sup>268</sup> These assumptions have led Melson to define genocide as: "a public policy mainly carried out by the state whose intent is the destruction in whole or part of a social collective or category, usually a communal group, a class, or a political faction."<sup>269</sup>

Israel Charny, who in many ways takes one of the broadest definitions of the term. He attempts to include all the four sub-discourses of the discourse - the mass media, the legal, the political, and the academic - into his definition. His approach is divided into several different subdivisions under what he refers to as the generic definition of genocide: "Genocide in the generic sense is the mass killings of substantial numbers

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<sup>264</sup> Supra.

<sup>265</sup> Supra.

<sup>266</sup> Ibid.

<sup>267</sup> Ibid.

<sup>268</sup> Ibid.

<sup>269</sup> Ibid.



of human beings, when not in the course of military action against the military forces of an avowed enemy, under conditions of the essential defencelessness and helplessness of the victims.”<sup>270</sup> As opposed to many other scholars, Charny is not concerned with the group dilemma or with that of a specific intent. He proposes that all mass killings of unarmed persons should be considered as genocide.<sup>271</sup>

As a consequence, it is necessary to add the concept of genocidal action which Shaw defines as: “action in which armed power organisations treat civilian social groups as enemies and aim to destroy their real or putative social power, by means of killing, violence and coercion against individuals whom they regard as members of the group”.<sup>272</sup> Hence, genocide is a type of unequal social conflict between two sets of parties that are ultimately defined by the type of action carried out by the powerful side.<sup>273</sup> Another scholar, Martin Shaw<sup>274</sup> recognizes that wars and genocides might be interrelated. His definition states genocide is "a type of conflict characterized by the projection of power by an armed organization against a civilian population". Shaw argues that past research has missed the “civilian” aspect of genocide. Other types of conflict such as terrorism involve "a contest between organized armed actors (typically, insurgent groups versus states)" and revolutions involve "contests between politically organized social movements and states, typically leading to armed contests between revolutionary parties and states (and hence civil wars)"<sup>275</sup>.

## Groups

Steven T. Katz, Jewish philosopher and scholar, is of the viewpoint that “Genocide is the actualization of the intent, however successfully carried out, to murder in its totality any national, ethnic, racial, religious, political, social, gender or economic group, as these groups are defined by the perpetrator, by whatever means.”<sup>276</sup> Israel W. Charny, a psychologist and genocide scholar, on the other hand has echoed Lemkin’s view of genocide as a broad category of destructive activity against groups by defining “Genocide in the generic sense means the mass killing of substantial numbers of human beings, when not in the course of military action against the

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<sup>270</sup> *Ibid.*

<sup>271</sup> *Ibid.*

<sup>272</sup> *Ibid.*

<sup>273</sup> *Ibid.*

<sup>274</sup> *Ibid.*

<sup>275</sup> *Supra.*

<sup>276</sup> Steven T. Katz, *The Holocaust in Historical Context*, Vol. 1, New York, 1994.

military forces of an avowed enemy, under conditions of the essential defencelessness of the victim”<sup>277</sup>

The main contentions or criticisms against the UNGC definition are: firstly, the exclusion of political and social groups from those deemed worthy of protection; secondly, the exact meaning of the intentionality clause in the contention (Article II)<sup>278</sup> and lastly, one of the biggest contentions against the UNGC since its inception has been the lack of enforceability. There is no doubt that it is a very big flaw in combating a crime which has been called the “crimes of crimes” by the International Criminal Tribunal of Rwanda in 1998. Some scholars have been of the view that it is the question of enforceability that should be first tackled rather than getting into the evils of “definitionalism”, by which they imply exclusion and hierarchism of mass killing. This no doubt is an inaccurate contention as a standard, all inclusive, acceptable to both legal and social sciences scholars’ definition of genocide will provide us with the opportunity to have successful enforceability. According to history scholar Frank Chalk “for the purpose of discovering their common elements and analysing the processes that brought them about”, social science thus needs to study cases that fall under a defined boundary, thereby building a conceptual understanding of genocide. Unless this boundary between genocide and state terror is not clearly demarcated, they both will be inter changeably used for each other.

It must be noted though that many scholars disagree with each other on defining genocide as they either find the list of possible victim groups too narrow or that the need to prove intent is too demanding or there is some kind of incompleteness in each of the definitions according to them. Vahakn Dadrian, an Armenian sociologist, describes it as “Genocide is the successful attempt by a dominant group, vested with formal authority and/or with preponderant access to the overall resources of power, to reduce by coercion or lethal violence the number of a minority group whose ultimate continued extermination is held desirable and useful and whose respective vulnerability is a major factor contributing to the decision for genocide”.<sup>279</sup>

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<sup>277</sup>Israel W. Charny, *The Widening Circle of Genocide. Volume 3 in the Series, Genocide: A Critical Bibliographical Review*, New Brunswick, NJ: Transaction Publishers, 1994.

<sup>278</sup> Supra.

<sup>279</sup> Vahakn Dadrian, ‘A Typology of Genocide’, *International Review of Modern Sociology*, 5, 1975, pp. 201-212.

## Approaches to Genocide

The two major approaches in the study of genocide are the structural or functional approach and the “intentionalist”. Genocide is connected to modernity through its association with the origins and development of the modern state. The association of genocide with the state is based on Hannah Arendt’s works on the nature of the totalitarian state as a twentieth century phenomenon, which has the capacity to draw mass mobilizations on modern technology and communications and has genocide and terror as part of its ideological logic.<sup>280</sup> She wrote the book *The Origins of Totalitarianism* in 1949, by which time the world had seen the revelations of atrocities of the Holocaust. Although she did not view genocide as a condition of totalitarian rule, she argued that the “totalitarian” methods of domination” were uniquely suited to programmes of mass extermination.<sup>281</sup> She further explained that unlike previous regimes that employed terror, totalitarianism did not merely stop at physical extermination but it aimed to bring to an end by preceding the physical extermination with total abolition of civil and political rights, exclusion from public life, confiscation of property and finally the deportation and murder of entire extended families and communities around them. This is exactly what happened with the Jews.

The state uses technology to exterminate its victims as had happened in the extermination camp, which were termed as “death factories” by Arendt. Genocide scholars have not been able to move beyond the linkage of state and genocide, where they always believe that it is either a totalitarian or an authoritarian state which is responsible for genocide. There has been an attempt to link genocide with nationalism too. Mann tried to shift the emphasis away from the totalitarian state and set the notion of the Holocaust as the ultimate form of genocide. He termed as “the dark side of democracy”, the nationalism entwined with the demos of the dominant ethos which lead to forms of democratic nation state building thus producing wholesale inter-group violence.<sup>282</sup> Mark Levene has further argued that the earliest genocides took place in those states which were at the forefront of the modern revolution from the sixteenth to the eighteenth century. According to him genocides is an intrinsic part of the historical process of modernization.

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<sup>280</sup> Hannah Arendt, *The Origins of Totalitarianism*, New York, 1951.

<sup>281</sup> *Ibid.*, p. 440

<sup>282</sup> *Supra*.

The race towards modernization resulted in geopolitical and economic competition which compelled states to indulge in genocides whenever they perceived the local population to be a threat or obstacle to their power. For Levene modern genocides are most likely to occur in states that are undergoing a systematic crisis due to a radical and speedy social transformation towards modernization. For example, the Ottoman Empire collapsed due to this reason. On the other hand Kuper argues that the structural base for genocide is the plural society which is deeply divided due to ethnic, communal and other differences as was the case with India during partition. This is another type of a structural approach which suggests that societies which are driven and divided by the above mentioned differences are more susceptible to genocide. Kuper further also cautions that simply because these above mentioned differences exist, it does not mean that this pluralism will automatically lead societies to genocide. Hinton also argues that societies that go on to experience genocide are marked by severe “social divisions” that arise because of “segregation and differential legal, sociocultural, political, educational, and economic opportunities afforded to social groups”.<sup>283</sup>

There maybe an onset of genocide linking it to modernisation particularly in conditions of modern bureaucratized nation states and the creation of radical exclusionary nationalist, racist or revolutionary ideologies. The rise of nationalism is being observed in countries all around the world currently, whether it will lead to any incident of genocide is a matter of time. Though many racist attacks are being currently observed in the USA especially since President Trump has taken over the reins of the country. He is anti-immigrants and portrays himself as a nationalist; this is causing a lot of conflict both in and outside America. Many scholars believe that it is not the modern state but the modern revolutionary ideologies that are responsible for genocides. Eric Weitz argues that these ideologies rest on modern conceptions of the world which is naturally divided into races and nations.<sup>284</sup> He further states that the rise of nationalism and racism coincided with the rapid expansion of European imperialism which resulted in these westerners to come in contact with indigenous populations which were totally different from them. This resulted in the notion that

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<sup>283</sup> Alexander L. Hinton, 'The Dark Side of Modernity: Toward an Anthropology of Genocide', in *Annihilating Difference: The Anthropology of Genocide*, ed. Alexander L. Hinton, Berkeley, 2002, p. 29.

<sup>284</sup> *Supra*.

the Europeans were superior to these indigenous races which resulted in a number of genocides around the world such as the killings of native Americans in or Africans in countries under colonial rule.

The fact that serious conflicts whether political, economic or security issues have resulted or preceded cases of genocide have been observed by a number of scholars. Helen Fein in her work *Accounting for Genocide* remarks that crisis resulting in the loss of the status of a nation due to defeat in war or internal strife can propel a state toward “crisis of national identity” in which elites may take such actions which project the nation as dominating but she further clarifies that crisis donot directly casus genocide. For Hinton too, crisis may create a “hot” and “volatile” context in which genocidal processes are more likely to be “set off”. Opportunities for genocide can also arise in the form of revolutions. Melson argues that in the case of both Cambodia and Holocaust the collapse not only of the state’s political institutions but also of it’s legitimacy were to be blamed.<sup>285</sup> Further, wars can also give governments the tools to commit genocides and to cover up it’s misdeeds. As governments at war already have combat ready soldiers in the field, they can be easily diverted to commit genocide. Scott Strauss argues that in the case of Rwanda the renewed civil war of 1994 helped drive the genocide because the war was constructed by the perpetrators as a security crisis in which violence had to be used to overcome a threat, hence all Tutsis were construed as “enemies” along with the RPF.

Scholars like Markusen, Kopf, Kuper and Shaw believe that war not only sets the stage for genocide but also acts as a cover. Shaw projects genocide as a distinct form of war against civilians and is intertwined with other forms of war particularly what he calls “degenerate war”, which involves “the deliberate and systematic extension of war against an organised armed enemy to war against a largely unarmed civilian population”.<sup>286</sup> Other structural explanations focus on how the structures of political regimes determine the adoption of genocidal policies. It has been discussed very briefly at the start of the section. Under this explanation Horowitz argues that genocide is inherent to totalitarian political systems because they attempt to exert total political, economic and social control over all aspects of life of all the members of a

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<sup>285</sup> Robert F. Melson, *Revolution and Gneocide: On the Origins of the Armenian Gneocide and the Holocaust*, Chicago, 1992, p. 260, 267.

<sup>286</sup> Martin Shaw, *War and Genocide: Organised Killing in Modern Society*, Cambridge, 2003, p. 5

society by eliminating groups of people which it considers to be hostile to the totalitarian order.<sup>287</sup> As Arendt also mentions that the fullest expression of totalitarianism that was practised by both the Nazis and the Stalinist regimes was the exercise of “total domination” in the death camps in which “everything” became possible.<sup>288</sup> Hence, the main weakness of a totalitarian regime is its over determination which is bound to result in conflict but due to the differences even between such regimes one cannot definitely argue that it will invariably lead to genocide.

The ‘internationalists’ believe that intent must be organised and systematic and is not individualistic in nature. On the contrary history suggests that one of the most important factors behind many of the genocides has been charismatic leadership. For some scholars the emphasis on the role of played by leaders such as Hitler, Pol Pot, Stalin in the genocidal process. For numerous reasons which maybe ideological or psychological, these leaders decide to exterminate whole groups of people. Though they play a significant role in a genocidal event but we cannot be sure that if not for them then this particular incident would not have happened. Role of each such elite varies from genocide to genocide. Valentino sees genocide or “mass killing” as a barbaric, immoral and seemingly illogical act but one that is the product of a rational choice made by elites to achieve specific policy goals.<sup>289</sup>

Too much emphasis on the role of the elite in the genocide may ultimately result in ignoring the role played by other societal actors. Hence, elites alone cannot be the driving force behind a genocide. We have to consider other actors as well as other factors for their role in this destructive turn of events. This brings to our attention the role of other societal actors who may drive the genocidal process not by leading the charge but by merely following the orders of the leader. For example, many of the Nazis were found to be highly ideological or fanatical believers of Hitler. This factor can also be combined with the role of the society. It mainly consists of ordinary people who are bystanders and allow genocide to happen whether actively or passively. Ervic Staub has compared different societies in which genocide has occurred and has arrived at the conclusion that many members of the society that

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<sup>287</sup> Supra.

<sup>288</sup> Supra.

<sup>289</sup> Benjamin A. Valentino, *Final Solutions: Mass Killing and Gneocide in the 20<sup>th</sup> Century*, New York, 2004, pp. 72-73.

experience genocide become psychologically depressed as a result of severe crisis and are therefore willing to accept the victimization of marginal groups.<sup>290</sup> The above three approaches which can easily be termed as agency-oriented approaches are more focused on the psychological behaviour of the elite, the frontline killers and the society. Though it is a different approach towards understanding genocide but they are not able to explain the cultural, economic, political, legal explanations behind genocides which the structural approach do.

Discussed above are the different approaches to genocide in brief. Each of these approaches tries to answer the question as to why do genocides happen? None of them are fully correct but they are able to at least solve some of the mystery of the frustrating mystery associated with this question. Though it does not seem that there is any one particular factor which is responsible for the occurrence of genocide, on the contrary it is the combination of almost all these factors and approaches which result in genocidal incidents.

### **Conclusion**

Although at first glance the Genocide Convention appears to have departed from Lemkin's initial ideas, on deeper reflection and examination, it is evident that much of Lemkin's initial theories and definition still remain and form an intrinsic part of the modern definition. The main differences between the initial definition and the current one is the omission of the vandalism element or cultural genocide, while we have seen the initial intention of the United Nations in drafting the Convention was to leave these to be covered by human rights declarations, it appears that this is no longer the case. The use of cultural genocide to prove physical genocide in the Karadzic and Krstic cases shows that the current definition is not as developed as previously thought and as Cassese believes, is perhaps returning back to Lemkin's original definition. Whilst it cannot be denied that the definition of genocide has developed in the past sixty years (the inclusion of rape and crimes of a sexual nature as acts of genocide evidence this development) it appears that in general the modern definition remains rooted in Lemkin's original conception of the term. In conclusion it is prudent to note that notwithstanding natural development such as elaborations of above the terms, and the inclusion of new acts of genocide, that ultimately the

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<sup>290</sup> Supra.

definition of genocide is coming full circle, no longer remaining purely about the physical aspect of genocide, instead embracing culture as an element leading to genocide, not as an obscure, forgotten term. Therefore, although the definition has changed slightly that it has not developed much beyond its original ambit, choosing not to disregard its origins but instead to streamline, ultimately finding its roots firmly planted within Lemkin's original definition.



## Chapter IV

### The Many Faces of Evil: The Holocaust, Darfur and Sri Lanka

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To many of us both the understanding and definition of genocide is either closely linked or synonymous with the Holocaust. Another common perception is regarding the Holocaust as the “prototype” of genocide. These perceptions are very much prevalent in the academic arena too. Therefore, there is eventually little space left as to reflect on other issues concerning what really constitutes the Holocaust and why the Holocaust is understood and used in the ways that it is in relation to law, politics and history. For a long time in the efforts to comprehend genocide, focus was exclusively towards the Holocaust. Only minimal and cursory attention was paid to other genocidal incidents. Whenever a genocidal event was compared to the Holocaust it was done largely to set the Holocaust apart from them and not towards integrating it into the larger twentieth century phenomenon of genocide. It ended up in making the Holocaust separate and distinct. It has finally become evident that if we want to understand genocide as a concept due attention has to be given to the other cases too. Both the chosen cases of Darfur and Sri Lanka are also unique cases in themselves. This chapter is divided into three sections dealing with the Holocaust, Darfur and Sri Lanka. Each section gives a brief historical history of the incident and discusses some other related aspects of the event.

#### Introduction

To understand the discrepancy between law, politics and history, the Holocaust, Darfur and Sri Lanka have been chosen. All three of these incidents may have occurred at different times and at different places but there are a number of similarities that all three of them have. Paradoxically though their status as a case of genocide is entirely different from each other. The Holocaust was and is a universally recognised genocide, Darfur was initially not recognised as genocide and Sri Lanka is still a contested incident. In the very first glance the very status of these three cases is sufficient enough to let us know that there are influential forces that work behind an incident’s recognition as a genocide other than just being similar to the Holocaust. If

this would not have been the case then both Darfur and Sri Lanka would have been recognised as genocides as soon as the world realised that they were conflicts resulting in serious human rights infringement around the world.

### **The Holocaust**

Given the geopolitical repercussions it entails, the official recognition of genocide is a symbolically loaded, highly contested, carefully calculated and also rather infrequent event. Consider, for example, Turkey's strong (and largely successful) opposition to the recognition of the Armenian genocide; the international community's refusal to apply the word 'genocide' to Rwanda in 1994; or the whole host of current petitions to the UN and world governments to recognise the violence against various groups as genocide – the Kurds of Iraq, the Tamils in Sri Lanka or groups in Ukraine. Whenever we talk about incidents being recognised or not being recognised as genocides by the international community or individual governments a question that arises is as to why a particular incident has been or not been recognised as genocide?

During the study it has been observed that many scholars and common laymen tend to keep the Holocaust as the benchmark as to whether a genocide has occurred or not. Due to the wide coverage given and easy access regarding literature pertaining to the Holocaust it has emerged as the standard for comparing other incidents. This results into another set of important questions such as to whether making the Holocaust the benchmark is correct? Many scholars talk about the uniqueness of the Holocaust, this raises the issue that all incidents are unique in themselves and only because a particular alleged genocidal incident may not match up to the set benchmark of the Holocaust, should it not be recognised? It is not very easy to find answers to all these questions and even if we do they may not satisfy a large number of scholars. The reality is that recognising a particular incident as genocide is based much more on the nexus and role of international law, international politics and history as compared to the fact whether a particular incident is able to reach the benchmark set by the Holocaust.

## **The Final Solution**

By the year 1945, the Nazis and their collaborators had killed nearly two out of every three European Jews as part of the “Final Solution”, which was the Nazi policy for murdering Jews. In July 1941, Herman Göering authorized SS General Reinhard Heydrich to make preparation for implementing a “final solution of the Jewish question”. Under the code name operation “Reinhard”, German General Odilo Globocnik implemented a plan to murder the Jews at three killing centres established in Poland at Belzec, Sobibor and Treblinka. Some more killing centres were set up at Majdanek, Chelmno and Auschwitz also located in Poland. By the end of the Second World War, two thirds of the European Jews were dead which included women and children.<sup>291</sup> All though, the Jews were the primary targets of the Nazis whom the Nazis deemed a priority danger to Germany, various other groups too suffered at their hands such as the Romas, Polish Christians, Soviet prisoners of war, etc.

The “final solution” was not a spontaneous event it has been culminating for a long time, it took years of evolving Nazi policy. It commences with Hitler’s earliest writings which talked about how a solution was needed for the Jewish question in Europe. It was in September 1919, Hitler had penned his first political document stating that the Jewish question would eventually be solved by the removal of the Jews from Europe altogether. Hitler was obsessed with Jews and wanted to find a “final solution” for getting rid of them. The plan was to first attempt mass migration of the Jews during the 1930s and then finally their mass extermination. It was not in his early days, that he believed that extermination was the only solution for getting rid of Jews. Throughout the 1930s he believed that mass emigration was the answer. Even the anti-Jewish Legislation passed in Germany after Hitler won in January 1933 had the sole aim of designing and convincing and later coercing the Jews to leave the country. As he started believing that the free world was not ready to accept these Jews, he warned that the consequence of war would include the “annihilation” of the European Jewry.<sup>292</sup>

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<sup>291</sup> Retrieved from the Holocaust Road website <http://holocaustroad.org/2010-11readings/Doc1.pdf>, accessed on 14th March 2013.

<sup>292</sup> Retrieved from Yad Yashem, [http://www.yadvashem.org/odot\\_pdf/Microsoft%20Word%20-%205851.pdf](http://www.yadvashem.org/odot_pdf/Microsoft%20Word%20-%205851.pdf), accessed on 15<sup>th</sup> April 2016.

After the invasion of Poland in 1939, 1.8 million Jews came under German control. He did not straight away order their extermination but formulated a plan whereby all Jews living within the Reich were to be exiled to a reservation in the Lublin district of the *Generalgouvernement*. The Nazis failed in implementing this and the Nisko plan as well. By the spring of 1940, it was evident that the Lublin plan had failed as Poland did not have enough territory to spare for the Jews. So the next step of the plan was introduced which was the Madagascar plan- a plan to deport all of Europe's Jews to the island of Madagascar, a French colony in Africa. This plan was rendered unfeasible after the Germans were defeated in the battle of Britain. The Germans then attacked their former ally, Soviet Union in June 1941. Mobile killing units called *Einsatzgruppen*, along with regular army, police units and local collaborators immediately began the systematic murder of the Jews in the Soviet Union. This was the first time that systematic mass extermination of the Jews was carried out as a method of solving the Jewish question. This finally led to the events mentioned at the very beginning of the section.<sup>293</sup>

The foreign policy of Germany under the direction of Hitler aimed to establish a European empire through war and hence required to make adequate and rapid expansion of the military capabilities of Germany under this policy.<sup>294</sup> To fast track this plan of his, Hitler repudiated the effort of the other European countries by withdrawing Germany from the Geneva Disarmament Conference beginning in 1932 which aimed to avoid another European war by negotiating a reduction in armaments. Instead, Nazi Germany not only embarked on a vast military construction program with the aim of not only Europe but world domination and hence, Hitler rejected the collective security in international affairs by also withdrawing from the League of Nations at the same time.<sup>295</sup>

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<sup>293</sup> *Ibid.*

<sup>294</sup> *Supra.*

<sup>295</sup> *Supra.*

## **Holocaust: A “Benchmark”**

The Holocaust is assumed to be the prototype of genocidal experience as it encompassed virtually all genocidal aspects. Many scholars proclaimed the “universality” of the Holocaust as according to them it not only had a large scope “Holocaust covered the entire gamut of philosophical and methodological problems and, therefore, could profit those studying other “lesser” incidents of genocide”.<sup>296</sup>

During the study it has been observed that many scholars and common laymen tend to keep the Holocaust as the benchmark as to whether a genocide has occurred or not. Due to the wide coverage given and easy access regarding literature pertaining to the Holocaust it has emerged as the standard for comparing other incidents. This results into another set of important questions such as to whether making the Holocaust the benchmark is correct? Many scholars talk about the uniqueness of the Holocaust, this raises the issue that all incidents are unique in themselves and only because a particular alleged genocidal incident may not match up to the set benchmark of the Holocaust, should it not be recognised? It is not very easy to find answers to all these questions and even if we do they may not satisfy a large number of scholars. The reality is that recognising a particular incident as genocide is based much more on the nexus and role of international law, international politics and history as compared to the fact whether a particular incident is able to reach the benchmark set by the Holocaust.

