REDRESSING ATROCITIES OF WAR IN BIAFRA: A MATTER OF AMNESIA OR PROSECUTIONS?

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ABSTRACT

The Nigerian Civil War, otherwise known as the Biafran War raged between 1967 and 1970. Despite strident allegations of genocide, no one seems to have been investigated, indicted or prosecuted, either for genocide or crimes against humanity and war crimes. Could this be a matter of amnesia, or that of legal problematics like statutory limitations, lack of documentary evidence or the determination of what qualifies as genocide, when judged against the general notion, as an International Observer Group may have done, and arrived at the conclusion that no genocide took place in Biafra? This article examines the issues and makes a case for holding perpetrators of atrocities of war in Biafra accountable, notwithstanding the passage of 50 years, since the end of the war.

Keywords: Nigeria, Biafra, War atrocities, Genocide, Amnesia and Prosecutions.

ISSN 2581 3382

INTRODUCTION

There was an armed conflict in Nigeria between 1967 and 1970. The conflict has alternately been referred to as the Nigerian civil war and the Biafran war. Unlike the images and memories of those in Bosnia, Rwanda, Kosovo, Sierra-Leone, DR Congo, Central African Republic, and Darfur (Sudan), which are deeply embedded and engraved in the consciousness of humanity, Biafra seems to have been consigned to the realm of amnesia. Two reasons may account for this, namely: a theory of national and international conspiracy of silence between the federal military government of Nigeria, and at the time, an international community with strategic vested interests; and, the non-emergence, also at the time, of a world of satellites and 'CNN, where events from remote parts of the world are integrated into our daily viewing'.[i]

The Biafran war witnessed spell-binding atrocities whose gravity could only be compared to the deafening criminal silence and cover-ups, and the murderous acquiescence of the international community. By the end of that war, more than three million people had died, with a majority of the dead being accounted for on the Biafran side. Most of them civilians, including unarmed women and children, who died as a result of a genocidal policy of starvation and disease as a weapon of war or who were directly targeted and killed by air raids of civilians and civilian objects or by trigger-happy soldiers, who engaged in orgies of massacre.

As at the time of writing this paper, more than fifty years after the war, nobody seemed to have been indicted and prosecuted for those atrocities. Rather, the victorious Nigerian government had declared a variant of amnesty programmes tagged 'Reconstruction, Rehabilitation and Reconciliation' (otherwise known as the 3Rs), which were underlined by a 'No Victor, No Vanquished' slogan.[ii] That programme was poorly and haphazardly implemented, either because of insincerity of purpose or incompetence on the part of relevant officials.

The Nigerian government and the world have since moved on, as if nothing happened. Even the Igbos, victims of those atrocities and impunities have remained silent for so long, either as a mark of gratitude for not having been exterminated, when Biafra surrendered, as was feared, or for fear of reprisals and persecutions.

However, more recently, survivors and key actors of the conflict have begun to write their memoirs and tell their stories. This has given rise to ample documentation of impunities and

ISSN 2581 3382

violations of international humanitarian law, in the war. Such documentation has in turn begged the question of the feasibility of legally redressing atrocities of war in Biafra, notwithstanding the passage of fifty odd years, since the war ended.

Thus, this paper seeks to answer the fore-going question and proceed to make a case for prosecution of perpetrators of atrocities of war in Biafra, and advocate reparation for the victims of that war. For this purpose, this paper has been divided into six segments, as follows: 1. Introduction; 2. Definition of Terminologies; 3. Brief Historical Background to the Biafran war; 4. War Atrocities in Biafra; 5. A case for Prosecutions and Reparations; and 6. Conclusion.

DEFINITION OF TERMINOLOGIES

There is a compelling need to define some relevant terminologies and concepts right from the outset of this paper, especially as most of them belong to the law of armed conflicts or international humanitarian law, which is a *lex specialis* (law governing a specific subject matter). Such concepts and terminologies include: War/Armed conflict; Amnesia/Amnesty; Combatant/Civilian; International humanitarian law; and International criminal law.

Armed conflict: "Armed conflict" is a relatively new concept in international humanitarian law. In fact, it is an interventionist concept. Before 1949, such situations which otherwise would have been regulated by Treaty laws of war, or international humanitarian law were denied such regulations even in the face of impunity, and grave violations of the Geneva Conventions (GC) in the absence of formal declarations of war. This was so because without a formal declaration, the state of war could not be recognized. To remedy this mischief, *the* Four Geneva Conventions of 1949 and the Additional Protocols (AP) 'introduced the concept of armed conflict into this legal regime for the first time'.[iii] Before then, the term "war" was generally employed,[iv] and "war" simply means 'fighting carried on by armed force between nations or parts of a nation,'[v] but technically and legally speaking, it required a formal declaration by either or both parties.

ISSN 2581 3382

According to Pictet:

> "The substitution of this much more general expression ('armed conflict') for the word 'war' was deliberate. One may argue almost endlessly about the legal definition of 'war'. A state can always pretend, when it commits a hostile act against another State, that it is not making war, but merely engaging in a police action, or acting in legitimate self-defense. The expression 'armed conflict' makes such arguments less easy. Any difference arising between two states and leading to the intervention of armed forces is an armed conflict, even if one of the Parties denies the existence of a state of war "…""[vi]

This commentary on the meaning of "armed conflict" is important for proffering for the very first time, a definition for "armed conflict'', for apart for referring to it in common *articles 2* and *3*, the 1949 Geneva Conventions did not define the notion.[vii] For instance common *article 2* provides: "In addition to the provision which shall be implemented in peace time, the present Convention shall apply to all cases of *declared war or of any other* armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them…"[viii]

On the other hand, *article 3* makes reference to "armed conflict" only in passing, as follows: ''In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions "…" ''[ix]

Clearly, the use, of this new phraseology is practically significant. Following the ban on "war" by the international community as embodied in the Briand Kellog Pact of 1928, the United Nations balked at the use of the word, "war" preferring instead, the phrase "use of force".[x] Thus, the UN Charter employs the term or phrase "use of force" instead of "war".[xi] However, the term "armed conflict" has been so controversial 'with conflicting views being propounded by scholars as to its concrete content.'[xii]

Interestingly though, the *International Committee of the Red Cross Commentary* to the 1949 *Geneva Conventions*[xiii] explains that the term "armed conflict" was deliberately left undefined by the Conventions as the States parties' intention was to rely on a de facto standard rather than

ISSN 2581 3382

on legal technicalities.[xiv] However, recent case law has attempted to define "armed conflict". The International Criminal Tribunal for the former Yugoslavia has attempted to define the notion in the case of *Prosecutor v Tadic*.[xv] It held that an armed conflict exists 'whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state'. This definition has been applied repeatedly by the *Ad hoc* Criminal Tribunals.[xvi]

Amnesty and amnesia: Like "amnesia", "amnesty" is derived from the Greek word "amnestia", which means "forgetfulness" or "oblivion". [xvii] According to Mallinder, it 'has traditionally been understood in a legal sense to denote efforts by governments to eliminate any record of crimes that have already occurred by barring criminal prosecutions and / or civil suits for particular categories of crimes or individuals.[xviii] Amnesty could also be seen as a pardon, which is extended to a group or class of persons usually for a political offence. [xix] It could also be seen as the act of a sovereign power officially forgiving certain classes of persons who are subject to trial but have not yet been convicted.[xx]

However, 'unlike an ordinary pardon, amnesty is usually addressed to crimes against State sovereignty – that is, to political offenses with respect to which forgiveness is deemed more expedient… than prosecution and punishment.'[xxi] In other words, it is used to refer to those offenses whose criminality is considered better forgotten.[xxii]

Combatant: The first attempt to formulate an internationally accepted definition of combatant status was made during the Brussels Conference of 1874, when the conference annunciated its project of an International Declaration concerning the Laws and customs of War.[xxiii]

However, it is generally agreed that the starting point for the definition of "combatant" is *article 1* of Hague Regulations iv and *article 4* of the third Geneva Convention (which addresses treatment of prisoners of war). The definition is important because the Law of armed conflict distinguishes between civilians and combatants, so as to properly assign applicable laws, rights and obligations or duties. Thus, the third Geneva Convention provides a definition of those persons who are entitled to prisoner of war status as combatants to include *inter alia*:

1. Members of the armed forces of a party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.

ISSN 2581 3382

2. Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps including such organized resistance movements fulfill the following conditions:

   (a) That of being commanded by a person responsible for his subordinates;

   (b) That of having a fixed distinctive sign recognizable at a distance.

