

This book investigates the legal nature and criminal responsibility of ISIL/DAESH's crimes against civilians in Iraq, especially Christians. The author examines whether these crimes constitute genocide or persecution as crimes against humanity under the Rome Statute, based on the actus reus and mens rea of the perpetrators. The book draws on hundreds of cases from international criminal tribunals and offers a significant and original contribution to the study of genocide and crimes against humanity.

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Áquila Mazzinghy

BEYOND A REASONABLE DOUBT

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DID THE ISLAMIC STATE
COMMIT GENOCIDE AGAINST
CHRISTIANS IN IRAQ?

- Áquila Mazzinghy

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Beyond a Reasonable Doubt

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Áquila Mazzinghy

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Abstract

The self-proclaimed Islamic State in Iraq and the Levant (ISIL/DAESH) occupied large parts of Iraq from 2014 to 2017. During this time, ISIL/DAESH members committed grave violations of International Criminal Law and International Humanitarian Law. In March 2015, an OHCHR (the Office of the United Nations High Commissioner for Human Rights) mission field investigation in Iraq reported on “reliable information about acts of violence perpetrated against civilians because of their affiliation or perceived affiliation to a religious group” (A/HRC/28/18). This book was particularly focused on the violations of international criminal law that ISIL/DAESH perpetrated against the religious group of Christians in Iraq.

This book’s main goal was to determine the legal nature, typification of, and criminal responsibility for these violations. In this case study, the author attempted to determine whether the *actus reus* and the perpetrators *mens rea* behind this criminal conduct fall under the definition of genocide, as prescribed by the Rome Statute, or fall under the crime of persecution, as a crime against humanity, as defined in the Rome Statute – *the test of equal gravity*. To address these issues, the author explored a vast body of literature and provided the reader with a detailed, methodical, and scrutinized account of the major criminal acts that ISIL/DAESH perpetrated against civilians in Iraq, focusing on the violations against Christians.

The author also legally assessed the factual matrix of human rights and humanitarian law violations in the case-law from the Nuremberg, the ICTR, the ICTY, the SCSL, and ICC tribunals. In the Conclusion, the author presents the reader with possible judicial models to hold ISIL/DAESH fighters accountable for their violations of international criminal law. This research contributes to the current literature on genocide and persecution as a crime against humanity.

KEY-WORDS: Genocide; Crimes Against Humanity; Religious Persecution; ISIL; DAESH; Christians in Iraq.

To all the victims of the ISIL/DAESH:
May justice and healing shine upon them as the noonday sun.

Dedication

This book is dedicated:

To my dad, Lino, and to my mom, Maria,

for their unconditional love, dedication, sacrifice, encouragement, reassuring words, constant prayers, and valuable advice throughout my entire life. Their lives have been a constant source of support during the research and writing of this book. For many times, many days, when life felt like a rollercoaster, they were always ready to embrace my sorrows and make me feel stronger. To them, my heartfelt gratitude and love.¹

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Table of abbreviations, acronyms, and correspondences

Term	Meaning
ACHR	American Convention on Human Rights
AFRC	Armed Forces Revolutionary Council
AP I	Additional Protocol I to the 1949 Geneva Conventions (1977)
AP II	Additional Protocol II to the 1949 Geneva Conventions (1977)
AP III	Additional Protocol III to the 1949 Geneva Conventions (2005)
Apr.	April
AU	African Union
Aug.	August
CA 3	Common Article 3 to the Geneva Conventions
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCT	Counter-Terrorism Committee
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CEDAW Committee	United Nations Committee on the Elimination of Discrimination Against Women
CERD	United Nations Committee on the Elimination of Racial Discrimination
CoE	Council of Europe
Counter-ISIL Coalition	Global Coalition to Defeat ISIL
CRC	Convention on the Rights of the Child
CTED	Counter-Terrorism Committee Executive Directorate
CTITF	Counter-Terrorism Implementation Task Force

Daesh	ad-Dawlah al-Islāmiyah fi 'l-'Irāq wa-sh-Shām
Darfur Commission	International Commission of Inquiry on Darfur
Dec.	December
ECHR	European Convention on Human Rights (European Convention for the Protection of Human Rights and Fundamental Freedoms)
ECOMOG	The Economic Community of West African States Monitoring Group
EU	European Union
Eur. Ct. H.R.	European Court of Human Rights
Eur. Parl.	European Parliament
Feb.	February
FTF(s)	Foreign Terrorist Fighter(s)
G. A. Res.	United Nations General Assembly Resolution
GCs	Geneva Conventions
Genocide Convention	Convention for the Prevention and Punishment of the Crime of Genocide
H.R.	United States House of Representatives
H.R.Con.Res.	United States House of Representatives concurrent resolution
<i>Ibidem</i>	Exactly the same citation/reference
ICC	International Criminal Court
ICC Statute	Rome Statute of the International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all forms of Racial Discrimination
ICESCR	International Covenant on Economic Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda

ICTR Statute	Statute of the International Criminal Tribunal for Rwanda
ICTY	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia
ICTY Statute	Statute of the International Criminal Tribunal for the Former Yugoslavia
<i>Idem</i>	Same citation/reference, but different page or paragraph
IDP(s)	Internally Displaced Person(s)
IED	Improvised explosive device
IHEC	Independent High Electoral Commission in Iraq
IKR	Kurdish Autonomous Region
IMT	International Military Tribunal (Nuremberg Tribunal)
IMTFE	International Military Tribunal of the Far East
Inter-Am. Ct. H.R.	Inter-American Court of Human Rights
IS	Islamic State
ISF	Iraqi security forces
ISIL	Islamic State of Iraq and the Levant
ISIS	Islamic State of Iraq and Syria
Jan.	January
Mar.	March
NATO	The North Atlantic Treaty Organization
NGO	Non-Governmental Organization
NMI	North Atlantic Treaty Organization Mission in Iraq
Nov.	November
OAS	Organization of American States
Oct.	October
OGPRP	United Nations Office on Genocide Prevention and the Responsibility to Protect

OHCHR	Office of the United Nations High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention Against Torture
OSAPG	United Nations Office of the Special Adviser on the Prevention of Genocide
OSRSG-SVC	United Nations Special Representative of the Secretary-General on Sexual Violence in Conflict
p.	Page
para. or ¶	Paragraph
paras. or ¶¶	Paragraphs
pp.	Pages
R2P	Responsibility to Protect
Res.	Resolution
Residual Mechanism	United Nations International Residual Mechanism for Criminal Tribunals
RUF	Revolutionary United Front
S.	United States Senate
S.C.	United Nations Security Council
S.C. Res.	United Nations Security Council Resolution
S.C. Res. 2379 Team	United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant
SASGRP	United Nations Special Adviser of the Secretary-General on the Responsibility to Protect
SCSL	Special Court for Sierra Leone
Sept.	September
SRSG	United Nations Special Representative of the Secretary-General on Violence Against Children
SRSG/CAAC	United Nations Special Representative of the Secretary-General for Children and Armed Conflict
SS	The Schutzstaffel
U.N.	United Nations

U.N. Charter	Charter of the United Nations
U.N. Doc.	United Nations Document
U.N.G.A.	United Nations General Assembly
U.N.H.C.H.R.	United Nations High Commissioner for Human Rights
U.N.H.R.C.	United Nations Human Rights Council
U.N.S.G.	United Nations Secretary-General
U.S.	The United States of America
U.S. Dep't of State	United States Department of State
UAM	Unaccompanied minor
UK	The United Kingdom
UNAMI	United Nations Assistance Mission for Iraq
UNAMID	United Nations-African Union Hybrid Mission in Darfur
UNAMIR	United Nations Assistance Mission in Rwanda
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNMIS	United Nations Mission in the Sudan
UNMISS	United Nations Mission in South Sudan
UNOCT	United Nations Office of Counter-Terrorism
UNODC	United Nations Office on Drugs and Crime
UNTS	United Nations Treaty Series
VCLT	Vienna Convention on the Law of Treaties
WASH	Water, Sanitation and Hygiene (cluster)
WG on OP to CRC	United Nations Working Group on an Optional Protocol to the Convention on the Rights of the Child
Workers Party	Nationalsozialistische Deutsche Arbeiterpartei (National Socialist German Workers Party)

