

INTERNATIONAL HUMAN RIGHTS LAW AND THE PREVENTIVE BID OF THE GENOCIDE CONVENTION: EXAMINING THE THEORIES OF GENOCIDE IN THE LIGHT OF NIGERIAN CRISIS*

Abstract

This paper examines the history of international human rights law as claims on states. It delves into the specific human rights treaty, the Genocide Convention, and examines the preventive bid of the Convention. The study discusses some of the theories of Genocide, drawing lessons from the Rwanda and Darfur Genocidal incidences. It equally examines the Nigerian crisis situation in the light of the above theories. The study reveals the gaps present in the convention with respect to its preventive bid.

Keywords: International Human Rights Law, Genocide Convention, *Boko Haram*, Nigerian Crisis

1. Introduction

The nature of obligation and the bearers of the duty of ensuring human rights as encapsulated in the vast array of international human rights instrument is worthy of consideration if the ideals of human right would not be seen as mere rhetoric. The historical map of the emergence of International human rights protection reveals that States are the duty bearers of human rights, to 'ensure' and to 'protect' the retinue of human rights¹. This duty is further expanded by the Genocide Convention to include not just individual states but collective states²: also, the nature of obligation was expanded to include 'prevention.'³ How is this mandate to be carried out successfully? And how relevant is this mandate to the crisis situation in Nigeria? This paper attempts to answer these questions by examining certain theories propounded by scholars in answer to the root cause of Genocide. This is important to understanding crisis situations and determining whether the danger of Genocide is looming in any given situation. Consequently, part one of this paper examines the history of international human rights law as claims on states; part two delves into the specific human rights treaty- the Genocide convention and examines the preventive bid of the Convention: part three discusses some of the theories of Genocide, drawing lessons from the Rwanda and Darfur Genocidal incidences and part four examines the Nigerian crisis situation in the light of the above theories: part five reveals the gaps present in the convention with respect to its preventive bid and finally part six concludes the paper.

2. Concise History of International Human Rights Law: As Claims on States Individually and then Collectively

One fundamental nature of law whether international or national is the word 'dynamism'. Law evolved based on the exigencies of situation. Consequently, the concept of human rights law just like any other law has gone through a process of evolution. Prior to 1945, the concept of human rights was solely a domestic issue within the borders of state.⁴ For centuries, it was considered absolutely true that states or leaders are best suited to cater for the needs, interest and wellbeing of its citizens⁵. The structure of governance were created for the main purpose for protecting their subjects; the citizens⁶. Even prior to the rise of states, in Europe, all the kings saw themselves as guarantors of human rights based on their Christian faith hence there was no need for state intervention. However, the challenge of human rights at this primitive stage was that states which were thought to be guarantors of human rights become the very instrument of terror, a lethal threat to the life and wellbeing of its citizens.⁷ Thus while affirming the fact that states were the best guarantor of human rights, the best machinery for safe guarding the existence, freedom and property of

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¹ The preamble of the United Nations Charter 1945; the Universal Declaration of human Rights 1948; The International Covenant on Civil and Political Rights 1966; The Genocide Convention 1948: the International Covenant on Economic and Social Cultural Rights 1966: other Regional treaties such as the African Charter on Human and Peoples Rights 1986: European Convention human rights: American Declaration of the Rights and duties of man 1948 and the American convention on Human Rights 1969.

² Article 8 of the Genocide convention 1948.s

³ Article 1 of the Genocide Convention 1948.

⁴ Tomuschat, C., *Human Rights Between Idealism and Realism* (2n ed.Oxford, Oxford University Press, 2008) p.8

⁵ *Ibid*

⁶This is of the constant theories of state philosophy: human beings aware of the necessity to maintain and defend themselves in inimical surroundings, have established state Machineries.

⁷Ishay, MR, *The History of Human Rights* (Berkely, University of califonia press 2004)

the individual citizens, it was found from historical accounts that the same state through person vested with sovereign powers have been responsible for the breaches of these rights.

According to Christian Tomuschat, modern human rights law have a double edged, function in overcoming this challenge. That is to reconcile the effectiveness of states powers in guaranteeing human right with the protection against that same state power⁸ this is the role of international protection of human rights as heralded by the 1948 Universal Declaration of Human Rights (UDHR).