   (c) That of carrying arms openly;

   (d) That of conducting their operations in accordance with the laws and customs of war.

3. Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.
4. Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labor units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model ….
5. Inhabitants of a non-occupied territory who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.[xxiv]

Additional Protocol 1 provides an alternative definition which seems to have 'muddied' up, the definition of a combatant,[xxv] and engendered some confusion.[xxvi]

However, a closer scrutiny of the definitions may show that they are not irreconcilable. Whereas the provisions of the third Geneva Conventions are concerned with persons that should be accorded prisoners of war status, and thus rather inclusive of persons who may not traditionally or even be considered as combatants at all,[xxvii] *article 43* of Additional Protocol 1

ISSN 2581 3382

contemplates combatants strictu sensu. Thus, the latter provision, other than the former is constitutive of the definition of "combatant", under the Geneva Conventions.

International Humanitarian Law: international humanitarian law (IHL) hitherto known as the law of war has been defined as: The branch of international law limiting the use of violence in armed conflicts by:

a) Sparing those who do not or no longer directly participate in hostilities;
b) Restricting it to the amount necessary to achieve the aim of the conflict, which – independently of the causes fought for can only be to weaken the military potential of the enemy.[xxviii]

In other words, international humanitarian law is applicable only in times of armed conflict[xxix] and protects persons not or no longer taking a direct part in hostilities; and regulates permissible means and methods of warfare.[xxx] Flowing from the foregoing definition are the following basic principles of international humanitarian law: i) the principle of distinction between civilians and combatants, ii) the principle prohibiting attacks on those *hors de combat*, iii) the principle prohibiting the infliction of unnecessary suffering, iv) the principle of necessity, and v) the principle of proportionality.[xxxi]

On the other hand, the following inherent limits of international humanitarian law have been acknowledged: i) It does not prohibit the use of violence; ii) It cannot protect all those affected by armed conflict; iii) It makes no distinction based on the purpose of the conflict; It does not bar a party from overcoming the enemy; iv) It presupposes that the parties to an armed conflict have rational aims and that those aims as such do not contradict international humanitarian law.[xxxii]

Hans–Peter Gasser defines international humanitarian law to include all those rules that for humanitarian reasons limit the resort to force in an armed conflict between states or in an intrastate conflict situation. He went on to state that those rules limit the right of parties to an armed conflict to choose methods or means of warfare, and emphasized that they prohibit the use of force against persons who are not or who are no longer taking part in hostile acts, as the civilian population and individual civilians, military and civilian prisoners or detainees described as "protected persons'', and against civilian property, described as "protected objects''.[xxxiii] He further observed that international humanitarian law imposes on a party to the

ISSN 2581 3382

conflict the obligation to provide, if necessary, assistance to persons under its control or to allow relief operations to be undertaken by third parties, including non-governmental humanitarian organizations.[xxxiv]

It is noteworthy, that the foregoing definitions emphasize the fact that IHL embodies rules and regulations of warfare, and thus antithetical to a reign of impunity in warfare, while debunking the notion that laws are silent in the event of war, '"…"*silent enim leges inter arma*'[xxxv], as pleaded by Cicero in his defense of Milo during an armed conflict in Rome.[xxxvi]

International Criminal Law: As has been widely acknowledged, formulating the definition of International Criminal Law is not an easy task.[xxxvii] This is because of the overwhelming volume of controversial definitional issues[xxxviii] that have been generated by scholars in their attempt to define the concept. Thus, a review of some of such definitions becomes absolutely necessary.

According to Ratner and his co-authors, ''the term refers broadly to the international law assigning criminal responsibility for certain particularly serious violations of international law?''[xxxix] They further observe that although some scholars limit it to responsibility for violations of human rights and humanitarian law, its scope is in fact, far wider, and includes, for instance, drug crimes and terrorism offenses and caution that beyond their seemingly straight forward definitions is 'a core difficulty in clarifying the nature of both international criminal law and an international crime namely, what does it mean to say that international law assigns criminal responsibility?'[xl] To answer this question, the learned authors insist that three subsidiary issues that essentially correspond to different strategies for providing international criminal responsibility must be examined, namely: i) To what extent does international law directly provide for individual (or other) culpability or responsibility? ii) To what extent does international law obligate some or all States or the global community at large to try and punish, or otherwise sanction, offenders? iii) To what extent does international law authorize these same actors to try and punish, or otherwise sanction, offenders?[xli]

In other words, they acknowledge the fact that jurisdictional limits must be recognized, in any consideration of international criminal responsibility.[xlii] In acknowledging this, they go on to state the possible scope of international criminal law by observing that international law can explicitly provide for individual criminality or require states to make an act a crime under

ISSN 2581 3382

domestic law, or both, as does the Genocide Convention.[xliii] They, further observe that it can obligate States or an international court to carry out prosecutions or punishment, as with the Genocide Convention *or the* Geneva Conventions, or to extradite or prosecute offenders, as with the Torture Convention.[xliv] They also further observe that it can simply allow states or international courts to try and punish individuals for certain acts, irrespective of normal jurisdictional limits[xlv]. In concluding, they declare that the foregoing strategies have been combined to a certain extent in the Security *Council's Statutes for the* ad hoc *tribunals for Yugoslavia and Rwanda, and the Rome statute of the International Criminal Court*.[xlvi] However, these strategies which derive from the wide–ranging scope of the Law reflect the fact that international criminal law is capable of multifarious meanings.

BRIEF HISTORICAL BACKGROUND TO THE BIAFRAN WAR

The Nigerian civil war otherwise known as the Nigeria-Biafra war was a fall-out of Nigeria's successive military coups of January 15 1966, and July 29 1966. Following the counter-coup of July which witnessed the cold-blooded murder of one hundred and eighty-five Igbo military officers and the massacre of thirty thousand Igbos and Easterners in pogroms that started in May 1966 and lasted over a period of four months without the emergent military regime led by Gowon, a Northerner doing anything to stop the massacre, the Igbos and Easterners generally lost faith in the federal government.[xlvii] The Igbos and Easterners 'fled "home" to Eastern Nigeria to escape all manner of atrocities that were inflicted upon us and our families in different parts of Nigeria, we saw ourselves as victims'.[xlviii]

The fact that the federal government did not respond to the call to end the pogrom, nor did it care much about the internally displaced persons of Igbo origin spurred the Igbos and Easterners on to consider secession. Ultimately, the government of Eastern Nigeria became resolute and declared the birth of the sovereign state of Republic of Biafra,[xlix] while, the federal military government purported to have restructured the polity by creating twelve states out of the existing four regions, thereby balkanizing Eastern Nigeria and the other regions into disparate states.[l]

ISSN 2581 3382

Consequently, the Biafran war broke out in July 1967, when military units from Nigeria that attempted to advance into secessionist Biafran territory, in what the then federal military government of Nigeria had termed 'Police measure or action', were repelled by Biafran troops.[li]

The name "Biafra" is said to have been taken from the name of an ancient kingdom in Africa which encompassed the then Eastern Region and part of the Western Region of what later became Nigeria.[lii] The federal military government of Nigeria responded by declaring war against the nascent republic ostensibly in a bid to force her back into the Nigerian union.[liii]

The Biafran government fought to defend the territorial integrity of the nascent nation and cried out that the Nigerian aggression was a war of genocide. The asymmetrical[liv] war which ended in January, 1970 with the formal surrender of secessionist Biafra took a great toll on the Biafran civilian population, especially children, women and the elderly. The situation was exacerbated by the adoption of a policy of starvation as a weapon of war by the Nigerian government.