One of the main problems, besides definitions, when writing about genocides is the fact that the Holocaust has imprinted itself conceptually on genocide. It is nearly impossible to talk about genocide without involuntarily comparing it with the Holocaust. This has led to confusion, as events which can most definitely be characterized as genocides will not be seen as such, simply because they pale in comparison to the Holocaust. Precisely because the Holocaust was so horrific, any other genocide might be seen as ‘less’ deserving of our attention or might not even be considered as a genocide because it does not fit the perceived standard image of genocide, that standard being set by the Holocaust. Nonetheless, making comparisons is natural. We try to locate parallels and differences which we then try to explain in

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<sup>296</sup>Henry R. Huttenbach, Holocaust or Genocide Studies? The “Apologia Rationalis” in the Journal of Genocide Research’ in *Journal of Genocide Research*, vol. 1 no. 1, 1999, pp. 7-10.

order to understand the bigger picture.<sup>297</sup> Comparative studies on the Holocaust and genocides have been growing in popularity. Most genocide research came from Holocaust research. But because of its perceived uniqueness, research in which comparisons are made between the Holocaust and other genocides is quite often viewed as illegitimate. Applying the notion of ‘genocide’ to very different historical cases has raised a number of objections, and continues to fuel the most heated of debates.<sup>298</sup> There are, generally speaking, two attitudes towards comparative studies: skeptical and optimistic. Skeptics state that historical phenomena are unique and therefore a comparison wouldn’t make sense. If the differences are too large, it wouldn’t make sense to compare. The use of a comparison is therefore limited, because things are too different. Optimists, however, see no principles which would make the comparison useless. It’s always interesting and useful because comparing different events can bring more understanding about both of them.<sup>299</sup>

According to Martin Shaw, saying that the Holocaust is the same as any other case of genocide might minimize the horrors its victims went through, but stressing its uniqueness as the only epoch in history where an attempt was made to exterminate all Jews also leaves much to be desired: other victims are left out and the general conception becomes fixed, leaving scholars unable to define genocide objectively without reference to the Holocaust.<sup>300</sup> As mentioned before, the conflicts in Yugoslavia and Rwanda in the 1990s renewed interest in the field of Holocaust (and genocide) studies. However, even though what happened in Yugoslavia reminded people of Nazi persecutions, there was still the feeling it fell short compared to the Holocaust and therefore did not deserve the label ‘genocide’. This is one of the reasons the concept of ‘ethnic cleansing’ was developed. When Rwanda erupted in 1994, world leaders did not want to acknowledge its genocidal character to avoid responsibilities. Afterwards, it was acknowledged genocide had been committed: comparisons with Nazism were unavoidable. However, the concept of ‘ethnic cleansing’ still seemed easier and without the complicated Holocaust baggage.<sup>301</sup>

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<sup>297</sup> Supra.

<sup>298</sup> Supra.

<sup>299</sup> Supra.

Due to the Holocaust being the paradigmatic genocide, it is often stated that the Holocaust as such is unique and deserves to be the epitome of evil. This puts the suffering of the Jews into an unique position which can never be reached by victims of other genocides. Simply put, while the Holocaust might be a genocide, a genocide is not necessarily the Holocaust. This is known as the ‘uniqueness question’. This so-called uniqueness is based on several arguments which are meant to show that the Holocaust is most definitely not the same as a normal genocide, but is in fact much more and much more sinister. Central to this focus on uniqueness is the conviction that the Holocaust is the only authentic case in history of a state attempting to destroy every member of an entire people for purely ideological reasons.<sup>302</sup> As such, there are two major types of opposition to any comparisons of the Holocaust with other genocides:

- 1) A metahistorical or theological position which absolutizes the Holocaust as an unique phenomenon outside of history;
- 2) Rejecting its factual likeness to other genocides.<sup>303</sup>

Due to the massive and systematic scale of the Holocaust, we necessarily think of genocide being widespread and systematic. Events not falling within these criteria can be termed as ‘genocidal massacres’, this recognizes the intent inherent in the selection of victims and can be seen as clues to possible future genocides.<sup>304</sup> One of the reasons why the Holocaust is seen as unique was that it was brought about due to modernity. As we discussed earlier, modern science and bureaucratic processes made it much easier to commit genocide, but that does not mean that genocide is a modern phenomenon per se. Lemkin himself saw genocide as something which occasionally happened in intergroup relations, just as homicide sometimes happened in individual relations. As such, it isn’t a modern phenomenon per se, but still something which needs to be prevented. Take the genocide in Rwanda, for example, even though this genocide was modern in time, it was very primitive in the way it was carried out. On the other hand, Germany was one of Europe’s most scientifically and industrially advanced countries. This excellence in science, technology and administration made it possible to commit genocide: it provided the tools and techniques necessary to

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identify, separate and annihilate Jews.<sup>305</sup> The uniqueness of the Holocaust can be found in its detailed planning aimed at the destruction of a biologically-defined group, and its implementation using administrative and industrial means by a highly civilized and culturally renowned nation.<sup>306</sup> According to several authors, part of the uniqueness of the Holocaust can be found in the ‘willingness’ of the Jews to work along with their own destruction. Had there not been a pre-existent Jewish community with its own institutions and registered membership, German authorities could not have used these institutions to define and enumerate Jews, for there was no objective indication of their alleged criteria of Jewishness – race – which divided ‘Jews’ and ‘Aryans’ categorically.

Arendt proposed that the cooperation of the Jewish leadership, the Judenratë, with the Nazis increased Jewish victimization.<sup>307</sup> To the degree Arendt criticizes the behavior of Jews in the face of the Nazis and their genocidal program, she restricts her criticisms to the Jewish *leadership* (however justified or problematic those criticisms may be). Arendt expresses sympathy and solidarity with the masses of Jews against what she regards as their betrayal by their leadership, and unequivocally rejects the notion that Jews could or should have engaged in mass resistance.<sup>308</sup> Various authors wrote about the role of the Judenräte in the destruction of European Jewry. One of the most famous Holocaust scholars, the Israeli Yehuda Bauer (born in Prague, 1926) specialized in this aspect of the Holocaust. Bauer stated that whether or not the Jews collaborated with the Nazis, they were in no position to stop them. No one knows whether more Jews would have survived if there had been no Jewish participation in the Judenräte, but the effort by those Jews in the Judenräte in trying to keep alive at least some Jews despite the Nazis plans needs to be acknowledged. Jewish resistance, or Amidah, is another area Bauer wrote about. He found that – with the options they had and under the conditions they were in – the Jewish resistance was actually quite extensive. In the ghettos, leading a “normal” life through organising schools, conducting weddings and the like, was often the only option of resistance open to the Jews. As such, by leading a “normal” life, they tried to cling on to their humanity and show people that they were not the animals others thought them to be.

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<sup>305</sup> Supra.

<sup>306</sup> Supra.

<sup>307</sup> Hannah Arendt, *Eichmann in Jerusalem*, Harmondsworth., 1994, pp. 11, 61, 117, 125, 134

<sup>308</sup> Ibid.



Yehuda Bauer distinguishes between genocide (partial annihilation) and Holocaust (total annihilation). The Czechs, Poles, Serbs and other Slavs as well as Gypsies were the victims of genocide, while the Jews alone were victims of the Holocaust: a planned, total annihilation. However, Bauer states that the Holocaust cannot be fully understood in itself nor can we appreciate its significance for other events if it is absolutely unique. His arguments are not against comparing, but against equating, which is not the same. Bauer refers to the Holocaust as being 'unprecedented', rather than 'unique'. As he sees it, the Holocaust was an extreme example of genocide: it was unique in the same way that all historical events are unique unto themselves, though even when comparing it to other events it had specific characteristics that had never happened before, being: - The ideological motivation of the killings, unlike other genocides in which ulterior motives based on physical acquisition (of land or loot) can be traced; - The totality of the Nazis' aims, according to which every Jew in the world, without exception, was the intended target; - The breadth of the Nazis' scope, which transcended borders and spread across all lands occupied and yet-to-be occupied by the Nazis' and their allies and/or supporters; and - The nature of the Nazi concentration camp system, in which mass imprisonment, ritualised degradation, and, ultimately, purpose built factories for the killing of huge numbers of people were developed for the first time in human history. Bauer's view on the difference between partial and total annihilation is easier understood when taking into account that 'only' 23,5% of the Gypsies in Nazi occupied territory were killed, whereas it reached 85% for the Jews under Nazi control. As Steven Katz stated: "in the end, it was only Jews and Jews alone who were the victims of a total genocidal onslaught in both intent and practice at the hands of the Nazi murderers."<sup>309</sup> There was no Nazi policy about having to kill Gypsies but more of an indifference to their fate once they got into a labour or concentration camp. Katz went on to say that there was no genocide of the Slavs because the Nazi intended to enslave them, not kill them.<sup>310</sup>

According to Bauer "The Holocaust has assumed the role of universal symbol for all evil because it presents the most extreme form of genocide, because it contains elements that are without precedent, because that tragedy was a Jewish one and because the Jews – although they are neither better nor worse than others and

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<sup>309</sup> Anton Weiss-Wendt (ed.), *The Nazi Genocide of the Roma: Reassessment and Commemoration*, New York, 2013, p. 284.

<sup>310</sup> *Ibid.*

although their sufferings were neither greater nor lesser than those of others – represent one of the sources of modern civilization.”<sup>311</sup> As such, Bauer sees the Shoah as the definitive yardstick against which all anti-human activities should be measured. Shaw, too, states that it currently is the Holocaust which is the standard something has to reach to be considered genocide. Recognition of such cases depends on whether they can be linked to the Holocaust.<sup>312</sup> As the Holocaust is indeed regarded as the prime example of genocide, it is the paradigmatic genocide for political manipulation of images and revising the past. Comparing something to the Holocaust is often done for political reasons or to incite certain actions. Interestingly enough, Jewish authors often prefer the term Shoah when talking about the Holocaust. Mostly, this is because, in their eyes, the Holocaust is now an overarching, inclusive, concept in which all victims of the Nazi regime are recognized. Furthermore, they resent the Christian roots the term Holocaust has. To regain the idea of an unique Jewish suffering, they have taken to use the Hebrew word Shoah, which means ‘catastrophe’. Lastly, an easy pointer towards the idea that the Holocaust is considered to be unique and cannot be repeated is the fact that we speak about ‘the Holocaust’, a singular event for which no plural form exists. As such, it becomes an exclusivity which cannot be applied to anything but the Jewish suffering under the Nazis; this uniqueness suggests that the Holocaust was both unprecedented and unrepeatable.<sup>313</sup>

We never speak about ‘holocausts’ and the question is whether we should. Even though placing too much emphasis on just how unique the Holocaust was might make it more difficult for scholars in the field of comparative genocide studies, denying its uniqueness serves no goal either. As always, the middle road might be the best one, seeing the Holocaust as an unique event in history but keeping in mind that in fact every event, every episode is unique on its own. Even though there may be similarities between certain events, this does not make them exactly the same and therefore they are all unique in their own way. Although Jews were the main victims of the Nazi genocide, they were not the only ones. Before the Jews there were the Soviet prisoners of war and before that mentally ill Germans and the Polish intelligentsia. Had the war ended a few years earlier, we might as well have meant a completely different victim group when talking about what the Nazis did. As such, the

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<sup>311</sup> Supra.

<sup>312</sup> Supra.

<sup>313</sup> Supra.

Holocaust can only be understood in the light of multi-targeted genocidal policies and war.<sup>314</sup> It was unique in the sense that every event in history is unique; neither because it is a category of its own nor because such a thing will never happen again.

Although we do not wish to believe it, there is a potential for genocide in every ethnically diverse society which has not found a way to resolve its internal issues. Even though the question about the uniqueness of the Holocaust receives much attention and demands much debate, “it remains, for those in the west, at least, the yard stick by which all mass killings are judged.”<sup>315</sup> Due to this, once interest in the Holocaust and its perceived uniqueness re-emerged in the 1970s, cases of less planned, less total and less rationalized cases of extermination have escaped observation.<sup>316</sup> Although there are some more or less coherent reasons why the Holocaust should be seen as an unique event, this does not mean we need to let our understanding of this event colour any similar events that happened and are still happening afterwards. Comparative research into genocides can benefit from tools acquired in research on the Holocaust, but it should not be defined by it. It appears that the field of genocide studies is slowly but steadily becoming a field of its own without the shadow of the Holocaust lurking over it. Even though this might be because in recent years more and more conflict which could be qualified as genocides have arisen, or simply because time is passing by and new generations use different reference points, it is not often anymore that the Holocaust is used to signify how bad an event is. Whereas quite some events are still called ‘genocide’ simply to get people to pay attention to what is happening, it seems that this is less by the linkage to the Holocaust but more because genocide on its own has become known to the general populace as absolute evil or the crime of all crimes. Recent court cases concerning genocide have not mentioned the Holocaust. In fact, the only states still acutely concerned with the Holocaust are Germany and Israel, both for obvious reasons. That being said, it can be safely assumed that the concept of genocide has managed to free itself from the burden of the Holocaust and has arisen as a genuine concept on its own.

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<sup>314</sup> Supra.

<sup>315</sup> Supra.

<sup>316</sup> Supra.

The common core of the concept of genocide, as given above, shows us that there is no need to depend on the Holocaust in order to use genocide as a scholarly framework. As such, we can move away from the current focus on the Holocaust when it comes to determining whether or not an event is genocide. There may be various reasons why the Holocaust can be regarded as unique and, hopefully, something which will never happen again, but this does not mean we need to let our understanding of genocide be based on the Holocaust. Comparative research into genocides can benefit from tools acquired in research on the Holocaust, but it should not be defined by it. Genocide studies is slowly but steadily becoming more of a field on its own without the Holocaust lurking over it. Even though this might be because in recent years more and more conflict which could be qualified as genocides have arisen, or simply because time is passing by and new generations use different reference points, it is not often anymore that the Holocaust is used to signify how bad an event is. Whereas quite some events are still called ‘genocide’ simply to get people to pay attention to what is happening, it seems that this is less by the linkage to the Holocaust but more because genocide on its own has become known to the general populace as absolute evil or the crime of all crimes. As such, it can be said that the concept of genocide has managed to get out of the shadow of the Holocaust and has arisen as a genuine concept on its own.

### **Is the Holocaust “unique”?**

Likewise the question of “uniqueness” has emerged as a highly contentious issue involving a wide range of participants, including professional academics, partisan institutions, and individuals seeking to promote specific political, cultural, and even racist agendas. For an event or occurrence to be unique, it must essentially be without like or equal. Historical events or occurrences can be judged to be singular or comparable in several respects. On the one hand, a theologian might focus on ethics and morality to define moral singularity, while a social scientist might examine bureaucratic structures and organizational procedures to identify political singularity. On the other hand, an historian might concentrate on the motivations of the actors and the series of actual events (cause) that led to a specific result or results (effect). Regardless of the benchmark used, most historians agree that, like an individual’s fingerprint, every historical event is unique in its own right, as no two situations, regardless of similarities, are ever exactly the same. It is precisely for this reason that

in contemporary historiography, one will seldom find the term the “lessons” of history without the accompanying quotation marks. Still, history is in many respects the art of drawing conclusions by using analogies and comparisons. Comparability does not, however, ipso facto equate to relativism.

Finally, the concept of “uniqueness” itself poses problems because of its many meanings and epistemological challenges. For the purpose of this essay, uniqueness will not be considered in primarily theological terms, nor will it be used to measure greater or smaller evils. This article will not engage the philosophical question of whether “the unique” exists. It is a truism that any historical event can be seen as unique in the shared memory of a particular group whose members it affected. The claim for historical uniqueness will rest on an understanding that, on an empirical-comparative basis, several of the Holocaust’s key components are genuinely singular in modern history. This evaluation is especially the case for its geographic scope, elements of the killing process, and the ideology and intentions of its perpetrators.

A total of about six million Jews died during the Holocaust. While this horrendous figure turns the Holocaust into an unparalleled event in the history of the Jewish people, it cannot serve by itself as the basis for a claim of historical uniqueness. The Bolsheviks’ genocidal policies against the ethnic minorities of the Tartars and Volga Germans during World War II, as well as the “terror famine” in the Ukraine of the early 1930s, led to the death of more than 14.5 million people. Without entering the debate over the allegedly genocidal character of the government-produced famine, the sheer immensity of the number of its victims causes one to question claims of uniqueness of the Holocaust based on the death toll.

Rather than the number of its victims, the geographic scope of the Holocaust constitutes one of the components that marks its uniqueness. The Nazis extended their genocidal policies against the Jews over all of Europe that came under their control during the war. Moreover, the protocol of the so-called Wannsee Conference of 20 January 1942 indicates that leading Nazis also envisioned the murder of those European Jews who were outside their sphere of influence. The conference, which served to secure the participation of the German ministerial bureaucracies in the Holocaust, listed, among others, the Jews of England that Hitler’s armies never attempted to conquer and those of neutral Switzerland. In the end, the Nazis

succeeded in murdering two-thirds of all European Jews. In contrast, other modern genocides did not approach the geographic scope of the Holocaust. During the genocide of the Armenians in World War I, for example, Turkish authorities limited the persecutions of their victims to the Ottoman Empire. They did not try to kill Armenian refugees in neighboring countries such as Czarist Russia. Likewise, the Bolshevik deportations of the Tartars and Volga Germans were events that took place exclusively in the Soviet Union.

A third element that sets the Holocaust apart from other modern genocides is the structure and key role of the Nazi leadership's racial ideology. While the Nazi *Weltanschauung* (world-view) did not assume the form of a coherent structure, its conception of an enemy was more stringently defined. In Nazi ideology, the Jews assumed a place below the lesser races of the Slavic peoples, whom the Nazis only deemed worthy of a life in slavery. The Nazis viewed the Jews, however, as posing a continuous lethal threat, trying to weaken and defeat the German-Aryan master race by polluting its blood and setting Western capitalism and Eastern Bolshevism against Nazi Germany. In an ideological schemata that projected a world evolving around an eternal racial struggle, the "solution to the Jewish Question" was their *Entfernung* (removal)—in whatever way imagined. In the course of World War II, this "removal" took the final form of the physical destruction of the Jews. Nazi racial anti-Semitism was not the only factor in the complex processes that led to the actual genocidal killings. Yet, without it, the Holocaust would not have taken place. Nazi ideology attributed a role to "the Jew" that it did not assign to any other group. Their physical destruction was not a means to an end, but rather one of the Nazi regime's central *raison d'être*.

The foregoing argument does not imply that other modern genocides were not also ideology-driven. However, the ideologies at stake were structurally different and often fulfilled other purposes. The genocidal killings of many Sinti and Roma by the Nazis certainly fed on ideological constructions. Yet, in Nazi ideology, the gypsy did not pose a fundamental threat as did the Jew. In the Stalinist Soviet Union the official interpretation of Marxist-Leninism lent itself to defining the relatively wealthy peasant elite of the kulaks as "class enemies." This ideology, however, did not necessitate the physical destruction of "class enemies." Unlike with race in Nazi

thought, the destruction of a class could have taken place without murdering their members.

The fourth element differentiating the Holocaust from other twentieth-century genocides, evolves around the crucial question of the perpetrators' intentions. The Holocaust represents the only incident in which the leadership of a modern nation-state intended and implemented a genocidal program to annihilate every member of a specific people it had defined. Every Jew was to be killed. Even if, as the latest studies on the topic correctly emphasize, the genocide of the Sinti and Roma resembled the Holocaust in many respects, the Nazis did not intend to murder all people defined as "gypsies." Likewise, the Turkish regime presided over the gruesome killing of large numbers of Armenian women and children. It also sought to murder the Armenians of major cities such as Smyrna, where many of the targeted population ultimately managed to survive. Nonetheless, the Turkish leadership did not intend to systematically eliminate every Armenian in the Middle East.

In some respects, it appears that the uniqueness argument approaches the debates of medieval theologians concerning the number of angels that could dance on the head of a pin. Clearly, one can attempt to so narrowly define a term as to make it exclusively applicable to one event. Or more profitably, one can recognize the singular aspects of historical occurrences and still place these events within the broader course of historical developments. In an insightful series of essays in *Murder in Our Midst: The Holocaust, Industrial Killing, and Representation* (1996), Israeli historian Omer Bartov argued that the Nazi genocide of European Jews was "unprecedented," rather than unique. Bartov's contention offers an important distinction that allows the events of the Holocaust to remain within the course of human history, while also providing the contemporary historian with a framework for comparing the multifarious manifestations of genocide and mass murder in the modern world.

The vast scope of government-sponsored acts of annihilation clearly indicates that genocide is far from a unique occurrence in this century. In contrast, the motivations behind mass murder are diverse. The motives for genocide range across a wide spectrum including ideological, religious, ethnic, racial, cultural, and economic grounds and often involve a poisonous admixture of several of these elements. In this

respect, the rationale offered by the National Socialists for the annihilation of the Jews based on a bastardized variant of Charles Darwin's theory of evolution is largely unprecedented. Even in this regard, however, there exists some debate concerning the singularity of the Jewish experience under the Third Reich. In fact, some high-ranking National Socialists sought to apply the standard of biological extermination not only to the Jews, but to the Sinti and Roma as well. For example, the Reich Minister of Justice, Otto Thierack, met with the Reich Propaganda Minister, Josef Goebbels, in September 1942. After his meeting, Thierack wrote, "with respect to the extermination of antisocial forms of life, Dr. Goebbels is of the opinion that the Jews and the Gypsies should simply be exterminated." Likewise, Edward B. Westermann in a 1998 article for *German Studies Review* reported that a senior German Uniformed Police leader in the occupied Eastern territories, recommended that Sinti and Roma with "contagious diseases" and those classified as "unreliable elements" should be "handled exactly as the Jews." It is therefore questionable as to the degree of distinction that should be made between the Jews and the Sinti and Roma. In any event, the National Socialists' use of an immutable biological standard as the rationale for annihilation was itself unprecedented.