Thus, the philosophy that the good kings will always do the best for the wellbeing of his subject was rather a philosophy that places excessive trust in the person of the ruler. Historical accounts reveal the futility of such trust. For example, the atrocities committed by Hithler re-enforces the futility of absolute trust on 'states' and paved way for a new understanding of the relationship between individual, the state and the international community. The experience of the 2nd world war revealed that a state apparatus can be turned into an assassination tool blatantly infringing on the rights of its subject and falling to perform its sacrosanct function of upholding and defending the human dignity of its citizen. This experience heralded the birth of what is now known as international protection of human rights.⁹ The beauty of this new age is that states themselves came together led by the super powers to initiate this regime. After the Horrendous experience of the war, the United Nations was created for two major reasons as reflected in the preamble of the charter¹⁰. First, it is to save succeeding generations from the scourge of war and secondly to reaffirm faith in fundamental human rights.

3. Human Rights Obligation as Claims on States Collectively: The Convention on the Prevention and Punishment of the Crime of Genocide 1948

The Genocide Convention which was entered into in 1948 gave a slight twist to the nature of obligation placed on states to enforce this human right obligation. According to this treaty, firstly, 'States' are obliged to 'prevent' and 'suppress' acts of Genocide. Also the collective nature of the obligation was emphasized by the inclusion of Article 8 of the Convention. Article 8 of the Genocide Convention provides that 'Any contracting party may call upon competent organs of the United Nations to take such action under the charter of the United Nations as they consider appropriate for the prevention and suppression of the acts of genocide or any of the other acts enumerated in article III.' It is clear from the wordings of this Convention that it was made to prevent and punish acts of Genocide and that it is a collective assignment. According to Article 1 of the Genocide Convention, contracting parties 'undertake to prevent' genocide. According to that same article, genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish. The definition of genocide is provided for in article 2 of the Convention and Article 3 makes certain acts in connection with the crime of Genocide punishable: the act itself (genocide); conspiracy to commit the act of genocide, direct and public incitement to commit genocide and complicity in genocide. The part of this Convention that needs to be emphasized, is the mandate placed on the international community to 'prevent' Genocide¹¹.

4. The Concept of Genocide¹²

The term 'Genocide' merges the ancient Greek word '*Genos*' meaning race or tribe and '*Caedere*', the Latin word for killing¹³. Genocide is commonly associated with the *shoah*, translated as 'Holocaust'¹⁴ in English Language distinguished from other international crimes by its *dolusspecialis*; the special intent element (Genocidal intent)¹⁵, which is specific intent to destroy a national, racial, religious or ethnical group in whole or in part, through one or five listed categories of criminal conduct such as¹⁶:

⁸Tomuschat C supra note 4

⁹Rehman J., *International Human Rights Law* (2nd edition Halow, pearson education limited, 2010) p.28

¹⁰Preamble of the United nations charter (1945)

¹¹ Article 1 of the Genocide Convention, 1950.

¹²Schabas, W, *Genocide in International Criminal Law: The Crime of Crimes* (Cambridge: Cambridge University Press, 2000).

¹³Lemkin, *Axis Rule Occupied Europe* (Carnegie Endowment for International Peace, 1944, P.79).

¹⁴ See Newman, L. and Eibe R. *Understanding Genocide, The Social Psychology of the Holocaust* (Oxford: Oxford University Press, 2002).

¹⁵ *ICTY Prosecutor v. Jelsic*, Trial Chamber Judgment of 14 December 1999.

¹⁶Article 2 and 3 of the Genocide Convention 1958.

- a. Killing members of the group;¹⁷
- 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.

