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CRIME OF CRIMES: A STUDY ON THE CRIMINOLOGY OF GENOCIDE

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ABSTRACT

This paper attempts to study a largely uncharted area of criminology, the Crime of Genocide. Though labelled as the most horrendous crimes against humanity this crime has been researched on by very less criminologists. This is due to the fact that, the crime of genocide is committed by the state and the debate whether the state can be held as criminal; in this regard criminologists split into two, those who agree state can be labelled a criminal have conducted research from the 90s showing the significance of the state crime in genocide. The paper uses Collective action theory and through historical cases has tried to understand the criminology of genocide.

INTRODUCTION

Genocide can be defined as the 'cide' or killing of a 'genos' or a race of people. Simply, it is where a large number of the same race, ethnicity or nationality are murdered by another race, ethnicity or nationality. The word genocide itself is largely associated with the WWII where a large number of Jews were murdered by the Hitler regime. The names associated with genocide are Hitler, Mussolini, Rajapakse, Mao Zedong, Joseph Stalin and many more. Therefore, can one come to a conclusion that genocide is the product of the leaders of a nation as the killings are mass? Research and studies in this area has proved the contrary. Genocide, the killing of the mass is also committed by the mass. This paper studies the cause of genocide, the root to the greatest crime against mankind. This paper has been divided into four parts which, the first part being about Treating Genocide as a crime followed by the second chapter which discusses the link between genocide and criminology, the third about how genocide can be brought under the ambit of criminology, wherein it emphasis on state crime and collective action theory. The fourth part recounts historic events of genocide which categorically proves the collective action theory and this part ends with comparison between the cases, conclusions drawn from it and most importantly, profiling the general characteristics of the offenders.

I: GENOCIDE AS A CRIME

Genocide is not a phenomenon that is new or unknown to man. Massive killings are a part of human nature and has been happening since time immemorial. The Colonial era has witnessed one of the greatest genocidal attacks, especially with reference to the attack against the Native Indians. Genocide was recognised as a ‘Crime’ after the WWII and the attack on the Jews. It was when in 1944, a polish lawyer, Raphael Lemkin coined the term ‘Genocide’ by combining two Greek words, Genos (race) and Cide (to kill).¹ It was after the victory of the Allies that these forces installed the International Military Tribunal at Nuremberg (Germany) to try the Nazi suspects. During the trial itself, ‘genocide’ did not play an important role because of the non-existence of this term in International Law, then. Lemkin lobbied this idea to the Military tribunal which was rejected but was later accepted by the newly founded United Nations in the year, 1948.

In short, Genocide can be said to be a violation of rights to life, liberty and security and is said to be the worst form of violence among humans. It can be committed in secret or as a procession in public. Genocide, is an international crime, which means that countries all over the world have agreed collectively that the act of genocide is a wrong and should be punished collectively. Genocide may or may not involve ethnic cleansing. It can be mass murder, even if the “mass” of the target group is small and even if some of its members survive; but murder need not occur at all, according to specialists in colonial genocide, although victims certainly do die.² Apart from the mass killing of people, genocide also includes the destruction of a culture, leading to ruin of its language, marriage, customs regarding craftsmanship courtship, livelihood, politics and etc. Therefore is social as well as physical death. It is social death because, *“victims are stripped as members of the target group of the social identities that gave meaning to their lives and that would ordinarily also have given meaning to their deaths.”*³ It is the supreme form of state-organized crime. Genocide is the destruction of one group by another. It is the destruction of a group “as such”—not because of its actions but because of its characteristics, the traits that make it a group in the first place.⁴

Today the UN Genocide Convention on the Prevention and Punishment of the Crime of

¹ Stanton, Gregory H., What is genocide?, Genocide Watch.

² Powell 2007; Woolford, Benvenuto, and Hinton 2014.

³ Card 2008: 182.

⁴ DeJong and Long 2014: argument that the Ugandan government’s attempt, to require the death penalty as punishment for homosexuality was in effect an attempt at genocide. 2009–2012

Genocide stands as a pledge to ensure that never again will there be such a great loss on humanity.

- Art. II of the Convention, contains a narrow definition of this crime that includes two main elements: the mental element and the physical element. The Mental Element being the intent to destroy in any manner (in whole or in part) a national, ethnic, racial or a religious group. And the Physical Element includes five acts that have been enumerated exhaustively, which have been listed as follows: Killing members of the group
- Causing serious bodily or mental harm to members of the group
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
- Imposing measures intended to prevent births within the group
- Forcibly transferring children of the group to another group.⁵

Like in any other crime the 'Intent' is the most difficult to determine. Because to constitute genocide, there has to be a proven, the intention by the perpetrators that they physically intend on destroying national, ethnic, religious or a racial group. The uniqueness to this crime of genocide can be attributed to the proving of this special intent or *dolus specialis*.