### **Darfur: A Silent Genocide**

Darfur was the first genocide in the 21st century, a genocide that perhaps should not have happened. It is a region situated in the western parts of North Sudan, bordering Chad and Central Africa. The on-going crisis in the region is widely accepted as genocide by the United States, many humanitarian organizations, and activists throughout the world. However, the United Nations, much of the international community, the International Criminal Court (ICC), and other organizations alike have yet to constitute the crimes in Darfur as such. Instead, the situation is labelled as ethnic cleansing accompanied with crimes against humanity and war crimes; citing one of the difficulties of labelling this incident as genocide being finding it hard to prove the presence of intent and calculation.<sup>317</sup> This action has resulted in downplaying a horrible genocide which was no doubt confirmed by the US Congress and various human rights organisations. However, not only the international community was not recognising it as a genocide, the UN Commission of Inquiry had not been able to discover proof beyond doubt that the Sudanese government had

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<sup>317</sup> Supra.



intentionally indulged in a policy of genocide. Yet, the commission eventually concluded that the government was responsible for serious violations of international human rights and international law. While the legal experts very busy debating whether this particular incident fell under the category of genocide or not specially due to the definitional conundrums, the Commission admitted that the Sudanese government and its militia had and were conducting “indiscriminate attacks, including killing civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement, throughout Darfur”.<sup>318</sup>

The failure of the UN legal experts to prove that genocide was taking place in Darfur initially appeared to be welcome by nations around the world. Most probably because it freed them from any kind of responsibility and commitment to intervene and stop the ongoing slaughter of innocent civilians in Darfur as stipulated under the UNGC. Instead of taking action, the international community shamelessly had offered humanitarian aid and the prosecutions made by the ICC, financial expenses of the African Union Mission in Sudan (AMIS) and the peace talks in Abuja. There is a wide belief that the current conflict in Darfur began as a result of one instance of violence acted out by the rebel groups in 2003 in El Fasher. However, there is a long history of ethnic violence, tension, and deprivation in the region of Darfur, which refutes the idea that one mere instance of violence, could possibly be held responsible for the last decade of violence.<sup>319</sup> Additionally, the conflict has been portrayed as one with only two parties: African farmers and Arab migrants. This is a surface level evaluation that does not provide enough context for an outsider to fully understand the parties to the conflict and their roles within it.

While most of the violence has been inflicted upon the African population of Darfur by government-controlled forces (who are of Arab descent), it is not correct to attribute the conflict to racial differences and racial differences only. There are economic, agricultural, social, and political issues that penetrate the on-going conflict and that have perpetuated Darfur’s alienation from Khartoum for decades. Peace in Darfur and the entirety of Sudan are directly related to the stability of relations between the North and South, which have been shaky since the South’s independence.

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<sup>318</sup> UN Commission of Enquiry

<sup>319</sup> Supra.

Oil reserves that were once in Sudan's control are now in the South's jurisdiction, which has depleted Sudan of its main export and has had an extremely detrimental effect on the Sudanese economy. The last few years have been ridden with conflict between the North and South over oil control, with the South shutting down all oil production in December 2011 due to a disagreement over transport fees. This oil disagreement, in addition to specific border disagreements, has resulted in a resurgence of violence in South Sudan, Darfur, South Kordofan, the Blue Nile, and the Abyei area.

Additionally, unprecedented civil unrest and protest occurred at the beginning of June through the beginning of August in Khartoum and other parts of Sudan, in response to austerity measures that President Bashir announced in order to boost the economy. Protestors began calling for regime change and persisted through harsh repercussion by government forces. The unrest began to settle when the North and South reached an agreement on oil on August 2nd, 2012, although the problems between the two Sudans still have a way to go. As for Darfur and Sudan there was another key factor that would create devastating consequences: oil. Resources of oil are mainly located in the South of Sudan whereas the port is located in North of Sudan, as it borders the red sea. A conflict between the two parts became inevitable due to the location of oil resources and the port.

The historical background of Sudan is more complicated than the one of Rwanda. Sudan as a country had been suffering from two conflicts: the one between the religious groups in north and south, and the second one between the government of Sudan (the Janjaweds) and the rebels of Darfur, both are relevant for the progress of the development of genocide in Darfur.<sup>320</sup> Sudan does also not, as opposed to Rwanda, have only two different ethnical groups – instead the division of the country goes far beyond that and the population is strongly divided by ethnic, linguistic, and religious differences. Sudan's nearly 600 ethnic groups spoke more than 400 languages and dialects in year 1991 which created fundamental problems for the country as a whole<sup>321</sup>. In terms of religion, Sudan is represented by three main groups: Christians, Muslims and the non-religious groups. Due to the different ethnicities,

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<sup>320</sup> CRS Report for Congress, *Sudan: The Crisis in Darfur and Status of the North-South Peace Agreement*, March 27, 2007, retrieved at <http://fpc.state.gov/documents/organization/84929.pdf> , accessed on 21<sup>st</sup> July 2014.

<sup>321</sup> *Ibid.*

conflicts have escalated throughout the country; however it has also increased the importance of one's ethnicity rather than one's religion.

Historically, this derived from the colonial masters of Sudan, Egypt, until a joined colonization by a combined British-Egypt rule<sup>322</sup>. Indeed, such differences were reinforced when the Anglo-Egyptians rule the country. The Europeans on the other sides were appeasing the Arabs so that they kept Egypt under control and therefore the Muslims were more respected than those of African descent.<sup>323</sup> In 1956 Sudan gained their long wanted independence from British / Egyptian rule. The independence itself would however lead to a rough future with constant political unrest; two years after the independence a wave of military coups started that would take place until the beginning of the 1970s. These military coups involved, to name a few, the October and the May revolution. A reoccurring problem in Sudan was that herders and farmers were fighting for water and arable land – a scarce 14 commodity in the country. Historically, the main problems were between the South of Sudan and the main capital Khartoum. Civil wars that would characterize the independence of Sudan would constantly remove and recreate governments in the country<sup>324</sup>.

In 1972, peace agreements were finally signed and the South area of Sudan became a self-governing region – a step in the right direction as the Christians and Muslims could rule their respective areas in the south and north. Only a few years later, oil was discovered in south of Sudan which would act as a catalyst for conflicts into the upcoming years. In 1983, the Sharia law (Muslim law) was imposed for the first time in Sudan by the current president, which caused even further tension between the two groups. The upcoming years were characterized of domestic conflicts between the north and south. In 1999, the exportation of oil started for the first time and was shipped mainly to China. The military coups were far from over and civil war was just around the corner. Peace agreement after peace agreement failed to be signed. A few years earlier the US also took greater involvement in Sudan when the UN was putting sanctions on Sudan as a country resulting from suspicions of Sudanese involvement in the attempt of an assassination of Egyptian president Mubarak. China's, the US and the UN's early involvements in the country are important to keep in mind.

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<sup>322</sup> C.D. Mareng, 'The Sudan's dimensions: A country divided by ethnicity and religion' in *African Journal of Political Science and International Relations*, vol. 3 no. 12, pp. 532-539, December 2009.

<sup>323</sup> *Ibid.*

<sup>324</sup> *Supra.*

The pressure for signed peace agreements continued and in the upcoming years Sudan managed to take steps forward in the development of terms of commonly made agreements, but also steps back as these developments often take backfire from one direction or another.<sup>325</sup> In 2002, Kenya managed to convince the government in the north and the rebels in the south to reach a breakthrough in peace agreements that were important for both Sudan and the outside world – this breakthrough divided the oil resources and revenues in the country. However, the peace agreements would be jeopardized only a year later when the rebels in the area of Darfur attacked the government due to the neglected and suppressed attitude that the area had suffered from. Since the beginning, Darfur was disappointed with the fact that they did not get a hold of the profits of oil like Sudan currently was making – instead these profits stayed within the government and main capital Khartoum. Darfur itself was very poor and in need of these revenues as well. The government answered the rebellions with their own military troops: the Janjaweds.<sup>326</sup> In year 2003 the rebel inhabitants in Darfur had enough with the Sudanese government mistreating them, and decided to carry out an armed attack against the government. These weapons were provided by the SLA (Sudan Liberation army) and the JEM (Justice and Equality Movement), two rebel groups in the area. The Sudanese government was quick to respond with “the devil on horseback”, also known as the Janjaweds. Together with the Sudanese government, the Janjaweed attacked several villages and killed hundreds of thousands of people over the course of several years.

From July 2003, The Janjaweds attacked the people of Darfur both from land and air. By using mass slaughtering techniques and systematic rape, they created chaos in the area where hundreds of thousands ended up dead, and even more were displaced from their home. Rape was a common weapon and the women that were not slaughtered were instead sexually abused with the goal that they would become pregnant and then rejected by their own families<sup>327</sup>. On the side of the conflict in Darfur there was also the fragile situation between the South and North which had been problematic for years – peace agreements were about to be established in 2003 but had not been signed. These peace agreements would be one of the major blockades as to why the

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<sup>325</sup> *Ibid.*

<sup>326</sup> *Ibid.*

<sup>327</sup> Retrieved at Human Rights Watch website, <https://www.hrw.org/reports/2004/sudan0404/sudan0404.pdf>, Human Rights Watch Report 2004, accessed on 15<sup>th</sup> September, 2014..

peace commissions would be delayed. Due to the major ethnic differences in the countries, situations similar to this one would continue to bring problems into the area<sup>328</sup>. As the genocide progressed, thousands of people fled from the West of Sudan and its brutal violence towards neighboring Chad in order to seek protection. To hide in Chad was at the beginning, a good solution for the people of Darfur, but as the conflict escalated the Janjaweed came closer and closer to the border, and would eventually cross it. This meant an even more difficult situation for the international society to face now that the rebels were moving across border without anything to stop them. By 2004, millions were displaced, and this number would continue to increase throughout the years of the genocide.<sup>329</sup> Sadly, the even today the conflict is still going on.

Mukesh Kapila, the then UN Resident and Humanitarian Coordinator, Sudan had by now sent so many resolutions to the UN that brought the issues in Darfur into the eyes of the public by using the BBC and Radio 4, that he explained what was going on in Darfur and how the world had become silent viewers of the situation. "This is ethnic cleansing, this is the world's greatest humanitarian crisis, and I don't know why the world isn't doing more about it." – he described how villages had been burned to the ground, how aid supporters were not able to reach the areas in where they are needed, how women and children are systematically raped in front of their fathers, before they, along with their fathers, were slaughtered. He described how the mass movement towards Chad had started to take place and that over 100,000 people had already crossed the border. Kapila claimed that over one million people in total were at the time affected by the ethnic cleansing in Darfur<sup>330</sup>. Media was now involved in the situation, which created change for the people of Darfur – but it took time. The same year the conflict is also called genocide officially by civilians such as U.S. Secretary of State Colin Powell. He described Darfur killings as genocide based on interviews he had made with refugees in the area. It was concluded that genocide had been committed in Darfur and that the government of Sudan and the Janjaweed should bear responsibility and genocide may still be occurring.<sup>331</sup>

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<sup>328</sup> *Ibid.*

<sup>329</sup> *Ibid.*

<sup>330</sup> *Supra.*

<sup>331</sup> British Broadcasting Corporation, retrieved from [www.bbc.com](http://www.bbc.com), on air in 2004, accessed on 21<sup>st</sup> September 2014.

To term the violence in Darfur “genocide” did not become an internationally controversial topic till 2005, two years into the violent events, instead the correct terminology would have to wait and in turn create further consequences for the people of Darfur. By mid 2005 AMIS had around 7000 military observers active in the area of Darfur – all working for the same goal. AMIS lacked the money and logistic knowledge. Their performance in Darfur and the peace keeping missions therefore took time and were not as effective as the situation required them to be.

The UN establishment of The Responsibility to Protect, which was an initiative concerning the sovereignty of a country in terms of different violations of human rights, including genocide, came in year 2005. The R2P states that a country is responsible to protect its inhabitants from mass atrocities. The international society was responsible to help the country prevent it from such, and they were also responsible to intervene if a country failed to protect their citizens. At the time, the R2P offered exactly what the people of Darfur needed – an initiative that made it possible for the international society to intervene. The R2P relies upon three pillars: “1. The State carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement; 2. The international community has a responsibility to encourage and assist States in fulfilling this responsibility; 3. The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations”.<sup>332</sup>

Still, the RtoP did not make any major differences for the people in Darfur, and the genocide went on for two more years and change would instead come from a more or less unexpected angle. The reason for why the RtoP did not work was mainly due to the fact that the Sudanese government did not follow through with any of sanctions, actions or other recommended behaviour by the UN. The RtoP has also been criticized as the problematic of the principle itself has created grounds for dilemmas. These dilemmas does, for example, bring up the issue on where the international society should emphasis human rights and when it should emphasis the sovereignty of

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<sup>332</sup> World Summit outcome Document 2005, retrieved from [www.globalr2p.org/about\\_r2](http://www.globalr2p.org/about_r2), accessed on 21<sup>st</sup> September, 2014.

the country concerned. This can then be further discussed in terms of state security or human security and how the RtoP is supposed to choose which one to protect or focus on first. The last highlighted problem with the RtoP concerns the international community that is mentioned within the definition of the RtoP – the definition of the so called international community is not given, and once again a dilemma within the RtoP is given<sup>333</sup>. In March 2005 UN decided it was time to intervene with the situation and created the United Nations Mission in Sudan (UNMIS) in Darfur – the organization itself had earlier been active in Sudan because of the hunt for a peace agreement. However, Darfur had not been their aim. The peace agreements between the north and south were finally signed through CPA – Comprehensive Peace Agreement. This peace agreement did not make a difference for the people of Darfur. There was a great understanding that this CPA would not remain stable unless the violations in Darfur also stopped – a stable nation does not suffer from genocide in one area and remain stable everywhere else. The problems in Darfur would remain, which would call for a further creation: UNAMID – a mission that would not be applied properly until year 2007<sup>334</sup>.

In 2006 the border crossing to Chad started to take place not by the refugees or others that were fleeing for their lives, but instead by the Janjaweds who decided to start their mass murdering on that side of the border. Aid that had earlier been provided without any major disturbance was now threatened<sup>335</sup>. The president of Sudan at the time also swore that there will not be any international military intervention in Darfur as long as he was in power. Sudan, which was the first country south of the Sahara to gain independence, cannot now be the first country to be recolonised.<sup>336</sup> The same year, China was also the biggest investor in the oil industry in the country – the power that China had in the country was not used in order to press the government of Sudan to change their violations of human rights<sup>337</sup>. It is no secret that China, as many other countries in the world, were lacking oil and were hunting for investments for their own gain. The energy investment in Sudan can be discussed as numbers and show how the military expenditures in the country had risen in the same speed when the oil began to be exported in 1997. China had of course denied any kind of involvement in

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<sup>333</sup> *Ibid.*

<sup>334</sup> *Supra.*

<sup>335</sup> *Supra.*

<sup>336</sup> *Supra.*

<sup>337</sup> *Supra.*

the provisions of weapon to Sudan. However, the coincidence is remarkable and would also later on be one of the reasons for why change in Darfur would come<sup>338</sup>.

Once again the self interest of a country, in this time China who was in need for oil, becomes visible and ends up being a higher priority than helping people in need. UNAMID -a hybrid between the UN and the AU was created in 2007 to complement one of the UNSC resolutions the same year that the crisis in Darfur needed to be faced. This was four years after the conflicts and violations had started which remained unsolved. The AU and the UN had not managed to solve the situation on their own and cooperation between the two was seen as another possibility to solve the issues in the area of Darfur. This was possible due to Resolution 1769 signed 31st of July 2007. AMIS would in time dissolve and appear under UNAMID only - numbering 19,555 troops, including 360 military observers and liaison officers, as well as 3,772 police personnel, including 19 police units of 140 officers (Resolution 1769 2007). The UN and the AU obviously had major interference in the area of Darfur. There were many different opinions in the UNSC itself that are worth taking a deeper look into, both the opinions and arguments of China and the US.

As noted previously, China abstained from several of the above highlighted resolutions made by the UNSC and it is therefore important to highlight their role in the genocide in Darfur. As mentioned, oil in Sudan was discovered a year earlier – a discovery that China had been fast to invest in. To keep their relation with the Sudanese government stable was of major importance for them, which could to some extent explain their non existing willingness to send troops to the area of Darfur. As the government was supporting the Janjaweed, which they probably did not speak loud of even if there was reports of such cooperation, the last thing they needed was UN presence in the area – and in line with realism the lack of a working international organization would also delay the UN presence. Throughout the genocide of Darfur, the US raised several resolutions in the UNSC but the genocide still took years to face – due to weak resolutions, abstentions or weak peace campaigns in the areas. The US involvement in these delays was of particular interest. Above mentioned is the strict relationship between China and Sudan, which could be one of the motivations of China's delay in action.

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<sup>338</sup> Supra.



The American relationship to China must also be considered. Over the years the two had disagreed on more than one problematic area, and to once again disagree over the situation in Darfur was not a preferable situation. At the time of the genocide in Darfur the US was being criticized internationally. In 2003 they had – without the agreement of the UNSC – invaded Iraq. The UNSC permission to do so was required, as always for such missions, however this time the present government of the US did not follow the regulations. In the aftermath of the invasion, the world, and of course the US themselves, were aware of the mistake they had made. To keep a low profile of major interest and the US did indeed vote for a change in Darfur and was promoting it, but to take steps further and act was not on their agenda. The self interest of the US did not reflect the need of the people in Sudan, and therefore change could be argued for without any actual change.

In many cases this can be seen in the careful choice of words in the resolution posted in the UNSC which argued that they would consider taking measurements, and so on. The UNSC did however ask the government in Sudan to reduce and disarm their government troops – a deadline for doing so was however not set, and when the disarmament did not come, neither did any sanctions. Booker (a US liberalist) argued through Counterpunch: Once upon a time, Washington could have exercised its clout as the most powerful nation in the world and handily won over the support of these recalcitrant members. But now, the country that cried wolf has lost the moral authority it needs to rally its global neighbours to real action against genocide in Darfur.<sup>339</sup> The US themselves had not been taking part of the oil revenues in the country nor invested in them. In many cases it seemed as if the peace agreements between north and south were of major concern to the US, and that the problems in Darfur would have to wait – a fact which would be extremely criticized in media. Again and again it is said that “something” must be done. “Humanitarian forces” and “U.S. peacekeepers” must be deployed immediately to stop “ethnic cleansing.” UN troops or NATO forces must be used to stop “genocide.”

The U.S. government has a “moral responsibility to prevent another Holocaust.”<sup>340</sup> On the 31st of July in 2007 the people of Darfur could finally see the end of a five year long genocide through the resolution 1769 mentioned above. The power of media

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<sup>339</sup> Supra.  
<sup>340</sup> Supra.

would however be one of the strongest pulling forces in creating change in the UN. Many individuals, since the outbreak of the genocide in Darfur, reacted strongly in the public media to the fact that the UN and UNSC were so slow in taking actions against the government of Sudan and the Janjaweed. The Chinese Olympics in Beijing was just around the corner in 2008, and slowly, individuals such as Eric Reeves started to use mass media in order to promote this Olympics as the Genocide Olympics. The Olympics were of major importance to China as they would finally get the chance to show their great developments as a nation – and any kind of negative publicity could potentially destroy their vision of showing their success.<sup>341</sup>

The force of the new promoted Genocide Olympics hit hard on China, and in 2007 the world could finally watch as the Resolution 1769 finally was voted through the UNSC without any abstentions and the UNAMID was finally set in order to face and end the genocide in Darfur (Resolution 1769 2007). The ICC investigation on Darfur and Sudan was officially opened by the prosecutor on June 5<sup>th</sup> 2005 after a demand from the UNSC. Even in the current phase there are four ongoing cases which have suffered from major complications as the Sudanese government has refused to comply with the ICC. However, some culprits being prosecuted had appeared willingly in front of the court. The president of Sudan at the time of the genocide, among others, received arrest warnings issued in 2009. The former president and others were held for their responsibility of the violations of human rights in Darfur. The trial date was set to May 5<sup>th</sup> 2014 and their punishment is still to come<sup>342</sup>.

### **Legal and other remedies undertaken**

The discrepancy between international law and politics can be easily understood by the latest developments in case of Darfur. On July 14, 2008, Luis Moreno-Ocampo, the Prosecutor for the International Criminal Court (ICC), arraigned and connected for the capture warrant against President Omar al-Bashir of Sudan. The charges included five counts of wrongdoings as a detriment to mankind for homicide, elimination, coercive exchange, torment, and assault; two checks of war violations for

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<sup>341</sup> Supra.  
<sup>342</sup> Supra.

"purposefully coordinating assaults against a regular citizen populace in that capacity or against individual regular people not joining in dangers... and looting"<sup>343</sup>.

The occasions utilized the opportunity as confirmation for the prosecution and the warrant stated that the struggle started in March 2003 even though struggle and strife has been available in the region for any longer. Darfur, a district that lies amongst Sudan and Chad, experienced inconvenience amid the 1980's from a common war in Chad that overflowed into the domain and also issues later on in the 1990's from Chadian Arab bunches attempting to seize land<sup>344</sup>. Furthermore, the administration in Khartoum, the state capital, had a proclivity for "tending to neighborhood [Darfurian] clashes by dispersing arms to the other side to stifle the other—a strategy that quite often descended for the Arabs"<sup>345</sup>. A case of this is the focal government's backing of the Janjaweed, a fragment of Darfur's camel-crowding Arab tribes and other Arab workers from Chad who needed a cut of Darfur<sup>346</sup>. The focal government made an arrangement with these Arab bunches where they would give the gatherings a chance to seek after their own motivation until the length of time they smothered any insubordination in the zone<sup>347</sup>.

The ICC's Pre-Trial Chamber I had proof, stating the occasions beginning after March of 2003, that Al-Bashir and other military pioneers had wanted to assault the regular citizen populace of Darfur, to be specific the Fur, Masalit and Zaghawa tribes whom they accepted to be a piece of the uprising in the territory and in addition near the Sudanese Liberation Movement/Army (SLM/An) and the Justice and Equality Movement (JEM) (ICC, 2009). The strengths utilized amid the assaults incorporated the Sudanese Armed Forces, the Janjaweed state army, the Sudanese Police Forces and the National Intelligence and Security Services (NISS), and the Humanitarian Aid Commission (HAC) and as indicated by proof submitted to the Pre-trial Chamber I, these were the particular gatherings that carried out the recorded atrocities and wrongdoings against mankind<sup>348</sup>. The Pre-Trial Chamber I likewise had proof that Omar al-Bashir assumed a crucial part in these assaults and in addition having "full

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<sup>343</sup> *Supra*.

<sup>344</sup> Alex De Waal, 'Darfur and the Failure of the Responsibility to Protect' in *International Affairs*, vol. 83 no. 6, November 2007, pp. 1039-1054.

<sup>345</sup> *Ibid*.

<sup>346</sup> *Ibid*.

<sup>347</sup> *Ibid*.

<sup>348</sup> *Supra*.

control of all branches of the "mechanical assembly" of the State of Sudan, including the Sudanese Armed Forces and their associated 20 Janjaweed local army, the Sudanese Police Forces, the NISS and the HAC" and utilized them to actualize the Government of Sudan counter-uprising effort<sup>349</sup>. With this confirmation, the Pre-Trial Chamber I could issue a warrant of capture, the first of its kind for a sitting head of state, on March 4, 2009.

Sadly, regardless of these legal steps being taken against him he is free and roams around the world meeting state heads without any hindrance. This is very much the picture of the discrepancy that is ever prevalent and has not let genocides come to an end even today.