Rapheal Leinkin, a Polish Jurist of Jewish origin is accredited with developing the modern principle relating to the crime of genocide in his view: By genocide we mean destruction of a not or of an ethnic group... generally speaking, genocide does not necessarily mean the immediate destruction of a nation, or except when accomplished by mass killings of all members of a nation. It is intended rather to signify a co-ordinated plan of different actions aiming at the destruction of essential foundation of life of national groups... the objective of such a plan would be the disintegration of the political and social institutions of culture language, national feelings, religion and the economic existence of national groups, and the destruction of personal security, liberty, health, dignity and even lives of the individual 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 group¹⁸. The nature of this crime, like the crime against humanity and while war crime is that there need be no armed conflict for the act of Genocide to be committed although most such acts as constitute the legal means of Genocide are committed in conflict situations. The crime is distinguished from crime against humanity based on the specific intention of underlying its perpetration which must be not just to kill or ill-treat one or more, individuals, but to annihilate the group to which those individuals belong¹⁹. How can this intention be identified? According to *Marco Sassoli*, the intentions may be deduced from the words or the general behavior of the perpetrators, the systematic and methodical manner in which the crimes were committed, the fact that the choice of victims excluded members of the crimes, etc²⁰. The Crime Genocide can be illustrated by the actions of Nazis. During the course of the Second World War, physical destruction of groups took place because of their belonging to a national, racial or religious group. The most obvious targets were the Jews and the Gypsies. That notwithstanding, in the trial of the Nazis, the term 'Genocide' was not mentioned in the Charter of the IMT²¹ but was used in the indictment against them which charged them of having committed 'deliberate and systematic genocide viz, the extermination of racial and national groups, against civilian populations of certain occupied territories in order to destroy particular races and classes of people and national and racial groups'²². Today, the crime of Genocide has been fully entrenched in international law as a distinct crime for which individuals were held criminally responsible with the coming into force of the Convention on the Prevention and Punishment of the Crime of Genocide 1948²³. The scope of the crime has also been expanded by recent international instruments and the Jurisprudence of ICTY and ICTR to take acts that does not fall with the provisions of both the Genocide Convention and the Statutes of the ICTY and ICTR, such as Rape²⁴, forced or mass expulsions, or forcible expulsion of ethnic, racial or religious groups²⁵. The mental element of Genocide has also been expanded to include 'killing' of a culture as evidence of intent to bring about physical genocide²⁶.

¹⁷ *Prosecutor v. Akayesu*, Trial Chamber, Judgment of 2 September 1998.

¹⁸ Rapheal Leinkin is also accredited for coining the term 'Genocide'.

¹⁹ The specific character of the crime of genocide does not therefore live in the nature of the act itself but in the thinking (mensrea) behind its perpetration, that thinking is the 'intent to destroy in whole as in part, a national, ethnical, racial or religious group, as such'.

²⁰ Marco Sassoli, *How Does Law protect in War*, (Geneva: International Committee of the Red Cross, 2011) 404.

²¹ Power A, *Problem from Hell: America and the Age of Genocide* (Hamper: Perennial, 2007) 58.

²² Trial of the Major War Criminals before the International Military Tribunal, 1947.

²³ For the UN Resolution of the Crime of Genocide adopted on 11 December 1946, to Genocide Convention of 1945 when Conventized the legal recognition to the concept of Genocide as an independent concept.

²⁴ Although the ICTY and ICTR Statutes maintained the same definition as those of the Genocide Convention, the Court in *Akayesu* held that to rape of Tutsi Wannan fell within the scope of Genocide, see *Prosecutor v. Jean-Paul Akayesu* Trial Chamber Case No. ICTR-96-4-T, Paras 731-734; also see Mackinnon, *Are Women Human? And other International Dialogues* (Belknap: Harvard University Press, 2006).

²⁵ *Prosecutor v. Kradzic and Mladic*, Case No. IT-95-18-1, 16 November 1995. See also the Report of the International Commission of Inquiry on Darfur of the United Nations Secretary-General, 25 January 2005, (UN Doc/s/2005/60).

²⁶ Known as 'cultural Genocide' when considers evidence of attacks on the cultural and religious property and symbols of the targeted group as evidence of genocidal intent: *Prosecutor v. Kunarac et al.* Case No IT-96-23-T & IT-96-23/1-T,

5. Root Causes of Genocide: Theories of Genocide

In the past years, social scientists have propounded theories on the root causes of Genocide. These theories can serve as 'early warning' signals to the international community. From the plethora of theories propounded to explain genocide, the prominent ones are: inter-group divisions, authoritarianism, deprivation, ideology, wartime strategy and political development. The Genocidal incidences in Darfur and Rwanda exemplified some of these theories. Traces of these theories are seen in the socio-economical polity of Nigeria today.