Over the past twenty years, there has been an enormous progress in treating Genocide as crime especially with the institution of the International Criminal Court as a permanent body in the year 2002. It has formally defined and taken into its jurisdiction three important crimes, namely crimes against humanity, genocides and war crimes.⁶ This institution along with its predecessor has dealt with the crimes committed during the genocide in the former Yugoslavia and Rwanda. Apart from this institution, powerful non-governmental organisations like the Human Rights Watch have made a massive impact with reference to genocidal attacks.⁷ Today despite the existing laws, Conventions and regulations, the crime of genocide has not been eradicated or stopped. To be completely honest, it cannot even be controlled. The Holocaust is not the last of the Genocidal attack. The Thamizh- Eezham issue, the Rohingya Issue and the issue are a few issues taking place in the Twentieth Century and is an example that despite the laws, awareness and the combined efforts of Governmental, Non-Governmental and international organisations, the crime of genocide is still one of the most widely committed crimes in the

⁵ <http://www.un.org/en/genocideprevention/genocide.html>

⁶ Charles H. Anderton, Jurgen Brauer, ed. (2016). *Economic Aspects of Genocides, Other Mass Atrocities, and Their Prevention*. Oxford University Press. ISBN 9780199378296.

⁷ Id.,

world.⁸

In the next few parts, the researcher has focused whether the crime of genocide can be classified like any other crime within one of the criminological schools? Whether criminology can contribute to the theoretical understanding of genocide? And has described in detail the root to genocide: xenophobia.

II: CRIMINOLOGY AND GENOCIDE

Criminology is the scientific study of the nature, extent, management, causes, control, consequences and prevention of criminal behaviour in both an individual and in the society. In this respect, the criminologists had studied all forms of crimes through various school of thoughts. Genocide was not researched upon by the criminologists till recently because, defining a crime or criminal falls upon the State and till recently if the state were to classify genocide as a crime, it would have invariably criminalised itself. However, a few scholars involved with the analysis of crime, drew their attention towards genocide. An article titled “*Genocide and Social Production of Immorality*” was the first ever article in 1999, by Ruth Jamieson, to relate Genocide with Criminology and its subfield, Victimology.⁹ Since then there were various research scholars and academicians analysing and researching in this issue.

In 2010, when John Hagan and Wenona Raymond- Richmond developed a collective- action theory on genocide and presented it in the paper titled, “*Dafur and the Crime of Genocide (2009)*”. The paper took a collective approach analysing the human rights violations that began in the 2003 in Dafur as a racial propaganda that set the Arabic herders against the black African farmers.¹⁰ The paper further proved how the Sudanese government supported the policy of raping black women. The authors of this paper were able to address genocide at a micro and a macro level by studying the interactions between the two. Around the same time, a research paper titled, “*Anomie and Violence*” by John Braithwaite and his colleagues.¹¹ The work was a three- volume series applying the concept of “anomie”: the dissolution of moral standards that leads to a complete social breakdown and alienation, in Indonesia in the late twentieth and

⁸ Supra., 4

⁹ Chambliss, W. J. (1989). State-organized crime: The American Society of Criminology, 1988 Presidential Address. *Criminology*, 27(2), 183-208.

¹⁰ Dutton, D. G., Boyanowsky, E. O. & Bond, M. H. (2005). Extreme mass homicide: From military massacre to genocide. *Aggression and Violent Behavior*, 10, 437-473.

¹¹ Id.,

the early twenty first century.

Profiling a crime is what the criminologists do, they build profiles on various types of crimes on those who commit them, where, when, why, the weapons used and the consequences, this knowledge is then used to find a criminal on a later stage.¹² There are numerous criminological profiles on various crimes like homicide, arsons, rapes and etc, but barely anything on Genocide. The main reason for this would be because genocide by nature is a state crime. Therefore, the next part of the paper analyses the reason as to why there has not been much research in this area and also analyses the type of criminological theory that can be used to understand and profile the perpetrators of this crime.