Table of cases

International Military Tribunal – Nuremberg

#	Case Name (Chronological Order)	Case Number	Type of Decision	Date
1	1 Trial of the Major War Criminals Before the International Military Tribunal			1947
2	United States of America v. Oswald Pohl, et al. Case 4 (<i>Pohl case</i>)			1947
3	4 Trial of the Major War Criminals Before the International Military Tribunal			1947
4	5 Trial of the Major War Criminals Before the International Military Tribunal			1947
5	United States of America vs. Friedrich Flick et al.			1947
6	United States of America v. Ulrich Greifelt, et al. (<i>RuSHA case</i>)			1947
7	United States of America v. Carl Krauch, et al. Volume 8 (<i>I.G. Farben case</i>)			1947
8	11 Trial of the Major War Criminals Before the International Military Tribunal			1947
9	30 Trial of the Major War Criminals Before the International Military Tribunal			1948
10	36 Trial of the Major War Criminals Before the International Military Tribunal			1948

International Court of Justice – ICJ

#	Case Name (Alphabetical Order)	Case Number	Type of Decision	Date
1	Application of the Convention on the Prevention and Punishment of the Crime of Genocide	1996 1. C. J. 595	Preliminary Objections, Judgement	July 11, 1996
2	Bosnia and Herzegovina v. Serbia and Montenegro: Application of the Convention on the Prevention and Punishment of the Crime of Genocide	2007, I.C.J. 43	Judgement	Feb. 26, 2007
3	Bosnia and Herzegovina v. Yugoslavia: Application for Revision of the Judgement of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide	2003, I.C.J. 7	Preliminary Objections	Feb. 3, 2003
4	Croatia v. Serbia: Application of the Convention on the Prevention and Punishment of the Crime of Genocide	2008, I.C.J. 412	Judgement	Nov. 18, 2008
5	Croatia v. Serbia: Application of the Convention on the Prevention and Punishment of the Crime of Genocide	2015 I.C.J. 3	Judgement	Feb. 3, 2015
6	Democratic Republic of the Congo v. Belgium: Arrest Warrant of 11 April 2000	2000, I.C.J. 3	Judgement	Feb. 14, 2000
7	Reservations to Convention on the Prevention and Punishment of the Crime of Genocide	1951 I.C.J. 15	Advisory Opinion	May 28, 1951

International Criminal Tribunal for the former Yugoslavia – ICTY

#	Case Name (Alphabetical Order)	Case Number	Type of Decision	Date
1	Prosecutor v. Ante Gotovina, Ivan Čermak, and Mladen Markač	IT-06-90-T	Judgement, vol. I	April 15, 2011
			Judgement, vol. II	
2	Prosecutor v. Biljana Plavšić	IT-00-39 & 40/1	Sentencing Judgement	Feb. 27, 2003
3	Prosecutor v. Blagoje Simić, Miroslav Tadić and Simo Zarić	IT-95-9-T	Judgement	Oct. 17, 2003
		IT-95-9-A	Judgement	Nov. 28, 2006
4	Prosecutor v. Dario Kordić and Mario Čerkez	IT-95-14/2-A	Judgement	Dec. 17, 2004
5	Prosecutor v. Darko Mrđa	IT-02-59-S	Sentencing Judgement	March 31, 2004
6	Prosecutor v. Dragan Obrenović	IT-02-60/2-S	Sentencing Judgement	Dec. 10, 2003
7	Prosecutor v. Dragan Zelenović	IT-96-23/2-A	Judgement on Sentencing Appeal	Oct. 31, 2007
8	Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic	IT-96-23/1-T	Judgement	Feb. 22, 2001
		IT-96-23/1-A	Judgement	June 12, 2002
9	Prosecutor v. Dragomir Milošević	IT-98-29/1-T	Judgement	Dec. 12, 2007
	Prosecutor v. Dragomir Milošević	IT-98-29/1-A	Judgement	Nov. 12, 2009
10	Prosecutor v. Duško Sikirica, Damir	IT-95-8-T	Judgement on Defence	Sept. 3, 2001

	Došen & Dragan Kolutžija		Motions to Acquit	
11	Prosecutor v. Duško Tadić	IT-94-1-T	Opinion and Judgement	May 7, 1997
		IT-94-1-A	Judgement	July 15, 1999
		IT-94-1-T bis-R117	Judgement	Nov. 11, 1999
		IT-94-1-Abis	Judgement on Sentencing Appeals	Jan. 26, 2000
		IT-94-1-Abis	Separate Opinion of Judge Shahabuddeen	Jan. 26, 2001
12	Prosecutor v. Enver Hadžihasanović and Amir Kubura	IT-01-47-A	Judgement	Apr. 22, 2008
13	Prosecutor v. Naser Orić	IT-03-68-A	Judgement	July 3, 2008
14	Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu	IT-03-66-T	Judgement	Nov. 30, 2005
15	Prosecutor v. Goran Jelisić	IT-95-10-T	Judgement	Dec. 14, 1999
		IT-95-10-A	Judgement	July 5, 2001
16	Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić & Berislav Pušić	IT-04-74-T	Judgement, vol. I	May 29, 2013
			Judgement, vol. II	
			Judgement, vol. III	
			Judgement, vol. IV	

			Judgement, vol. V	
			Judgement, vol. VI	
	Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić & Berislav Pušić	IT-04-74-A	Judgement, vol. I	Nov. 29, 2017
Judgement, vol. II				
Judgement, vol. III				
17	Prosecutor v. Jovica Stanišić and Franko Simatović	IT-03-69-T	Judgement, vol. I	May 30, 2013
			Judgement, vol. II	
18	Prosecutor v. Mićo Stanišić, Stojan Župljanin	IT-08-91-T	Judgement, vol. I	Mar. 27, 2013
			Judgement, vol. II	
			Judgement, vol. III	
19	Prosecutor v. Milan Babić	IT-03-72-S	Sentencing Judgement	June 29, 2004
20	Prosecutor v. Milan Lukić, Sredoje Lukić	IT-98-32/1-T	Judgement	July 20, 2009
21	Prosecutor v. Milan Martić	IT-95-11-T	Judgement	June 12, 2007
		IT-95-11-A	Judgement	Oct. 8, 2008
22	Prosecutor v. Milan Simić	IT-95-9/2-S	Sentencing Judgement	Oct. 17, 2002
23	Prosecutor v. Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin	IT-95-13/1-T	Judgement	Sept. 27, 2007
24	Prosecutor v. Milomir Stakić	IT-97-24-T	Judgement	July 31, 2003
		IT-97-24-A	Judgement	Mar. 22, 2006

25	Prosecutor v. Milorad Krnojelac	IT-97-25-T	Judgement	Mar. 15, 2002
		IT-97-25-A	Judgement	Sept. 17, 2003
26	Prosecutor v. Miroslav Deronjić	IT-02-61-A	Judgement on Sentencing Appeal	July 20, 2005
27	Prosecutor v. Miroslav Kvočka, Mlado Radić, Dragoljub Prcač, Zoran Zigić and Milojica Kos	IT-98-30/1-T	Judgement	Nov. 2, 2001
		IT-98-30/1-A	Judgement	Feb. 28, 2005
28	Prosecutor v. Miodrag Jokić	IT-01-42/1-S	Sentencing Judgement	March 18, 2004
29	Prosecutor v. Mitar Vasiljević	IT-98-32-T	Judgement	Nov. 29, 2002
		IT-98-32-A	Judgement	Feb. 25, 2004
30	Prosecutor v. Mladen Naletilić, a.k.a. “Tuta”, and Vinko Martinović, a.k.a. “Štela”	IT-98-34-T	Judgement	Mar. 31, 2003
		IT-98-34-A	Judgement	May 3, 2006
31	Prosecutor v. Momčilo Krajišnik	IT-00-39-T	Judgement	Sept. 27, 2006
		IT-00-39-A	Judgement	March 17, 2009
32	Prosecutor v. Momčilo Perišić	IT-04-81-T	Judgement	Sept. 6, 2011
33	Prosecutor v. Momir Nikolić	IT-02-60/1-A	Judgement	Mar. 8, 2006
34	Prosecutor v. Nikola Šainović, Nebojša Pavković, Vladimir Lazarević	IT-05-87-T	Judgement, vol. I	Feb. 26, 2009
			Judgement, vol. II	
			Judgement, vol. III	
			Judgement, vol. IV	