The Theory of Ideology and Inter-group Rivalries

Accord to the findings of Leo kuper²⁷ a political scientist, the main root of genocide is a divided society in which one faction whether ethnic, racial or religions, dominates the other. In corroboration, Helen Fein²⁸ argues that such dominant group defines the victim group 'outside the universe of obligation' with certain ideology that justifies such domination. From her studies on the holocaust, she found out that ideological dominance of a group precipitated the genocide in Europe. When applied to the Nigerian situation, there seem to be certain ideology held by the dominant Northern-region –Muslim, the *meyity alah*²⁹ have consistently maintained that the whole of Nigeria was given to them as a possession by 'Allah' and are bent on spreading the Fulani colony on every part of the country. The *boko haram* ideology is that 'western education is evil and that the only acceptable education and system of government is the 'sharia' evidence show that the Muslim sect are more in number in comparison to the Christian sect.

The Theory of State Power and Authoritarianism

According to Irving Louis Horowitz, Genocide occurs when there is 'absolute concentration of power.'³⁰ Rudolph Rummel³¹ opined that 'absolute power kills absolutely' and genocide is likely to occur where there is totalitarian or authoritarian government. Thus democracy, checks and balances are a bulwark against genocide. The political terrain of the Nigerian state is close to being authoritarian, with power, concentrated on the north. The heads of all the security apparatus in Nigeria are all from one ethnic and religious group. Political, economic and military power seems to be concentrated in the north. If Rummel's research is something worth considering, the political terrain of the Nigerian State raises a warning signal on the imminent threat to genocide.

Widespread Deprivation

According to Ervin Stanb,³² in the context of difficult life conditions, people groups tend to blame other groups for their troubles. Where there is economic depression, starvation and social crisis, people groups for their sufferings leading to genocidal tendencies.

Ideology

Contemporary studies on genocide, precipitated by the crisis in former Yugoslavia and Rwanda have revealed that ideology is the primary cause of genocide. Utopian ideologies, ideologies based on religion, fear of biological contamination etc. According to Ben Kiernan,³³ these ideologies are pathways to genocide. A close study on the Nigerian crisis reveals a predominantly Muslim ideology of Islamizing the Nation: Ideologies of Fulani Supremacy and the disregard of other religion. All of these are features of the political, social and economic cosmos of the Nigerian State.

judgment 22 February 2001, Para 568; *Prosecutor v. Kvočka et al*; Case No. IT-98-30-T (Omasska, Keraterim and Trnopolje Camps) Judgment 2 November 2001.

²⁷ Leo Kuper, *Genocide; Its Political Use in the Twentieth Century* (New haven CT; Yale University Press 1981) 57.

²⁸ Helen Fein, *Accounting for Genocide; National Responses and Jewish Victimization During the Holocaust* (Chicago: University of Chicago press, 1979)9.

²⁹ Helen Fein *Accounting for Genocide; National Responses and Jewish Victimization During the Holocaust* (Chicago: University of Chicago press, 1979)9

³⁰ Living Horowitz, *Genocide: State Power and Mass Murder* (New Brunswick, Nj: Transaction Publishers, 1976) 36.

³¹ Rudolph Rummel, *Death by Government* (New Brumswick NJ transaction publishers 1994) 19

³² Ervin Stanb, *The Roots of Evil: The Origins of Genocide and other group violence* (Cambridge: Cambridge University Press, 1989) 25.

³³ Ben Kiernan, *Blood and Soil: A world History of Genocide and extermination from Sparta to Darfur* (New Haven CT: Yale university Press, 2007) 50.

Strategic Aims of Leaders and State Interest

Amongst the contemporary studies on the root cause of genocide is State leader's interest and ambition. This argument was well articulated in Benjamin Valentino's work.³⁴ He argued that leaders engage in genocidal acts 'when they believe that doing so is the best available means to achieve their goals'³⁵ sometimes based on a decision making calculus and at other times, aided by international allies who create a permissive environment for genocide to happen.³⁶ It is not the intention of this researcher to delve into all the probable causes of genocide but to examine the most relevant of all the theories to the situation in Nigeria. Different scholars, emphasize different theories³⁷. Indeed, there is little consensus on the determinants of genocide³⁸. The above factors only serve as indicators which can be used as a 'warning signal' for appropriate action especially by the international community.