III: MACRO- LEVEL ANALYSIS OF CRIME

State crime refers to the acts defined by law as criminal and is committed by the state officials in the pursuit of their job as representatives of the state.¹³ The reason for there being not much literature in this area is because of the divided opinion on “state crime”. Where some criminologists strongly opine that state should be treated as a criminal actor because some crimes cannot be committed without explicit state policies the other group of criminologists believe in the contrary.¹⁴ But once it had been established that State Crime is a viable aspect, it was discovered that none of the criminological theories used on individual criminals can be applied to the state. It was here that the concept of micro -level analysis and macro-level analysis of crime took form. Rothe had proposed that State Crime is caused due to three reasons: (1) economic pressure, political goals and anomie motivating the state; (2) an opportunity where the state controls information, propaganda and the military; (3) where constraints on media, public opinion and political pressure is ineffective. Another reasoning proposed for State Crime is that when the pressure for goal attainment intersects with the availability of illegitimate means in the absence of effective social control.¹⁵ Within this framework, the state structure can create a pressure based on the State’s majority belief on the political, economic and cultural set up. This would invariably frame the minority group and the pressure would be released only after the act of genocide.

¹² Ermann, M. D., & Lundman, R. J. (2002). Corporate and governmental deviance. In M D. Ermann & R. J. Lundman (Eds.), *Corporate and Governmental Deviance: Problems of Organizational Behavior in Contemporary Society* (pp. 3-49). New York: Oxford University Press.

¹³ (Chambliss, 1989, p. 184)

¹⁴ Friedrichs, D. O. (1996). Governmental crime, Hitler and white collar crime: A problematic relationship. *Caribbean Journal of Criminology and Social Psychology*, 1(2), 44-63.

¹⁵ (Kramer & Michalowski, 2005).

Macro- Level Crimes are those that where there is the commission of large scale criminal acts. It is for this reason that, the existing literature compares State crime to organizational crime. Organizational Crime are illegal acts of omission or commission of an individual or a group of individuals in a legitimate formal organisation in accordance with the operational goals of the organization. The State can be viewed as a particular type of organisation. The state can be taken as a “*centralised set of institutions and personnel wielding authoritative power over a nation*”¹⁶ As stated above, organizational crime involves illegal acts of an individual or group of individuals in legitimate formal organization acting in compliance with the organization’s goals. The government of a state is a legitimate goal-oriented organization. A government obtains legitimacy in many different ways including admission to the United Nations or other international body, support in elections from the people of the state, or through exertion of a dominance of power.¹⁷ In addition, the government has its goals that it seeks to attain through the legislative and executive branches: to provide support and maintenance for its population. The nation’s goals will include ways to achieve prosperity for the state. There may also be several other goals that the state seeks to achieve based on the government regime and the economics of the state.¹⁸ Both an organization and a state cannot function without the people working in it, striving to achieve a goal or exist independently.¹⁹ In this regard, it does not matter if people are replaced in the offices of the state or the positions of the organization. And most importantly both the State and Organizations are considered to separate entities. Therefore, if a wrong or a crime has been committed where an organization is unpunished, the State walks scot free. It needs to be understood that, the structure and organizational culture of the state may make the execution of crime easier. It has been claimed that “*the structure and ideology of totalitarian governments, for instance, are prone to create institutions of social control and political policing in which terrorizing, physically abusing, or even killing perceived political enemies becomes a taken-for granted part of everyday life*”.²⁰ Thereby, government agents come to accept the organizational culture created by those in power in which objectively evil acts become necessary and legitimate means to reach organizational goals. Recognition that the state is a type of organization allows for the use of organizational

¹⁶ (Schrager & Short, 1977).

¹⁷ Gould, R. V. (1999). Collective violence and group solidarity: Evidence from a feuding society. *American Sociological Review*, 64, 356-380.

¹⁸ Pruitt, William, How Criminology can engage in the Theorizing on Genocide?, *International Journal of Criminal Justice Sciences (IJCJS) – Official Journal of the South Asian Society of Criminology and Victimology (SASCV)* ISSN: 0973-5089 January – June 2014. Vol. 9 (1): 1–15.

¹⁹ Grimshaw, A. D. (1970). Interpreting collective violence: An argument for the importance of social structure. *Annals of the American Academy of Political and Social Sciences*, 391, 9-20.