### **Sri Lanka**

It has been alleged by a number of international actors that even in the narrowest theoretical approach, Sri Lanka's treatment of its Tamil community during the armed ethnic conflict constitutes genocide. These allegations had garnered immense support around the world after the military action taken by the Sri Lankan government for the annihilation of the Liberation Tigers of Tamil Eelam (LTTE) in 2009. These notions are allegedly based on the politics of race that have dominated Sri Lankan elections since its independence. It has been claimed that since independence the Sri Lankan governments that have come to power have been invariably those that had espoused the anti-Tamil card. Civil rights activists have claimed that when during the conflict when Tamil families were being hacked to death or burnt alive in the streets, in their homes, workplaces and temples, the then President Jayawardene came on radio for the first time and instead of either apologising or promising protection to the Tamil people during the alleged pogrom, he chose instead to talk about the "suspicion between the Sinhala and the Tamil people" which, he said, began in 1956. He further added that the blame of the pogroms lies on the desire of the Tamil people for separation which he said began in 1976. It has been claimed by human rights activists around the world that President Jayawardene's speech made no rational sense outside of genocide theory. Therefore, arises the foremost question as to whether the war crimes during the war fall under genocide or not?

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<sup>349</sup> Supra.

Before trying to interrogate as to whether the acts of violence against the Tamil population during the military action taken by the Sri Lankan government falls under genocide or not, it becomes essential to first go into the history of the conflict that had plagued the island nation for ages. Regardless of the fact that it resulted into a full blown war in 2009, the relations between the Tamils and the Sinhalese have not always or consistently been antagonistic. In the ancient times, such conflicts happened only in times of external threats from South India after the formulation of clear Sinhalese and Tamil ethnic or cultural identities during the 9th or the 12th century had come into place formally. In those times, these wars were wars of dominance which were fought between regional rulers and were not 'race' wars as came to be observed and defined later.

The historical chronicles compiled by Sinhalese Buddhist monks during those times have further defined these wars as campaigns undertaken to protect Buddhism and the Sinhalese nation. In the modern times, due to mainly the reach and reinforcement by formal education, many Sinhalese had accepted these problematic interpretations as fact. Hence, in the eyes of many Sri Lankan inhabitants of the island, these interpretations not only suggested a long and bloody tradition of conflict but where hope for any kind of reconciliation was seen as minimal. Significantly, with the passage of time the interpretations of this conflict, hand in hand with their potent and emotional undertones found their way into school textbooks, which as in any developing nation are an important aspect of social and political socialization in contemporary Sri Lanka. In the meantime, around one million Indian Tamils were disenfranchised in 1948 under the Ceylon Citizenship Act. Out of these, approximately 350,000 were repatriated to India under the Indo-Ceylon Agreement of 1964. Over the years, subsequent governments conferred citizenship rights to the rest. This Ceylon Citizenship Act not only served to reinforce the long going ethnic politics but further went on to reduce the electoral leverage of the Indian Tamils who ended up being an impoverished community at the time of the military action. `

Eventually, due to these incidents the forces of Sinhalese notions of nationalism ended up aggravating the thoughts of eternal conflict with Tamils which had been gathering strength since before independence in their hearts and minds. Many of these people were those Sinhalese-educated rural people whose nationalist aspirations of cultural transformation, power and status had not automatically materialized with

independence of the island. Hence, soon after declaration of independence of the nation it was clear to see that a conflict was emerging between these various groups residing within the island nation since ages.

This ethnic conflict was not always armed in nature but it all changed in the late seventies and the early eighties. Until the early 1980s the destruction of property and life was minimal because of the ethnic conflict as it was primarily limited to the political arena, but it had not been totally free of violence. Violence had occurred on a number of occasions such as the passing of the “Sinhalese Only Bill” in 1956, riots in 1958, 1977, 1981. In 1978, the Tamil Tigers later known as the LTTE had even carried out a number of bank robberies and assassinations of a number of police officers. Many of these officers were even Tamil as they were considered traitors. This had led to massacres of the Sinhalese and the Muslim civilians in the border villages and contested areas. Many observers are of the view that the most destructive riots took place in the year 1983 and proved to be a turning point in this long standing conflict. This view point has culminated from the observation that sporadic instances of violence were gradually giving way to institutionalised political violence by both the political parties in power and also by the Tamil youth who had started organising themselves into armed guerrilla outfits. This resulted in the militarization of the entire ethnic conflict. Due to the failure of the parliamentary politics and the ever rising frustration among the Tamil Youth, some of these youth organised themselves into armed groups with the aim of seeking independence from the ruling Sinhalese population. One of these groups later came to be known as the LTTE.

The Sri Lankan government on 19th May’2009 declared victory over the LTTE bringing to an end the 26 year long armed conflict which resulted in about 80,000 to 100,000 deaths. This conflict resulted into unnecessary civilian suffering and casualties due to repetitive violations of the laws of war by both the Sri Lankan armed forces and the LTTE. Hence, even today Sri Lanka remains a contested case of genocide.

### **Violations by the Government**

The government armed forces indiscriminately without distinguishing between civilians and combatants, shelled at densely populated areas by using heavy artillery. The armed forces kept on attacking the “no-fire zones”, “safe zones” declared such on three different occasions and even at or near hospitals on at least nearly 30 occasions. The Sri Lankan government officials tried to justify these attacks on the civilian population by arguing that these people remaining in these zones were LTTE sympathizers and therefore the government was right in targeting them. This indicated to the outside world that the government intended to commit war crimes.

### **Violations by the LTTE**

On the other hand the LTTE due to the government offensive operations drove civilians into a narrow strip of land on the island’s north-eastern coast, ending up using several hundred thousand people as human shields. All those civilians who tried to flee the area were shot at and ended up as either being injured or killed. The LTTE was still forcibly recruiting civilians which included children. Not only this, the civilians were being forced to do hazardous labour on the battlefield. Eventually, the civilians caught in between this military action ended up without food, water, shelter and medical facilities. To make matters worse, the Sri Lankan government had already in September 2008 ordered the international and regional humanitarian agencies out of the LTTE controlled areas. All this ended up in the manipulation by both the government and the LTTE of the aid delivery for the civilians and undoubtedly further contributed to the deepening of the humanitarian crisis to such a large extent. According to estimation by the United Nations (UN henceforth) at least 7,000 people were killed and 13,000 were injured during the last five months of the war in 2009.

## **Conclusion**

Over the last few decades the Holocaust has been lifted out of its original contextualisation in the category of genocide and became the “master” category of the discourse as it has come to be seen as the paradigm and prototype and as being unparalleled, unprecedented and unique in history. This has consequently affected the definitional part of the genocide discourse and also resulted in making the two concepts almost inseparable. This was the contextual explanation for why the Holocaust is the point of departure for all scholars when they seek to define the concept of genocide. The various definitions whether laid down by the UNGC or Lemkin or other prominent scholars related to different fields pertaining to both genocide and Holocaust, eventually aim to understand the uniqueness or universality of both genocide and the Holocaust. While the Holocaust still is and essentially will remain the reason both the concept ‘genocide’ and the Genocide Convention exist, they are slowly but steadily moving away from their origin. Whereas the Genocide Convention is, of course, somewhat more static than the scholarly concept of genocide, the Convention too is being read differently nowadays than it was in the beginning. The most important problem the Genocide Convention has had since it was signed, was the exclusive character it described to the different protected groups. As article two of the Convention shows only “national, ethnical, racial or religious group[s]” are protected, and those groups alone. Earlier efforts to include, for example, political groups were swept aside because the then signatory states, mostly the communist countries, did not wish to see this group included.

However, since political groups are one of the most persecuted categories of groups these days, this can be seen as a significant problem concerning the definition given by the Genocide Convention. As such, it is noteworthy that the International Criminal Tribunal for Rwanda determined in the case against Jean-Paul Akayesu that all “stable and permanent groups” were protected by the Convention and as such reinterpreted the Convention to apply to all people who were to be victimized merely on the basis of perceived membership of a certain stable and permanent group. While not directly including political groups, for these are more ‘flexible’ and easier changed, this does open the way for a broader interpretation of the Genocide Convention by other international tribunals and courts. Although neither the ICC nor the ICTY have developed this further, there is quite some potential in this landmark case to further



develop which groups exactly are entitled to protection under the Genocide Convention.

Hopefully, more research into the effects and follow-up of this case is underway and especially that scholars and international lawyers will take the opportunity presented by it to move further with the definition of genocide under the Convention. With regard to the scholarly definition of genocide, this too has been developed much further since its original conception. Various authors have added to the work of Lemkin and have come up with theories of their own. As one can see it, one of the more important realizations in the context of a genocidal continuum is that it starts relatively small, with isolating the chosen victim group in various ways. This is mostly done through dehumanizing the members of the group as to remove them from the universe of obligation of the rest of society, be that perpetrators or bystanders. As a synthesis based on the work of multiple scholars, combined with some other findings, as to ease the problem of definition that currently is found in the field of genocide studies is done, one can propose that this definition be used from now on and that, if other authors wish to engage in theoretical work, that they expand upon the definition and process. All that is left now is to answer the question; has the concept of Genocide been able to get out of the shadow of the Holocaust and what does this mean for the analytical and normative value and the use of the concept as such? As this question has been answered in various sections of this chapter, one can just answer in the affirmative.

The common core of the concept of genocide, as given above, shows us that there is no need to depend on the Holocaust in order to use genocide as a scholarly framework. As such, we can move away from the current focus on the Holocaust when it comes to determining whether or not an event is genocide. There may be various reasons why the Holocaust can be regarded as unique and, hopefully, something which will never happen again, but this does not mean we need to let our understanding of genocide be based on the Holocaust. Comparative research into genocides can benefit from tools acquired in research on the Holocaust, but it should not be defined by it. Genocide studies is slowly but steadily becoming more of a field on its own without the Holocaust lurking over it. Even though this might be because in recent years more and more conflict which could be qualified as genocides have arisen, or simply because time is passing by and new generations use different

reference points, it is not often anymore that the Holocaust is used to signify how bad an event is. Whereas quite some events are still called ‘genocide’ simply to get people to pay attention to what is happening, it seems that this is less by the linkage to the Holocaust but more because genocide on its own has become known to the general populace as absolute evil or the crime of all crimes. As such, it can be said that the concept of genocide has managed to get out of the shadow of the Holocaust and has arisen as a genuine concept on its own.

The Holocaust, Darfur and Sri Lanka give us a glimpse of the reality of not only the Holocaust, which is probably one of the most devastating “moral wrong” ever committed by humans against their fellow humans in the history of the modern civilised world but also of the other incidents such as Darfur and Sri Lanka where weapons were used on civilians by their own governments. Today, with the developments that we have achieved in numerous fields like science, technology, travel, communication, health, diplomacy, media, etc. we are no longer confined to the political boundaries of our native states but have become citizens of a globalized village. If not physically, development has made us so capable that we can travel the world virtually at the click of a mouse. One would assume that this development that has been brought about after actually suffering and having faced the threats of total world annihilation many times since the Second World War concluded in 1945, would have made us better humans and citizens of this world but sadly it does not seem to be the case. All these three case studies are examples of this ongoing infringement of the innocent civilians.

## **Chapter V**

### **The Paradigms of Genocide: Comparative Analysis of the Holocaust, Darfur and Sri Lanka**

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The chapter presents a comparative analysis of genocide in the case of the Holocaust, Darfur and Sri Lanka. The Holocaust has been recognised as genocide universally whereas Darfur genocide was not initially recognised as genocide and Sri Lanka is still a contested case. The chapter compares the three case studies based on the ten stages of genocide as developed by Prof. Gregory H. Stanton. This framework is being used to bring out the discrepancy between law, politics and history as witnessed in these three cases.

#### **Introduction**

The Holocaust, Darfur and Sri Lanka are the three case studies chosen to examine the discrepancy between law, politics and history which does not let prevent or abolish genocide from the face of the earth. Atrocity crimes such as the genocide continue to occur in many parts of the world. It is our responsibility as fellow human beings to protect these vulnerable populations from these most serious crimes. All after every genocidal incident there are calls for responsibility but shunning this responsibility is too common. The international community has been held responsible for shunning it's responsibility in a number of genocidal incidents such as Rwanda, Darfur, etc. Genocides is not a spontaneous crime, it build up over years and hence, the first thing we can do is to pay attention to the warning signs. There is a sequence of events which ultimately lead to genocide, combined with these historical build ups and triggering factors, a genocide occurs.

This study has chosen the risk assessment tool of ten stages of genocide as formulated by Prof. Stanton. It has been conceptualised on one principle i.e. prevention from genocide. It is a guide for assessing the risk of crimes such as genocide and promotes action, improve monitoring and give early warnings. This tool will be used to examine each of these three cases, firstly, to decide whether they should be recognised as genocide or not regardless of the current status of each of them and

secondly, to compare each of these cases with each other in order to analyse their similarities and differences and how these two have influenced the status of these three as genocides. These differences in their status as genocides also bring out the discrepancy of law, politics and history to light as the result of the examination of these three cases by these two frameworks maybe contrary to the existing status of each of the cases. One benefit of analysing these case studies on the basis of this framework is to come to a conclusion regarding the capabilities of this tool in predicting future genocidal incidents. As this theory has been formulated on the principle of prevention and early warning a recognised case such as the Holocaust, a case like Darfur, which was initially rejected as a genocide and eventually recognised and a contested case such as Sri Lanka are perfect to check the credibility of these two tools.

### **Comparative Analysis**

As the Second World War came to an end in 1945 with it came to light the real magnitude of the crime came as the holocaust in the public arena. With the passage of time the world community realised as to how much damage the Nazi ideology had inflicted on Jews, Romas, gypsies and other communities as part of this pogrom. As the world had never before witnessed a crime of such large proportions it soon became the face of evil and a “benchmark” in cases of mass violence. Hence, the holocaust is now a frequent comparative point of reference. To what degree are the patterns of violence in the Holocaust, Darfur and Sri Lanka similar and different? From an international perspective, in what ways was the response to the holocaust similar to and different from the one made in Darfur and then in Sri Lanka? Answering this question will from a practical perspective will provide us with a clear picture about the effectiveness (or lack thereof) of particular prevention strategies. Answers to these questions have inherent epistemological value, but they also have theoretical and practical importance. It is essential to understand from a theoretical perspective, what do the commonalities and differences between the three cases suggest as to why do genocides occur?

It is not very easy to find answers to all these questions and even if we do they may not satisfy a large number of scholars. The reality is that recognising a particular incident as genocide is based much more on the nexus and role of international law,

international politics and history as compared to the fact whether a particular incident is able to reach the benchmark set by the Holocaust. It is due to this fact that in this particular chapter though there is a comparative analysis of the Holocaust with Darfur and Sri Lanka, the other two case studies are not being compared with the Holocaust being set as the benchmark but all the three case studies are being compared with each other based on the theory of the ten stages of genocide laid down by Dr. Gregory Stanton. According to him genocide is a process that develops in ten stages that are predictable but not inexorable. At each stage, preventive measures can stop it. The process is not linear. Stages may occur simultaneously. Logically, later stages must be preceded by earlier stages. But all stages continue to operate throughout the process. This theory or concept is one of the most widely discussed concepts in genocide studies.

The reasons for choosing to compare all the three case studies to a common theory and not to the Holocaust itself are manifold, though the Holocaust is being used as a “lens” in understanding the concept of genocide as well as the discrepancy between international law, international politics and history. Although there are some more or less coherent reasons why the Holocaust should be seen as a unique event, this does not mean we need to let our understanding of this event colour any similar events that happened and are still happening afterwards. Comparative research into genocides can benefit from tools acquired in research on the Holocaust, but it should not be defined by it. It appears that the field of genocide studies is slowly but steadily becoming a field of its own without the shadow of the Holocaust lurking over it. Even though this might be because in recent years more and more conflict which could be qualified as genocides have arisen, or simply because time is passing by and new generations use different reference points, it is not often anymore that the Holocaust is used to signify how bad an event is. Whereas quite some events are still called ‘genocide’ simply to get people to pay attention to what is happening, it seems that this is less by the linkage to the Holocaust but more because genocide on its own has become known to the general populace as absolute evil or the crime of all crimes. For example, many of the recent court cases concerning genocide have not mentioned the Holocaust. In fact, the only states still acutely concerned with the Holocaust are Germany and Israel, both for obvious reasons. That being said, it can be safely assumed that the concept of

genocide has managed to free itself from the burden of the Holocaust and has arisen as a genuine concept on its own.

The study examines the Holocaust alongside the Darfur genocide and the controversial Sri Lankan conflict. The aim of the analysis is not to make an comparison in itself but analysing these three case studies will provide us with a starting point as to how do various cases of mass violence evolve over time. The analysis will also provide us with similar characteristics such as shared ideology, a regime with revolutionary and utopian ambitions, internal division and circumstances of war.<sup>350</sup> On the other hand, the differences may exist in the general context, ideology, the political consequences, the international context and the nature of the conditions of war. Each case of genocide carries with itself a unique character and context and hence one has to be diligent while comparing the Holocaust to other cases.

The comparative method is derived from the qualitative approach method and appears in many different ways. However, this study will rely upon the comparative case study method as it is the most suitable for the topic chosen. The qualitative method, as opposed to the quantitative method offers a more in depth study and therefore also a more truthful result as there is only a few areas studied. The quantitative method is not suitable as that approach offers a wider and more general perspective of a situation while the qualitative approach often offers more of a descriptive answer which is needed for this study.<sup>351</sup> Also, as this study takes place over time in where one problem is analysed but in three different countries, even continents, with totally different circumstances in each case, a comparison of both similarities and differences is necessary as these factors make history repeat itself over and over again.

Still, there are some researchers who argue that other genocides are not in a position to stand the comparison with the Holocaust. There are a number of reasons for this argument, firstly, because each of the incidents has occurred in different circumstances. Some scholars, such as historian Yehuda Bauer, accept the comparison

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<sup>350</sup>Eric D. Weitz, *A Century of Genocide. Utopias of Race and Nations*. Princeton, 2003, p. 72.

<sup>351</sup>Ariadne Vromen, 'Debating Methods: Rediscovering Qualitative Approaches' in David Marsh and Gerry Stoker (eds.), *Theory and Methods in Political Science*, Third Edition, New York: Palgrave Macmillan, 2010.

but acknowledge the fact that the Holocaust was unparalleled in many ways.<sup>352</sup> A comparative study of the three chosen cases will be adopted in order to discover common patterns and differences, ultimately contributing to the existing body of knowledge on genocide. To make a complete analysis of all the genocides that have taken place since the Holocaust will not be possible and hence, will be beyond the scope of this study, so I have limited it to the above mentioned case studies. This method of studying case studies is important for tracing the background and tracking the events of outbreaks of mass violence, as they allow for in depth knowledge of the societal and historical roots of the problem.<sup>353</sup> Through these comparative case studies, the study aims to find out whether each occurrence of genocide is sui generis, or, alternatively, whether there are shared causal factors, enabling the application of a universal criteria for prediction and intervention.

Though the history of genocides runs in centuries, the study will only be exploring the law, politics and history of genocides since the Holocaust to the present times. Hence, the study concentrates on some other significant cases of Genocide along with the Holocaust like the Darfur Genocide and the Sri Lankan incident. The first one stands out as an example of the blending of circumstances and context which have mostly already taken place whereas the second one has still not been officially declared as genocide. All these incidents will make it possible to draw informative comparisons and contrasts about not only the international community's usage of the Holocaust in relation to the genocide paradox but also of the role played by international law, politics and history while handling these incidents. In the present times the Darfur incident has been accorded the status of genocide though there was much controversy in awarding of this status initially while this grotesque crime was being committed. All the three case studies differ from each other in terms of time, geographical location, international response, current status of each of these incidents, etc. Hence, both of the latter case studies will be compared to the Holocaust in order to observe the difference in how law, politics and history is interpreted in each of the cases in comparison to it. As both of them are recent incidents whether they will or will not be seen as an archetype can only be determined by time.

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<sup>352</sup> Yehuda Bauer, ' *On the Holocaust and Other Genocides*' presented at the Joseph and Rebecca Meyerhoff Annual Lecture, 5 October 2006, First Printing, 2007.

<sup>353</sup> Peter Suedfeld (ed.), *Light from the Ashes: Social science careers of young Holocaust refugees and survivors*, Ann Arbor: University of Michigan Press, 2001.

### **Risk Assessment Mechanism**

The study hopes to fulfil the objective of bringing out the discrepancy between law, politics and history by comparing these three case studies. The below mentioned theory will be able to fulfil both these objectives. Due to the difference in the status of all the three cases along with some basic differences like timeline, geographical location, etc. it is understood that this risk assessment model can help pre-emptively. In this case, all the three incidents have already taken place; hence they are perfect to check the effectiveness of this theory. It has unique aspects and offers systematic, qualitative analysis to help identify and address future genocidal situations.

### **Reasons for choosing this theory**

Comparative studies are the most common way to study genocide and hence we will find a number of comparative studies already done. The foremost reason to choose this particular theory was that all the literature that one had gone through had not conducted a single comparative analysis based on this theory. Hence, it has never been examined whether this theory actually works or not. In order to analyse it's successful working this analysis was based on this particular model. This theory is basically meant to predict whether a particular situation of conflict is moving towards turning into a full blown genocidal incident or not. It is not so that each and every case fulfils all the ten stages mentioned under this theory. Sometimes a conflict may turn genocidal but without fulfilling all the stages or it may not follow the sequence laid down in the theory but as it is a preventive theory, ticking any stage can be taken as a warning. The theory has been studied by a number of scholars related to genocide studies and as genocide is a process and not an event this theory fits perfectly in making us understand the different aspects related to a genocide.

### **Stages of Genocide**

Initially the “8 Stages of Genocide” was a hypothesis put forward by Dr Gregory H Stanton in 1998. It described the eight stages that all genocides follow, from “classification” through to “denial”. Having originally being presented to the US State Department in 1996, the model has become the foremost paradigm on which teachings of genocide are based when educating those involved in the prevention of such atrocities, notably the Enough Project and Genocide Watch International. It was an archive created by Dr. Gregory H. Stanton, an educator at Mary Washington




University and the Vice President of the International Association of Genocide Researchers (2006). Stanton likewise drives Genocide Watch, a non-benefit association committed to the battle against genocide. ("Ten Stages of Genocide" was initially composed in 1996 at the U.S. Division of State as the "Eight Stages of Genocide," exhibited at the Yale University Centre for Universal and Area Studies in 1998, and amended in 2013.) "Ten Stages of Genocide" is an equation for how the general public can take part in genocide. Genocide can't be submitted by an individual or little gathering; rather, it takes the participation of a substantial number of individuals and the state. The genocidal procedure begins with bias that keeps on developing. By knowing the phases of genocide, nationals are better prepared to distinguish the notice signs and stop the procedure from proceeding.

The ten stages of genocide are: classification, symbolization, discrimination, dehumanization, organization, polarization, preparation, persecution, extermination, and denial. Genocide is a procedure that creates in ten phases that are unsurprising, however not inflexible. At each stage, preventive measures can stop it. The later stages must be gone before by the before stages, in spite of the fact that prior stages keep on operating all through the procedure. Given below are the ten stages of genocide on which each of the case studies will be tried.