WAR ATROCITIES IN BIAFRA

The Biafran war recorded allegations of myriads of war atrocities. Such alleged atrocities consist of war crimes, crimes against humanity and genocide. This paper shall proceed to give some instances of such alleged atrocities in Biafra.

i) **War crimes**: The Nigerian forces have been accused of having directed attacks against civilians and civilian objects contrary to the law of armed conflicts, thereby committing war crimes. Okocha reports that there were, perhaps, more women and children casualties when the federal troops 'liberated' Midwestern Region of Nigeria as they killed civilians indiscriminately.[lv] One foreign journalist, Jack Shepherd, senior editor, *Look Magazine* confirms this in his reports on November 26 1968, when he states: "Perhaps, 8000 Igbo civilians died when the Midwestern region was 'liberated' by troops under Col. Murtala Mohammad "…" Between 400 and 1000 men died in Isheagu "…" Federal troops shot at women and children as they moved with automatic weapons through every hut". [lvi]

Professor Chika Anyasodo also recounts, as an eye-witness, one of such direct attacks on civilians by an air raid:

ISSN 2581 3382

> "There was this amorphous Nigerian bomber air craft with a white pilot which comfortably flew very low on Afo Umuohiagu market; that was in 1969. In this raid, more than 3000 lives were destroyed, about 90 percent of them were mostly women who went to the market to find some food for their children. They were mostly women because all the able-bodied men were in the war front. I supervised the mass burial of the victims of this heavy bombardment as Captain commanding the Engineering Squadron. I gave the order that the caterpillar assigned to erect obstacles along Aba-Owerri road be used first to bury these dead bodies. The sight was too awful for words".[lvii]

The Newsweek Magazine of 24 March 1968, also reports another eye-witness account of reverend father Raymond Mahar, which confirms that civilians were targeted: "When I got to the market, every square yard was covered by a body or a part of a body. In all there were more than two hundred bodies, not more than four or five of them were men".[lviii]

The fore-going accounts are not said to be isolated cases, but representative of consistent, persistent and regular operations of the Nigeria air force strikes during the Biafran war.[lix] Besides market places, the Nigerian air raids are known to have targeted other civilian objects, including objects indispensable to the survival of civilian population, refugee camps, cultural objects and places of worship, contrary to the Geneva Conventions,[lx] and the Additional Protocol II of 1977, which applies specifically to non- international armed conflicts.[lxi] Alleged commission of war crimes and crimes against humanity are not limited to the operations of the Nigerian air force, the general officer commanding the ruthless Third Marine Commandos, colonel Benjamin Adekunle is said to have declared: "I want to see no Red cross, no Caritas, no World Council of Churches, no Pope, no Missionary and no UN delegation. I want to prevent even one Ibo from having even a piece to eat before their capitulation. We shoot at everything that moves and when our troops march into the centre of Ibo territory, we shoot at everything even at things that do not move".[lxii]

The commanding officer is also credited to have denounced humanitarian aid to dying Biafran civilian population in the following terms: "[Biafran aid is] misguided humanitarian rubbish… if children must die first; then that is too bad, just too bad".[lxiii]

ISSN 2581 3382

Implicit in the fore-going pronouncements by the commanding officer, is the declaration that "no quarter will be given", meaning that no one will be allowed to survive the war. In other words, the Nigerian government seemed to have intended the extermination of the Ibos. This constitutes a war crime,[lxiv] crime against humanity[lxv] and even an intent on genocide. Furthermore, the fact that the Nigerian troops were under orders to "shoot at everything that moves (including even things that do not move) when [they] match into the centre of Ibo territory" offends against all the fundamental principles of international humanitarian law, namely the principles of distinction;[lxvi] precaution;[lxvii] proportionality;[lxviii] unnecessary suffering;[lxix] and humanity.[lxx]

Igbo women were also targeted during and after the war, for sexual violence and rape contrary to provisions of the law which stipulate such offences as war crimes.[lxxi] Nwosu describes the rape of young women of about thirteen or fourteen years old as a "spree" "for the all-conquering federal troops", and observes that they also abducted people's wives and forcefully separated them from their husbands.[lxxii] "Their husbands who showed acts of 'courage' insisting that the soldiers must leave their wives or nothing, were killed in cold blood with a barrage of hot bullets spread (sic) without qualms".[lxxiii] According to Nwosu, most of these women who have been forcefully abducted, and raped, sometimes, gang-raped, returned home carrying the babies that were conceived from the rapes.[lxxiv]

ii) **Crimes against humanity**: Some of the following crimes which have been committed in the Biafran war and against the civilian population constitute crimes against humanity: a) murder b) extermination, c) enslavement, d) deportation, e) imprisonment, f) torture, g) rape, h) persecution on political, racial and religious groups, and other inhumane acts.[lxxv]

For instance, systematically enslaving Biafran women for sex and inflicting sexual violence, and rape against them on a large scale, as had been noted earlier, constitute crimes against humanity. Okocha reports that the Nigerian soldiers raped women on an unprecedented scale when they overran Asaba.[lxxvi] So also did they commit a crime against humanity, when they lined up all Ibo male over the age of ten years in the same Asaba town and executed them for unknown reasons.[lxxvii]

ISSN 2581 3382

The survivors were subjected to torture as they were made to watch helplessly as their husbands, brothers and male children were lined up and shot right before them; while their daughters, including their virgin daughters were violated and raped, also right before them, so as to punish them for their men daring to take up arms against the Nigerian government, or for any other perceived infraction. The experience of watching helplessly, while children wasted away and died of *kwashiorkor* due to the policy of starvation which was adopted by the Nigerian government, as a weapon of war was extremely tortuous. Thus, such perpetrators and their commanders could be indicted for torture as a crime against humanity.

iii) **Genocide:** The defunct Biafran authorities were strident in accusing Nigeria of waging a war of genocide.[lxxviii] Could there have been any truth in such a serious allegation? Could a prima facie case be made out for the charge of genocide in the Biafran war?.[lxxix] Before answering these questions, it is necessary to establish the meaning of "genocide".

The World Book Dictionary[lxxx] renders the meaning of "genocide" as "the systematic extermination of a cultural or racial group, whose theoretical basis existed in the corroding Nazi doctrine of race, as expressed by Victor H. Benstein". It further observes that the word was coined in 1944 by R. Lemkin who combined the Greek "*genos*" meaning race and the English "cide" meaning killing to produce the word "genocide". On the other hand, the *Black's Law Dictionary* denotes it as "An international crime involving acts causing serious physical and mental harm with the intent to destroy, partially or entirely, a national, ethnic, racial or religious group".[lxxxi] Cassese states: "Genocide is the perpetration of one of five well-specified categories of conduct with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such".[lxxxii] However, there is a widespread tendency to use the term loosely to indicate mass killing[lxxxiii]. Such loose perception or general notion overlooks that the term covers some specific actions if accompanied by the special intent to destroy a group, as such. The crime was first envisaged merely as a subcategory of the crimes against humanity:[lxxxiv] "Neither Art 6 (c) IMT Charter nor Art 11 (1) (c) CCL. No.10 explicitly envisaged genocide as a separate category of these crimes. However, the wording of the relevant provisions clearly shows that those crimes encompassed genocide (for instance Art. 6 (c)IMT Charter referred to 'murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population, as well as 'persecutions on political, racial or religious grounds' ".[lxxxv]

ISSN 2581 3382

Cassese goes on to state that though the International Military Tribunals did not explicitly mention genocide in their judgements, they mostly referred to the crime of persecution in dealing with the extermination of the Jews and other ethnic or religious groups.[lxxxvi] Genocide was, however, discussed in a few other cases, which include *Hoess*[lxxxvii], and *Greifelt* and others[lxxxviii], which were decided in 1948 by a Polish Court and a US Military Tribunal, respectively. Apparently, these discussions reflected the difficulties in determining situations that qualify as genocide, when judged against the general notion of genocide as "the intentional annihilation of a specific group or groups" – a notion that is "neither definitive or demonstrably effective"[lxxxix] enough to represent the meaning of genocide.