²⁰ (Lynch & Micahlowski, 2006, p. 186)

crime research when considering state crime issues. Integrating these two distinct areas may provide fuller answers to the questions surrounding state crime and genocide.²¹

COLLECTIVE VIOLENCE

Genocide is viewed as a collective violence. Collective violence as defined by WHO is, “*“The instrumental use of violence by people who identify themselves as members of a group—whether this group is transitory or has a more permanent identity—against another group or set of individuals, in order to achieve political, economic, or social objectives”*²² the beginning of phenomenon of collective violence cannot be traced, exactly. Though it has always featured in history taking the form of gang violence, genocide, mob violence etc. The ideology behind collective violence rests upon the subordination of the individual to the group²³. Then the group becomes independent of the individual members that make up the collectively but the elite maintain a power position. The individuals have subordinated their interests to that of the group and the group is led by power elite²⁴. These power elite can shape the focus and intention of the collectively, thus controlling the group both ideologically and behaviourally²⁵. Due to the fact that collective violence is executed with a final result in mind, it may be seen as a rational act. Human beings turn to collective violence as a response to a perceived threat, where benefits outweigh risks, making collective violence a rational act. If collective violence is rational, then we cannot blame it on random behavior or simplify it to conflict between groups. Rational behavior implies a decision-making process that can be analyzed in hopes of preventing future acts of collective violence.²⁶ Therefore if there were an influential leader with a good political standing and he were to point out the short comings of having to share the economy with another inferior race, people would collectively tend to follow him. This when the said man gets into power and appointed by the state in an influential position, can use the power of the state to commit genocide.

The approach to critical criminology is not always an explicit approach to genocide but it provides tools to analyse and study in detail the subject. Important theories on criminology includes the theories of Hagan and Raymond-Richmond (2009) who proposed collective action

²¹ Supra 15

²² <http://www.who.int/features/darfur/en/>

²³ (Gould, 1999)

²⁴ Id.,

²⁵ (Klein, 2007)

²⁶ (Mattaini & Strickland, 2006)

theory of genocide. Their collective action theory begins at the macro-level and discusses how the micro-, meso-, and macro-levels interact to result in genocidal victimization.²⁷

There are various elements to Hagan's collective action theory including the nation-state, socially constructed groups, individualization and collectivized intent. With reference to genocide, in this regard, by inaction, the state will violate the international principle of R2P or Responsibility to Protect.

IV: HISTORICAL CASES

In this chapter historical comparison over seven different incidents has been made to study the core characteristics of the crime. Mass killing is a matter of rational choice by the perpetrator group's leaders. In this view, "*mass killing does not require widespread, active public support, only passivity or indifference*"²⁸ on the part of the populace.

Herero Genocide 1904-1907:

The Herero, a Nambian tribe of the Southwest Africa was colonised by the Germans which rose up against them, even with the knowledge that they would lose. The leader of the German Army issued a written order of extermination- a rare written authorisation of genocide. Of the 80,000 Herero in the colony, only 15,000 remained. Their culture had been obliterated, and the survivors were forced into slavery.²⁹ The influence of the Herero genocide, far from dying with its victims, grew stronger over time, spilling into the Armenian genocide of 1915 and the Nazi genocide that began just thirty years later. Although the German influence was small in the Armenian case (German military advisers encouraged the Turks The influence of the Herero genocide, far from dying with its victims, grew stronger over time, spilling into the Armenian genocide of 1915 and the Nazi genocide that began just thirty years later. Although the German influence was small in the Armenian case (German military advisers encouraged the Turks³⁰. The African Genocide became an example for the future paving way for the genocide of the Jews by the Nazi regime. The origins of the German concentration camp can be traced to the

²⁷ Id.,

²⁸ Jeremy Sarkin-Hughes (2008) Colonial Genocide and Reparations Claims in the 21st Century: The Socio-Legal Context of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904–1908, p. 142, Praeger Security International, Westport, Conn. ISBN 978-0-313-36256-9

²⁹ challer, Dominik J. (2008). Moses, A. Dirk, ed. "From Conquest to Genocide: Colonial Rule in German Southwest Africa and German East Africa." [Empire, Colony Genocide: Conquest, Occupation, and Subaltern Resistance in World History] (first ed.). Oxford: Berghahn Books. p. 296. ISBN 978-1-84545-452-4.

³⁰ Hull 2003: 162.

Herero genocide, as can the beginning of German studies in eugenics, the idea that humans can be improved by better “breeding.” The Herero genocide—an example of racial cleansing of a territory—helped habituate some Germans to the idea that it is legitimate to exterminate people who stand in the way of national aspirations.³¹

The Armenian Genocide (1915-1923):