	Prosecutor v. Nikola Šainović, Nebojša Pavković, Vladimir Lazarević	IT-05-87-A	Judgement	Jan. 23, 2014
35	Prosecutor v. Predrag Banović	IT-02-65/1-S	Sentencing Judgement	Oct. 28, 2003
36	Prosecutor v. Radislav Krstić	IT-98-33-T	Judgement	Aug. 2, 2001
		IT-98-33-A	Judgement	Apr. 19, 2004
37	Prosecutor v. Radoslav Brđanin	IT-99-36-T	Judgement	Sept. 1, 2004
		IT-99-36-A	Judgement	Apr. 3, 2007
38	Prosecutor v. Radovan Karadžić	IT-95-5/18-AR73.4	Decision on Karadžić's Appeal of Trial Chamber's Decision on Alleged Holbrooke Agreement	Oct. 12, 2009
		IT-95-5/18-AR98bis	Judgement	July 13, 2013
		IT-95-5/18-T	Judgement, vol. I	Mar. 24, 2016
			Judgement, vol. II	
Judgement, vol. III				
Judgement, vol. IV				
39	Prosecutor v. Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj	IT-04-84-T	Judgement	Apr. 3, 2008
40	Prosecutor v. Ranko Češić	IT-95-10/1-S	Sentencing Judgement	March 11, 2004

41	Prosecutor v. Ratko Mladić	IT-09-92-T	Judgement, vol. I	Nov. 22, 2017
			Judgement, vol. II	
			Judgement, vol. III	
			Judgement, vol. IV	
42	Prosecutor v. Sefer Halilović	IT-01-48-A	Judgement	Oct. 16, 2007
43	Prosecutor v. Slobodan Milošević	IT-02-54-T	Decision on Motion for Judgement of Acquittal	June 16, 2004
44	Prosecutor v. Stanislav Galić	IT-98-29-T	Judgement and Opinion	Dec. 5, 2003
		IT-98-29-A	Judgement	Nov. 30, 2006
45	Prosecutor v. Stevan Todorović	IT-95-9/1-S	Sentencing Judgement	July 31, 2001
46	Prosecutor v. Tihomir Blaškić	IT-95-14-T	Judgement	Mar. 3, 2000
		IT-95-14-A	Judgement	July 29, 2004
47	Prosecutor v. Vojislav Šešelj	IT-03-67-T	Judgement, vol. I	Mar. 31, 2016
			Judgement, vol. III Partially Dissenting Opinion of Judge Flavia Lattanzi	
48	Prosecutor v. Vidoje Blagojević	IT-02-60-T	Judgement	Jan. 17, 2005
		IT-02-60-A	Judgement	May 9, 2007
49	Prosecutor v. Vlastimir Đorđević	IT-05-87/1-A	Judgement	Jan. 27, 2014

50	Prosecutor v. Vuja- din Popović et al.	IT-05-88-T	Judgement	June 10, 2010
		IT-05-88-A	Judgement	Jan. 30, 2015
51	Prosecutor v. Zdravko Tolimir	IT-05-88/2-T	Judgement	Dec. 12, 2012
		IT-05-88/2-A	Judgement	Apr. 8, 2015
		IT-05-88/2-A A172- 1/2054bis	Separate and Partly Dissenting Opinion of Judge An- tonetti	July 14, 2015
52	Prosecutor v. Zlatko Aleksovski	IT-95-14/1-A	Judgement	Mar. 24, 2000
53	Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Vladimir Šantić (“Vlado”), Stipo Alilovic (“BRKO”), Drago Josi- pović, Marinko Katava, Dragan Papić	IT-95-16-T	Judgement	Jan. 14, 2000

International Criminal Tribunal for Rwanda – ICTR

#	Case Name (Alphabetical Order)	Case Number	Type of Decision	Date
1	Prosecutor v. André Ntage- rura, Emmanuel Bagambiki, Samuel Imanishimwe	ICTR-99-46-T	Judgement and Sentence	Feb. 25, 2004
2	Prosecutor v. Athanase Se- romba	ICTR-2001- 66-I	Judgement	Dec. 13, 2006
		ICTR-2001- 66-A	Judgement	Mar. 12, 2008
3	Prosecutor v. Augustin Ndindiliyimana, Augustin	ICTR-00-56-T	Judgement and Sentence	May 17, 2011

	Bizimungu, François-Xavier Nzuwonemeye			
	Augustin Bizimungu v. Prosecutor	ICTR-00-56B-A	Judgement	June 30, 2014
4	Prosecutor v. Augustin Ngirabatware	ICTR-99-54-T	Judgement and Sentence	Dec. 20, 2012
	Augustin Ngirabatware v. Prosecutor	MICT-12-29	Judgement	Dec. 18, 2014
5	Prosecutor v. Callixte Kalimanzira	ICTR-05-88-T	Judgement	June 22, 2009
	Callixte Kalimanzira v. Prosecutor	ICTR-05-88-A	Judgement	Oct. 20, 2010
6	Prosecutor v. Callixte Nzabonimana	ICTR-98-44D-T	Judgement and Sentence	May 31, 2012
	Callixte Nzabonimana v. Prosecutor	ICTR-98-44D-A	Judgement	Sept. 29, 2014
7	Prosecutor v. Dominique Ntawukulilyayo	ICTR-05-82-T	Judgement and Sentence	Aug. 3, 2010
	Dominique Ntawukulilyayo v. Prosecutor	ICTR-05-82-A	Judgement	Dec. 14, 2011
8	Prosecutor v. Édouard Karemera et al.	ICTR-98-44-T	Judgement and Sentence	Feb. 2, 2012
	Édouard Karemera et al v. Prosecutor	ICTR-98-44-A	Judgement	Sept. 29, 2014
9	Eliézer Niyitegeka v. Prosecutor	ICTR-96-14-A	Judgement	July 9, 2014
10	Prosecutor v. Elizaphan and Gérard Ntakirutimana	ICTR-96-10 & ICTR-96-17-T	Judgement and Sentence	Feb. 21, 2003
		ICTR-96-10 & ICTR-96-17-T	Judgement	Dec. 13, 2004
11	Prosecutor v. Emmanuel Ndindabahizi	ICTR-2001-71-I	Judgement and Sentence	July 15, 2004
	Emmanuel Ndindabahizi v. Prosecutor	ICTR-01-71-A	Judgement	Jan. 16, 2007

12	Prosecutor v. Emmanuel Rukundo	ICTR-2001-70-T	Judgement	Feb. 27, 2009
	Emmanuel Rukundo v. Prosecutor	ICTR-2001-70-A	Judgement	Oct. 20, 2010
13	Prosecutor v. Ephrem Setako	ICTR-04-81-T	Judgement and Sentence	Feb. 25, 2010
14	Prosecutor v. Ferdinand Nahimana et al.	ICTR-99-52-T	Judgement	Dec. 3, 2003
	Ferdinand Nahimana et al v. Prosecutor	ICTR-99-52-A	Judgement	Nov. 28, 2007
15	Prosecutor v. François Karera	ICTR-01-74-T	Judgement and Sentence	Dec. 7, 2007
	François Karera v. Prosecutor	ICTR-01-74-A	Judgement	Feb. 2, 2009
16	Prosecutor v. GAA1	ICTR-07-90-R77-I	Judgement and Sentence	Dec. 4, 2007
17	Prosecutor v. Gaspard Kanyarukiga	ICTR-2002-78-T	Judgement and Sentence	Nov. 1, 2010
18	Prosecutor v. Georges Anderson Nderubumwe Rutaganda	ICTR-96-3-T	Judgement	Dec. 6, 1999
		ICTR-96-3-A	Judgement	May 26, 2003
19	Prosecutor v. Georges Ruggiu	ICTR-97-32-I	Judgement and Sentence	June 1, 2000
20	Prosecutor v. Grégoire Ndahimana	ICTR-01-68-T	Judgement and Sentence	Dec. 30, 2011
	Grégoire Ndahimana v. Prosecutor	ICTR-01-68-A	Judgement	Dec. 16, 2013
21	Prosecutor v. Hormisdas Nsengimana	ICTR-01-69-T	Judgement	Nov. 17, 2009
22	Prosecutor v. Ignace Bagilishema	ICTR-95-1A	Judgement	June 7, 2001
23	Prosecutor v. Jean-Baptiste Gatete	ICTR-2000-61-T	Judgement and Sentence	Mar. 31, 2011