Fortunately, the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide*[xc] has cured this mischief by carefully setting down a definition of the crime. It provides:

> "In the present convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
> (a) killing members of the group;
> (b) causing serious bodily or mental harm to members of the group;
> (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
> (d) imposing measures intended to prevent births within the group;
> (e) forcibly transferring children of the group to another group."[xci]

This definition of genocide seems to have been adopted with identical wordings by subsequent international criminal statutes.[xcii] A line of cases which have been tried under these statutes seems to have benefitted from the streamlined meaning of "genocide" bequeathed to them by the convention. They include *The Prosecutor v Jean-Paul Akayesu*[xciii]*; The Prosecutor v Kayishema and Ruzindana*[xciv]*; Prosecutor v Jelisic*[xcv]*; Prosecutor v Jean Kambanda*[xcvi]*; Prosecutor v Ruzzio*[xcvii] *and Prosecutor v Krstic*[xcviii].

In fact, the first judicial interpretation of the crime of genocide was made in the *case of Jean Paul Akayesu,*[xcix] while the case of *Jean –Kambanda* is important for being the first conviction ever, of a former head of government for genocide.[c] This development may not be unconnected

ISSN 2581 3382

with the fact that the Statutes of the International Criminal Tribunal for Former Yugoslavia and Rwanda adopted the well-spelt out elements of the crime provided for by the Genocide Convention *of 1948.*

Prosecutor v Jean-Paul Akayesu[ci] proved to be the most celebrated of the cases the International Criminal Tribunal for Rwanda (ICTR) tried. In that case, a fifteen-count indictment was filed against Jean-Paul Akayesu, the *bourgmestre* (mayor) of Taba Commune (an administrative district) from April 1993 to June 1994. His responsibilities as *bourgmestre* included the maintenance of law and order in the commune, but he did nothing when about two thousand Tutsis were killed in the commune during the ethnic conflict between the Hutus and the Tutsis.[cii]

The *Statute of the International Criminal Tribunal for Rwanda* (ICTR) provides that a person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in *articles 2* to 4 is individually responsible for such a crime. The statute also states that the official capacity of a suspect or superior order of government does not relieve the suspect of responsibility, if it is proved that he or she knew or had reason to know that the prohibited acts were being committed, and he took no reasonable measures to stop them.[ciii]

Akayesu pleaded not guilty to the counts of indictment, contending that the massacres were widespread, and thus difficult for him to stop. Moreover, he contended that the ten communal police men under his command were helpless in the circumstances. On the count of sexual violence, the accused denied knowledge of any such thing, or even being involved. He was however found guilty of genocide, crimes against humanity (extermination, murder, torture, and rape, direct and public incitement to commit genocide). Particularly, he was found guilty in nine out of the fifteen counts indictment and sentenced to life imprisonment.[civ]

In *Prosecutor v Jean Kambanda*,[cv] the prime minister of the interim government of Rwanda, with '*de jure* authority and *de facto* control over members of his government,[cvi] was tried on a six-count indictment of genocide, and crimes against humanity.[cvii] He was held accountable under *Article 6* of the *Statute of the International Criminal Tribunal for Rwanda* which provides for individual criminal responsibility, irrespective of the fact that one is a head of state or holds government positions. He was found guilty of all the counts of indictment and

ISSN 2581 3382

sentenced to life imprisonment. He was sentenced to life imprisonment despite his plea of guilty, his remorse and cooperation with the prosecutor, because the tribunal decided that the aggravating circumstances in the case outweighed the mitigating ones.[cviii]

In as much as, the first judicial interpretation of the crime of genocide was made in the *case of Akayesu*, it has been alleged that the first black-on-black genocide took place in Nigeria and in the Biafran War.[cix] All through the war, the Biafran authorities insisted that Nigeria "had a design to exterminate the Igbo people from the face of the earth".[cx] According to Achebe:

> "Herbert Ekwe-Ekwe, Professor of history and politics and an expert on genocide, reminds us that supporters of the Biafran position point not only to the histrionic pronouncement of the leaders of Nigeria army- often dismissed as typical outrageous wartime rhetoric- but to an actual series of atrocities, real crimes against humanity, that occurred on the battlefield and as a result of the policies of the Federal Republic of Nigeria".[cxi]

Such wartime rhetoric which may have been taken as indicative of the Nigerian intent on committing genocide include a popular theme song of Radio Kaduna, a government-controlled station which was broadcast from 1967-1970. The lyrics are as follows: 'Let us go and crush them. We will pillage their properties, rape their women-folk, kill off their men-folk and leave them uselessly weeping. We will complete the pogrom of 1966'.[cxii] The Nigerian field commander, colonel Adekunle's pronouncements mentioned earlier may also be illustrative.

Above all, the proponents of the Biafran position point to an actual series of atrocities, as already recorded in this paper under 'crimes against humanity', to make a case for their having been genocide against Biafrans, who are mainly Ibos. For instance, "The International Committee on the Investigation of Crimes of Genocide carried out exhaustive investigation of the evidence, interviewing 1082 people representing all the actors in the dispute (the two sides of the civil war and International collaborators)",[cxiii] and concluded that "hatred of the Biafrans (mainly Igbos) and **a wish to exterminate them was a foremost motivational factor**".[cxiv]

Achebe draws attention to a paragraph from an editorial in the Washington Post of July 2 1969, which was cited in "Dan Jacobs' well researched book, *The Brutality of Nations*: "One word now describes the policy of the Nigerian military government towards secessionist Biafra:

ISSN 2581 3382

genocide. It is ugly and extreme but it is the only word which fits Nigeria's decision to stop the International Committee of the Red Cross, and other relief agencies, from flying food to Biafra".[cxv]

As a matter of fact, the Nigerian policy of starvation as a legitimate weapon of war, which was promoted by the then minister of finance Obafemi Awolowo and another Nigerian leader, Allison Ayida,[cxvi] offends against the 1948 Genocide Convention.[cxvii] This was the case in *Attorney General of Israel v Eichmann*,[cxviii] where the defendant was alleged to have done acts intended to produce "slow death" by placing a group of Jewish people on a subsistence diet, and reducing required medical services below minimum, etc. "Before the trial, details of the Nazi genocide had seldom been evaluated systematically and survivors were reluctant to openly reflect upon their experiences '…' Not only did the trial establish Eichmann's guilt, but it also presented the details of the 'Final Solution' as they unfolded in Europe from 1933 until 1945".[cxix] The defendant was eventually convicted under an Israeli law of 1951 for war crimes, crimes against the Jewish people, and crimes against humanity. The most compelling assertion that genocide against the Biafrans took place, may have been that made by Richard Nixon, a former American president in the course of his campaign speech on September 10 1968:[cxx] He said: "until now efforts to relieve the Biafran people has been thwarted by the desire of the central government of Nigeria to pursue total and unconditional victory and by the fear of the Ibo (sic) people that surrender means wholesale atrocities and genocide. But genocide is what is taking place right now – and starvation is the grim reaper".[cxxi]

However, the Nigerian government has continued to deny the allegation that it inflicted genocide on the Igbos of Biafra. It cites the findings of some groups that sent observers to the country during the conflict to the effect that there "was no clear intent on behalf of the Nigerian troops to wipe out the Igbo people, "…'' pointing out that over 30,000 Igbos still live in Lagos, and half a million in the Mid-West".[cxxii] On the other hand, the Biafran authorities dismissed the team of observers, as biased in favour of Nigeria's federal government. They alleged that the team restricted their observation to Lagos and never entered the Biafran enclave, where the genocide was alleged to have been taking place.