The Armenians are an ethnic group that lived in the land that later became a part of the Ottoman Empire and they were incorporated on the said Empire as second-class citizens. From the beginning of the late nineteenth century, in the hands of the Ottomans, there was a series of massive massacres, mass rape of Armenian women and children, murder of entire families, theft of their property and burned down their villages.³² With the Conservative Party winning the election, the Turkey-for-Turks movement was endorsed for which a Special Organisation had been set up, to plunder and kill. On the night of April 24, 1915, the Turks rounded up Armenian leaders and intellectuals in Constantinople. In Turkey, particularly in the east, where most Armenians lived, members of the Special Organization marched Armenian men out of their villages to be shot. It evicted women, children, and the elderly from their homes and forced them on a death march south into the Mesopotamian and Syrian deserts. Armenians were butchered, burned alive, and shoved off boats into lakes and rivers. They were whipped, bludgeoned, and left by the roadside to starve or die of thirst. The Special Organization encouraged amnestied convicts and Kurdish bandits to rape and pillage the deportees; some sold young girls into sexual slavery or forced them into harems. One million or more Armenians died. Today, Turkey still refuses to acknowledge these events as genocide.³³

The Nazi Genocide of the Disabled, 1939-1945:

Under the Nazi regime, it was not just the Jews who suffered, it was also a population of Germans as well. Hitler's conviction was that by eliminating undesirables from German population, he could improve the purity and power of the Aryan “stock”. With this agenda, his “euthanasia” programme was passed in 1933 mandating the sterilization of people with mental and physical disorders. In 1939, the children's euthanasia programme began, it was a secret

³¹ Rafter, Nicole, *The Crime of Crimes: Toward a Criminology of Genocide*, New York University Press, New York and London, ISBN: 978-1-4798-5948-1.

³² Schaller, Dominik J; Zimmerer, Jürgen (2008). "Late Ottoman genocides: the dissolution of the Ottoman Empire and Young Turkish population and extermination policies – introduction". *Journal of Genocide Research*. **10** (1): 7–14.

³³ Derderian, K. (1 March 2005). "Common Fate, Different Experience: Gender-Specific Aspects of the Armenian Genocide, 1915-1917"

project run by a small group of physicians who agreed to murder disabled children whom they deemed genetically inferior.³⁴ The program expanded to cover mentally disabled youths, chronically ill adults, the blind, the deaf, and residents of old-age homes and almshouses; it expanded further, to cover criminals and other “asocials.” The program became known as Aktion T4, after the address of its Berlin headquarters, number 4 Tiergartenstrasse.³⁵

As the T4 program grew, its medical directors looked for more efficient means than poison and starvation to kill the disabled. 1939-1940 the first experiment with carbon monoxide gas was conducted, with it being a success, six “euthanasia” centres were established through out Germany and Austria. 750,000 people may have been killed in this genocide. It is difficult to arrive at a total, partly for definitional reasons; as the historian Robert Proctor explains, “for Nazi physicians no sharp line divided the destruction of the racially inferior and the mentally or physically defective.”³⁶

The Katyn Forest Massacre, 1940:

Due to Stalin’s secret plan to annex eastern Poland, the borders between Poland and western Russia were unsettled and unclear in 1939 when Soviet soldiers invaded and rounded up about 22,000 members of the Polish army and intelligentsia, imprisoning them in three camps in western Russia.³⁷ The Poles, unaware of Stalin’s annexation plan, offered but slight resistance. Spies in the prison camps, interrogating the Poles about their attitudes toward Poland and Russia, discovered that most were avid patriots—just the kind of Polish nationalists who, if released, would resist the Soviet takeover. Thus, Stalin signed orders for their liquidation and the deportation of their families (about 61,000 relatives in all) to Kazakhstan, where many died of hunger and disease.³⁸ In early spring of 1940, the prisoners were shot, one by one, and buried in pits in the nearby Katyn Forest and other sites. The soil preserved the bodies so well that diaries, medals, and other objects subsequently made it possible to identify disinterred victims. Later in World War II, when the Germans invaded the Soviet Union, they discovered the burial pits, which they tried to use as anti-Soviet propaganda, reporting with great fanfare that the

³⁴ Burleigh, M. (1994). *Death and Deliverance: 'Euthanasia' in Germany c. 1900-1945*. Press Syndicate of the University of Cambridge: NY.

³⁵ Friedlander, H. (1995). *The Origins of Nazi Genocide: From Euthanasia to the Final Solution*. The University of North Carolina Press: London.

³⁶ Proctor 1988: 209.

³⁷ Roberts, Geoffrey (2006). *Stalin's Wars: from World War to Cold War, 1939–1953*. Yale University Press. p. 171.

³⁸ "Decision to commence investigation into Katyn Massacre". Departmental Commission for the Prosecution of Crimes against the Polish Nation.