6. Lessons from History: Rwanda and Darfur Genocide

The humanitarian atrocities committed in Rwanda by the Hutu led government against the Tutsi, leading to the death 500, 00 Tutsi was internationally acclaimed to be the worst case of genocide in the twentieth century. From the Background of the crisis and the application of the theories of genocide, it was found that the Hutus, perpetrators of the Genocide constituted about 85-90% of the population while the Tutsis were only 10-14%. In addition, Rwanda had a history of 'politicized and polarized ethnicity.' Prior to colonial rule there was this dichotomy between animal raisers which had a high status; and the Agriculturist. The former, predominantly the Tutsi were (before the colonial rule) the ruling class as the traditional kingship regime was dominated by the Tutsis. This social categorization was given an interpretation that meant Tutsi's superiority over Hutus. During colonial rule, Germany who controlled Rwanda till after World War II interpreted the dichotomy thus³⁹: 'Tutsi was a superior race of 'Hamites' who had descended from Northern Africa to Subjugate the agricultural Hutu' to the Germans, the Tutsis were smarter, more elegant and innate rulers. Thus they established a colonial rule that strengthened Tutsi's dominance in helms of affair. The Tutsi's enjoyed favour more than the Hutus such that they occupied prominent positions in the colonial administration. To complicate the class dichotomy, the difference was elevated to a racial sphere by the introduction of scientific machinery to measure features of both classes of persons: such as their nose, height, cranium etc. The dichotomy between these two classes of people was further expanded by the introduction of these races into the identity card of the State⁴⁰.

With the trusteeship program, Rwanda was handed over to Belgium and the game of Tutsi's preference was upturned in favour of Hutus⁴¹. The new Belgian administration deliberately made reforms to uplift the Hutus. This led to an outright resistance from the Tutsis. The success of the Hutu's upgrade was hinged on the ideology that they constituted the majority of the population of Rwanda and by the definition of democracy, being majority rule, they should govern⁴². This ideology gave rise to the 'Hutu Revolution' whereby the Tutsis were overthrown from government position. By the time Rwanda attained independence in 1962; the table has been so overturned that most governmental positions were dominated by Hutus. The resultant effect was Tutsi's persecution leading to mass exile. The descendant of Tutsi's exile in later years formed the Rwandan Patriotic Front (RPF), a major resistance fighter and actor in the crisis. Contrary to what was painted by the media, these two classes of people were not in rivalry until colonial rules which introduced racial concepts to the existing dichotomy of peoples and thereby bred hatred. The theories

³⁴ Benjamin Valentino, *Final solutions: Mass killings and Genocide in the Twentieth Century* (Ithaca Ny: Cornell University Press, 2004) 78.

³⁵ Manus Midlarsky, *The killing Trap: Genocide in the Twentieth Century* (New York: Cambridge University Press 2005)48.

³⁶ *Ibid*

³⁷ Kuper L, *Genocide: Its political Use in the Twentieth Century* (New Haven Ct: Yale University Press, 1981); Fein H, *Accounting for Genocide: National Responses and Jewish victimization During Holocaust* (Chicago: University of Chicago press, 1979).

³⁸ Straus S, 'Contesting Meanings and Conflicting Imperatives: A Conceptual Analysis of Genocide' [2001] *Journal of Genocide Research*, 349-375

³⁹ Mamdani M, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (Princeton: Princeton University Press, 2001) 45.; Chretien J, *The Great Lakes of Africa: Two Thousand Years of History* (New York: Zone Books Publishers, 2003) 76.

⁴⁰ Newbury C, *The cohesion of Oppression: Clientship and Ethnicity in Rwanda, 1860-1960* (New York: Zed Books Publishers 1988) 109.

⁴¹ *Ibid*

⁴² Mamdani (n. 86)

earlier expounded are revealed in the Rwanda crisis: tribal antipathy orchestrated by the Europeans, totalitarianism: power concentration⁴³ on the Hutus, ideology that, first, the Tutsi's were a superior class of individuals and then the ideology that Hutus constituted the majority and so should rule. In all, the Rwanda Genocide represented a mix of all Theories of Genocide and constitutes early warning signals for a proactive action in conformity with the Preventive mandate of the Genocide Convention.