The three case studies of the Holocaust, Darfur and Sri Lanka will be compared to each other on each of the ten stages to see whether they fulfil the criteria of that particular stage or not. A little introduction of each stage will be provides first and then the activities or events that have happened in relation to all the case studies or any of the case study which match that particular state will ne mentioned in detail below. The data for each stage has been derived from historical sources regarding each of the case studies. At the end of this exercise we will come to the conclusion regarding the status of each of these case studies regardless of what their real status is in the world. Comparing the three case studies will also bring out the legal, political and historical aspects related to each case and show us the similarities or the differences between all the three cases.

**Table I: The Ten Stages of Genocide**

<b>1. Classification</b>
<b>2. Symbolisation</b>
<b>3. Discrimination</b>
<b>4. Dehumanisation</b>
<b>5. Organisation</b>
<b>6. Polarisation</b>
<b>7. Preparation</b>
<b>8. Persecution</b>
<b>9. Extermination</b>
<b>10. Denial</b>

<b>GENOCIDE</b>

### **1. Classification**

Societies can never be classless and the first stage of the theory represents that. As all societies have classes to recognize individuals into "us and them" by ethnicity, race, religion, or nationality: German and Jew, Hutu and Tutsi, this is a form of distinction between varied groups inhabiting the same society. In the event that social orders are excessively isolated (separated) they are most prone to have genocide. The principle method for averting genocide at this early stage is to create opportunities in a general public for individuals to work and live respectively who are from various ethnic, social, national or religious foundations. This will permit individuals to end up more tolerant and comprehension of each other. Though cultures all round the world have mixed categories but societies like that of Rwanda and Darfur who lack these mixed

categories are more prone to genocide. Organisations which are neutral could have played the best role to bring tolerance and understanding between these two groups.<sup>354</sup>

### **The Holocaust**

This stage was easily applied to all of the three cases studies. The Holocaust perhaps the most infamous of all genocides offers an excellent example of this. The people of Germany were divided into three main categories i.e. “Germans”, “Jews” and “Mischlings” (mixed-blood). The latter two were considered to be “Undesirables”. Other, less major categories were also present, including “Gypsies”, “Homosexuals” and disabled people and others considered to be “not socially useful”. Much like other genocides, guidelines existed for classifying people – for example, charts were drawn up, illustrating the structure of a “Jew’s” genealogy, and criteria such as “three or four Jewish grandparents” were established. Legislation such as the Reich Citizenship Law legalised such classification.

### **Darfur**

This pattern is also evident in Darfur. There are in excess of 30 ethnic groups in Sudan. These are largely divided into two main factions – “African” and “Arab”. “Non-Arabs” (or “Africans” are considered to be those who inhabit the North or “camel nomads”. The “Arabs”, however, are regarded as being the cattle-herders in Southern and Eastern Darfur. Unlike in the Holocaust, there is very little physical difference between the two, due to years of intermarriage and movement through the social classes. As a result there is no clear and organised system of classification as was seen in the Holocaust but that does not mean that there is no classification. As Dr Stanton writes in his model, the “classification” stage is a natural and unavoidable human habit. Every society has divisions – spoken or unspoken. However, in the case of the Holocaust, these divisions are made clear through the use of criteria (and, in some cases, law) whereas, in Darfur, they remain informal. Therefore, classification in Darfur is much vaguer and the category that someone belongs to falls to the perpetrators’ judgement, rather than official regulations.

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<sup>354</sup> Gregory H. Stanton, ‘Eight Stages of Genocide’ *presented as the first working paper of the Yale Program in Genocide Studies in 1998, originally written in 1996, pp. 1-7.*

## **Sri Lanka**

There is no doubt about the fact that Tamils were living in Eelam from prehistoric times. It so happened that with the passage of time the Sinhalese started calling themselves the Dravidians, which the Tamils have always claimed to be. This irked the Tamils as they allege that the Sinhalese had slipped into Sri-Lanka as conquerors and looters. There have been many instances where derogatory language has been used against the Tamils for eg. a Sinhala historian described them as dark skinned, thick lipped etc. The “Mahavamsa” which the Sinhalese cite as their holy history book also describes Tamils as demons etc. It is further alled that the then Sri Lankan President who was alleged to have committed the genocide of Tamils in the last war against the LTTE in May 2009, had set aside 4-6 pages in “Mahawamsa” to record his victory over the LTTE as victory over Tamils who are eternal enemies to the Sinhalese or the “Dravda Janathava”.<sup>355</sup>

This shows how the people were and are categorised and turned into “them” and “us” which started the first stage of the genocide. This stage has occurred in all the three case studies. Though historically each of these categories of people were different to each other but before the start of this stage these differences were not that prominent but only in the case of the Holocaust. In case of both Darfur and Sri Lanka the categorisation has been very strong historically.

### **2. Symbolization**

This is the second stage of the theory. According to this stage it is us who give names or different images based on the characterizations of ethnicity, race, religion, or nationality. We name individuals "Jews" or "Tamils", or recognize them by their hues or dress, and apply these tags to individuals to differentiate them from other individuals in a gathering. Order and symbolization are all around humans and they don't inexorably result in genocide unless they prompt the phase of dehumanization. At the point when joined with scorn, images might be constrained after unwilling individuals from minority groups like the yellow star for Jews under Nazi lead, the blue scarf for individuals from the Eastern Zone in Khmer Rouge Cambodia, may be

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<sup>355</sup> Jonathan Spencer (ed.), *Sri Lanka – History and the roots of the conflict*, New York, 1990.

used to segregate such individuals even more from the crowd. In some cases, we force images on ourselves which show us these particular individuals in certain specific light. It so happens that the group that is being marginalised may retaliate because of the regular oppression faced by them. To battle symbolization, despicable images should be lawfully tabooed such as the “swastikas” which became notorious the world over for being associated with the Nazis. On the other hand, other derogatory rituals such as group stamping like tribal scarring can be prohibited, too. The real issue is that lawful confinements will fall flat if such behaviour is unsupported by the society at large. On some of the occasions, some derogatory names that still exist in the society should be banned too, as the faster we ban such derogatory practices, the difficult it will be to segregate individuals or groups. In the event that there is support from the majority or other groups such as had happened in Bulgaria, when numerous non-Jews wore the yellow star, denying it of its significance as a Nazi image for Jews, the conflict can come to an end at this very stage. As indicated by legend, the Nazis did not present the yellow star at Denmark since they knew even the King would wear it.<sup>356</sup>

### **The Holocaust**

The second stage of the model is “symbolisation”. Dr Stanton stipulates that this means that groups are distinguished by “colours or dress” and/or symbols are applied to the groups. This is clear in the Holocaust. The “J Stamp” on identity cards was introduced in July 1938, and later on passports. More infamously, however, the yellow Star of David was applied to the Jews. In his book, the Destruction of the European Jews, Raul Hilberg claims that “The whole identification system, with its personal documents, specially assigned names and conspicuous tagging in public, was a powerful weapon in the hands of the police force. First, the system was an auxiliary device that facilitated the enforcement of residence and movement restrictions. Second, it was an important control measure in that it enabled police to pick up any Jew, anywhere, anytime.” This was certainly true in cases such as the Jews’ plight in Norway – although the Star of David was not used on clothing (the system of symbolisation was not applied homogenously throughout German-occupied territory),

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<sup>356</sup> Gregory H. Stanton, The Genocide Education Project: Ten stages of genocide, retrieved from [https://genocideeducation.org/wp-content/uploads/2016/03/ten\\_stages\\_of\\_genocide.pdf](https://genocideeducation.org/wp-content/uploads/2016/03/ten_stages_of_genocide.pdf), accessed on 5<sup>TH</sup> August 2013.

identity cards were used to recognize over 750 Jews who were subsequently deported to Polish death camps.

### **Darfur**

The second stage is not as distinct in Darfur. Symbolisation arguably occurred through the use of skin colour and language – although both factions speak Arabic, the dialect that accompanies that of the Africans has become synonymous with their group. Another form of symbolisation is skin colour. However, as previously mentioned, this is often subtle, if present at all due to years of intermarriage. Unlike in the other two examples, there is a lack of organisation in terms of the perpetrators issuing their victims with identifying symbols such as stamps or clothing. Symbolisation was used to different extents in the three genocides: although the yellow Star of David badge was not applied homogenously across German-occupied Europe, the system of identity cards allowed the Jews' methodical destruction. In Darfur however, the provision of such identifying emblems has been neglected, with the government choosing not to apply anything to the victims, but rather to encourage the people of the country to associate skin-tone with the particular categories. Regardless of that, the genocide has been no less well defined, though there remains a blurred line between African and Arab.

### **Sri Lanka**

Although the Eelam Tamils had held high ranking government posts under the British rule for e.g. the commander of the Army was Anton Muttucumaru and the acting Chief justice and governor Mr S Nagalingam, they were called “para demela”, “kalla thoni's”, sakily and the Muslims were also referred to by derogatory nick names. Once the Sinhalese got political power in their hands, it is alleged by the Tamils that they deceptively changed the post-independence constitution that ensured safety and security to the minorities into a majoritarian constitution that gave the majority Sinhala race political and other economic priority. In fact the Sinhalese went back on their promise they gave the Tamils that their rights would be protected during the time of conferment of freedom by the UK governor general Lord Soulbury. Though this charge cannot be refuted as the constitution has been amended.

### **3. Discrimination**

A predominant gathering utilizes law, custom, and political energy to preclude the rights from securing different gatherings. The weak gathering may not be given full social liberties or even citizenship. Cases incorporate the Nuremberg Laws of 1935 in Nazi Germany, which stripped Jews of their German citizenship, and restricted their work by the administration and by colleges. Counteractive action against segregation implies full political strengthening and citizenship rights for all gatherings in a society. Segregation on the premise of nationality, ethnicity, race or religion ought to be prohibited. People ought to have the privilege to sue the state, organizations, and different people if their rights are disregarded. The ideology advocates monopolization or expansion of power by the dominant group. It legitimizes the victimization of weaker groups.

#### **The Holocaust**

Once the groups were successfully classified and marked with symbols, discrimination occurred. The Nazis due to their control over the political power started making laws that took away the rights of the Jews or other targeted groups. The Nuremberg Laws of 1935 took away the citizenship of Jews and also prevented them from getting employed by any schools or the government. It also took away their right to marry any other German. Even the Germans who had not practiced their Jewish religion for years were targeted. To make matters even more worse even those Jews who converted or aligned to other religions were still considered Jewish as long as any of their parents or grandparents were Jewish.

#### **Darfur**

In the case of Darfur also there is no doubt that discrimination has taken place. Though no discriminatory legislative measure has been taken by the government of Sudan against the rebels but their policy of supporting the Arab Militia against their own people, it is a discriminatory government action no doubt.

## **Sri Lanka**

The Ceylon Citizenship Act of 1948 which was enacted after nine months of independence from the British rule denied the 11% Tamils of the country citizenship. Hence, nearly seven lakh Tamils became stateless. The two conditions of being registered as Sri Lankan citizens under citizens by descent and by registration virtually ruled out the possibility of the Tamils registering themselves as citizens of the country.

### **4. Dehumanization**

Dehumanization is the point at which one gathering regards people from the oppressed group as servants or other derogatory stature such as parasites or ailments. This is the point, when a gathering of individuals is considered as "not as much as human", hence it becomes much more simpler for the dominant group to very well murder them. At this stage, despite hate campaign against the oppressed group in both print and other forms of media, the dominant group tries to utilise this opportunity to show these deeds as having been committed by miscreants. In order to battle this dehumanization, one must recollect that there is no privilege of "flexibility of discourse" in such societies as these societies lack constitutional protection for countervailing speech and hence, should be treated totally different from democracies. There should not only be a prohibition of hate speech but it should be condemned by both international and national leaders. Leaders who indulge in such behaviour should be brought to justice and their hate campaigns shut down.

### **The Holocaust**

Dehumanisation is the third stage of genocide, according to Dr Stanton. This refers to the act of "[denying] the humanity of the other group... [equating them] with animals, vermin, insects or diseases". Dr Stanton also specifies that, unless this stage occurs, the former two will not lead to genocide, as dehumanisation "overcomes the normal human revulsion against murder". In the case of the Holocaust, this is, once again, very prominent. Joseph Goebbels, the German "Minister of Public Enlightenment and Propaganda" was responsible for spearheading the campaign to dehumanise the Jews, creating a negative image of them and promoting the idea of an "inferior race" through media such as films, poster and radio broadcasts. The passing of the



Nuremburg Laws in 1935 furthered this, legally stripping the Jews of their right to citizenship.

### **Darfur**

As was seen with the previous stage, the dehumanisation present in Darfur is less marked than in others as the propaganda is missing. Rather than having propaganda publicised by the government or extremist groups or legislation to deny the humanity of the Africans, there is an unspoken assumption that they are the inferior race and they are hence discriminated against. For example, a report in 2003 claimed that an African rape victim was told “you are black, so we can rape you”. This illustrates how, effectively (though not legally), the Arabs have denied the Africans citizenship and the rights and liberties that it entails by the general feeling of the nation. There is clear and defined dehumanisation in the cases of Darfur. Although the propaganda originates from different sources, it illustrates the intention to dehumanise the victims. In Darfur, however, the unspoken nature of such beliefs mean that it could be argued that dehumanisation is not present in Darfur.

### **Sri Lanka**

In the case of Sri Lanka one acting president Dingiri Banda Wijetunga had likened the Tamils to parasitic creepers on the Sinhala tree etc. Dehumanization overcomes the normal human revulsion against murder – in other words, murder becomes okay because the victims are not seen as human.

## **5. Organization**

Genocide is usually organised by the state by often using militia. Sometimes these organisations are informal or decentralised. The special militia are trained and armed specially. To battle this stage, participation in these civilian armies ought to be prohibited. Their masters ought not to be permitted to go outside their nation where they might have the capacity to raise finances or get weapons. The U.N. should uphold arms embargoes on governments and nationals of nations required in genocidal slaughters, and make commissions to research infringement, as was done in post genocide Rwanda.

## **The Holocaust**

In the case of the Holocaust, this came in the form of the Schutzstaffel (SS) and the Sicherheitsdienst (SD). The SD was created in 1931 by Heinrich Himmler. It was designed to be an intelligence and security body. After Hitler became Chancellor in 1933, greater power was allocated to them to increase their ability to quell opposition. This was evident in the role they played in the Night of the Long Knives. The SS was founded by Hitler in 1925 as a group of personal bodyguards. It consisted of three main groups: Leibstandarte (Hitler's personal bodyguard), Totenkopfbande ("death-head battalions" who dealt with concentration camps) and the Verfügungstruppen (an elite fighting group). Adolf Eichmann is sometimes credited with the organisation of the systematic killings that took place. Eichmann was an SS officer who planned the transportation of thousands of Jews to death camps such as Treblinka and Auschwitz. This earned him the title of "Chief Executioner of the Third Reich".

## **Darfur**

Darfur, also, shows evidence of organisation. Although the Sudanese Government denies any involvement with the Janjaweed – the perpetrators of the genocide – there is strong evidence to suggest that, since the mid 1990s, they have been both tolerated and supported by the Government. It is claimed that Khartoum supplies the group with arms, training and protection. One report claims that "operations carried out by the Janjaweed often enjoy air support from the government of Sudan, both aerial bombardments before operations and helicopter reconnaissance afterwards to ensure the area is empty. In many villages, regular troops and Janjaweed forces establish a joint presence—often in the local police station—before going out to burn and pillage." Organisation in all three genocides resulted in the creation of extra-governmental forces. However, whereas in Rwanda and Darfur the Governments denied connections with the militia, the Third Reich were open and full accepted the SS and SD as being affiliated with the Government. All of the genocides are the same in that the governments armed the militia or provided them with assistance.

## **Sri Lanka**

Genocide is always organized. Special army units described as Deep Penetration Units were trained by the Sinhala army to execute politicians and human rights workers. Militias were trained and armed by the Sinhala army. It is alleged that a special Task force that carried out several genocide in boarder villages were specially trained was carrying it out. Sometimes organization is informal or decentralized (terrorist groups) such as the Karuna Group, Pillayan Group and the EPDP.

### **6. Polarization**

In this stage extremists or fanatics divide the gatherings through propaganda. Laws may preclude intermarriage or social cooperation between the gatherings. Radical terrorism targets groups directly and threatens them with intimidation. Moderate leaders are the best bet capable enough to avoid genocide and they are frequently the first ones to be killed. Aversion may mean security assurance for moderate leaders or help to human rights organisations. Resources (cash and property) of such extremists should be seized, and global travel denied to them. In the event that radicals attempt to assume control over the administration, then global approvals ought to be set up.

### **The Holocaust**

During the Holocaust, this was present in the form of propaganda. Goebbels exploited leaflets, posters and institutions under Nazi control, such as newspapers and theatre companies to convey the ideal of a “superior race”. New technologies were also utilised, with the encouragement of the mass production of cheap radios and the instillation of speakers on street corners to communicate anti-Semitic feelings to the masses. The ghettoisation of the Jews also played a role in this.

### **Darfur**

The Sudanese genocide has not displayed any evidence of polarisation at the same level as the Holocaust. Once again, the lack of organisation in Darfur may be the reason for this not the intention; the perpetrators lack the resources/cohesion to generate propaganda or orchestrate the segregation of the two factions. As was seen with the previous stage, the model here appears to fit the Holocaust. Darfur also

displays polarisation even if not at the same level through both propaganda and physical segregation.

### **Sri Lanka**

Even in the case of Sri Lanka the extremists drove the groups apart. Hate groups broadcasted polarizing propaganda. Mahavamsa myths allegedly taught that Sinhalese Buddhists are the sole rightful occupiers of Sri Lanka and that Tamils and all others were considered inferior interlopers who must be destroyed to honour Buddha. Sinhalese Buddhist supremacist doctrines of the venerated Sinhalese Buddhist monk Dharmapala exalted a pure Sinhalese Buddhist race in Sri Lanka to the exclusion of all others. The race purity creed was voiced contemporaneously with Hitler's goal to make Nazi Germany pure Aryan.

### **7. Preparation**

National or culprit group leaders plan devastating acts such as the "Last Solution" was to the Jewish, Armenian, Tutsi or other groups of people. They frequently utilize double talk to shroud their goals, for example, alluding to their objectives as "ethnic cleansing," "sanitization," or "counter-terrorism." They construct armed forces, purchase weapons and train their troops and civilian armies. They influence the masses with trepidation of the casualty group. Such leaders are often heard to claim that "on the off chance that we don't murder them, they will slaughter us." Prevention of preparation may incorporate arms bans and commissions to uphold them. It ought to incorporate prosecution of incitement and conspiracy to commit genocide both violations under Article 3 of the Genocide Convention.<sup>357</sup>

### **The Holocaust**

During the Holocaust, this came in a number of forms. As is illustrated in Schindler's List, the segregation of the Jews was a key feature in the path to their mass extermination. In October 1939, the SS based in Poland were instructed by Reinhard Heydrich to confine the Jews to areas surrounded by barbed wire, walls and guards. The first of these ghettos was established in Piotkow, with the largest ghettos located

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<sup>357</sup> Article III: The following acts shall be punishable: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide.

in Warsaw and Lodz. As well as this, the confiscation of Jewish property commenced as early as 1933. During the early years (known as the “voluntary” period), pressure was placed on the estimated 100,000 Jewish-owned enterprises to sell. By 1938, around 70% of Jewish businesses had been liquidated under the Decree on the Registration of the Property of the Jews 1938. Taxation on Jewish assets was also enforced. Also, as has already been discussed, symbols such as the “J stamp” and the yellow Star of David made identifying and separating out the victims far easier.

### **Darfur**

Darfur is similar, in that there is no evidence of preparation for the mass killings. It could be considered that ghettoisation occurred, as the factions were largely separate due to the nomadic lifestyle of the Africans, however, this could be disputed, as these partitions already existed. The Holocaust is really the only genocide that plainly exhibits preparation – it accounts for ghettoisation, death lists and the confiscation of property. In Darfur, this could be explained by the disorganised nature of the genocide: there was no official beginning of the killing. Therefore, preparation may not have taken place due to uncertainty as to when the extermination being prepared for would take place.

### **Sri Lanka**

It is alleged that the Sinhalese had forcefully taken away the centuries old cultural and political autonomy of a population and apply instruments of Sinhala homogenisation. Like in the Holocaust, the victims allege that the Sinhalese Buddhist objective had and has been to make Sri Lanka a mono-ethnic and mono religious state free of Tamils in the Jaffna peninsula or North-East unless they accepted vassalage with no legal protections. Sinhalese Buddhists were also seeking to accomplish their goal of a mono-religious, mono-ethnic state through a Tamil genocide. Like Jews in Nazi Germany, Tamils were excluded from service in the Sri Lankan armed forces, security services, or law enforcement agencies; and, Tamils had been placed outside the law itself. The Tamils victims were identified and separated out because of their ethnic or religious identity. In the last war the entire Tamil settlement of the Tamils of Vanni was surrounded and the whole population were ordered to move into so called ‘No fire Zones’ which ultimately turned out to be their “Death Zone” Death lists were also drawn up. Their property were looted and destroyed by shelling and bombing. Some

properties were confiscated. At the end of the genocide when they could not kill anymore because of international intervention the remaining Vanni Tamil population were segregated into internment camps and transported to concentration camps named Ramanathan Camp etc.

## **8. Persecution**

Victims are recognized and isolated due to their ethnic or religious character. Death lists are drawn up. In state supported genocide, individuals from victim groups might be compelled to wear identifying symbols. Their property is frequently appropriated. Some of the time they are even isolated into ghettos, extradited into inhumane imprisonments, or limited to a starvation struck district and starved. Genocidal slaughters are start. They are all demonstrations of genocide since they purposefully crush part of a group. At this stage, a Genocide Emergency must be pronounced. In the event that the political will of the great powers or regional alliances or the U.N. Security Council can be activated, outfitted global intercession ought to be readied, or substantial help be given to the casualty gathering to get ready for its self-protection. Compassionate help ought to be provided by the U.N. Furthermore, more help be provided to the groups for the inescapable tide of evacuees to come.

### **The Holocaust**

After being placed in ghettos, Jews were then placed in concentration camps. In these concentration camps, they were separated from their families and forced into labour for “economic profit”. From 1939-1941, more concentration camps were established to place the increased number of prisoners. These prisoners consisted of Jews, gypsies, criminals, homosexuals and even foreigners. Diseases quickly spread due to lack of sanitation and poor living conditions. Prisoners did not receive enough of the essentials such as food, clothing, etc. Some of these camps were located at Auschwitz, Gusen, Stutthof and Majdanek.

### **Darfur**

The civil war of Darfur and the government supported Arab militia resulted in a widespread and systematic attack attack on the civilian population which resulted in crimes such as murder, deportation, imprisonment, rape, torture, etc. Though there

may not have been ghettos for these people or camps but their persecution has occurred within their own homes.

### **Sri Lanka**

The tamils in Sri Lanka not only had to suffer a civil war but also constant persecution under the hands of the dominant Sinhalese population. There were numerous cases of murder, torture and rape where the allegations of these crimes being committed by the state security personnel were rampant.