Soviets had butchered thousands of Poles.³⁹ The Soviets in turn held the Germans responsible for the executions, and the blame game continued until 1990, when Mikhail Gorbachev, the Soviet president, admitted his country's guilt. The victims' disappearance, and their relatives' inability to learn the truth about their fates, became a central issue in twentieth-century Poland.⁴⁰

The Indonesia Genocide, 1965-1966:

In the early 1960s, Indonesia hosted the largest communist party in Southeast Asia, the Partai Komunis Indonesia, or PKI. The president, Sukarno, tried to balance the demands of the left-wing PKI, the right-wing Partai Nasionalis Indonesia (PNI), and a group of Islamic parties. On September 30, 1965, an attempted coup, apparently sponsored by the PKI, left six army generals dead. The then Major General Suharto quelled the disturbance, pushed Sukarno aside, and encouraged a national bloodbath against communists in what was an almost purely political genocide. Six months later, half a million Indonesians lay dead, with thousands more in jail on suspicion of leftist sympathies.⁴¹ According to historians, *"These mass murders belong to the worst counter-revolutionary acts of violence of the twentieth century. . . . The killings of 1965–1966 established a new regime of fear which the New Order [Suharto's rule] used . . . to repress nearly every form of protest. At the same time, however, the murders were completely banned from history writing. The official history books state that in September 1965, Suharto promptly thwarted a communist coup."*⁴² Further Suharto's army encouraged the killings of communists and their associates, it remains difficult to identify perpetrators and victims in Indonesia.⁴³

The Guatemalan Genocide, 1981-1983:

This genocide occurred during the civil war (1962-1996) between a right-wing military, supported by the US Government and a loose coalition of leftist guerrillas and the Maya, members of the original indigenous population.⁴⁴ It was a genocide waged against a group defined on ethnic, racial, and political grounds. The Maya, who had ruled what is now Guatemala before the sixteenth-century Spanish conquest, had darker skin than the country's oligarchs did, a difference used to justify the racism of the conquistadores' descendants. The

³⁹ Engel, David (1993). Facing a holocaust: the Polish government-in-exile and the Jews, 1943–1945

⁴⁰ Fischer 2007.

⁴¹ Cribb, Robert (1990). The Indonesian killings of 1965–: studies from Java and Bali Clayton, Vic.: Monash University Centre of Southeast Asian Studies, Monash Papers on Southeast Asia no 21,

⁴² Colombijn and Lindblad 2002: 8.

⁴³ Supra 41

⁴⁴ "GUATEMALA 1982". Peace Pledge Union Information.

Maya were not necessarily leftists, but they too were struggling for civil and human rights against an oppressive, deeply conservative government that was in league with wealthy landowners. They were sometimes aided by the Catholic Church as well as leftist guerrillas, but neither source of support could effectively oppose the Guatemalan army, whose generals ran the country.⁴⁵

The genocide coincided roughly with the dictatorship of José Efraín Ríos Montt (1982–1983), who waged systematic, racist attacks on the Maya on the grounds that they supported a communist takeover of the government. Cold warriors in the US bought into this belief (some would call it an oversimplification, others a fabrication), training Guatemalan soldiers in its School for the Americas and lending help through the CIA and Green Berets. Guatemalan paramilitaries attacked over 600 Mayan villages, destroying them, raping the women (sometimes for days on end), smashing infants against walls, burying people alive.⁴⁶ (Sometimes, the paramilitary groups included Maya who had been forced to join so-called civil defense patrols.)⁴⁷ The genocide ended with the overthrow of Ríos Montt in 1983 and the start of a somewhat less oppressive period in Guatemalan politics. It is difficult to find reliable estimates of the number of Maya who died as a result of the genocide. It seems likely that well over 100,000 were killed and at least 150,000 were forced to flee to Mexico.⁴⁸

The Rwandan Genocide, 1994:

From early April through mid-July of 1994, in a span of 100 days, Hutu extremists in Rwanda systematically murdered over one million people both moderate Hutu and Tutsi and raped an estimated 250,000 women. The goal was to exterminate the Rwandan Tutsi population.⁴⁹ The reason for the hatred between the once peaceful castes was the entrance of the German Belgian Colonists. Older differentiations were used by the colonists to construct the Tutsi as superior because more European in appearance.⁵⁰ A Hutu uprising of 1959 began the process through which Rwandan Hutu gained the upper hand. Although there was considerable violence against Tutsi in the period leading up to the genocide, Hutu President Juvénal Habyarimana at least

⁴⁵ Navarro, Mireya (February 26, 1999). "Guatemalan Army Waged 'Genocide,' New Report Finds". The New York Times.