ISSN 2581 3382

A CASE FOR PROSECUTIONS AND REPARATIONS

There is a need for closure on the Biafran war. Clearly, the so-called 3R's (Reconstruction, Rehabilitation and Reconciliation) failed to bring about the desired closure. The war and its atrocities have continued to reverberate in agitations by pro-Biafra groups[cxxiii] and the re-surgency in literatures on the war. This is a clear indication that the federal government of Nigeria failed to effect post-conflict transitional justice. Then, the question is: is it too late in the day, to redress atrocities of war in Biafra? In other words, are prosecutions of perpetrators of atrocities of war in Biafra statute or time-barred, especially as it has been 50 years since the civil war ended?

No doubts, statutes of limitation have raised controversies in relation to international crimes like genocide, war crimes and crimes against humanity, thereby prompting the formulation of conventions to prohibit the applicability of statutes of limitations to such crimes.[cxxiv] However, these conventions are yet to achieve widespread ratifications.[cxxv] Interestingly, the Rome Statute of the International Criminal Court (ICC) has enshrined the non-applicability of statutes of limitation for crimes within the jurisdiction of the ICC in its *article 29*.[cxxvi] According to Mallinder, "Schabas argued that the inclusion of this provision 'may affect the prohibition on statutory limitation that the international treaties have failed to do' ".[cxxvii] He further states that indeed, a recent detailed study of state practice relating to statutory limitations argues that this has already taken place as the "non-applicability of statutes of limitation has become a rule of customary international law in the years between the adoption of the 1998 ICC statute and the year 2006", for international crimes that have not yet been subjected to statutes of limitation. [cxxviii]

If non-applicability of statutes of limitations has become a rule of customary international law, then, it is not too late in the day to redress atrocities of war in Biafra, neither are prosecutions of perpetrators of atrocities of war in Biafra statute or time-barred, despite the passage of 50 years, since the civil war ended.[cxxix] Thus, this author strongly recommends the prosecution of perpetrators of war crimes, crimes against humanity and genocide, on both sides of the conflict, despite the passage of time. Moreover, the case can also be made for prosecution of those who have been indicted by available documentary evidence, as already reviewed in this paper, including those embodied in the Oputa Panel Report.[cxxx] Particularly, the case for prosecutions for genocide may be made against certain persons who may have been indicted by foregoing

ISSN 2581 3382

reports. Above all, a case may be made for the filing of a suit against the Federal Republic of Nigeria at the International Court of Justice (ICJ), for genocide and war atrocities against Igbos of Biafra under the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide. The suit may be brought under *article 9* of the *convention*, by any State party to the Genocide Convention.[cxxxi]

Elements of the crime of genocide in Biafra may be established on the basis of the documentary evidence adduced earlier. Such elements which are embodied in the convention's definition of genocide are:

> "1. A mental element: the 'intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such'; and
>
> 2. A physical element, which includes the following five acts, enumerated exclusively:
>
> i. Killing members of the group
> ii. Causing serious bodily or mental harm to members of the group
> iii. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.
> iv. Imposing measures intended to prevent births within the group
> v. Forcibly transferring children of the group to another group".[cxxxii]

The mental element of genocide in Biafra may be deduced and established from the genocidal utterances and broadcasts of the Nigerian government, their proxies and agents, as mentioned earlier in this paper. However, this mental element or intent has been viewed as the most difficult to determine[cxxxiii], but case law has associated it with the existence of a state or organizational plan or policy.[cxxxiv] It is this special intent, or *dolus specialis* (specific intent to destroy) that makes the crime of genocide unique. The Nigerian government's policy of starvation as a weapon of war may be viewed as the requisite *dolus specialis*, in the case of genocide in Biafra.

Besides, for the crime of genocide to be established, there must be a deliberate, not a random, targeting of victims, because of their real or perceived membership of one of the four groups that are protected under the convention.[cxxxv] In other words, it is the group that must be the target of destruction, and not its members as individuals.[cxxxvi] That was the case against the

ISSN 2581 3382

Igbos in Biafra. On the other hand, "Genocide can also be committed against only a part of the group, as long as that part is identifiable (including within a geographically limited area) and 'substantial' ",[cxxxvii] as happened even in peace-time when officers and men of Igbo descent were rounded up and massacred in the aftermath of the counter-coup of 29th July 1966.

On the basis of the fore-going analysis, it seems that there is a prima-facie case for ordering formal investigations and consequent prosecution of perpetrators of genocide, war crimes and crimes against humanity in Biafra. The primary constitutionally prescribed forum for such prosecution would be the Federal High Court of Nigeria, but it is doubtful that the federal government of Nigeria or any state government of Nigeria would muster enough political will to initiate investigations and prosecutions. It is equally doubtful that any Nigerian court would entertain such a suit from citizens without government interference. However, the crimes involved, being such that confer universal jurisdiction upon foreign national courts could be tried outside Nigeria. The International Criminal Court (ICC), which ordinarily would have assumed jurisdiction, if Nigeria which is a State party to the *Rome statute* shows herself unwilling or unable to prosecute the crimes in question, would be limited by its temporal jurisdiction, as it had not been established at the time the crimes were committed. Thus, the most viable option would be for the United Nations Security Council to establish an ad hoc international criminal tribunal to try alleged perpetrators of war crimes, crimes against humanity and genocide in Biafra, as it had done for former Yugoslavia and Rwanda.

On the other hand, it would also be desirable to incorporate systems for reparations to the victims of those atrocities, in any planned justice delivery. For this reason, international law has long recognized the obligation to provide reparations for such international wrongful acts, in addition to other penal sanctions.[cxxxviii] This means that "institutions, organizations and governments that enable the abuses to occur should not escape liability"[cxxxix]. It is against this background that a case for reparations for the atrocities in Biafra should be viewed, as both a legal and a moral imperative, which can contribute to the individual and social aims of rehabilitation, reconciliation, consolidation of democratic principles and restoration of the rule of law,[cxl] which seems to have eluded Nigeria since after the war.[cxli] Ordering and granting reparations to Igbo survivors can also help to psychologically overcome traditional prejudices that have served to marginalize the Igbos and contribute to the crimes perpetrated against them.[cxlii] For instance, ordering reparations to the Igbos for the wanton and criminal destruction of their lives (civilian) and property, in form of restitutions and compensations would serve the

ISSN 2581 3382

ends of justice, and signal genuine reconciliation with the rest of the country. The Port Harcourt town 'Abandoned Property' debacle could be redressed with restitutions for the dispossessed persons and their heirs, while those whose bank accounts were frozen during the war could bring class-action suits for the recovery of their frozen deposits, either by themselves, if still alive, which in most cases may be unlikely, or by their heirs and proxies. This was the case in the *Nazi Gold Case* [1996].[cxliii]

In that case, a Jewish woman and holocaust survivor, Estelle Sapir, who was born in Warsaw, Poland, where her father, Josef was a wealthy investment banker, became the lead plaintiff in a class-action suit to require Swiss banks to restore – with rightful interest Jewish assets to their owners or their heirs, fifty years after the Second World War. The action succeeded.

In May 1998 Sapir became the first Holocaust survivor to receive a settlement from a Swiss bank. In her comment to the press, she declared, "It's not about the money. It's about justice".[cxliv]

In as much as, "it is important that the form(s) of reparation as well as the quantum and quality of adopted measures, adequately respond to the injurious acts '…' the nature of the crimes of genocide, crimes against humanity and war crimes, is such that it is impossible to put survivors back to their previous position prior to the violation or to 'repair' the violation".[cxlv] In the circumstances therefore, reparation measures for such crimes can only be symbolic.[cxlvi]

CONCLUSION

Nigeria may have succeeded in "liquidating" Biafra, but the ghost of Biafra has not been laid to rest. It may never be laid to rest, by any inclination to general amnesia. the pursuit of post-conflict transitional justice, however delayed, is imperative. Establishing prima facie evidence of atrocities of war in Biafra, as has been done in this article, is a step in the right direction. Having unearthed particulars of allegations of genocide, crimes against humanity and war crimes in Biafra, it is hoped that Nigeria and the international community would be jolted into seeking to redress atrocities of war in Biafra, 50 years after, especially as non-applicability of statutes of limitation has become a rule of customary international law.