	Jean-Baptiste Gatete v. Prosecutor	ICTR-00-61-A	Judgement	Oct. 9, 2012
24	Prosecutor v. Ildephonse Hategekimana	ICTR-00-55B-T	Judgement and Sentence	Dec. 6, 2010
25	Prosecutor v. Ildéphonse Nizeyimana	ICTR-2000-55C-T	Judgement and Sentence	June 19, 2012
26	Prosecutor v. Jean Kamabanda	ICTR-97-23	Judgement and Sentence	Sept. 4, 1998
27	Prosecutor v. Jean de Dieu Kamuhanda	ICTR-95-54A-T	Judgement	Jan. 22, 2004
	Jean de Dieu Kamuhanda v. Prosecutor	ICTR-95-54A-A	Judgement	Sept. 19, 2005
28	Prosecutor v. Jean Mpambara	ICTR-01-65-T	Judgement	Sept. 11, 2006
29	Prosecutor v. Jean-Paul Akayesu	ICTR-96-4-T	Judgement	Sept. 2, 1998
		ICTR-96-4-A	Judgement	June 1, 2001
30	Prosecutor v. Joseph Nzabirinda	ICTR-2001-77-T	Judgement and Sentence	Feb. 23, 2007
31	Justin Mugenzi et al v. Prosecutor	ICTR-99-50-A	Judgement	Feb. 4, 2013
32	Prosecutor v. Juvénal Kajelijeli	ICTR-98-44A-T	Judgement and Sentence	Dec. 1, 2003
33	Prosecutor v. Juvénal Rugambarara	ICTR-00-59-T	Judgement and Sentence	Nov. 16, 2007
34	Prosecutor v. Clément Kayishema et al.	ICTR 95-1-T	Judgement	May 21, 1999
		ICTR 95-1-A	Judgement	June 1, 2001
35	Prosecutor v. Laurent Semanza	ICTR-97-20-T	Judgement and Sentence	May 15, 2003
36	Prosecutor v. Léonidas Nshogoza	ICTR-07-91-T	Judgement	July 7, 2009

37	Prosecutor v. Michel Bagaragaza	ICTR-05-86-S	Sentencing Judgement	Nov. 17, 2009
38	Prosecutor v. Mikaeli Muhimana	ICTR-95-1B-T	Judgement and Sentence	April 28, 2005
	Mikaeli Muhimana v. Prosecutor	ICTR-95-1B-A	Judgement	May 21, 2007
39	Prosecutor v. Musema	ICTR-96-13-A	Judgement and Sentence	Jan. 27, 2000
40	Prosecutor v. Omar Serushago	ICTR-98-39-S	Sentence	Feb. 5, 1999
41	Prosecutor v. Paul Bisengimana	ICTR-00-60-T	Judgement and Sentence	Apr. 13, 2006
42	Prosecutor v. Pauline Nyiramasuhuko et al.	ICTR-98-42-T	Judgement and Sentence	June 24, 2011
		ICTR-98-42-A	Judgement	Dec. 14, 2015
43	Prosecutor v. Protais Zigiranyirazo	ICTR-01-73-T	Judgement	Dec. 18, 2008
	Protais Zigiranyirazo v. Prosecutor	ICTR-01-73-A	Judgement	Nov. 16, 2009
44	Prosecutor v. Rutaganda	ICTR-96-3-T	Judgement and Sentence	Dec. 6, 1999
45	Prosecutor v. Siméon Nchamihigo	ICTR-01-63-T	Judgement and Sentence	Nov. 12, 2008
	Siméon Nchamihigo v. Prosecutor	ICTR-2001-63-A	Judgement	Mar. 18, 2010
46	Prosecutor v. Simon Bikindi	ICTR-01-72-T	Judgement	Dec. 2, 2008
	Simon Bikindi v. Prosecutor	ICTR-01-72-A	Judgement	Mar. 18, 2010
47	Prosecutor v. Sylvestre Gacumbitsi	ICTR-2001-64-T	Judgement	June 17, 2004
	Sylvestre Gacumbitsi v. Prosecutor	ICTR-2001-64-A	Judgement	July 7, 2006

48	Tharcisse Muvunyi v. Prosecutor	ICTR-2000-55A-A	Judgement	Aug. 29, 2008
	Prosecutor v. Tharcisse Muvunyi	ICTR-00-55A-T	Judgement	Feb. 11, 2010
49	Prosecutor v. Tharcisse Renzaho	ICTR-97-31-T	Judgement and Sentence	July 14, 2009
	Tharcisse Renzaho v. Prosecutor	ICTR-97-31-A	Judgement	Apr. 1, 2011
50	Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva	ICTR-98-41-T	Judgement and Sentence	Dec. 18, 2008
51	Prosecutor v. Vincent Rutaganira	ICTR-95-1C-T	Judgement and Sentence	Mar. 14, 2005
52	Prosecutor v. Yussuf Munyakazi	ICTR-97-36A-T	Judgement and Sentence	July 5, 2010
		ICTR-97-36A-A	Judgement	Sept. 28, 2011

The Special Court for Sierra Leone – SCSL

#	Case Name (Alphabetical Order)	Case Number	Type of Decision	Date
1	Prosecutor v. Brima, Kamara, Kanu (<i>AFRC case</i>)	SCSL-04-16-T	Judgement	June 20, 2007
		SCSL-04-16-A	Judgement	Feb. 22, 2008
2	Prosecutor v. Fofana, Kondewa (<i>CDF case</i>)	SCSL-04-14-T	Judgement	Aug. 2, 2007
			Partially Dissenting Opinion of Honorable Justice Renate Winter	
		SCSL-04-14-A	Judgement	May 28, 2008

3	Prosecutor v. Norman	SCSL-04-14-PT	Motion to Recuse judge Winter From Deliberating in the Preliminary Motion on the Recruitment of Child Soldiers	Mar. 24, 2004
			Judge Winter's Response to Motion to Recuse Her From Deliberating on the Preliminary Motion on the Recruitment of Child Soldiers	May 14, 2004
		SCSL-04-14	Motion to Recuse Judge Winter from Deliberating in the Preliminary Motion on the Recruitment of Child Soldiers	May 28, 2004
		SCSL-2004-14-AR72(E)	Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment)	May 31, 2004
4	Prosecutor v. Sesay, Kallon and Gbao (<i>RUF case</i>)	SCSL-2004-15-PT	Decision on Prosecution Request for Leave to Amend the Indictment	May 6, 2004
		SCSL-04-15-T	Prosecution Application for Leave to Amend Indictment	Feb. 20, 2006
			Oral Rule 98 Decision, Transcript	Oct. 25, 2006
			Judgement	Mar. 2, 2009
			Sentencing Judgement	Apr. 8, 2009

5	Prosecutor v. Taylor	SCSL-03-01-T	Judgement	May 18, 2012
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International Criminal Court – ICC

#	Case Name (Alphabetical Order)	Case Number	Type of Decision	Date
1	Prosecutor v. Ahmad Muhammad Harun (“Ahmad Harun”) and Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”)	ICC-02/05-01/07	Decision on the Prosecution Application Under Article 58(7) of the Rome Statute	Apr. 27, 2007
2	Prosecutor v. Bosco Ntaganda	ICC-01/04-02/06	Judgement	July 8, 2019
			Sentencing Judgement	Nov. 7, 2019
			Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute	June 9, 2014
3	Prosecutor v. Callixte Mbarushimana	ICC-01/04-01/10	Decision on the Confirmation of Charges	Dec. 16, 2011
4	Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali	ICC-01/09-02/11	Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute	Jan. 23, 2012