⁴⁶ "Human Rights Testimony Given Before the United States Congressional Human Rights Caucus" (Press release). Human Rights Watch. 16 October 2003.

⁴⁷ Guatemala: A Nation of Prisoners, An Americas Watch Report, January 1984, pp. 2–3

⁴⁸ Garrard-Burnett 2010: 6–7; O'Neill 2005: 333–334; Sanford 2009: 41.

⁴⁹ Uggem, Nyseth Brehm, and McElrath 2014.

⁵⁰ Akhavan, Payam (1996). "The International Criminal Tribunal for Rwanda: The Politics and Pragmatics of Punishment". American Journal of International Law. **90** (3): 501–510. JSTOR 2204076

pretended to be moving toward greater democracy. His death in a plane crash—possibly engineered by more extremist Hutu, possibly by Tutsi opponents—triggered the genocide. Hutu extremists had lists of the country’s Tutsi, whom their militias proceeded to drive into public spaces such as crossroads, schools, and churches and then hack to death with machetes.⁵¹ They also systematically raped Tutsi women. This was a carefully planned and well-coordinated genocide. The journalist Philip Gourevitch writes, “*The dead of Rwanda accumulated at nearly three times the rate of Jewish dead during the Holocaust. It was the most efficient mass killing since the atomic bombings of Hiroshima and Nagasaki.*”⁵²

Almost million refugees fled into neighboring countries. The slaughter ended with the arrival in the capital of the Rwandan Patriotic Front (RPF), Tutsi soldiers from Uganda who had been fighting a civil war with Rwandan Hutu during the genocide and who now formed a new government under the RPF leader, Paul Kagame.⁵³ By November 1994, the UN Security Council had established an international criminal tribunal to bring justice to surviving Rwandans, and although progress was slow, expensive, and bloody (some witnesses and their families were murdered), over five dozen genocidists were convicted. The court’s first conviction, decided half a century after the UN defined genocide, was the first- ever judgment by an international court on a charge of genocide. This same trial established that rape is a crime of genocide when committed with intent to destroy a group.⁵⁴

General Findings:

All the Genocides that had taken place were during a period of unrest in the international arena. There were either wars or upheavals.

- The Herero Genocide had occurred when the native tribes waged war against their white colonisers.
- The Armenian Genocide was the result of WWI, wherein Turkey fought and lost that war and the one against the Balkans.
- The Nazi Germany, Hitler began the WWII and then started the killings or “euthanasia” against the disabled children and the disabled population.

⁵¹ Id.,

⁵² . Gourevitch 1998: 3.

⁵³ BBC News (II) (2006-11-23). "France issues Rwanda warrants"

⁵⁴ Aptel, Cicile (2008). "Closing the U.N. International Criminal Tribunal for Rwanda: Completion Strategy and Residual Issues" (PDF). *New England Journal of International and Comparative Law*. **14** (2): 169–188.

- The Katyn Genocide had occurred during the “undeclared” war against Poland.
- Indonesia, though not in a war during the genocide with another country, there prevailed a state of unrest and was nearing a Civil War, with the new military leader.
- The Guatemalan Genocide is today referred to be synonymous with the army’s war against the insurgent with that of the Mayans. But however, there was no single belief with the academicians, with Maya at one end as victims and the right-wing army at the other as perpetrators, but according to a few accounts, the Maya also worked with the army in civil defence patrols that ravaged Mayan villages, and the army’s target was not the Mayans but rather insurgents living in the highlands with support from the Mayans
- In Rwanda, the genocide was not just a war between the Hutu Government and the invading Rwandan Patriotic Front of Tutsi, this genocide unlike many others did not just have the mass killing and violence of one sect of people but it involved both. There were equal casualties of Hutus as there were of Tutsis with the same amount of violations on both sides. Therefore in this case, there is no single perpetrator.

Specific Findings: These findings further prove the close association of war and genocide.