ISSN 2581 3382

To that end, the following actions are recommended:

1. The Federal government of Nigeria should be encouraged to enact an enabling legislation empowering it to set-up an investigative panel for atrocities of war in Biafra, subject to consequential amendments of the 1999 Constitution of Nigeria (as amended). However, concerned states of the federation may also independently set-up investigative panels for the same purpose, as they are currently empowered to, under the 1999 Constitution of Nigeria (as amended).
2. Persons indicted for genocide, crimes against humanity and war crimes in Biafra should be prosecuted and tried in appropriate judicial fora or special tribunals set-up for that purpose, nationally subject to the principle of universal jurisdiction, and internationally, by the UN Security Council (including regional judicial organs), as happened in the cases of former Yugoslavia and Rwanda. Such trials should be on the bases of individual, command, or head of state criminal responsibilities, including state responsibility in appropriate cases.
3. Beyond sentences of terms of imprisonment, and other penal measures, reparations in form of restitutions, compensations, damages etc, should be awarded to victims of proven violations, in appropriate cases.

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ISSN 2581 3382

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ISSN 2581 3382

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ISSN 2581 3382

ENDNOTES

[i] DJ Hogan *The Holocaust Chronicle: A History in Words and Pictures* (2000 Lincolnwood, Publications International Ltd) at 10.

[ii] The 'pseudo-amnesty' programme and its accompanying 'No Victor, No Vanguished' slogan belie the contradictions of post-Biafran conflict realities. Rather than even-handed post-conflict transitional justice, what was meted out to Igbos was a retributive victor's justice, that punished them for resisting in an apparent war of genocide. Their ranking officers who fought on the side of Biafra were dismissed from the Nigerian army, rather than being re-instated; the bank accounts held by individual Igbos, before the out-break of war were frozen, allowing only a blanket withdrawal of maximum of twenty pounds to such account holders, who had lost virtually all their earthly possessions, and were in need of rehabilitation, and a fresh start in life. Of course, this was irrespective of how much credit amount one had in the banks before the war. Nigeria implemented an 'Abandoned Property' policy, which operated to dispossess Igbos who fled Port Harcourt town during the war, of their homes and real estate property in Port Harcourt town. Successive Federal governments seem to have tacitly continued to marginalize Igbos, as a vanguished people, in politics, infrastructural developments, employments and appointments into Federal institutions and parastatals.

[iii] S Vite "*Typology of Armed Conflict International Humanitarian Law: Legal Concept and actual situations"*(2003) 91/873, *International Review of the Red Cross*, 69 at 72.

[iv] A Cassese (ed) *International Criminal Justice* (2009, Oxford University Press) at 247.

[v] CL Barnhart and RK Barnhart *The World Book Dictionary* (vol.2, 1976, Field Enterprises Educational Cooperation) at 2356.

[vi] JS Pictet *Commentary on the first Geneva Convention for the Amelioration of the Condition of the Wounded and sick in Armed Forces in the Field* (1952 ICRC) at 32. For instance, at the inception of the Biafran war, Nigeria denied that it was waging a war and claimed to be merely engaging in a police action.

[vii] Barnhart, above at note 6.

[viii] See *GCI, art 2*.

[ix] *GCI, art 3.*

[x] See, *Legality of the Threat or use of nuclear Weapons case (ICJ), Nuclear Weapons Advisory Opinion, Reports 1996*, ss 105; Advisory Opinion (1997) 35 I.L.M. 809 and 1343 where the court appraised the *United Nations Charter* provisions relating to the threat or use of force, and observed that even though there is a general prohibition on the use of force under *art 2(4)*, the charter recognizes the inherent right of individual or collective self-defence. The court further observes that the charter also provides for lawful use of force under *art 42*, whereby the Security Council may take military enforcement measures in keeping with chapter VII of the charter.

[xi] Cassese, above at note 5.

[xii] Ibid.

[xiii] Pictet, above at note 7.

[xiv] Cassese, above at note 12.

[xv] Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ICTY, *Prosecutor v Tadic* (IT-94-1), October 1995, S 70.

[xvi] See Judgment, *Furundzija* (IT-95-17/1-T), TC, 10 December 1998 $ 59; Judgment, ICTY, *Prosecutor v Kunarac* and o*thers* (IT-96-23), AC, 12 June 2002, $56.

[xvii] See L Mallinder *"Fighting Impunity and Promoting International Justice, European Initiative for Democracy and Human Rights: Promoting Justice and the Rule of Law"* (being a Draft Report on Global Comparison of Amnesty Law presented by Dr Louise Mallinder to the International Institute of Higher Studies in Criminal Sciences ISIS). See also, BA Garner (ed), *Black's Law Dictionary* (8th edn, 1999, Thomson West) at 93.

[xviii] Mallinder, ibid.

[xix] Garner, above at note 18

[xx] Ibid.

[xxi] Ibid.

[xxii] Ibid.

[xxiii] E Crawford *The Treatment of Combatants and Insurgents under the Law of Armed Conflict* (2010, Oxford University Press) at 49.

ISSN 2581 3382

[xxiv] See Geneva Convention III, *art* 4. *art 5* provides: 'The present Convention shall apply to the persons referred to in *article 4* from the time they fall into the power of the enemy and until their final release and repatriation. Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in *article 4*, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal'.

[xxv] J Norwitz (ed) *Pirates, Terrorists, and Warlords: The History, Influence, and future of Armed Groups* (2009, Skyhorse Publishing) at 108.

[xxvi] EC Ibezim ''*Contemporary Challenges to international humanitarian law: the private military companies''*(2010), *African Year Book on International Humanitarian Law*(AYIHL) 86 at 98..

[xxvii] *Geneva Convention III*.

[xxviii] M Sassoli and others *How Does Law Protect in War?: Cases, documents and Teaching Materials on contemporary practice in International Humanitarian Law* (vol 1/3rd ed, 2011, ICRC) at 93.

[xxix] As established in *Prosecutor v Tadic (IT-94-1-A)* May 1997, an armed conflict is said to exist 'whenever there is a resort to armed forces between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state'. Treaty law does not define the term; it merely regulates permissible means and methods of warfare.

[xxx] M Sassoli and A A Bouvier, *How Does Law Protect in War?* (vol 1/2nd ed, 2006, ICRC) at 81. See also, E.C Ibezim *Contemporary Challenges*, above at note 27 at 87.

[xxxi] Ibid *How Does Law Protect in War?*

[xxxii] Id at 94.

[xxxiii] H Gasser "*Humanitarian Law"* (2009) 2 *Encyclopedia of Human Rights*, 462 at 462. See also, H Gasser *International Humanitarian Law*: *An Introduction*, (1993, Henry Dunant Institute) at 15-20.

[xxxiv] Ibid.

[xxxv] Latin, meaning 'Laws are silent among [those who use] weapons' (cited in Cicero, Pro Milone, 4.11). See also, M Sassoli. and others How does law protect in war? above note 32 at 95.

[xxxvi] Ibid.

[xxxvii] See, C Than and E Shorts *International Criminal Law and Human Rights* (2003, Sweet & Maxwell) at 13; JM Sjocrona and AAM Orie,., *International Criminal Law (*2002 Devenver, *Strafrecht)* at 1-10; and SR Ratner *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (3rd edn, 2009, oxford university press) at 10.

[xxxviii] Such issues include the scope of international criminal law, and the hybrid nature of the field-a combination of international law and criminal law involves the inculpation of individuals, but is developed and enforced by the actions of state. This includes the fact that tribunals, courts and procedure to secure compliance by individuals as are required by criminal Law have only just begun to evolve. Moreover, many authors argue that a crime is not an international crime unless it may be prosecuted in an international criminal tribunal whether permanent or ad hoc, but that definition would exclude some of the oldest international crimes with the most accepted status, including piracy.

[xxxix] Ratner, ibid.

[xl] Id at 11.

[xli] Ibid.

[xlii] See JH Noritz *Pirates, Terrorists, and Warlords*, above note 26 at 101

[xliii] Ratner, *Accountability for Human Rights Atrocities*, above note 38.

[xliv] Ibid.