5	Prosecutor v. Germain Katanga	ICC-01/04-01/07	Decision on the Confirmation of Charges	Sept. 30, 2008
			Judgement Pursuant to article 74 of the Statute	March 7, 2014
6	Prosecutor v. Jean-Pierre Bemba Gombo	ICC-01/05-01/08	Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo	June 15, 2009
			Judgement Pursuant to Article 74 of the Statute	Mar. 21, 2016
7	Prosecutor v. Omar Hassan Ahmad Al Bashir	ICC-02/05-01/09	Second Decision on the Prosecution's Application For a Warrant of Arrest	July 12, 2010
8	Prosecutor v. Thomas Lubanga Dyilo	ICC-01/04-01/06	Decision on the Confirmation of Charges	Jan. 29, 2007
		ICC-01/04-01/06-1229-AnxA	Written Submissions of the United Nations Special Representative of the Secretary-General on Children and Armed Conflict Submitted in Application of Rule 103 of the Rules of Proce-	Mar. 18, 2008

			dure and Evidence	
		ICC-01/04-01/06	Redacted Version of Decision on “Indirect Victims”	Apr. 8, 2009
			Judgement Pursuant to Art. 74 of the Statute	Mar. 14, 2012
			Decision on Sentence Pursuant to Article 76 of the Statute	July 10, 2012
			Separate and Dissenting Opinion of Judge Odio Benito, Trial judgement	
			Judgement on the Appeal of Mr. Thomas Lubanga Dyilo Against His Conviction	Dec. 1, 2014
9	Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang	ICC-01/09-01/11	Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute	Jan. 23, 2012

Inter-American Court of Human Rights – Inter-Am. Ct. H.R.

#	Case Name (Alphabetical Order)	Case Number	Type of Decision	Date
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1	Chitay Nech et al. v Guatemala	Inter-Am. Ct. H.R. (ser. C) No. 212	Preliminary Objections, Merits, Reparations, and Costs, Judgment	May 25, 2010
2	Gudiel Álvarez et al (“Diario Militar”) v. Guatemala	Inter-Am. Ct. H.R. (ser. C) No. 253	Judgement, Merits, Reparations and Costs	Nov. 20, 2012
3	Río Negro Massacres v. Guatemala	Inter-Am. Ct. H.R. (ser. C) No. 250	Preliminary Objection, Merits, Reparations and Costs, Judgment	Sept.4, 2012

European Court of Human Rights – Eur. Ct. H.R.

#	Case Name	Case Number	Type of Decision	Date
1	Vasiliauskas v. Lithuania	Eur. Ct. H.R. App. No. 35343/05		Oct. 20, 2015

“Blessed are those who are persecuted for the sake of righteousness, for theirs is the kingdom of heaven.”

(The Gospel of Matthew, Chapter 5, verse 10)

Introduction

A. Problem statement, significance of the research, main research question and sub-research questions, and objectives of this book

Some mothers, to avoid that ISIL/DAESH fighters took their sons, firmly embraced their children and “had thrown themselves off the mountains in desperation.”²

In areas under its control in Iraq, the fighters of the self-proclaimed Islamic State of Iraq and the Levant (ISIL) – also known as IS (Islamic State) ISIS (Islamic State of Iraq and Syria), and DAESH (Ad-Dawlah al-Islāmiyah fi ‘l-‘Irāq wa-sh-Shām) – engaged in multiple persecutory acts and omissions against Christians, from 2014 to 2017. These acts and omissions violated several international humanitarian and criminal laws, resulted in devastating physical and mental consequences for ISIL/DAESH victims, particularly women and children, and left an enduring legacy of religious vulnerability of catastrophic proportions in Iraq.

ISIL/DAESH acts and omissions against Christians in Iraq can be grouped as follows: 1) Physical and mental harm; 2) Use of economic measures against the civilian population; 3) Attacks against property of sacred religious relevance; 4) Infringements upon the right to physical liberty and security; and 5) Infringements upon the right to privacy, and deprivation, destruction, and plunder of private property. Evidence collected by different local and international actors demonstrated that these violations were premeditated, systematic, and strategic, constituting a serious threat to international peace and security.

ISIL/DAESH violations of international criminal law represent a severe challenge to the international legal system. Therefore, this book took the form of a case study of the international criminal responsibility for international crimes committed by the ISIL/DAESH in Iraq against Christians.

² UNAMI (July 6, 2014 – Sept. 10, 2014). p. 14.

This book aims to answer the following main research question: “whether the existing evidence of crimes against Christians in Iraq by members of the ISIL/DAESH (2014-2017) may amount to the crime of genocide, or if not, to crimes against humanity.” Three sub-research questions were elucidated throughout this work: 1) “If ISIL/DAESH actions could amount to genocide, to what extent? Can genocidal *mens rea* be proved?” 2) “Whether genocide can be perpetrated by members of terrorist groups.” 3) “Whether the labeling of an armed group as a “terrorist group” modifies the crimes of such group under the International Criminal Law regime.”

This study’s main objectives were twofold: 1) to determine the legal nature and typification of ISIL/DAESH fighters’ acts and omissions against Christians in Iraq, and 2) to determine the criminal responsibility for these acts and omissions. With these objectives, the author implicitly assumes that ISIL/DAESH did not act in a legal vacuum. On the other hand, the “modality” of responsibility which attaches to such acts (for example, whether the perpetrators are to be classified as principals or mere participants/accomplices, the issue of command responsibility, etc.) is not within the sphere of this book.

This book aims to advance the understanding of the atrocities that ISIL/DAESH perpetrated against Christians in Iraq. Through a detailed analysis of hundreds of cases from international criminal tribunals, the book intends to make a significant and original contribution to the field of genocide and crimes against humanity studies. Ultimately, the purpose of this research work is to serve in the near future as an important tool for the investigation, prosecution, and punishment of ISIL/DAESH terrorist fighters in Iraq’s local courts or internationally.

B. The structure of the book.

This book has four chapters, along with introductory and concluding remarks. Here in these introductory remarks, the reader will find a vast, detailed, and methodical review of the literature on the crimes of genocide and crimes against humanity. Research for this book concentrated on academic works, international criminal case-law, official documents from states, reports from inter-governmental and intra-governmental organizations, reports from NGOs, and documents from ISIL/DAESH’s official propaganda machine (*Dabiq* and *Rumiyah* issues). These works were selected with the objective of legally assessing whether ISIL/DAESH violations of international criminal law against Christians in Iraq would fall under the definition of genocide, as prescribed by the Rome Statute in its Article 6, or would fall under the crime of persecution, as a crime against

humanity as prescribed by the Rome Statute in Article 7.1.h. The definitions provided in those articles are generally accepted in academic writings as reflective of customary international law.

The author researched the works of several scholars who published sound works exploring the substantive law of genocide and crimes against humanity and the origin of laws against these crimes. The author also meticulously explored the historical evolution of International Criminal Law and traced in detail the evolutionary status of the recognition of individual criminal responsibility in International Criminal Law, and the various forms of criminal responsibility. Besides, the author explored a large body of literature on the notions of the general principles, theories, and practice of International Criminal Law, the very concept of an international crime, accepted methods of investigation, rules of pre-trial and trial procedure, rules of evidence, and issues regarding retroactivity and *nullum crimen sine lege*.

Later, the author introduced the pertinent case law on genocide and crimes against humanity of various international criminal tribunals, namely the International Military Tribunal (IMT, Nuremberg), the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the Special Court for Sierra Leone (SCSL), and the International Criminal Court (ICC). Finally, the author analyzed specific literature on the hypothetical genocide of Christians in Iraq perpetrated by ISIL/DAESH fighters.