7. Early Warning Signals and International Response: People Politics

Despite these signals, the international community stood aloof as Genocide unfolded in Rwanda. It was reported that General Dallaire had received information of the plot to annihilate Tutsi's Civilians but was prevented from taking action to stall the plot by the UN Department of Peace keeping Operations⁴⁴. When the Genocide started, the same General Dallaire requested for reinforcement to protect civilians. The request was taken with a 'Pinch of Salt.' As the genocide unfolded, instead of taking serious action to halt it the international community resorted to evacuating their nationals from the zone inevitably leaving the Tutsis at the mercy of the Hutus.⁴⁵ A number of explanations abound as to the response of the big players in international politics. It was reported that peace keeping operations had failed in Somalia leaving a number of US soldiers dead and so presented a need to avoid a re-occurrence. It was also reported that the 'big players' had no 'Interest' in Rwanda as a coffee- and -tea export country: there is also the defense that the genocide happened too swiftly⁴⁶ and that there were little outcry of the Public for intervention. These were nothing but 'Politiqing' with human lives. To corroborate this inference is the fact that there was reluctance by the 'big powers' especially the United States to label the crisis as 'genocide' as this will necessitate them to intervene. To obviate this responsibility, they refused to label the crisis as 'genocide'⁴⁷ this would not have been the case if the Genocide Convention itself did not have gaps especially with respect to the 'Preventive' mandate. Reminiscing about the humanitarian atrocities that took place in Rwanda where well over 500,000 people lost their lives commentators opine that it was a 'Preventable genocide' owing to the warning signals that were given. This historical account reminds us of the fact that history has the capacity of repeating itself; early warning signal must be taken seriously⁴⁸

Darfur

Darfur's social -political settings have some similarities with Rwanda. First, there is antipathy and dichotomy between Farmers and Herders with Arabs and non-Arabs origin⁴⁹ this dichotomy is also overlaid with religious affiliations: while the farmers 'Arabs' have their origin from Africa and middle- East, the herders, 'non-Arab' are rooted in Sub-Saharan African orientation⁵⁰ and were also divided between Muslim-Christian sectarianism. This cleavage was the source of the two civil wars in Sudan. The first one took place from 1955 to 1972 and the second from 1983 to 2005 with about 450,000 deaths and about 2.5 million civilians displaced. Most of the theories of Genocide were reflected in this country. First, there was this rivalry between the Arabs and non-Arabs which began in the mid-1980s, which was not there prior to that time. The reason for this rivalry was linked to drought and desertification resulting to scarce water and arable land. This led to fight between these sects who were farmers and the other herders over the scarce resources. Second cause of rivalry and most important of all, the Arab supremacist ideology and influx of weapon from chad and Libya and also the authoritarian nature of government enforcing Arab supremacist

⁴³ Mamdani, M. *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (Princeton: Princeton University press, 2001) 87.

⁴⁴ Barnett H, *Eyewitnesses to a Genocide: The United Nations and Rwanda* (Ithaca: Cornell university Press, 2002) 46: Power S, *A Problem from Hell: America and the Age of Genocide* (New York: Basic Books Publishers, 2002) 98.

⁴⁵ Dallaire R, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (Toronto: Random House, 2003) 75.

⁴⁶ Barnett, M. *Eyewitness to a Genocide: The United Nations and Rwanda* (Ithaca, NY: Cornell University Press, 2002): Power S, *A problem from Hell: America and the Age of Genocide* (New york: Basic Books, 2002)

⁴⁷ *Ibid*

⁴⁸ After the Genocide, the international court was established to try perpetrators of the Genocide and it was successful. As with the Holocaust, Punishment provisions of the law have proven to be more influential than the preventive ones.