[xlv] Ibid.

[xlvi] See, Security Council Resolution 827, para 2 (1993) wherein it was stated that the tribunal's purpose is ''prosecution of persons responsible for serious violations of international humanitarian law''. See also *Rome Statute of* International *Criminal Court*, article 1 ('jurisdiction over'), and 17 (rules on admissibility).

[xlvii] C Achebe *There was a Country: A Personal History of Biafra (2012*, Penguin Group) at 95.

[xlviii] Ibid.

[xlix] The historic declaration of Biafra as an independent state was made on 30th May 1967. For more information on events in Biafra, see, CO Ojukwu., *Biafra: Selected Speeches with Journals of Events* (1969, Harper & Row Publishers).

[l] Eastern Region was divided into three states namely, East Central State, Rivers State and South East State.

[li] C Achebe *There was a Country*, above at note 48 at 128.

ISSN 2581 3382

[liii] E Ezeani *In Biafra Africa Died: The Diplomatic Plot* (2nd edn, 2013, Veritas Lumen Publishers) at 39. However, the name 'Biafra' had survived in the name of a body of water called 'Bight of Biafra', which had since after the war been renamed Gulf of Guinea by the Nigerian government.

[liii] Nigeria declared war against Biafra on 6th July 1967, and boasted of crushing Biafra in 48 hours. She imposed sea and air blockade against Biafra, making it difficult for food, weapon and other essential materials to come into Biafra.

[liv] Asymetrical warfare describes the situation where regular, well-trained, and well-armed and supposedly well-disciplined forces, duty-bound to act lawfully, are opposed by irregular forces that are lightly armed, more loosely structured and for whom respect for the law is not important. [see APV Rogers ''Unequal combat and the Law of war'' (2004) at 17, Year Book of International Humanitarian Law 3 at 4

[lv] E Okocha *Blood on the Niger: The First Black-on-Black Genocide* (2012, Gomslan Books) at 220. See art 8, Rome statute of the International Criminal Court for a listing of war crimes.

[lvi] Id at 213.

[lvii] E Ezeani In Biafra Africa Died, above at note 53 at 135.

[lviii] Id at 131.

[lix] Ibid.

[lx] See *Part II* of the fourth Geneva Convention, 1949, arts 13-18, 20 and 23.

[lxi] Part IV of Additional Protocol II, arts 13-16.

[lxii] E Ezeani In Biafra Africa Died, above at note 58 at 227. Perhaps, this is the spirit in which one of the ICRC DC7 Relief planes that was supplying relief and medication to Biafra was shot down by the Nigeria Air Force, killing the three and workers on board. C Achebe, *There was a Country*, above at note 52 at 307

[lxiii] Id at 137

[lxiv] See *art 8*(e)(x) of the Rome Statute of the International Criminal Court (1998); art 40 of Additional Protocol I and CIHL, rule 46.

[lxv] Art 7(1)(b) of the Rome Statute of International Criminal Court 1998.

[lxvi] See Additional Protocol I, art 44(3) and Customary International Humanitarian Law (CIHL), rule 106.

[lxvii] Additional Protcol I, art 57(2)(a); Geneva Convention IV, art 18(5) and 19 and Additional Protocol I, art 57(2)(c).

[lxviii] Additional Protocol I, art 51(5)(b) and CIHL, rule 14.

[lxix] Additional Protocol I, art 35

[lxx] Additional Protocol I, art 70 and Additional Protocol II, art 18.

[lxxi] See Rome Statute of the International Criminal Court (1998), art 8 (2)(e)(vi); Geneva Convention IV, art 147(II); art 3, Geneva Convention; and art 4(e) of the Additional Protocol II.

[lxxii] II Nwosu *Zak-Ibiam: My Story of Pain , Blood & Tears* (2nd ed, 2017, Soteria Publishing House) at 337. This could also ground the offence of "Forced Marriage".

[lxxiii] Ibid

[lxxiv] Ibid 337-338. This suggests an attempt at ethnic cleansing.

[lxxv] See *art 5* of the Rome Statute of International Criminal Court (1998); arts 5 and 3 of the statutes of the ICTY and the ICTR, respectively.

[lxxvi] E Okocha *Blood on the Niger*, above at note 58 at 229.

[lxxvii] This was reported by Monsignor Georges who was sent down to Asaba in 1968 on a fact-finding mission by His Holiness the Pope and published by Le Monde (a French Evening Newspaper) of April 5, 1968. See also E Ezeani *In Biafra Africa Died*, above at note 69 at 224 where the same picture of soldiers lining up men, separating them from women and shooting them in the market square was also painted. This same massacre was also reported by witnesses at the Oputa Panel of Enquiry, and has become an established notorious fact.

[lxxviii] CO Ojukwu *Biafra*, above at note 50 at 380.

[lxxix] See principally, C Achebe *There was a Country*, above at note 63 at 228.

[lxxx] CL Barnhart *World Book Dictionary*, above at note 6 at 890

[lxxxi] BA Garner *Black's Law Dictionary*, above at note 18 at 707

[lxxxii] A Cassese *The Oxford Companion to International Criminal Justice* (2009, Oxford University Press) at 332.

[lxxxiii] Ibid.

[lxxxiv] Ibid.

[lxxxv] Ibid.

[lxxxvi] Ibid.

[lxxxvii] 1948 7LRTWC II (Supreme National Tribunal of Poland).

[lxxxviii] *The RuSHa Case* Nuremberg, [10 March 1948]5 TWC, vol 5, 88 – 173.

[lxxxix] C De Than, and ,E Shorts *International Criminal Law and Human Rights*, above at note 38 at 66.

[xc] The Convention was adopted by the United Nations General Assembly on December 9 1948 and entered into force on January 12 1951. See "Genocide Convention, 1948" available at https: //www.un.org/en/genocide

ISSN 2581 3382

documents/atrocity-crimes/Doc.1 convention % 20 on % 20 prevention % 20 and % 20 punishment % 20 of % 20 the % 20 crime % 20 Genocide.pdf. (Accessed 3-4-2020) The convention has been ratified by 149 states (as at January 2018)

[xci] See *art 2* of the Genocide Convention.

[xcii] See art 4(2) of the Statute for International Criminal Tribunal for the former Yugoslavia; art 2(2) of the ICTR Statute; and art 6 of the Statute of International Criminal Court (ICC).

[xciii] Judgment September 2 [1998, *para* 523].

[xciv] Judgment May 21 [1999, *para* 527].

[xcv] [IT – 95 – 10] Appeals Chambers, July 5 2001.

[xcvi] Case No. ICTR-97-23-5.

[xcvii] ICTR-97-31-1

[xcviii] ICTY Trial Chamber, November 2, 2001.

[xcix] Case No. ICTR-97-23-5.

[c] MO Unegbu From Nuremberg Charter to *Rome Statute: Judicial Enforcement of International Humanitarian Law* (2015, SNAAP Press Ltd) at 149.

[ci] Case No. ICTR-97-23-5.

[cii] MO Unegbu *From Nuremberg to Rome statute*, above at note 100 at 149. See also EC Ibezim *"Legal Protection of Women in Armed Conflicts in Nigeria, Democratic Republic of Congo and Sierra Leone"* (An unpublished PhD Thesis presented to the School of Post Graduate Studies, Faculty of Law, Abia State University, Uturu), 2019 at 134

[ciii] Id at 135.

[civ] Id, another celebrated, case which involved government officials and which was also decided by the International Criminal Tribunal for Rwanda was the case that became known as the *Butare Case*, otherwise cited as *Prosecutor v Nyiramasuhuko and others*, ICTR, Indictment, Case No ICTR-97-2.

[cv] Case No ICTR-987-23-5.

[cvi] Ibid.