After reviewing the literature, the author provided the methodology employed in this book to determine the legal nature of the atrocities perpetrated by ISIL/DAESH against Christians in Iraq from 2014 to 2017. This section explores the qualitative approach methods (doctrinal and comparative), historical-comparative research, *black law* and qualitative analysis of legal texts, in-depth analysis of genocide and crimes against humanity case-law, and triangulation research methods. Finally, the author presents other documentary research and in-depth readings employed throughout this project.

In Chapter 1, the author provides a documental description of the ISIL/DAESH regime in Iraq, starting with the origins of the group and a comprehensive timeline of their acts, omissions, money, and power in the region. The author explores the plethora of deliberate, widespread, systematic, and gross human rights and humanitarian abuses and international crimes against persons belonging to various religious and ethnic communities in areas under their control in Iraq. This chapter focuses on ISIL/DAESH targeting Christians in Iraq: Physical destruction of human lives, ISIL/DAESH's self-appointed sharia courts, public executions, forced

conversions, destruction of churches, and general violations of humanitarian law such as recruitment and use of child rape, sexual violence, displacement, forced disappearances, and mass graves.

The research data in this Chapter were drawn from several United Nations (U.N.) documents, for instance, UNAMI reports (United Nations Assistance Mission for Iraq), General Assembly resolutions, Human Rights Council resolutions, and solemn meetings, reports from the U.N. General Assembly, U.N. Secretary-General, Ad Hoc Committees, the High Commissioner on Human Rights and from the General Assembly Special Representatives on Iraq. Reports from other U.N. Representatives were also scrutinized, for instance, Rep. of the Committee on the Rights of the Child, Special Representative of the Secretary-General for Children and Armed Conflict, Rep. of the Office of the United Nations High Commissioner for Human Rights, Rep. of the Office of the United Nations High Commissioner for Human Rights, Rep. of the Committee on the Elimination of Racial Discrimination, and the Rep. of the Committee on the Elimination of Discrimination against Women. Reports from international non-governmental organizations (NGOs), from Governments and their bodies, such as from the US Congress, the US White House, the US Department of State, and from the Council of Europe – European Parliament, were also assessed to provide bases for additional evidence.

In Chapter 2, the author appraises the vast factual matrix of human rights and humanitarian law violations contained in the case law from the Nuremberg, the ICTR, the ICTY, the SCSL, and ICC tribunals. The factual matrix was methodically read, scrutinized, compared, and divided into ten categories, as follows: 1) destruction and appropriation of private property; 2) use of derogatory language and religious discrimination; 3) mass executions; 4) physical violence; 5) malnutrition and water scarcity; 6) violations related to Water, Sanitation, and Hygiene (WASH); 7) sexual violence and rape; 8) forced labor and enslavement; 9) child recruitment and use; and 10) other general violations connected with the conditions of accommodation in detention and concentration camps.

Chapter 3 analyzes the legal definitions and contours of the crimes of genocide and crimes against humanity in the case-law from the Nuremberg, ICTR, ICTY, SCSL, and ICC tribunals. In relation to the crime of genocide, the author assessed these courts' approach to the legal definition (typification), applicable law, protected legal values, protected groups, *actus reus*, genocidal plan or policy, *mens rea*, evidence of *mens rea*, and the meaning of essential elements and terms, such as “destroy,” or “in whole or in part.” In relation to crimes against humanity, the author explored its definition and *chapeau* elements, the definition of attack, and the defini-

tion of terms, such as “civilian population,” and “widespread or systematic.” The prohibited acts and the policy element were also scrutinized. Specific crimes against humanity were analyzed, such as extermination and torture. Nevertheless, this Chapter’s main focus was placed on the legal analysis of the underlying crime of persecution.

Chapter 4 constitutes the essence of this book. The author meticulously assessed whether the perpetrators’ *actus reus* and *mens rea* behind ISIL/DAESH conducted against Christians in Iraq fall under the definition of genocide, as prescribed by the Rome Statute in Article 6, or fall under the crime of persecution as a crime against humanity, as defined in the Rome Statute in Article 7.1.a-k – the *test of equal gravity*. To perform this assessment, ISIL/DAESH violations of international human rights, humanitarian and criminal law were grouped in seven different categories in this chapter, as follows: 1) Physical and mental harm; 2) Use of economic measures against the civilian population; 3) Attacks against property of sacred religious relevance; 4) Infringement of the right to physical liberty and security; 5) Infringement of the right to privacy, and deprivation, destruction, and plunder of private property; and 6) The imposition and maintenance of other “restrictive and discriminatory measures involving denial of fundamental rights” and 7) Other violations of Humanitarian Law. In the Conclusion, the author provides a substantial and reasoned conclusion regarding the legal typification of ISIL/DAESH acts against Christians in Iraq.

While in Chapter 3, the book extensively discusses various aspects of the International Criminal Law on Genocide, Crimes Against Humanity, and persecution, this was done in an open exploratory manner (*theoretical legal analysis*), covering the generic aspects of a myriad of cases from international criminal courts. In Chapter 4, however, the book aims to show the reader explicitly which specific aspects of the International Criminal Law were exclusively and directly applicable to ISIL/DAESH’s actions in Iraq. More than sixty cases from the ICC, ICTY, ICTR, and SCSL were reread, from scratch, in a work that took more than 12 hours a day for 28 days. Therefore, the legal analysis in Chapter 4 is not a repetition of the legal analysis performed in Chapter 3.

C. Literature Review

In areas under its control in Iraq, ISIL/DAESH fighters engaged in multiple persecutory acts and omissions against Christians, which can be grouped as follows: 1) Physical and mental harm; 2) Use of economic measures against the civilian population; 3) Attacks against property of sacred religious relevance; 4) Infringements of the right to physical liberty and secu-

ity; 5) Infringements of the right to privacy, and deprivation, destruction, and plunder of private property; and 6) Other violations of International Humanitarian Law. The literature review of the present book concentrates on academic works, international criminal case-law, official documents from states, reports from inter-governmental and intra-governmental organizations, reports from NGOs, and documents from ISIL/DAESH official propaganda machine that could help in the legal assessment of whether the *actus reus* and the perpetrators *mens rea* behind these conducts fall under the definition of genocide, as prescribed by the Rome Statute in its Article 6,³ or fall under the crime of persecution, as a crime against humanity – the *test of equal gravity*⁴ –, as prescribed by the Rome Statute in Article 7.1.h.⁵

C.I. Works on the general theory of the crime of genocide, crimes against humanity, and persecution.

Many scholars have already published sound works exploring the substantive law of genocide and the origins of the legal prohibition of this crime, starting with the inaugural work of Raphael Lemkin – *Genocide as a Crime Under International Law* (1947)^{6 7 8} – who himself coined and developed the term *genocide* in the early 1940s. Some pieces constitute the bedrock of the criminal justice curriculum and scholarship on genocide: Dinah L. Shelton, *Encyclopedia of Genocide and Crimes Against Humanity*, volumes I (2005),⁹ II (2005),¹⁰ and III (2005).¹¹ Professor William A. Schabas handbook *Genocide in*

³ United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544. Article 6.

⁴ *Idem*. Article 7.1.a–k

⁵ *Idem*. Article 7.1.h

⁶ Raphael Lemkin, *Genocide as a Crime Under International Law in Genocide and Human Rights 3–9* (Mark Lattimer ed., Ashgate Publishing Limited, 2007).

⁷ Douglas Irvin-Erickson, *Raphaël Lemkin and the Concept of Genocide* (University of Pennsylvania Press, 2017).

⁸ Payam Akhavan, *Reducing Genocide to Law: Definition, Meaning, and the Ultimate Crime* (Cambridge University Press, 2012), Chapter *Raphaël Lemkin: A Biographical Sketch*, pp. 91–101.

⁹ Dinah L. Shelton, *Encyclopedia of Genocide and Crimes Against Humanity* (Thomson Gale, v. I, 2005).

¹⁰ Dinah L. Shelton, *Encyclopedia of Genocide and Crimes Against Humanity* (Thomson Gale, v. II, 2005).

¹¹ Dinah L. Shelton, *Encyclopedia of Genocide and Crimes Against Humanity* (Thomson Gale, v. III, 2005).