### **9. Extermination**

Eradication starts, and rapidly turns into the mass murdering lawfully called "genocide." It is "eradication" to the executioners since they don't trust their casualties to be completely human (see dehumanization). When it is supported by the administration, the military frequently work with private armed forces to conduct the murders. In some instances the genocide may result in requital killings by groups against each other, making the descending whirlpool-like cycle of common genocide where the casualties really sort out and confer a second genocide on the culprits. At this stage, only rapid and overpowering armed intervention can be of any help. The refugees may run to safe territories on the other hand it is essential to set up set up vigorously equipped worldwide security. The U.N. needs troops that can go into genocidal regions and stop the persecution when the U.N. Security Council calls for it. The UN may choose to act through provincial military strengths from associations like NATO. If strong nations will not provide troops to intervene directly, they should provide the airlift, equipment, and financial means necessary for regional states to intervene.

### **The Holocaust**

One of the most infamous aspects of the Holocaust was the creation of "concentration camps", so called because they concentrated "Undesirables" in one place. Around 20,000 camps were established between 1933 and 1945, with the earlier of them being used mainly to imprison "enemies of the state" - communists, socialists, homosexuals and those accused of anti-social behaviour. Although the death rate was high in concentration camps due to malnutrition and disease, "killing centres" were the places where the majority of the "extermination" took place. These were built in Poland (the

country with the highest concentration of Jews) and designed to be a place to carry out the “Final Solution”. The first of these centres, Chelmo was opened in 1941. The following year, Treblinka, Sobibor and Belzec were also established. Gas chambers were set up; Auschwitz Birkenau (with its four gas chambers) was capable of massacring 6,000 Jews a day. More than three million Jews were murdered in the killing centres. A smaller portion of Jews were shot and buried in mass graves by the Einsatzgruppen.

## **Darfur**

The situation in Darfur displays visibly less organization and efficiency than the Holocaust. The killings in Sudan were less systematic and thus less effectual than those in the Holocaust. Hilary Andersson travelled to Darfur in 2004 for BBC’s Panorama. She claimed that “the Arab militia often uses air strikes from the Sudanese air force to assist them. They then move in and pick people off in the ensuing panic - with children often included among their victims... Government planes bomb, while Janjaweed move in to kill on the ground.” The pattern of extermination in Darfur is also reminiscent of that of Rwanda due to the fact the Janjaweed, like the Interahawme; enjoy support from the government in terms of arms. A testimony made by a member of Human Rights Watch in 2004 to the Senate Foreign Relations Committee claimed that the Sudanese government was recruiting Arab men and providing them with a gun and a monthly salary of \$116. Darfur exhibits much more clandestine methods of killing. The government opted for less comprehensive strategies which made the murders slower and less efficient than the systematic model shown in the Holocaust, but it does not mean the killings are more covert than the Nazi camps. This may be because the leaders during the Holocaust enjoyed exceptional circumstances: not only was Europe at war, meaning potential protectors of the Jews were preoccupied, but there was, and had been for a long time, a strong anti-Semitic feeling, worldwide, meaning objection was not as strong as it was against the persecuted of the African genocides. Also, the horror of the Holocaust caused increased awareness of the “crime without a name”, and prompted the coining of the term “genocide”.



## **Sri Lanka**

The gory scenes of the executions by the armed forces does prove it is alleged that the Sinhalese were bent on exterminate those who fight for freedom. It is further alleged that if genocide was not their intention then what is the use of erasing evidence by burning the dead bodies on jungle firewood. In the last fight the Sri-Lankan army never captured the leaders of the freedom fighters but executed them. Even the underage child of the LTTE leader was executed by the Sinhalese just because he was the child of a revolutionary.

### **10. Denial**

Dissent is the tenth stage that dependably takes after genocide. It is among the surest markers of further genocidal slaughters. The culprits of genocide uncover the mass graves, burn the bodies, attempt to conceal the proof and scare the witnesses. They deny that they have committed any wrongdoing, and regularly find fault with the targeted group. They block investigations of the crimes, and continue to govern until driven from power by force, when they flee into exile. There they remain with impunity, like Pol Pot or Idi Amin, unless they are captured and a tribunal is established to try them. The response to denial of genocide is punishment by an international tribunal or national courts. These perpetrators of the genocide keep on denying the wrongdoing unless they are caught and a tribunal (exceptional court) is built up to attempt them. The best reaction to disavowal is discipline by a worldwide tribunal or national courts. This may bring some kind of justice to the victims.

### **The Holocaust**

In the case of the Holocaust, this came in two main forms; firstly, the perpetrators attempted to destroy the bodies from the camps by incinerating them after the victims had been gassed. Towards the end of the Holocaust, many were exhumed and burned in an attempt to eradicate all evidence. Secondly, attempts have been made by modern activists who believe either that the proof is fabricated or that there is no proof. One of the most infamous individual deniers of the Holocaust is the Iranian president, Mahmoud Ahmadinejad. He gained notoriety in 2005 after dismissing the Holocaust as a “myth” on live television. This followed outrage regarding a comment made several months previously which advocated Israel being “wiped off the map”. German

spokesmen have dismissed Ahmadinejad's views as "shocking and unacceptable". As well as this, many neo-Nazi groups believe that the Holocaust was propaganda created by the Jews to turn people against the Germans and ensure that they had the moral, political and economic upper hand. Ernst Zundel, a leader of such groups, for example, has played a major role in co-ordinating efforts to deny the genocide. For more than 20 years, Zundel has been involved in the production of Nazi and neo-Nazi memorabilia and propaganda. Since 1995, he has held a leading role in Zundel's online Holocaust denial propaganda organisation. As well as this, in April 2004, an international conference for Holocaust deniers met in Sacramento in his honour.

### **Darfur**

The Sudanese government was attempting to deny that genocidal activity was taking place in Darfur. The Sudanese ambassador in Washington, for example, when asked about death toll in 2007 (which, at the time, was estimated to be in excess of 400,000) maintained that "none" had died. Upon being questioned about the 2 million displaced, he replied "I am not a statistician". As well as this, he went on to deny all government connections with the Janjaweed.

### **Sri Lanka**

The Sinhala army, the perpetrators of genocide are reported to have dug up the mass graves in Mullivaikal, and burnt the bodies, to try to cover up the evidence and intimidate the witnesses. A report commissioned by an Australian law policy group and written by experts on international criminal law and war crimes revealed that Sinhala government security forces systematically destroyed mass burial sites of civilians and also found evidence that many of the crimes continue to this day, perpetrated by the Sri Lankan armed forces on the civilian population. They have denied that they have committed any crime and often blame what happened on the victims. They have blocked investigations of the crimes, and continue to govern. The Sinhala government is accusing America and other countries that is putting forward an international inquiry against Sri-Lanka of having unclean hands themselves.

**Table II: A Comparative Analysis based on Stages of Genocide**

Stages of Genocide	A. Holocaust	B. Darfur	C. Sri Lanka
<b>Classification</b>	Racial The Nazis v. the Jews and the Romas	Ethnic African Darfur Farmers v. Janjaweed a group of local Arab tribes	Ethnic The Sinhalese dominated government v. the Tamil Dravidian
<b>Symbolization</b>	Swastika for Nazi Yellow star of David for the Jews. Red Triangle for political prisoners Green triangle for criminals Black triangle for anti Nazis Pink triangles for Homosexuals Purple triangles for Jehovah's witnesses	Based on how people dress	Cultural, religious and Linguistic Differences
<b>Discrimination</b>	The Nuremberg Laws of 1935	No legislative measure as such	Ceylon Citizenship Act of 1948
<b>Dehumanization</b>	Treated as animals and things not even worth being touched by the Nazi boots. Hateful Propaganda spread through posters, art, music, films, books, radio, news, education.	Darfur farmers treated as worthless people.	Hateful propaganda specially during elections
<b>Organization</b>	Nazi party created the Gestapo and the SS (Schutzstaffel).	Militia Group Janjaweed controlled and supported by the Sudanese Government	The Armed Forces of the Sri Lankan Government.
<b>Polarization</b>	Through laws. Attacked and forcibly removed from their properties.	Farmers displaced. Not allowed to celebrate their religious ceremonies. To keep silent.	Driving Tamils out of the country. Internal refugees. Making them "disappear". Killing them.
<b>Preparation</b>	The Final Solution Ghettos	Ghettos or Camps	Special Camps for Tamils. Protected Zones. No-fly Zones.
<b>Persecution</b>	Concentration Camps	Civil War	Civil War
<b>Extermination</b>	Death camps	400,000 killed.	Tamilian residential

	Gas chambers in Chelmno Estimated 10 Million people died	2,500,000 displaced.	areas, hospitals and public places bombed. Deprivation of any kind of humanitarian aid. Used as Human shields. Controversy regarding the final death toll.
<b>Denial</b>	Changes in documents Operation Aktion 1005 Destroyed the physical evidence of murder Fled to other countries Denied responsibility in the Nuremberg Trials	Denial of allegations by the Sudanese Government	Censorship imposed on Press. Gravity of the Tamil Situation minimised. Denial of the Sri Lankan government of any human rights violation.

### The Analysis

As we come to the end of the comparative analysis we need to answer some assumptions that we started the study with. The study came up with various hypothetical presumptions regarding the ways of the global political discourse. After analysing the three case studies on a similar theory and realising that all three of them have all the making of a genocide we need to ponder on the reality of their real status for a minute. Out of all three cases, the Holocaust is not only the case that was recognised without any disputes by the international community in the very first instance but it is seen as a “benchmark” with which all other cases of genocides are compared. Throughout the study through various examples, there must be no doubt left regarding the status of the Holocaust even today in the genocide discourse. It has become so important that it even has a discourse of it’s own. The comparison was not done to undermine the status of the Holocaust but it was done to highlight the discrepancy between law, politics and history.

If we go back and have a look at the above table which lays down the criteria that each case has fulfilled at each stage of the ten stages, the question arises why do the

other two genocides do not have the same status as that of the Holocaust? First, let us discuss the case of Darfur. This conflict in Darfur is not the result of anyone singular triggering act, as has already been discussed in full details in the previous chapter. But there had been a conflict for a long time in this part of Sudan and genocide is just the culmination of these tensions that had been brewing for a long time. It is claimed by a number of scholars that the degree of violence unleashed in the innocent civilians by the armed militants is even horrific that that the one suffered by the Holocaust victims. It will be insensitive on our part to compare these two incidents on the basis of brutality and hence, this comparative analysis. The question is that why was Darfur not recognised as a genocide in the very first instance? Why did the international community not grant it the same status, by which it is not meant that of a “benchmark” or a “prototype” but only as a recognised case of genocide. For that matter why is Sri Lanka also a contested case?

The observational material that was collected in order to examine these three cases and compare them, it should be undoubtedly accepted that the states’ activities are controlled by their interests and thus it is these interests that overrule their reactions and activities towards various genocidal incidents, which maybe totally contrary to the laid down universal law. Be as it may, it once again raises the question as to why do the interests of the state appear to so infrequently match with the avoidance of genocide. For the reason and extent of this study it was further facilitated to make the supposition that states’ follow up on the premise of their interests. The presumption that the states’ activities are subject to their interests lays on a component which is expected to make states react and make a move in connection to universal political issues. Thus, a nation’s reaction to a genocidal incident is very much directed by the nation’s social life.

As both the last two chapters have been discussing these three cases in details, both the chapters have been comparing the three cases on different indicators. Due to fear of sounding repetitive, this section will just discuss the discrepancy crisply as the next chapter is dealing with this complexity in details in relation to various supportive frameworks such as human rights and the state. The historical background has been able to portray both the similarities and the difference between these three cases very clearly. All three cases took place under elected democratic governments. Governments, that had been brought to power to protect each section of the society.

But in all three cases, the protectors became the perpetrators. All the three categories of victims were perceived as enemies by the state. In case of both Tamils and the local population of Darfur the victims were in direct conflict with the government but that was not the case with Jews.

Based on the comparison above on the “ten stages of genocide” we can finally conclude that Sri Lanka should be recognised as a genocidal incident due to its fulfilment of all the criteria set by the theory. The Tamils have suffered through each of the stages and there is a need to acknowledge it now. Not much can be expected by the national government of Sri Lanka, but it is the responsibility of the international community to bring justice to the wronged.

### **Conclusion**

The chapter started with a big question as to whether these three case studies if examined are able to fulfil the criteria of being recognised as a genocide or not? There is no doubt that the Holocaust has been recognised as a genocide universally but it is not the same case with the other two case studies. The Darfur genocide was not initially recognised as one and finally when the world community woke up it was too late. A large number of innocent people lost their lives and homes and it again showed to the world that the world community was not serious about the promise of “never again”. The same story is being repeated in case of Sri Lanka once more. The geographical location may be different, the timeline maybe different but now that we can be sure of the fact that what has happened in Sri Lanka can very well pass the test required for being identified as a genocide, the world community once more has been given the opportunity to mend its ways and seriously look into these allegations. Though even in this case a lot of loss has already happened but still it will be huge injustice to the Tamilian people if this incident is not recognised as a genocide

## Chapter VI

### Complicity of Evil: Law, Politics and History

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The instruments of state power are essential to commit genocide. Once one fully understands the reasons as to why perpetrators commit genocides once they are in a powerful position, the question that arises is as to what will stop them? Just understanding why these perpetrators indulge in such crimes is not enough anymore. It is vital that this understanding be complemented by devising preventive tools to fight this fatal disease of genocide. The first step should be creating the means to intervene or limit and hopefully eventually prevent the devastating effects of genocide by developing suitable mechanisms that can make societies around the world resistant to the possibility of a genocide. Merely knowing why perpetrators commit genocide is insufficient in the fight against it. It is also our duty to know that why have the existing political, legal and historical mechanisms failed to combat this menace. Why has the international community consisting of an array of actors, many of whom have the mandate and/or the power to prevent or diminish the genocide subvert the attempts to intervene or just stand by idly. It is no doubt due to the discrepancy between law, politics and history. This chapter addresses this discrepancy in relation to cases of genocides other than the Holocaust, Darfur and Sri Lanka by analysing the reasons behind it by combing them with concepts of state, morality, power, human rights, etc. in relation to the concept of genocide.

#### **Introduction**

Genocide is one of the most flagrant crimes out of all the atrocity crimes witnessed by the world. It is one of the severest breach of the three founding documents of the UN: the UN charter, the Universal Declaration of Human Rights (UNDHR) and the UNGC. The last chapters have dealt in detail with the three unique cases of the holocaust, Darfur and Sri Lanka in order to showcase the discrepancy between law, politics and history by studying these three cases individually and then comparing them with each other to highlight the discrepancy. We must not forget that the genocide discourse is not limited to only these three cases; therefore, this chapter will

bring out this discrepancy by citing other genocides as examples whether recognised or contested.

From the time of the Holocaust if we go through history we will observe that much genocide occurred even before the holocaust. Since time immemorial genocides have taken place in this world. History has recorded the gruesome details of some of them and some of them have faded away from the memories of the human race. But this evil phenomenon of genocide churned the very conscience of this world after the Holocaust of Germany. The sheer brutality leashed by the regime of Adolf Hitler on the helpless Jews of his own country Germany and other occupied territories during the second world war made the world shudder in so much horror that governments around the world promised themselves that never ever will such an incident reoccur in the future of humanity. To combat the occurrence of genocides and to punish the perpetrators, the countries around the world came under the auspices of the UNGC in 1948. Human rights violations and conflicts are still taking place around the world and to combat mass atrocities like genocide it has become highly essential that the international community discards running its responses on vested interests and comes up with some uniform initiatives in order for the culprits involved in such heinous crimes to think twice before they try to inflict such inhumane atrocity on their fellow citizens.

The study of genocide has generally been found to be framed mostly in the legal and historical contexts rather than psychological, sociological, anthropological and political perspectives. Law provides the impetus to the definition of genocide through the pioneering efforts of Raphael Lemkin through the drafters of the United Nations while putting down the convention. Whereas on the other side historical studies account for the majority of genocide research conducted and form the basis of the basic knowledge on genocide. The study aimed to examine as to how the international community has responded to prominent cases of genocide and what role and position the Holocaust has played in each of these responses especially in reference to Darfur and Sri Lanka. The Holocaust as a historical phenomenon or “lens”, is used as an “instrument” in examining these responses in the attainment of various goals by the actors in the international community. In this instance this examination centres around whether the states will act or not act to prevent and punish genocide. This examination also gives us a clearer picture as to how this historical event is



interpreted in order to deny or grant a particular incident the tag of genocide. Therefore, this draws a correct impression of the international community's usage of the Holocaust in their argumentation, rhetoric etc. The international community's interpretation of an event such as the Holocaust acts as a validation and justification of their chosen responses towards the various conflicts, which are eventually reflected, influenced or critiqued.

### **The Discrepancy**

It was in the year 1945 that finally brought to end the systematic, bureaucratic, state-sponsored persecution and murder of six million Jews by the Nazi regime and its collaborators.<sup>358</sup> It was on 9<sup>th</sup> December' 1948, when the world community stood together and proclaimed under the auspice of the UNGC that it will never let a Holocaust happen again. Sadly, the truth is that such incidents are not only occurring today but have occurred all over different parts of the world for the past nearly sixty nine years since the UNGC came into force. These incidents of brutality by humans on their fellow human beings are what we refer to as "Genocide" in common parlance. Since 1945, regardless of the "never again" pledge genocides have occurred all around the world whether recognised as in the case of Cambodia, Darfur, Rwanda, etc. or contested as in the case of Tibet, Iraq, Sri Lanka, etc. One should not forget that though the term genocide was coined by Raphaël Lemkin in 1944<sup>359</sup> this crime has been committed since pre-historic times and yet we have failed to prevent it even after centuries of violence.

Even today incidents that have the making of a genocide are taking place in different parts of the world and the international community is still not vigilant enough to stop them at the very onset. The latest example is the Rohingya Muslims of Myanmar, who are being butchered to death in their own country. Though one can understand that there is always a huge difference between any two cases of genocide whether in terms of the number of casualties, the motives and triggering events and the political and legal responses of countries around the world, it is still disappointing to observe that we seem to wait for an act of human rights infringement to be tagged by either the

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<sup>358</sup>Retrieved from the United States Holocaust Memorial Museum, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10005143> , accessed on 1<sup>st</sup> May' 2013.

<sup>359</sup> Supra.

powerful nations or international organisations such as the UN before taking any action. What is currently happening in Myanmar should be a concern of all its neighbours. A large number of these civilians have been seeking refuge in countries like India and India continues to maintain a hands-off approach while advocating that the democratic Myanmar government should be given more time to resolve this issue.<sup>360</sup> These incidents are an indication that evil is still alive and it raises its head time and time again and reminds us of our weak resolve as law, states and citizens are unable or unwilling to defend the weak and the helpless from the scourge of this legal and moral wrong which is being committed against these human beings merely on the basis of their uniqueness of caste, creed, colour, ethnicity, religion, region, political or social beliefs etc. This uniqueness which should be celebrated as it helps in enriching one's national and cultural life has become a curse to many races over the centuries and the sole reason for their complete annihilation from the face of this planet.

Law, politics and history never seem to work together in order to bring to an end to this crime. The world community twists and interprets these three as it deems fit for each and every incident of genocide. In some cases there is no action taken till it is too late and too little, like the one that happened in case of Rwanda, where the UN finally did send its peace mission but bailed out much before the whole situation could come under control. One of the foremost reasons cited for this discrepancy is the absence of a generic definition of genocide. This has been covered in full detail in chapter III of the study. Even Lemkin has not been able to save himself from being criticised for his definition of genocide by scholars from different areas. Hopefully, with the passage of time the multi-disciplinary research on genocide will come up with a generic definition of genocide which will be able to put all the different elements of the crime under one statement. Till then it becomes essential to dig deep into the world politics which has since time immemorial played a huge role from defining to participating to combating to ignoring genocides.

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<sup>360</sup> Devirupa Mitra, 'India Backs Myanmar Even as International Actors Mull Action over Rohingya Violence', in *The Wire*, published on 16<sup>th</sup> March 2017, retrieved from *The Wire*, <https://thewire.in/116558/india-myanmar-rohingya-violence/>, accessed on 20<sup>th</sup> March 2017.

## **Undying Influence of the Holocaust**

The very basis of the UNGC in large part is believed to be inspired and modelled on the Holocaust. As it was adopted after the occurrence of the Holocaust, there is undeniable influence of the Holocaust over it. There are two problems with this influence; firstly, the UNGC needs reformation according to the changing times. For example, the definition itself needs to add new elements as the scope and the influence of genocides have increased manifold since the Holocaust took place. The perpetrators are targeting varied groups and using advanced techniques to carry out their attacks. This contention has already been discussed in detail in a previous chapter. Secondly, there seems to be an obsession with the status of Holocaust even today. All pre and post Holocaust genocides have and will probably carry on being compared to it, long before they gain the status of a genocide. In the academic sphere, the comparison materialises as an ongoing debate regarding the universality vs. the uniqueness of the Holocaust. It is not only closely connected to the concept of genocide but it won't be at all wrong to say that the term Holocaust has become synonymous with genocide. It is imperative to study the role played by the Holocaust in interpreting "genocide" in post-war international politics. Due to this importance given to the Holocaust on one hand it helps in justifying actions for safeguarding human rights but on the other hand it also poses problems like non-recognition of incidents that do not seem to fit in its "lens".

Nonetheless, what makes the post Holocaust period remarkable is that amid this period the international community had submitted themselves both ethically and lawfully to keep incidents of this kind under wraps. The atmosphere towards the end of the Second World war had been depicted as hopeful and idealistic and hence the international community hoped that it could forestall future wars and genocide and secure each individual's human rights. Be as it may, this idealism in the international community's ability to learn the lesson from history was not shared by everybody. A few counterparts had cautioned regarding this blind confidence especially in reference to the limits of the recently settled global legitimate administration, and its real impact on the activity of states. One of them was Hartley Shawcross, the lead British prosecutor at the Nuremberg trial, who forewarned on the eve of the selection of the UNGC that "the Assembly ought to know about misdirecting individuals into

imagining that an incredible stride forward had been taken through the appropriation of the Convention, while, as a general rule, nothing has been changed”.<sup>361</sup>

### **The United Nations**

The UN record of genocide prevention and punishment no doubt is affected by the member states’ manoeuvres and participation in the discussions, debates, talks, and decision-making surrounding the different cases of genocide. Even today, the world faces similar dangerous circumstances in countries like Syria which have previously resulted in genocides around the world. There is little doubt that while the world community awaits for reports of the United Nations on similar incidents around the world, it should not be too easy to identify the making of a genocide. Due to these repetitive experiences one is reminded of the numerous genocides and near miss incidents of genocide that have taken place in different parts of the world since the Holocaust of 1945. Though the geographical location may change, both the victims and the perpetrators may change but what has not changed is the discrepancy found legally, politically and historically in combating genocide. For example, in the recent Syrian incident of 2013, it was easily observable that the world community stood for different responses.