[cvii] *Prosecutor v Jean-Kambanda*, Case No. ICTR-97-23-5. See also *Prosecutor v Hissene Habre*, SCS/CAE [2016], reported (31 May 2016) Daily Sun Newspaper, (vol.10, No.3417), *Prosecutor v Bashir Idris Abu Garda*, (Darfur, Sudan), ICC Trial Chamber I, 2009; *Prosecutor v Omar Al Bashir*, ICC Trial Chamber IV, 2014; *Prosecutor v Omar Hassan Ahman Albashir* ("Omar Al Bashir"), No. :ICC-02/05-01/09, March 2009, Pre-Trial Chamber I, International Criminal Court, Prosecutor v Francis Kirimi *Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, ICC-01/09/02/11 and *Prosecutor v Slobadan* Miloevic (Decision on review of Indictment – November 22, 2001)

[cviii] MO Unegbu *From Nuremberg to Rome statute*, above at note 103 at 149. See also *Prosecutor v Eliezer Niyitegaka*, ICTR-96-14-T, Judgment and sentence (16 May 2003) paras 462,303,312,462.

[cix] See E Okocha *Blood on the Niger* at note 76 which title: '*Blood on the Niger*: The First Black-on-black Genocide' bears testimony to the fact. For further discussion on genocide in Biafra, see AS Amaramiro, "The Nigerian Civil War: 1967-1970: A Violation of the Genocide Convention?"(2012) *Journal of Nigerian Government and Politics*, generally.

[cx] C Achebe *There was a Country*, above at note 80 at 219.

[cxi] Id at 229-230.

[cxii] E Ezeani, *In Biafra Africa Died*, above at note 78 at 228.

[cxiii] C Achebe *There was a Country*, above at note 111 at 230

[cxiv] Ibid. [Emphasis supplied in the original text]

[cxv] Ibid.

[cxvi] Id at 314

[cxvii] Art II(c) of the Convention is concerned with acts intended to produce "slow death" such as placing a group of people on a subsistence diet, reducing required medical services below minimum, withholding sufficient living accommodation etc. as well as forced labour. Art 23 of Geneva Conventions IV, 1949 obligates parties to allow free flow of medical supplies, food, clothing and objects necessary for religious worship for the benefit of civilians. On the other hand, in protecting objects indispensable to the survival of the civilian population, art 54 of *Additional Protocol I* (1*)* and (2) prohibits starvation as a method of warfare and the destruction, removal or rendering useless, objects indispensable to the survival of civilian population. This prohibition is also contained in Additional Protocol II, art 14 (1977).

[cxviii] [1961] 36 Intl. Law Reports 5, 233-234.

[cxix] DJ Hogan *The Holocaust Chronicle*, above at note 1 at 674. See also, AS Rosenbaum *Prosecuting Nazi War Criminal* (1993, West view press, inc) generally.

[cxx] Achebe *There was a Country*, above at note 114 at 231.

ISSN 2581 3382

[cxxi] Ibid. Besides Richard Nixon's testimony, two distinguished Canadian diplomats, Mr Andrew Brevin and Mr. David MacDonald (members of the Canadian Parliament) were said to have "reported that genocide is in fact taking place and one of them stated that 'anybody who says there is no evidence of genocide is either in the pay of Britain or being a deliberate fool'."

[cxxii] Id at 232. They may base their decision on the general notion of genocide as "the intentional annihilation of a specific group or groups"- a notion that is "neither definitive or demonstrably effective" enough to represent the meaning of genocide.

[cxxiii] For instance, there are the Indigenous Peoples of Biafra (IPOB) led by Nnamdi Kanu and the Movement for the Actualization of Sovereign State of Biafra (MASSOB) led by Raph Uwazurike.

[cxxiv] UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, Nov 26 1968, 754 UNTS. 7; and European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes (Inter-European), Jan 25 1974, Urop. T.S. No 82.

[cxxv] The UN Convention has only been ratified by 51 of the 192 member states of the UN (see *http://www2.ohchr.org/english/ratification/6,htm*) (last visited 18 July 2008) and the European Convention has only been ratified by three states (see *http://conventions.coe.int/treaty/commu/chercheSig.asp?NT=082&CM=8 &DF=7/18/2008&CL=ENG*) (last visited 18 July 2008), although this enabled it to enter into force in 2003.

[cxxvi] The article sub-headed "Non-applicability of Statute of limitation" states: "The crimes within the jurisdiction of the court shall not be subject to any Statute of limitation".

[cxxvii] L Mallinder "*Fighting Impunity and Promoting International Justice"*, above at note 18 at 24.

[cxxviii] RA Kok *Statutory Limitations in International Criminal Law* (2007, TMC Asser Press) at 391, as cited in Mallinder, ibid.

[cxxix] Up to date, Nazi war criminals are still being hunted down and prosecuted. For instance, in 1979, US congressional investigations of Nazi war criminals in the West spurred the creation of the office of Special Investigations, with power to initiate proceedings against suspected war criminals, strip them of U.S citizenship (if held), and deport them.

[cxxx] This is the report produced by the Nigerian Human Rights Violations Investigations Commission, which has come to be known as the Oputa Panel. However, the extensive powers bestowed on the commission were pronounced unconstitutional by the Supreme court of Nigeria in Babangida & Anor v Oputa [2001] FWLR (pt 82), 2084.

[cxxxi] Gambia, with the cooperation of the 57 members of the Organization of Islamic Cooperation, has filed a case before the International Court of Justice (ICJ) alleging that Myanmar's atrocities against the Rohingya in Rakhine State violate various provisions of the Convention on the Prevention and Punishment of the Crime of Genocide. Gambia which ratified the *Convention* in 1978, brought the case under *art 9* of the *Convention* which allows for disputes between parties 'relating to the responsibility of a State for genocide' and related acts to be submitted to the ICJ by any party. The ICJ had previously confirmed that all members state of the convention has a duty to prevent and punish genocide. [ICJ, Application for the *Genocide Convention* (Bosnia-Herzegovina v Yugoslovia), Judgment, ICJ Reports 2007]. Myanmar has been a party to the *Genocide Convention* since 1956. (Available at https//www.hrw.org/news/2019/12/05/questions-and-answers-gambia-genocide-case-against-myanmar-international court. (Accessed 10-04-2020)

[cxxxii] See *art* II of the Genocide Convention, 1948.

[cxxxiii] 'Genocide', available at https://www.un.org/en/genocide prevention/genocide.shtml (accessed on 9-3-2020).

[cxxxiv] Ibid. see *Prosecutor v Jean-Paul Akayesu*. Case No ICTR-97-23-5.

[cxxxv] Ibid

[cxxxvi] Ibid

[cxxxvii] Ibid

[cxxxviii] Ibid. See *Permanent Court of Arbitration, Chorzow Factory Case* (Ger.v.Pol), art 1 of the draft articles on State Responsibility adopted by the International Law Commission in 2001 provides: "Every Internationally wrongful act of a State entails the International responsibility of that State." [UNDOC.A/CN.4/L.602/Rev.1, 26 July 2001 (ILC draft Articles on Sttae Responsibility)]. According to Ferstman, "This has been repeatedly reaffirmed in the jurisprudence of national and international courts. It is also reflected in a range of International treaty texts and has recently been affirmed by the United Nations with the adoption by the General Assembly of the Basic Principles and Guidelines on the Right to a Remedy and Reparations for Gross violations of International Human Rights Law and Serious violations of International Humanitarian Law in December 2005.

[cxxxix] C Ferstman (ed) *Reparations for victims of War crimes, Genocide and Crimes against Humanity: Systems in Place and Systems in the Making* (2009, Martinus Nijhoff Publishers) at 8.

[cxl] Ferstma, *Reparations*,above at note 134 at 8-9.

ISSN 2581 3382

[cxli] The case of the 'Abandoned Property Policy' against Igbo people who owned property in Port Harcourt, and perceived flagrant marginalization of Igbos by most successive governments in Nigeria are pointers to the fact that the Nigerian government has failed to achieve post-conflict restorative justice.

[cxlii] Ferstman above at note 136 at 9.

[cxliii] Ibid. Hogan, *The Holocaust Chronicle*, above at note 2 at 690

[cxliv] Ibid.

[cxlv] Ibid.

[cxlvi] Ibid.

ISSN 2581 3382