International Law: The Crime of Crimes (2009),¹² and other substantial works on the topic – see, for example, (2007)¹³, (2008),¹⁴ and (2010)¹⁵ – constitute a bedrock on the study of genocide. It is also worth noting Adam Jones' *Genocide: A Comprehensive Introduction* (2006),¹⁶ Ralph Henham & Paul Behrens' *The Criminal Law of Genocide: International, Comparative and Contextual Aspects* (2007),¹⁷ and Donald Bloxham & A. Dirk Moses' *The Oxford Handbook of Genocide Studies* (2010).^{18 19}

In their handbooks of International Criminal Law, M. Cherif Bassiouni (2003),²⁰ Robert Cryer (2007),²¹ Gideon Boas et al. (2011),²² Antonio Cassese (2013),²³ and Gerhard Werle (2014)²⁴ have meticulously detailed the historical evolution of International Criminal Law. In a comprehensive analysis of the history of international criminal investigations and prosecutions, Steven R. Ratner & Jason S. Abrams (2001),²⁵ Herbert R. Reginbogin & Chris-

¹² William A. Schabas, *Genocide in International Law: The Crime of Crimes* (Cambridge University Press, 2009).

¹³ William A. Schabas, *Origins of the Genocide Convention: From Nuremberg to Paris*, 40 *Case W. Res. J. Int'l L.* 35 (2007).

¹⁴ William A. Schabas, *Genocide Law in a Time of Transition: Recent Developments in the Law of Genocide*, 61 *Rutgers L. Rev.* 161 (2008).

¹⁵ William A. Schabas, *Retroactive Application of the Genocide Convention*, 4 *U. St. Thomas J.L. & Pub. Pol'y* 36 (2010).

¹⁶ Adam Jones, *Genocide: A Comprehensive Introduction* (Routledge, 2006).

¹⁷ Ralph Henham & Paul Behrens eds., *The Criminal Law of Genocide: International, Comparative and Contextual Aspects* (Ashgate Publishing Limited, 2007).

¹⁸ Donald Bloxham & A. Dirk Moses eds., *The Oxford Handbook of Genocide Studies* (Oxford University Press, 2010).

¹⁹ See also: Johan D. van der Vyver, *Prosecution and Punishment of the Crime of Genocide*, 23 *Fordham Int'l L.J.* 286 (1999).

²⁰ M. Cherif. Bassiouni, *Introduction to International Criminal Law* (Transnational Publishers Inc., 2003).

²¹ Robert Cryer, Håkan Friman, Darryl Robinson & Elizabeth Wilmschurst, *An introduction to International Criminal Law and Procedure* (Cambridge University Press, 3rd ed. 2014). pp. 91–102; 115–126.

²² Gideon Boas et al, *International Criminal Law Practitioner Library, Volume III: International Criminal Procedure* (Cambridge university Press, 2011). pp. 23–54.

²³ Antonio Cassese, *International Criminal Law* (Oxford University Press, 2013). pp. 317–335.

²⁴ Gerhard Werle & Florian Jessberger, *Principles of International Criminal Law* (Oxford University Press, 2014).

²⁵ Steven R. Ratner & Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (Oxford University Press, 2001). pp. 187–206.

toph J. M. Safferling (2006),²⁶ Hisakazu Fujita (2009),²⁷ Kevin Jon Heller (2011),²⁸ Yuki Tanaka, Tim McCormack & Gerry Simpson eds. (2011),²⁹ and Kai Ambos (2013),³⁰ thoroughly examined the establishment, the law, the functioning, the challenges and the outcomes of the Nuremberg and Tokyo Military Tribunals, from 1945 to 1948 and their importance for the current state of the International Criminal Law scholarship.³¹ The aspects of retributive and restorative justice in the Nuremberg and Tokyo Military Tribunals, particularly to the references to them as ‘victors’ justice,’ were mainly addressed by Alexander Boraine (2004).³² Very importantly, Nanci Adler (2004),³³ Gideon Boas, James L. Bischoff and Natalie L. Reid (2007),³⁴ Ciara Damgaard (2008),³⁵ Geert-Jan Alexander Knoops (2008),³⁶ and Kai Ambos (2013)³⁷ traced, in a detailed and comprehensive manner, the evolutionary status of the recognition of individual criminal responsibility in International Criminal Law and the forms of criminal responsibility.

²⁶ Herbert R. Reginbogin & Christoph J. M. Safferling eds., *The Nuremberg Trials International Criminal Law Since 1945 60th Anniversary International Conference* (K.G. Saur, 2006).

²⁷ Hisakazu Fujita, *The Tokyo Trial Revisited in The Legal Regime of the International Criminal Court: Essays in Honour of Professor Igor Blishchenko* 23–49 (Martinus Nijhoff Publishers, 2009). pp. 23–49.

²⁸ Kevin Jon Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law* (Oxford University Press, 2011).

²⁹ Yuki Tanaka, Tim McCormack & Gerry Simpson eds., *Beyond Victor’s Justice? The Tokyo War Crimes Trial Revisited* (Martinus Nijhoff Publishers, 2011).

³⁰ Kai Ambos, *Treatise on International Criminal Law, Volume I: Foundations and General Part* (Oxford University Press, 2013). pp. 1–10.

³¹ Concerning the constitution of the International Military Tribunal, the Nuremberg Tribunal, its jurisdiction and principles, please refer to: 1 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 66; *United States of America vs. Friedrich Flick et al. Case 5* (1947). p. XIII.

³² Alexander Boraine, *Retributive Justice and Restorative Justice: Contradictory or Complimentary?* in *Genocide and Accountability: Three Public Lectures by Simone Veil, Geoffrey Nice, Alex Boraine* 39–52 (Nanci Adler ed., Vossiuspers UvA, 2004).

³³ Nanci Adler ed., *Genocide and Accountability: Three Public Lectures by Simone Veil, Geoffrey Nice, Alex Boraine* (Amsterdam University Press – Vossiuspers UvA, 2004).

³⁴ Gideon Boas, James L. Bischoff & Natalie L. Reid, *International Criminal Law Practitioner Library, Vol. I, Forms of Responsibility in International Criminal Law* (Cambridge University Press, 2007).

³⁵ Ciara Damgaard, *Individual Criminal Responsibility for Core International Crimes: Selected Pertinent Issues* (Springer, 2008).

³⁶ Geert-Jan Alexander Knoops, *Defenses in Contemporary International Criminal Law* (Martinus Nijhoff, 2d ed. 2008).

³⁷ Kai Ambos. *Supra* note 30.

Leaning on the efforts and work of Raphael Lemkin, the United Nations General Assembly adopted, on December 9, 1948, the Convention on the Prevention and Punishment of the Crime of Genocide by approving Resolution 260 as the first instrument of international law that codified the crime of genocide.³⁸ Comprehensive works were published on the background and preparation, drafting, ratification, multiform interpretation, dimensions, international analysis, and recent developments of the 1948 Convention. They explored the prosecution and punishment of the crime of genocide before the U.N. *ad hoc* tribunals as well as before the permanent International Criminal Court, which was established later – see, for example, Henry King *et al.* (2007),³⁹ Matthew Lippman (1985)⁴⁰ (1998),⁴¹ Martin M. Sychold (1998)⁴², Jennifer Balint (1998),⁴³ Johan D. van der Vyver (1999),⁴⁴ Steven R. Ratner & Jason S. Abrams (2001),⁴⁵ Edward Day *et al.* (2003),⁴⁶ Cherif Bassiouni M. (2003),⁴⁷ Dominic McGoldrick and Eric Donnell (2004),⁴⁸ Peter Quayle (2005),⁴⁹ John B. Quigley (2006),⁵⁰ Cryer, Robert (2007),⁵¹ Alberto Costi

³⁸ G. A. Res. 260 A (III), Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1948).

³⁹ Henry T. Jr. King; Benjamin B. Ferencz; Whitney R. Harris, *Origins of the Genocide Convention*, 40 *Case W. Res. J. Int'l L.* 13 (2007).

⁴⁰ Matthew Lippman, *The Drafting of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide*, 3 *B.U. Int'l L. J.* 1 (1985).