- Genocide tends to occur when a State or another group had just started a war and emerged victorious.
- The leaders of war also usually tend to be the leaders of genocide.
- A unique feature about this part, i.e. using the above case studies is that where in the Nazi Genocide Hitler began the war and started the Genocide, in the Rwandan Case, the war and the Genocide started almost simultaneously⁵⁵

Perpetrator Profiles:

- In six of the Seven cases mentioned the leaders had used a specific force to commit the crime of genocide. It is as follows:
 1. Herero Case: German troops stationed in Southwest Africa
 2. Turkey: Special Organization (the meaning when translated)\
 3. Nazi Germany: Reich Committee of Physicians
 4. Katyn : specially trained executioners

55 Rafter, Nicole, The Crime of Crimes: Toward a Criminology of Genocide, NEW YORK UNIVERSITY PRESS
New York and London, ISBN: 978-1-4798-5948-

5. Indonesia: Suharto's Army and Militia
 6. Rwanda: Hutu Militia and the Rwandan Patriotic Front of Tutsi
- All the cases here were involved in a "cleansing" process even though it always did not mean a specific race or an ethnicity;
1. Herero: the general who issued the extermination order intended to cleanse Southwest Africa of its native inhabitants.
 2. Turkey: cleansed their country of Armenians (ethnic cleansing)
 3. Nazi Germany: the "cleansed" people were defined by neither race nor ethnicity but disability and their bad genes.
 4. Katyn: both ethnic and social class cleansing (the Russians regarded the captured Poles as "bourgeois")
 5. Indonesia: Suharto wanted to cleanse the country of communists, who constituted neither an ethnic nor racial but a political group.
 6. Guatemalan: sought to excise the Maya, or at any rate a significant portion of them.
 7. Rwanda: Hutu Power group wanted to eliminate ethnic Tutsi and vice-versa
- The final characteristic is that, all these perpetrators in these eight cases were impunity, confidence that they would suffer no consequences for their actions and crimes. In Southwest Africa, the Germans almost wiped a native tribe off the face of the earth while stealing its land; in return, they lost nothing while gaining a colony and acquiring experience in committing genocide.⁵⁶ The Turks, in return for uprooting and killing over one million Armenians, got the victims' homes and other property; some even appropriated Armenian women as concubines. (After the genocide, Turkey instituted legal proceedings in which the three principal leaders of the genocide, who had fled, were tried in absentia and condemned to death; today, in a complete reversal, Turkey refuses even to admit that the genocide occurred.) Similarly, at the end of World War II, some physicians involved in the T4 program were hanged; but most evaded punishment.⁵⁷ In both Turkey and Germany, many of those who were involved in the genocides went on to live and work openly.⁵⁸ The Katyn killers were never brought to trial. In Indonesia, for decades after the genocide, people did not even dare speak about what Suharto and his supporters had done. In Guatemala, Ríos Montt enjoyed impunity for decades, and although he was eventually tried

⁵⁶ Yair Auron. *The Banality of Denial: Israel and the Armenian Genocide*. Transaction Publishers, 2004

⁵⁷ Robert Gellately & Ben Kiernan (2003). *The Specter of Genocide: Mass Murder in Historical Perspective*. Cambridge, UK: Cambridge University Press. p. 267. ISBN 0-521-52750-3.

⁵⁸ Karstedt 2011b on the fate of Nazis convicted of genocide of European Jews.

and convicted of genocide, the conviction was overturned by an appeals court in 2013. Rwandan genocidists killed with impunity, fully expecting no punishment; but they were wrong.⁵⁹ The UN established its International Criminal Tribunal for Rwanda shortly after the genocide, and by the end of 2012, seventy-five cases had been prosecuted, with sixty-five findings of guilty and ten acquittals.⁶⁰ Rwandan courts, in their own proceedings, executed twenty-two people and sentenced large numbers of young men to prison; additionally, community *gacaca* or dispute-settlement courts handled close to two million cases.⁶¹

CONCLUSION

On studying the various theories on the conduct of Genocide and the commission of the crime, it can be concluded that as most commonly perceived it is not just the crime committed by one person but by a group. Be it the State or Non - State actors. Hitler or the Nazis alone are not responsible for the commission of Genocide, but it is the population as a whole. Even though it was the actions of the State, these actions wouldn't have existed without the support of people. Racial discrimination is said to be the root cause for the commission of genocidal crimes. Racial discrimination and xenophobia may be seemingly harmless when it comes to individual persons, but when the same is being used by a charismatic leader as a part of his political agenda, there arises a problem. This agenda will soon morph into hatred amongst the two or more groups leading to violent clashes like in Rwanda. But then again can a person be labelled a criminal for his political ideologies? Or can person's ideas, however bigoted, be known as criminal? The answer would be no and there lies the unique problem that the Crime of Genocide causes to the criminologists.

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⁵⁹ Supra 58

⁶⁰ Id.,

⁶¹ Nyseth Brehm, Uggem, and Gasanabo 2014b: 339. United Nations 2013: ch. 8

4. Human Rights Testimony Given Before the United States Congressional Human Rights Caucus" (Press release). Human Rights Watch. 16 October 2003.
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