On one hand, the political stage superpowers like Great Britain had issued a statement that left no doubt that it believed the Syrian government was responsible for the alleged chemical attack.<sup>362</sup> Even the Obama administration of the United States appeared to be shoring up international support for action against Syria by speaking to its allies like France. President Francois Hollande went to the extent of not rejecting the chances of military response against the Syrian government. On the other hand countries like Russia, Iran and China were supporting the Syrian regime. The reasons behind this support were both economic and ideological. Russia is one of the biggest arms suppliers to Syria. Even ideologically, it is Russia’s key policy to block any kind of American efforts to shape the region.<sup>363</sup> This fractured response of the world community was very much similar to previous international responses on numerous proven and alleged incidents of genocide. The only difference observed is the

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<sup>361</sup> Supra.

<sup>362</sup> Retrieved from Kansas City website , <http://www.kansascity.com/2013/08/25/4435993/us-appears-to-weigh-militaryresponse.html>, accessed on 18<sup>th</sup> November 2014.

<sup>363</sup> Retrieved from Cables News Network (CNN) , <http://edition.cnn.com/2013/08/29/world/meast/syria-iran-china-russia-supporters/>, accessed on 18<sup>th</sup> November 2014.

countries keep on changing sides. Ultimately, the biggest question that arises is as to what did this divided response of the world community result into? This has resulted into utter chaos for the Syrian population and once more the world has realised that we have not learnt any lesson. Due to their own political or economic or other interests nations are still ready to let the common people suffer even if they know that a particular conflict is very much on the path of turning into a crime like genocide.

International outrage over the United Nations' failure in Rwanda seemed to signal a new global resolve to stop mass human rights violations. This discrepancy is very much visible in relation to genocides as it is the law, politics and history that still plays the decisive role in determining whether a particular incident would be granted a chance at getting an international tribunal constituted or not to try the alleged human rights violations. This decision is very much governed under the influence of multiple factors stemming out of the individual or collective interests of the influential states. As it is the prerogative of the UN Security Council to make such decisions it has been observed that these decisions are ultimately determined by the political interests of each of the five permanent members. But though political motivations do drive the powerful nations in taking such decisions we have also witnessed some rare exceptions. For example, due to lack of a timely action by the international community in preventing and stopping the horrific Rwanda and Yugoslavia incidents due to political indecision, tribunals had to be constituted for both the incidents mostly due to the public opinion, guilt and perhaps a genuine sense of justice due to the severe nature of crimes committed in both the cases.<sup>364</sup> On the other hand, regardless of the same severity and barbarity witnessed in the case of Cambodia, leave alone the constitution of a tribunal it was not even a point of discussion on the international political agenda unless Cambodia itself provided the political atmosphere to discuss such issues. Another driving factor behind this decision was that Cambodia was an important part of the economically expanding South East Asia<sup>365</sup> and as the other countries did not want it to end up with economic sanctions, hence the international community did not pay much heed to setting up a tribunal for Cambodia.

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<sup>364</sup> Please refer to Power and Ronayne.

<sup>365</sup> Ibid.

## **Human Rights**

One of the intentions to study this discrepancy was to investigate as to how these above mentioned distinct discourses which bring varied meanings and understanding to the concept of genocide are used and condition, i.e. limit or restrict or contribute to the practical fulfilment of human rights in relation to the issue to human rights. There exists a paradoxical relationship between human rights and international politics i.e. how the concept of human rights is meant or used by the international community on the one hand and as to the real intentions behind its usage in international politics on the other. In order to fully investigate this paradox both the legal and the political aspects of human rights have to be unravelled. The inconsistency between the existence of human rights and the continuation of violations or deprivation of human rights around the world is a product of the discrepancy between law, politics and history.

One of the major inconsistencies of human rights is found in the discrepancy between the very existence of these rights and the reluctance on the part of the state to implement and fulfil them. It has been observed in the post second world war world that there exists a tendency on part of most modern states to project themselves as advocates of human rights by committing themselves formally to human rights by recognising the existence of international human rights law through various methods such as signing both international and domestic conventions upholding such rights. What these states do in reality is contrary to what they project, i.e. they do not implement or enforce any of these rights. To sum up, the contradiction between human rights and politics lay in the fact that human all around the world have been promised these rights but in practicality a large number of citizens around the world never get to enjoy them. What governs and determines this gap is the discrepancy between law, politics and history, under whose complexity human rights end up only getting lip service.

Nevertheless, the growing strength and influence of human right can be clearly illustrated by many of the past and recent actions of both the international community and the UN. Both of them are trying to prevent the occurrence of genocide by setting realistic preventive mechanisms such as creation of international courts and tribunal to try the perpetrators of genocide such as the ICTR and the ICTY. Early warning

systems and other significant political exercises are being taken up in the political arena to combat this crime. Regardless of all this, though the international community cannot realistically be able to respond to all cases of genocide, it can however reduce the number of suspected outbreaks by working on an internationally coordinated effective early response system by elucidating a comprehensive approach to genocide identification and prevention. This all will ultimately result in promoting international peace and security.

The introduction of universal standards for recognising genocide is concurrent with the introduction of the human rights and therefore there is no doubt that there also appeared on the scene oddity regarding crimes against humanity too. At the time, states did not see that there existed an inconsistency between the foundation of human rights and the mishandling of the continuation of human rights, in this manner adding to the discrepancy between human rights law and politics. This discrepancy has remained even before the existence of the Holocaust. What this means is that based on the grounds that the Holocaust did not exist as a marvel, it was not utilized as a part of the discussions on the perspectives to figure out if different occurrences were to be allowed the status of genocide or not. Be as it may, there existed a situation such as the worldwide community did not anticipate, mediate or give present or past genocidal episodes the status of genocide in spite of the recently settled global human rights law and the pledges to never give genocide a chance to happen again. This conveys a negative message to the recently made genocide standards and the circumstances encompassing its creation. As can be derived at this point, the genocide definition in the UNGC was a political development that did not reflect contemporary understandings of the Holocaust, which were all the more precisely reflected in the UNDHR, the Nuremberg Charter and in Lemkin's works.

### **The State**

Even after the news of travesties like Cambodia, Rwanda, Darfur, etc. reach all parts of the world they are taken in different magnitudes by all of us. On one hand where many of the governments and it's citizens condemn such genocidal acts, there are many countries which do not even issue a statement even recognizing such acts. The question that arises is that why do various governments and other political actors around the world give different interpretations and reactions to the occurrence of

genocides? Why even today do the global international political organisations recognise an incident as genocide or not? Why do countries take different actions against the perpetrators ranging from economic sanctions to military action to political boycott or none at all? Despite the “Never Again!” commitment made by the civilized world after the Holocaust it is highly disappointing to see that till today state sponsored genocide has been taking place in different parts of the world at different times. The case of Rwanda is one such genocide where the international community just stood by and watched while Tutsis were slaughtered in a hundred days of carnage. What is more shocking is the repetition of not only these genocides but also the inaction of the international community. The response to the systematic annihilation of hundreds of thousands of Darfurians from 2003 to the present times is evidence of this huge failure of international law, international politics<sup>366</sup> and even history which seems to have made no impact on us.

Since the days of the holocaust, numerous genocides have occurred around the world, mostly of indigenous people at the hands of their own states and in the name of “development”.<sup>367</sup> Holocaust is considered as a “unique” incident but if genocide is to be understood as a phenomenon historically it is necessary that the holocaust may no longer be seen as “unique” but a part of the continuation of history, a part of those nation-building processes which are based on racial, ethnic, political and developmental grounds resulting and permitting gruesome crimes like genocide to take place even today.<sup>368</sup> The motivations for genocide may in fact be diverse, but motives do not make events singular. For example, throughout history wars have arisen from several motives, but this fact does not prevent the historian from drawing comparisons between them. In reality, the singular aspect of genocide in this century is not to be found in the motivations of the perpetrators, but rather in the social and political matrix that allowed for the multiple manifestations of genocide around the globe. The environment of annihilation that has accompanied the historical events of the last more than one hundred years is not coincidental. Indeed, the last century’s genocidal actions were primarily associated with the actions of totalitarian or

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<sup>366</sup> Aidan Hehir, ‘The special adviser on the prevention of genocide: adding value to the UN’s mechanisms for preventing intra-state crises?’ in *Journal of Genocide Research*, vol. 13 no. 3, 2011, pp. 271-286.

<sup>367</sup> Supra.

<sup>368</sup> Supra.



authoritarian governments. These governments were themselves products of mass politics arising out of a process of industrialization in which modern society itself became increasingly atomized and its citizens subsumed into a corporate mass where individualism became equated with alienation.

The states over the years have both acted as perpetrators and saviours in cases of genocides. Though most of the genocides that have taken place could have never occurred without support from the home state, on the other hand it is the world community formed of states around the world who have taken action though many too late. There is no law or politics and even history to a large extent without the state. One of the biggest criticisms of the Genocide convention is on the basis that though genocide is committed by a state or political regimes representing a state, the convention provides provisions for only individuals to be punished. Thereby, making prevention of genocide impossible. Is this impossibility due to the fact that our national security is much more dear to us than the lives of people belonging to some other country who are being slaughtered for the mundane reason of belonging to some other ethnicity, race or religious beliefs? Or is it due to the fact that our own country has no interests to safeguard both politically and economically in that genocide ravaged country that we just want to sit silently through their ordeal? This study aimed to study this discrepancy not only in context of the role played conjointly by the international law, international politics and history but also the discrepancy that exists between all three of them which makes governments around the world give not only different reactions but take different actions in cases of genocides. This diversity that our world consists of has been the cause of strife among humanity since it's very inception. Many wars have taken place in order to bring under control the minorities by the majorities on the basis of caste, colour, religion, region, ethnicity or nationality.

The international community has consistently failed to stop genocide even after adopting the UNGC. There is always an excuse or reason for either non-intervention on it's part or at the best, there is a delayed and ineffective intervention, which seems to be the case in a number of genocides such as Rwanda, Darfur, etc. these genocides reveal the harsh reality of the state and it's government. There are two ways in which the states are responsible for the failure in preventing genocide. Firstly, the ability of the state as a perpetrator to not only sustain genocide against it's own people with indemnity but safeguarding itself from the international community particularly the

UN from both stopping the carnage and reprimanding the state. Secondly, the hypocrisy of the nations worldwide specially powerful nations such as the USA, Russia, Britain, etc. in never standing together in response to such human rights infringements.

It is high time that the world community, international organisations, international judicial organisations, civil society and the people of the world come together and call out this hypocrisy of these powerful nations. Since a very long time powerful nations such as the USA, the UK, France, Russia, China, etc. have been changing their policy on genocide at will or as it suits their interests. The very USA which wanted to take military action against Syria not long ago under the Clinton administration refused to recognise Rwanda as a site of genocide in 1994 which resulted in the death of about 800,000 Tutsis by the Hutu extremists. On the other hand, the political stands taken by the countries around the world were no different. Most of the countries around the world stood in silence and on the side-lines during this massive slaughter. This indifference can be said to be very similar and based on the genocide that took place in Yugoslavia previously. After the media reported the occurrence of the genocide in Rwanda, the Security Council of the United Nations supplied around five thousand troops for the affected area but it reached Rwanda months after the genocide was over. It was shocking for Rwandan people to understand that why did the other countries not take any interest in the prevention of this atrocity as they had done during the Yugoslavia genocide.

Another example of this hypocrisy was observed during the Darfur genocide. The United States again changed its position in case of Darfur when on 9<sup>th</sup> September 2004, after reviewing the evidence collected by the State Department of the United States, the then Secretary of State, Colin Powell announced that the U.S. administration believed that “genocide has been committed in Darfur and that the Government of Sudan and the Janjaweed bear responsibility and that genocide may still be occurring”.<sup>369</sup> Despite this observation, Powell further said that “the U.S. policy toward Sudan would remain unchanged” and since that time no other permanent member of the United Nations Security Council had followed suit. Regardless of this statement most of the international actors and organizations,

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<sup>369</sup> Ibid.

including the AU and Arab League, refused to accept Powell's characterization of the conflict as genocide. The European Parliament was the one who came closest to recognizing this huge human rights violation when it declared the situation in Darfur was 'tantamount to genocide'. It also threatened sanctions if no “tangible progress” was made between the United Nations and the Sudanese Government.<sup>370</sup>

These are just some of the examples of the political responses given by the United Nations, the superpowers and other countries in cases of genocides around the world. If we go deep into all the genocides that have taken place after the holocaust and try to understand the different political responses of the international community over the years, we will find that a number of factors have played an important part in the kind of conjoint role that international law, international politics and history plays before, during and after a genocide. Though, the international community through United Nations and various conventions has always tried to project that it is against genocide and wants to bring an end to it, the sad reality is that even today genocide is taking place. And all this is happening due to the various vested interests that states and their governments have in the areas of the occurrence of these genocides. The security and protection of the endangered people has not been able to become the sole reason for the international community to stand together and annihilate those who indulge in such barbaric practices.

The maximum that the international community has done is that it has drafted charters, conventions and treaties under international law which aim to fight against human rights violation and conflicts around the world but the sad truth is that the intention is far away from its fulfilment. Even the superpowers of the political world only intervene in cases of genocide if any of their political, economic or other interests are being put into jeopardy. The moral will for stopping genocide has been present in the states since time immemorial but the governments have lacked strong political will and use of internal mechanisms in order to respond effectively to such escalating violence both previously and even today. For example, the US reports like the Albright-Cohen GPTF under the Obama administration make it clear that prevention of such human rights violations is both a moral and strategic imperative as the effects of massive crimes against humanity are rarely contained within national

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<sup>370</sup> Retrieved from Eyes on Darfur, <http://www.eyesondarfur.org/response.html>, accessed on 18<sup>th</sup> November 2014.

borders. Such initiatives should be taken by countries around the world in order to provide effective response to threat of potential mass atrocities by dedicating resources and staff.

A major obstacle to genocide prevention has been and will continue to be the political will of the powerful countries. This political will exists in two forms: the first form is the lack of it, wherein these powerful nations do not concern themselves at all with any kind of cases of human rights infringement unless any of their personal interests are at risk, as is currently happening in Myanmar. In the second form, there is a force full enforcement of one's will over all the other nations. This has happened in the case of Iraq where the US had already made up it's mind on invading it and made sure that it's allies did so too even on false grounds. As Mark Levene also argues, the true scope of prevention is limited based on what he sees as the contending interests and will of major powers in the international community, as well as that of the international society and the dominant power (hegemon).<sup>371</sup> Bruce Cronin addresses Levene's critique by emphasizing the need for transparency in preventive measures by limiting the scope of intervention. He further stresses the need for political will to prosecute offenders, allies or foes alike. In a significant step toward genocide prevention.

This study came up with various hypothetical presumptions about the way of the global political discourse. In the examination of the observational material that was assembled subsequently after looking at the three incidents of genocide and perusing about others, it can undoubtedly accept that states' activities are controlled by their interests and thus it is these interests that oversee their reactions and activities towards distinctive genocidal episodes, and which may be as opposed to the commitments expressed in universal law. Be as it may, as contended prior, it brings up the issue of why the interests of states appear to so infrequently match with the avoidance of genocide. For the reason and extent of this study it was further facilitated to make the supposition that states' follow up on the premise of their interests, interests which can be as opposed to or as per global legitimate commitments. In the investigation of the Holocaust and the other two contextual analyses and also the genocide talk I have not analysed what lies behind the talk trying to discover what rouses the on-screen

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<sup>371</sup> Timothy Longman, 'Placing Genocide in Context: Research Priorities for the Rwandan Genocide' in *Journal of Genocide Research*, vol. 6 no.1, March 2004, pp. 29- 45.

characters of the talk, a "part" is in this way expected to clarify what prompts activity. The presumption that states' activities are subject to their interests lays on the way that a component is expected to make states react and make a move in connection to different universal political issues. Thus, a state's reaction to a genocidal situation is very much also dictated by the nation's social life.

### **Lack of reform of the UNGC**

Unfortunately, even after the adoption of the UNGC in 1948, not much was achieved for a long time which showed failure on the part of UN. A half a century later the renowned scholar William Schabas rightly concluded when he remarked that

The Genocide Convention was the first modern human rights treaty. It was adopted only one day earlier than the Universal Declaration of Human Rights, which set the common standard of achievement for human civilisation. Some must have believed, in 1948, that the unthinkable crime of genocide would never recur. Perhaps the gaps in the convention are only the oversights of optimistic negotiators, mistaken in the belief that they were erecting a monument to the past rather than a weapon to police the future. Their naiveté may be forgiven. A failure to learn the lessons of the fifty years since its adoption cannot.<sup>372</sup>

Incidents such as Rwanda and Darfur pay heed to the fact that on the international level, a never ending political game of the international community goes on which uses the concept of genocide in different contexts as per their own benefit. The international community does not even shy away from interpreting past history of genocidal incidents to suit their individual aims. In some cases genocide is used to condemn the actions of other member or non-member states by both the international community as well as the United Nations and on the other hand the loopholes prevalent in the definition of genocide is cited as the reason for not according the status of genocide to a particular conflict or incident. For example, the United States of America has never been publically reprimanded for the genocide of the native Americans by either the UN or the international community. In this case of course not only the loopholes of the definition come into play but so does the status of the United States as one of the most powerful nations of the world both economically and politically. On the contrary many times the opposite has also been found to be true i.e.

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<sup>372</sup> William Schabas, 'The Genocide Convention at Fifty United States Institute of Peace', Washington, Special Report, 7January 1999, p. 8.

the genocidal regimes themselves have appropriated the term at times to defend their own genocidal actions as was done by Milosevic in Serbia.<sup>373</sup>

Though under the UNGC it is the duty of the international community to intervene in case of genocidal conflicts regardless of when and where they happen in the world but it has been observed that due to various political, social, economic or simply disinterest the international community has not been able to do so. It has shamelessly run away from its responsibility of “never again”. This discrepancy starts from the very first step of defining genocide. The definition of genocide has garnered huge controversy from legal academia, social sciences, mass media and other political organs/ organisations due to the fact that it is seen by some as too broad and by some as too narrow. Though there is an on-going fight between the legal scholars and the social scientists as to the appropriate definition of genocide, while going through the discourse on genocide one can observe that the term genocide is being used in a completely different scenario as compared to these two fields. Different political circumstances like when the pro-life advocates equate abortion with genocide<sup>374</sup> or the aids epidemic has also been referred to as genocides particularly by the mass media involved, this pays heed to the fact that the term genocide is both morally and emotionally charged and is being used as a generic term for conflicts or situations that may under the legal or social definitions not fall under the category of genocide at all.

### **State Sovereignty**

The principle of state sovereignty plays a central role in shaping both prevention and intervention mechanisms and also structures international politics. This principle is viewed as sacrosanct which protects states from any kind of foreign interference, thereby making any kind of international intervention in response to domestic violence very difficult or nearly impossible. There is an ever going debate regarding the status of the states as sovereign entities and the enforcement of universal human rights. This debate raises a number of questions such as to the status of nation states as the inalienable building block of international organisations and law, further it raises a question mark on the sovereignty of the state as well as its status against human rights violation like genocide. Hence, sovereignty is not a defence for any kind

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<sup>373</sup> Meghna Manaktala, ‘Defining Genocide’ in *Peace Review: A Journal Of Social Justice*, vol. 24 no. 2, 2012, pp. 179-186.

<sup>374</sup> Supra.

of breach or gross violation of fundamental human rights and today it is less of a defence than ever. The international community around the world bases its recognition of genocide on the definition laid down by UNGC which is often seen as a blueprint of the holocaust. We are a part of an anarchic international system where states are the legislators, upholders, implementers and also the subjects of international law. As we already know it is the “right of a country to trial their own people and rule in their own system of government without intervention from other countries”.<sup>375</sup> Due to somewhat distorted circumstances states choose not to interfere in cases of genocide and violate their responsibility which has been set out under UNGC blatantly by citing reasons such as non-interference in the sovereignty of other nations. They are even going further by commenting that big powerful nations can abuse the conflict by intervening in a country even when no wrong was committed by that country. Hence, state sovereignty brings about a tricky situation as the country under scrutiny cannot be fairly evaluated as doing anything wrong or not.

This tussle between state sovereignty and human rights does result in periodic tensions regardless of their coexistence. The UN often finds itself in a precarious situation because on one hand it was founded on the principle that it will safeguard the sovereignty of a state, no matter whether it is democratic, socialist, monarchical or any other type. On the other hand the UN also promises to uphold human rights through its various charters and conventions. In the present times though, by observing the different happenings around the world one comes to realize that a large number of states are repeatedly indulging in violating their international obligations. Due to lack of any formal force, states most of the times act as if they are above law. This has been one of the greatest drawbacks of international law over the years and especially when it comes to human rights violations around the world. But it is not as if international law does not lay down the principle of state responsibility. The basic principle of “state responsibility” in international law provides that any state that violates its international obligations must be held responsible and accountable for its acts. It further imposes a duty on states to protect people from violations of their human rights by both state and non-state actors under international human rights law. It further clarifies it by stating that states which do not respect their international

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<sup>375</sup> Retrieved from The Brightest man on Wikispaces, <http://thebrightestman.wikispaces.com/Prevention+of+Genocide+vs.+State+Sovereignty>, accessed on 21<sup>st</sup> December 2015.

duties are responsible for not only immediately stopping their illegal actions but should also be made to make reparations to the injured. The above stated principle is a fundamental principle of international law and forms an essential part of the international customary law and is fully binding on all the states.

The defence of state sovereignty seems a farce when we further examine as to why states are not able to intervene in combating genocide even after they come to the conclusion that genocide has or is taking place in a particular state or states. Both realists and non-realists agree that it is either due to selfishness on the part of states or due to the emphasis on national interest while formulating their foreign policy. Further, the UNGC imposes obligations on all member states to prevent genocide at any cost which no commitment to state sovereignty can claim to abrogate. It therefore openly challenges and strict or absolute notion of state sovereignty. In the modern times the notion of state sovereignty has changed manifold due to the emergence of a robust body of international human rights.

### **Preventive Mechanisms**

“This is an impossible mandate that must be made possible. Genocide is one of the most heinous of crimes against which all of humanity must unite to prevent its recurrence and punish those responsible. However, for the same reason, it evokes denial from both the perpetrators and those who would be called upon to intervene to prevent or stop it. This is why our strategy focuses on early prevention, by responding to situations of concern before positions harden into denial.”

Francis Deng,  
April 2010

UN Secretary- General Kofi Annan laid out a five point UN Action Plan to Prevent Genocide and established the UN Office of the Special Advisor on the Prevention of Genocide (SAPG) in April of 2004. However, the office of the SAPG’s practices in identifying and responding to escalating cases leaves future genocide prevention in the same bureaucratic hands, and open to the same public relations bargaining that prevented timely action in Rwanda.<sup>376</sup>

Genocide prevention tools have progressed significantly since the coining of the term genocide and in particular after the genocides of the 90s. The intervention in some

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<sup>376</sup> Lawrence Wocher, ‘Developing a Strategy, Methods, and Tools for Genocide Early Warning’, Columbia University, Centre for International Conflict Resolution: September 2006. Retrieved from <http://www.un.org/ar/preventgenocide/adviser/pdf/Wocher%20Early%20warning%20report,%202006-11-10.pdf>, accessed on March 12, 2013.



genocide struck areas such as Darfur proves that the effective implementation of these tools is possible and provides hope for the future. However, as the conflict is ongoing, the situation reveals the weakness of genocide prevention today. Genocide prevention frameworks need to actively be mindful of the economic, historical, cultural and political layers of conflict in order to effectively put to use the mechanisms and tools created in the past. One way of doing so is by enlarging the pool of decision-makers in genocide prevention. This study has used the term “international community” while referring to the international state system. The reality is that we should be talking about an international community where civil society organizations (CSOs), development aid programs, international financial institutions, environmental movements, researchers and engineers work together.