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⁵⁰ Lesch A, *The Sudan: Contested National Identities* (Bloomington: Indiana University Press, 1998) 58.

ideology against the non-Arab sects leading to attack, using government machinery, on non-Arab civilians.⁵¹

International Response

While the United States called the crisis in Darfur ‘genocide’, the United Nations inquiry did not. The findings of Commission set up by the then Secretary General, Kofi Annan, was that, ‘There were no sufficient indicators of top-level intent to destroy the non-Arab population of Darfur.’⁵² The report however recommended the case to be referred to the international criminal court. Again, the international community politicized the conflict when upon the label being placed on the conflict as ‘Genocide,’ failed to act. The terms of the Genocide Convention indicated that the mandate of prevention was to be carried out by the United Nations⁵³. At the United Nations, the move to take action was halted by the opposition of China and Russia who usually opposed the use of coercive against states who violate human rights norms. However, underneath such opposition was a ‘hidden’ interest of these nations in the conflict. Firstly, China had oil interest in Sudan which they wanted to protect and Russia was the main supplier of weaponry to the Sudanese government. One would have thought that the international community would learn from the incidents of Rwanda but as the crisis in Sudan unfolded the global community watched in uttermost distraught the killings of thousands of people. This reluctance is ‘Worrisome’ if we are to take the prevention mandate serious the lessons from these two nations reveal how difficult and complicated the ‘Prevention’ Mandate of the Genocide convention can be.

8. Genocide Convention, Theories of Genocide and the Nigerian Crisis

Prior to the amalgamation of the North and South protectorate, now Nigeria State was made up of separate ethnic communities of over 360 languages⁵⁴. The Northern region was larger both in land mass and population than the Southern protectorate and both were meant to have equal representation at the senate and House of Representatives. The North and South protectorate were dominated by the Muslim and Christians respectively. The constitution that dictated the terms and conditions of this new existence from 1914 till date states that the Nation is a secular state implying the freedom of religion but at the same time provided for the establishment of a Sharia Court of Appeal.⁵⁵ The crisis in Nigeria has actually been both religions (the *Boko Haram* insurgency) and ethnic. With regards to the latter, it is the grievance of certain extremist that Western education be placed side by side with Sharia. Indeed, the outcry of this sect is that Western education is evil and thus the insistence of Sharia as the only form of education in the North. In the heat of this crisis, another sect springs up, with the aim of creating a Fulani-Cattle colony in every state of the country.

From the theory of Genocide, there is a similar trend with that of Rwanda and Darfur. First the Cleavage between Muslims and Christians, Arabs and non- Arab and in Rwanda, the dominance of the Hutus in government over the Tutsis does exist in the Nigeria State. Not only is the northern region larger, they, as at the last regime, occupied the most prominent positions in government. More so, the response of the government to the crisis seems to create a suspicion, a well-founded one at that, of complicity. As regards the *Boko haram* insurgency, it is reported that the chiefs of Defense staff threatened to expose the government over her involvement with the *Boko Haram*, as a result he was brutally murdered.⁵⁶ It was reported that before his resignation, Alex Badeh visited Maiduguri in a covert operation where he ran into some top members of the current day government as they were coming out of a meeting with *Boko Haram*

⁵¹Askin K, ‘Prosecuting Gender Crimes Committed in Darfur: Holding Leaders accountable for sexual violence’ in S. Totten and E. Markusen (eds) *Genocide in Darfur: Investigating the Atrocities in Sudan* (New York: Routledge, 2006) 85.

⁵² Commission of Inquiring 2005. Report of the international commission of inquiring on Darfur to the United Nations secretary-General.

⁵³ Article 8 of the Genocide Convention provides that party may call upon the competent organs of the United States to take such actions under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any other acts enumerated in article 111.

⁵⁴ Insa Nolte, ‘A History of Nigeria (review)’ [2011] *Journal of the International African Institute*, 78: Philip S, ‘Of Origins and Colonial Order: Southern Nigerian Historians and the Hamitic Hypothesis c. 1870-1970’ [2009] (35) (3) *The Journal of African History*

⁵⁵ S. 260-264 of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2011).

⁵⁶ Bridget Edokare, Murder of Alex Badeh. What an Insider Told Me by Femi Fanikayode <www.baristering.com> accessed December in 2018.

commanders at the Nigerian Army underground armory which was seized by *Boko Haram*. Accordingly, rather than engaging in a battle with them, he commanded his ‘men’ to take shots of the people involved. He was eventually murdered for refusal to hand over the pictures to the present government⁵⁷.