There is a belief among many scholars, activists and policy makers in the fields of human rights and genocide that if a crisis can be identified before it happens, the international community can move to stop it before innocent lives are lost. In 1996, Gregory Stanton, a Foreign Service Officer who would go on to found Genocide Watch in 1999 presented the US State Department with a briefing entitled “The 8 Stages of Genocide”, which discussed genocide as a process which he believes could be prevented at each stage instead of a singular event<sup>377</sup>. He broke the process of genocide down into eight stages initially which later turned into ten stages. Beyond providing a template for the study of genocide, it focused on the idea that genocide as a crime and as a process could be ended before the killing begins. In her book *A Problem from Hell*, Samantha Power, a journalist turned human rights crusader who is now one of President Obama’s top advisors on Human Rights<sup>378</sup>, also expresses a similar belief, but is highly critical of the U.S. government as well as other world powers for turning a blind eye to cases for political reasons while championing human rights at the United Nations and in the international press.

In 2008, the Genocide Prevention Taskforce, a joint operation between the American Academy of Diplomacy, the United States Holocaust Memorial Museum and the United States Institute of Peace published “Preventing Genocide: A Blueprint for U.S. Policymakers” which focused more heavily on early warning, prevention and

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<sup>377</sup> Gregory Stanton, *The 8 Stages of Genocide*, Genocide Watch, 2006.

<sup>378</sup> Sheryl Gay Stolberg, ‘Still Crusading, but Now on the Inside’, *The New York Times*, 29 March, 2011.

preventative diplomacy than the military options that can be applied after the conflict has taken many lives. These and many more works as well as policy decisions have shown that both the United States and the World are more interested in prevention of genocides, at least on paper, than being forced to employ military action to stop them after the fact. Stanton's "Ten Stages of Genocide" clearly work within an academic context analyzing the cases in retrospect. Though one remains unconvinced, however, that they are an effective manner of evaluating conflicts in real time. The division of genocide into stages as Stanton suggests, provides an analyst with a clear delineation of the course these conflicts take and accurately depicts genocide as a process instead of a singular event. Although Stanton notes that his "Eight Stages of Genocide" are not meant to be taken as linear in nature, his numeration of the stages as published them leads one to assume that the process follows a distinct order.

## **Conclusion**

All individuals must have a stake in preventing genocide, not because it is a moral obligation but because in genocide, humanity is put to question. Genocide is total annihilation as it permeates all aspects of society beyond that of law, politics and history. Genocide is also creative as it eludes the rational understanding of the use of force and the scope of violence. To fight against such a crime it is essential that the preventive mechanisms should work in a similar way. Genocide prevention should be total and it should be creative. If the framework of genocide prevention were limited to the scope provided explicitly in legal and academic documents then we would find ourselves perpetually encountering genocide and perpetually needing to prevent it without addressing the dynamics inherent to the conflict. In Ban Ki-Moon's "Implementing the Responsibility to Protect" report, he wrote that

one of the keys to preventing small crimes from becoming large ones, as well as to ending such affronts to human dignity altogether, is to foster individual responsibility. Even in the worst genocide, there are ordinary people who refuse to be complicit in the collective evil, who display the values, the independence and the will to say no to those who would plunge their societies into cauldrons of cruelty, injustice, hatred and violence.<sup>379</sup>

The international community needs to create those opportunities for individuals to be responsible in genocide prevention. It is important to find leaders to bring change and "own" the reconstruction of society after genocide. Patrick Awuah in his Ted talk

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<sup>379</sup> UN, "Implementing the Responsibility to Protect," 2009.

explains that it is important to educate leaders but that it is even more important to train the elite in general: the doctors, lawyers, engineers and journalists.<sup>380</sup> Good leadership matters in a place where institutions are weak. By investing in leaders, the international community can foster a sense of responsibility rather than a sense of entitlement and it can overcome the difficulties that were pointed out earlier on in this study concerning the abstraction of legal, political, historical, cultural and economic implications of genocide. The world is changing rapidly and genocide prevention as a process should adapt to this momentum. Investment and innovation are key for the future of genocide prevention. The use of technology, social media, news reporting and easy communication will revolutionize the distribution of power as well as the nature of conflict. The international community could implement better communication systems but bettering roads and investing in infrastructure, agriculture and support the responsible and ethical manufacturing of natural resources. The international community must implement systems thinking in which processes of genocide are analysed rather than events or acts of genocide.

The handling of the crisis such as in Darfur by the international community proves that genocide prevention today is realistic because the tools created during the twentieth century and early 2000s have made it possible for the international community to take concrete initiative in a rapid and timely manner. All the existent legal, political, economic and social mechanisms and systems are functional and can be applied effectively. R2P demonstrates how well it may have integrated international thinking and the duty to protect civilians. The wide acceptance of R2P may provide the plausible explanation as to why the “forgotten” countries around the world may receive help. Many more factors need to be taken into consideration in the genocide prevention framework in order to shape durable visions of peace. There is a need for more measures to stop genocide by highlighting the possibilities of enlarging the genocide prevention framework but also reinforcing the third and last pillar of R2P: rebuild. The international community has proved itself to be capable of reacting fast and stabilizing conflict but it is still responsible for the last step of fostering peace and security. The key is to look at genocide from a different angle and to implement measures with more awareness to the culture and economics surrounding violence.

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## Chapter VII

### Conclusion

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Genocide is a repetitive crime. It occurs all over the world with differences in circumstances, types of perpetrators or victims, geographical locations, distinct motives and triggers, etc. but the glaring truth is that it is not coming to an end. Or one should say forget coming to an end, it is not even coming under the control of the international community. Regardless of us coming to know of instances of human rights infringement that can fast escalate into a genocidal event, there seems to be no fear in the perpetrators to not indulge into such atrocities. Regardless of the failure to combat genocide should not stop us from trying to understand this dynamic concept. This study has provided a number of reasons that are responsible for this failure and also solutions that we can work on to try to bring an end or atleast control incidents from turning into another case of genocide. This is the least any of us can do for our fellow human beings who deserve a life of dignity.

#### Introduction

As of today, we know that the promise of “never again” has not been fulfilled. According to the great historian Raul Hilberg, who studied the Holocaust extensively the phrase “Never Again” had first appeared on handmade signs put up by inmates at the Buchenweld in April 1945, shortly after the camp had been liberated by the US forces during the Second World War.<sup>381</sup> Since then this phrase has become synonymous with the Holocaust. The pledge given in the preamble of the UNGC “to liberate mankind from such an odious scourge”, in order to avoid such “great losses on humanity” in the future, has not been fulfilled. Instead the period after 1948, has seen numerous instances of genocidal violence, turning the twentieth century into what some have called the “century of genocide” and the twenty first does not seem to be going any different with cases of Sri Lanka, Syria, Myanmar already on the way to be someday even if reluctantly be recognised as genocidal incidents by the international community. The writer David Rieff therefore once quipped that the

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<sup>381</sup> David Rieff, ‘The Persistence of Genocide’ in *Policy Review* , February 2011, pp. 1-5.

pledge of “never again” only could be understood to mean “never again will Germans kill Jews in Europe”.<sup>382</sup> Everybody else seems to be getting killed. This phrase can be seen everywhere today no matter which country in the world you go to but as it does not let us forget that the Holocaust took place, it now is becoming synonymous with the failure of the international community in letting it happen ever and ever again.

The use of this phrase currently just seems lip service on the part of the international community to do away with it’s guilt of letting something as barbaric as the Holocaust happen but to ease their conscious one wishes to remind them that nobody had ever done anything for the helpless victims of genocide even before the Holocaust. Of course, the international community can refute this allegation by pointing out that there did not exist such a pro-active and united international community before the second world war, though the League of nations was already in existence and the nation states around the world had already been battered by the first world war. It is not befitting here to enter into a long debate regarding the state of international relations and the status of League of Nations which finally gave way to the UN here, as it is the development of the concept of genocide since the Holocaust that we are interested in. The underlying truth being that the world has learnt very little.

Who is to blame for this? Are we all not a part of this world? Yes, we know that see how the legal and political mechanisms used by the international community if and when used have failed miserably to prevent genocide but is it the international community only which should be blamed for such atrocities. Media in the current times is such a powerful tool that human rights infringement around the world are flashed wished seconds to our homes and what do we do about it? Many of us donot even bother to acknowledge or discuss these events. It is the people who make a nation and no doubt our nations have become as selfish as all of us. As mentioned numerous times during the study it is the nations’ own interests that are paramount in situations of human rights infringement. Morality or ethics does not seem to be the driving force behind the nations while engaging with each other on the international platform.

Countries as powerful as the USA bring out documents and make statements on genocidal incidents such as the one made by the Obama administration’s National Strategy paper issued in May 2010 which asserted that “The United States is

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<sup>382</sup> *Ibid.*

committed to working with our allies, and to strengthening our own internal capabilities, in order to ensure that the United States and the international community are proactively engaged in a strategic effort to prevent mass atrocities and genocide”. Another time another promise but this should not deter us from thinking, writing, researching, talking, acting regarding genocide. This particular topic was chosen due to a magnitude of reasons given below:

Firstly, genocide is a very dynamic crime, a crime to which we have still not been able to find a solution and studying it from the conjoint lenses of law, politics and history seemed as an opportunity to not only bring something new to the research but a try at maybe finding those realistic solutions that could help mankind. Secondly, while going through the wide array of literature available on the topic it did not take long for realisation to dawn that not much research has been done on genocide in India. Hence, this study provided an opportunity to explore a nearly untouched area. Thirdly, the study of law, politics and history both jointly and individually was interesting as well as challenging. Of all the thesis or dissertations that have been referred to while conducting this study, not even one has combined all these three to study genocide. Nearly all of them emphasise on some sub topic under one of the three.

As the study comes to a conclusion there are a number of inferences that can be drawn now. There is no doubt that genocide cannot be studied in a vacuum. Even if it is studied under any particular subject like law or anthropology or economics or international relations, this study has proven that the influence of other subjects while trying to understand the concept of genocide is inescapable. Especially the nexus of law, politics and history cannot be done away with as these three have influenced and continue to influence genocide even today. Further, the study of these three in relation to genocide has also brought out the discrepancy between the three to the forefront. There is no doubt that they together have given birth to the concept of genocide but ironically their discrepancy is also responsible for not bringing an end to this crime even today. The law has not been successfully enforced due to the politics that is widely observed both in the UN and between the nations. Even incidents such as the Holocaust, Rwanda, Darfur, which have historical proof behind them are twisted and turned to suit the rhetoric of various nations. All this ultimately leads to the most important question that needs to be answered as to why are genocides still occurring?

During the study a number of reasons were found that are responsible for preventing genocidal incidents regardless of the best of intentions of the international community. First of all, the continuous debate over a generic definition of genocide automatically results in a delay in action. As the legal experts of international organisations such as the UN try to salvage the situation based on the rules of international law especially the UNGC, many of the incidents get stuck in the web of the definitional conundrums. Though the various contentions regarding defining genocide have already been discussed in detail in chapter III, it is required to mention here again that due to the limited scope of the definition a number of incidents do not fall under the category of genocide *prima facie*. This results in delay in action as a clear definition is needed in order to receive the proper treatment. Most of the alleged instances of genocide find themselves caught up in the definitional conundrums. As they do not fit the definition laid down by the UNGC which by the way has been severely criticised by scholars of the other fields as being incomplete, the world community does not deem it fit to firstly recognise them as genocides and secondly intervene. It is only with the passage of time that the multi-disciplinary research on genocide will come up with a generic definition of genocide hopefully one day, which will be able to put all the different elements of the crime under one definition. With regard to the scholarly definition of genocide, this too has been developed much further since its original conception. Various authors have added to the work of Lemkin and have come up with theories of their own. Many of which have been covered all through the study. This could be realised either through modification of the UNGC or to draft a new treaty comprising of the same prohibitions but also protecting the left out groups.<sup>383</sup> Till then it becomes essential to dig deep into modern law, world politics and history to understand genocide and the failure of the international community in combating it.

Secondly, many of the cases of genocide have happened due to historical problems that have been created or supported by external forces. For example, in many cases of genocides ethnic groups that were fundamentally different but share the same land and country have ended up being victims of genocide due to colonialism or economic or political interference of powerful nations into their internal matters. There are cases of inherited conflicts too such as Darfur, where the conflicts had been taking place

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<sup>383</sup> *Supra*.

much before the actual genocide started. Most of these inherited problems pushed the warring groups into future genocidal situations great deal such as in Armenia, Rwanda, Darfur, and Sri Lanka. Thirdly, we also have the external interests affecting the different geographical areas in the cases of the genocides. Many of the powerful nations due to their economic or political interests either support genocide or turn a blind eye to such human rights infringements. It also does not help that the UN is no more stronger than any of its strongest members who also have the veto power. Nations like the US, UK, China, etc. are able to influence it's decision and become one of the most obvious reasons for delays, as taking action against the perpetrators specially if the government of a nation is the culprit can be solely dependent on the opinion of a member of the UNSC.

The problem with preventing and punishing genocide is hindered by the power and right of veto held by permanent members of the UNSC. The UNSC has been given the responsibility to maintain international peace and security and is the only entity that can mandate an intervention that overrides the principle of non-intervention. In order to fully understand the implications of the use of the power to veto, it has been discussed in full details in the previous chapter under the section pertaining to UN. Reformation of the UN is the need of the hour specially in cases of genocide intervention. Luckily, despite the fact that here have been allegations against the UN for working on the whims and fancy of the powerful nations of the world, there have risen courageous voices of dissent both within and outside the UN which demand the reformation of both the UN and the UNSC. Though it does seem surprising to a large number of people but for the past decade or more the UN in order to authenticate it's legitimacy in the eyes of nations around the world has been working towards reform regardless of the pressure of the powerful nations within it. Hence, there have been different proposals relating both to the much needed changes within the UNSC and specially the power to veto.

Regardless of the early warning signals sent out in both cases of Rwanda and Darfur, still the actions and aid were normally sent either by the end of the genocide or after years of delays when it was of no use to the victims. The fact that nations can also, in an extreme sense, invest in genocide and go unpunished or uncharged shows the lack of a properly working system and a need of a new approach to face genocide. The self-interest of nations through international organizations has created problems for



the UN to act as the powerful organization fighting for human rights that they project themselves to be. This proves the fundamental connection to realism and as E.H Carr had remarked that an international organisation will not work as the strongest member will always rule.<sup>384</sup> Regardless of the self-interest accusations against the nations it can also be said that it is a bit too unfair to ask the international community to consistently put state self-interest aside to pursue humanitarian causes throughout the world. However, unique cases of ethnic cleansing and genocide should not be tolerated during the twenty first century when the world has supposedly come so far. The international community cannot continue to condemn atrocities with no intention to pursue consequential action, as it is hypocritical and unproductive. The world population cannot endure another utterance of “never again,” knowing full well that those words no longer hold weight. In her book titled *A Problem From Hell: America and the Age of Genocide*, Samantha Power ends with a powerful quote by George Bernard Shaw: “The reasonable man adapts himself to the world. The unreasonable one persists in trying to adapt the world to himself. Therefore, all progress depends on the unreasonable man”.<sup>385</sup> The world must shift it’s thinking in order to change the cycle of genocide. No longer should states rely on what seems reasonable.

### **Preventive Measures**

We have learned important lessons. We know more keenly than ever that genocide is not a single event but a process that evolves over time, and requires planning and resources to carry out. As chilling as that sounds, it also means that with adequate information, mobilization, courage and political will, genocide can be prevented.

Secretary-General Ban Ki-moon  
New York launch of Kwibuka20  
The 20th commemoration of the Rwanda genocide

On paper the various preventive measures sound quite robust and continuous research takes place on genocide through special offices dedicated to preventing genocides there are some areas where a little work is needed to at least make it difficult for the perpetrators to indulge in genocide as, when and wherever they wish. Firstly, all through the study it has become very obvious that genocide mostly happen in places where there are already conflicts going on whether international or domestic. It is also

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<sup>384</sup> Supra.  
<sup>385</sup> Supra.

one of the risk factors mentioned under the Framework for Analysis of atrocity crimes by the UN, hence, we can understand as to how much influence on-going conflicts have. Conflicts arise due to violence based on intolerance, racism, discrimination, tyranny, etc. one of the most critical prevention strategy should be to address the inequality in accessing resources.

Most of the conflicts arise due to the inequality between the haves and the have not's. People with no access to resources are bound to engage in conflict if they are not being awarded their due share. It is the responsibility of the national governments to frame policy and take correct legal measures to ensure equality among it's citizens. International organisations like the UN and in some cases even other nations provide aid to such countries which are reeling under the pressures of inequality due to lack of proper distribution mechanisms or resources. Economic and social development and alleviating poverty can also make substantial contribution in preventing conflicts. The UN supports such efforts through political, diplomatic, humanitarian and other institutional activities.

Secondly, during studying the various legal components related to the study one could easily notice that what a commendable job both the ICTY and the ICTR have been doing since decades now in bringing clarity to the concept of genocide. Though as of today the ICC is empowered within the parameters of it's statute to take action against the alleged perpetrators of genocide in order to investigate and prosecute those responsible for the crime but only if the state is unwilling or unable to exercise this duty. In order to carry on this unbiased work the judicial machinery needs to fight and end impunity. The perpetrators of the crime should be brought to justice but it seldom happens. The special Court for Sierra Leone does not have jurisdiction over cases of genocide, it is such actions that bring to the forefront and raise doubts in the mind of the common people as to the real motives behind setting up such institutions which donot have the required power. Though this tribunal was set up as part of an agreement between the UN and the governments of Sierra Leone and Lebanon but it's powers seem to be curtailed.

Thirdly, swift action on part of the international community which also includes the courts is the need of the hour. Most of the genocidal incidents deserve swift action including military intervention but in most of the cases of genocide the states and the

UN seem to be stuck in questions of sovereignty, political games and many time personal vendettas. All this time lost makes a huge impact on the lives of millions of people. The UN though carries out a number of peace missions around the world but it is dependent on the member nations for providing the required manpower and other resources. This makes the situation very complex as many nations do not support military interventions due to their personal interests. Recently though, there have been a number of instances where the UNSC has promptly taken action. For example in the case of Libya in 2011 as also happened in the case of Côte d'Ivoire, the international community acted fast to stop the government from killing it's own citizens. In both the cases the UNSC adopted resolutions to enable an international coalition to intervene in order to stop the killings of protestors of Mohammad Qadhafi, who was alive at that time. In the other case, the UNSC condemned the gross human right violations committed by supporters of both ex-President Laurent Gbagbo and President Quattara after the presidential elections in 2011. The UNSC authorised the UN military operation to prevent use of heavy weapons against civilians. The UN though was not able to gather the same kind of support among the UNSC in the matter of Syria.

Fourthly, it is essential to set up early warning systems. In order to do so, the international community can mark area of importance all over the world which will collect and analyse information in relation to particular area and also provide support to the local government in drafting policies or taking other suitable measures to prevent genocide. The UNGC does not have a monitoring mechanism as a part of it's basic structure. Hence, a treaty body should be set up which can comprise of independent experts from different nations who will establish a monitoring mechanism which would monitor the compliance of all the UN member states and their human rights records periodically. Strict action should be initiated against the offenders. Though there is already the office of Special Advisor on the prevention of Genocide who collects information on situations where there may be a risk of genocide but taking help from some other impartial local or international non-governmental groups or groups dedicated to studying genocide would also be highly useful in those particular marked areas.

## **Conclusion**

As the study reaches its conclusion, the aim to study genocide through the conjoint lenses of law, politics and history in depth has been accomplished to a large extent. There is no doubt that this study of genocide is based on the assumption that genocides exist even today due to a number of factors culminating due to the nexus resulting from law, politics and history. One of the sub topics of the study has been the role that the Holocaust has played over all these years in interpreting genocide in international law, international politics and history since the end of the Second World War. The Holocaust has been quite revolutionary in bringing about more clarity regarding the concept of genocide. It is only after the Holocaust that the world woke up to the existence of genocide and vowed to stop it. The Holocaust is seen as synonymous to genocide in many instances and its uniqueness in history has been interpreted and influenced other cases of genocide. The Holocaust has also been used as a “lens” in order to conduct a comparative analysis with other two case studies in which the Holocaust has been compared with the Darfur genocide and the Sri Lanka incident and much attention has been given to not only the responses of both the legal and political actors involved in it but also as to how the historic interpretations of both genocide and Holocaust as used in relation to both Darfur and Sri Lanka.

One of the most important realizations in the context of a genocidal continuum is that it starts relatively small, with isolating the chosen victim group in various ways. This is mostly done through dehumanizing the members of the group as to remove them from the universe of obligation of the rest of society, be that perpetrators or bystanders. This raises the question as to whether the concept of Genocide been able to get out of the shadow of the Holocaust and what does this mean for the analytical and normative value and the use of the concept as such? The common core of the concept of genocide, as given above, shows us that there is no need to depend on the Holocaust in order to use genocide as a scholarly framework. As such, we can move away from the current focus on the Holocaust when it comes to determining whether or not an event is genocide. There may be various reasons why the Holocaust can be regarded as unique and, hopefully, something which will never happen again, but this does not mean we need to let our understanding of genocide be based on the Holocaust. Comparative research into genocides can benefit from tools acquired in research on the Holocaust, but it should not be defined by it. Genocide studies are

slowly but steadily becoming more of a field on its own without the Holocaust lurking over it. Even though this might be because in recent years more and more conflict which could be qualified as genocides have arisen, or simply because time is passing by and new generations use different reference points, it is not often now that the Holocaust is used to signify how bad another incident is. In today's parlance some events are still being called genocide though simply only to get people to pay attention to what is happening, but it seems that this is less by the linkage to the Holocaust but more because genocide on its own has become a known phenomenon and concept known to the general populace as absolute evil or the crime of all crimes. As such, it can be said that the concept of genocide has managed to get out of the shadow of the Holocaust and has arisen as a genuine concept on its own.

Eventually one realises that there is a difference between the legacies of genocide which linger in everyday life – the grief of personal loss and trauma of violence done to the self, the marks on the landscape, the processes of justice and 'coming to terms with the past', the commemorative practices – and the persistence of undemocratic and discriminatory structures in society and governance after genocide. Each case has its specificities, of course, but there is a general pattern of continuity in state or military personnel, in authoritarian structures of government, in the political culture or social values which previously provided fertile soil for genocidal violence, and the continuing discrimination against the group(s) targeted during the genocide (or the deepening of divisions between groups which genocide itself solidified). As of now people are trying to build their lives even after suffering such barbarity and though the scars of any of the genocides cannot be undone, both the victims and the world is trying in its small ways to remember the hard learned lessons.

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