Furthermore, three renowned military officers who are privy to the secret happenings of *Boko Haram* and State involvement have been killed during this administration. First, is the Rear Admiral, Daniel Ikoli, the fleet commander of the Western Naval Command who was investigating the secret arms sales to *Boko Haram*. Next is the ex-military intelligence Chief and the former Directors of Administration, Defense headquarters, General Alkali, who was also privy to a lot of information and finally, is the ex-chief of defence staff, Alex Badeh. Although we may be tempted to dismiss the above as mere speculation, it is incumbent on us to advert our minds to the statement of the head of state concerning the fight against the *Boko Haram* as a ‘Fight against the North’⁵⁸ and the way the menace has continued unabated. There is also the Fulani herd’s men crisis ravaging the Country. Like General Dallaire did in the Rwanda crisis, certain persons and organization have written to the Secretary-General of the United Nation, Mr. Antonio Guterres and to the United Nations office on Genocide Prevention and the Responsibility to protect, New York, USA calling for the United Nations to intervene urgently to save a situation of potential genocide⁵⁹. Would the international community stand aloof like she did in Rwanda and Darfur’s crisis? Or would they learn from history?

Gaps in The Preventive mandate of the Genocide Convention

Article 1 of the Convention confirms the heinous nature of Genocide whether committed in time of peace or in time of war and as such parties ‘Undertake’ to ‘Prevent’ and to punish’ with over 140 state parties’ endorsement. Its preventive bid was further strengthened by Article VIII of the Convention that provides for State party intervention by notifying ‘competent organs of the United Nations to take such action under the Charter of the United Nation to prevent acts of genocide. However, without more, there are no provisions specifically tailored for enforcement of this preventive mandate. There are no policies or procedures that states must take to prevent Genocide save to call upon the competent organ of the United Nations i.e. the Security Council or any department created for that purpose, in this case, the United Nations office on Genocide Prevention and the Responsibility to Protect. This appears insufficient, imprecise, vague ambiguous and ultimately weak. Evidence of this is the failure to actualize the mandate in the face of Rwanda crisis and Darfur crisis. The Genocide Convention should be reviewed to accommodate clear, precise and specific enforcement procedures.

9. Conclusion

There is no gainsaying the fact that international Human rights laws have come a long way to ensuring the fundamental rights of peoples. As revealed in this paper, the Genocide Convention is revered mostly for its preventive bid. This reverence is born out of the cliché that ‘prevention is better than cure’. The holocaust of the last few centuries have revealed that certain crimes are better prevented when nipped at the bud. Thus, sociologists have propounded certain theories that would help the international community carry out this imperial task of preventing the occurrence of Genocide. A proper study of the theories shows the patterns and indicating factors signaling the dawn of inception of a full-blown Genocidal attack as exemplified by the two major genocidal attacks of the 21st century-Rwanda and Darfur crisis. When juxtaposed with the current trend in Nigeria, we see a somewhat, similar thread that if not properly acted upon by the international community, might make history repeat itself. Recall, the above theories serve as an early warning signal, which could help the international community carry out her preventive mandate in accordance with the provisions of the convention, however weak the provisions might be. The lesson drawn from the historical accounts of Rwanda and Darfur is that anytime the international community ignores these signals, crisis situation degenerates to the point of ‘no return,’ leading to the avoidable massacre of countless number of people. It is hoped that history does not repeat itself.

⁵⁷ Ibid

⁵⁸ John Shiklam, ‘Buhari: Military Offensive against Boko Haram, Anti-north’ This Day Newspaper (Lagos, 4th June 2013).< <http://www.thisdaylive.com/articles/buhari-military-offensive-against-boko-haram-anti-north/149256/>> accessed 21st October 2019.

⁵⁹ Lela Gilbert, ‘An Unrecognized Genocide in Nigeria’ < <https://www.hudson.org>> Accessed 21st October 2019; Ewelina U. ‘Trump May Not Be Wrong On Fulani Herdsmen Crisis In Nigeria’ www.forbes.com Accessed 21st October 2019; Samuel Smith, ‘Nigerians Describe Horrors of Fulani Atrocities: There is a genocide Going on.’< <https://www.christianpost.com>> Accessed 21st October 2019.