⁴¹ Matthew Lippman, *The Convention on the Prevention and Punishment of the Crime of Genocide: Fifty Years Later*, 15 *Ariz. J. Int'l & Comp. L.* 415 (1998).

⁴² Martin M. Sychold, *Ratification of the Genocide Convention: The Legal Effects in Light of Reservations and Objections*, 8 *Swiss. Rev. Int'l & Eur. L.* 533 (1998).

⁴³ Jennifer Balint, *Genocide and Law: International and National Dimensions*, 14 *World Bull.* 1 (1998).

⁴⁴ Johan D. van der Vyver. *Supra* note 19.

⁴⁵ Steven R. Ratner & Jason S. Abrams. *Supra* note 25. pp. 26–45.

⁴⁶ L. Edward Day; Margaret Vandiver; W. Richard Janikowski, *Teaching the Ultimate Crime: Genocide and International Law in the Criminal Justice Curriculum*, 14 *J. Crim. Just. Educ.* 119 (2003).

⁴⁷ M. Cherif. Bassiouni. *Supra* note 20.

⁴⁸ Christine Byron, *The Crime of Genocide in The Permanent International Criminal Court: Legal and Policy Issues 143–177* (Dominic McGoldrick & Eric Donnelly eds., Hart Publishing, 2004).

⁴⁹ Peter Quayle, *Unimaginable Evil: The Legislative of the Genocide Convention*, 5 *Int'l Crim. L. Rev.* 363 (2005).

⁵⁰ John B. Quigley, *The Genocide Convention: An International Law Analysis* (Ashgate, 2006).

⁵¹ Robert Cryer, Håkan Friman, Darryl Robinson & Elizabeth Wilmshurst. *Supra* note 21.

(2009)⁵² and Devrim Aydin (2014).⁵³ Hiram Abtahi & Philippa Webb – *The Genocide Convention: The Travaux Préparatoires*, Volume I (2008)⁵⁴ pieces together more than 300 background documents of the drafting process of the Genocide Convention produced between 1946 and 1948 – notes, corrections, letters from national delegations, official communications, recordings of the sessions and working papers.

The author also explored a large body of literature on the notions of the general principles, theories, and practice of International Criminal Law, the very concept of an international crime, accepted methods of investigation, rules of pre-trial and trial procedure, rules of evidence, issues regarding retroactivity and *nullum crimen sine lege* – see, for example, Cherif Bassiouni, M. (2003),⁵⁵ William A. Schabas (2006),⁵⁶ Leila Nadya Sadat & Michael P. Scharf (2008),⁵⁷ Gerhard Werle and Jessberger Florian (2014),⁵⁸ Sarah Nouwen (2016)⁵⁹ and Kevin Jon Heller (2017)⁶⁰. Respective to the contextual and mental elements of the crime of genocide, some authors mainly explored this issue within the meaning employed by the International Court of Justice, the International Criminal Court as well as within the scope utilized by the Ad Hoc Tribunals: Claus Kress (2007),⁶¹ Gideon Boas, James L. Bischoff and Natalie L. Reid (2009),⁶² Kai Ambos

⁵² Alberto Costi, The 60th Anniversary of the Genocide Convention, 39 Victoria U. Wellington L. Rev. 831 (2009).

⁵³ Devrim Aydin, The Interpretation of Genocidal Intent under the Genocide Convention and the Jurisprudence of International Courts, 78 J. Crim. L. 423 (2014).

⁵⁴ Hiram Abtahi & Philippa Webb, *The Genocide Convention: The Travaux Préparatoires*, Volume I (Martinus Nijhoff Publishers, 2008).

⁵⁵ M. Cherif. Bassiouni. *Supra* note 20.

⁵⁶ William A. Schabas, *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone* (Cambridge University Press, 2006).

⁵⁷ Leila Nadya Sadat & Michael P. Scharf eds., *The Theory and Practice of International Criminal Law Essays in Honor of M. Cherif Bassiouni* (Martinus Nijhoff Publishers, 2008).

⁵⁸ Gerhard Werle & Florian Jessberger. *Supra* note 24.

⁵⁹ Sarah Nouwen, *International Criminal Law: Theory all over the place in The Oxford Handbook of the Theory of International Law 738–762* (Anne Orford & Florian Hoffmann eds. Oxford University Press, 2016).

⁶⁰ Kevin Jon Heller, *What Is an International Crime: (A Revisionist History)*, 58 Harv. Int'l L.J. 353 (2017).

⁶¹ Claus Kress, *The International Court of Justice and the Elements of the Crime of Genocide*, 18 Eur. J. Int'l L. 619 (2007).

⁶² Gideon Boas, James L. Bischoff & Natalie L. Reid, *International Criminal Law Practitioner Library, Vol. II, Elements of Crime under International Criminal Law* (Cambridge University Press, 2009). pp. 1–13.

(2014),⁶³ Robert Cryer (2014),⁶⁴ Mohamed Elewa Badar and Sara Porro (2015),⁶⁵ and Nasour Coursami (2018).⁶⁶ To explore the ICJ jurisprudence on genocide, the following cases and advisory opinions were scrutinized in this book (in chronological order): *Reservations to Convention on the Prevention and Punishment of the Crime of Genocide* (1951);⁶⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (July 11, 1996);⁶⁸ the *Democratic Republic of the Congo v. Belgium* (2000);⁶⁹ *Bosnia and Herzegovina v. Yugoslavia* (2003);⁷⁰ *Bosnia and Herzegovina v. Serbia and Montenegro* (2007);⁷¹ *Croatia v. Serbia* (2008);⁷² and *Croatia v. Serbia* (2015).⁷³

Later, in the 1990s, the Security Council established The International Criminal Tribunal for the former Yugoslavia (ICTY)⁷⁴ and The United Nations International Criminal Tribunal for Rwanda (ICTR).⁷⁵ These tribunals have had the duty to investigate, prosecute and punish individuals responsible for committing genocide and other serious violations of International Criminal Law in the Rwandan (Hutus against the Tutsis, 1994) and Yugo-

⁶³ Kai Ambos, *Treatise on International Criminal Law, Volume II: The Crimes and Sentencing* (Oxford University Press, 2014).

⁶⁴ Robert Cryer, Håkan Friman, Darryl Robinson & Elizabeth Wilmshurst. *Supra* note 21. pp. 165–186.

⁶⁵ Mohamed Elewa Badar and Sara Porro, *Rethinking the Mental Elements in the Jurisprudence of the ICC in The Law and Practice of the International Criminal Court 649–668* (Carsten Stahn ed., Oxford University Press, 2015).

⁶⁶ Nasour Coursami, *The 'Contextual Elements' of the Crime of Genocide* (Asser Press, 2018).

⁶⁷ *Reservations to Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion*, 1951 I.C.J. 15 (May 28).

⁶⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections, judgment*, 1996 I. C. J. 595 (July 11, 1996).

⁶⁹ *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), judgement*, 2000, I.C.J. 3 (Feb. 14).

⁷⁰ *Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), preliminary objections (Yugoslavia v. Bosnia and Herzegovina)*, 2003, I.C.J. 7 (Feb. 3).

⁷¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment*, 2007, I.C.J. 43 (Feb. 26).

⁷² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), judgement*, 2008, I.C.J. 412 (Nov. 18).

⁷³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, 2015 I.C.J. 3 (Feb. 3).

⁷⁴ S.C. Res. 827 (May 25, 1993).

⁷⁵ S.C. Res. 955 (Nov. 8, 1994).

slavian territories (the conflict in the Balkans in the 1990s), such as crimes against humanity and the crime of persecution.

The ICTY has produced extensive jurisprudence on these crimes that will be analyzed in this book – in alphabetical order: *Ante Gotovina, Ivan Čermak, and Mladen Markač* (April 15, 2011);⁷⁶ *Biljana Plavšić* (Feb. 27, 2003);⁷⁷ *Blagoje Simić, Miroslav Tadić and Simo Zarić* (Oct. 17, 2003);⁷⁸ (Nov. 28, 2006);⁷⁹ *Dario Kordić and Mario Čerkez* (Feb 26, 2001), (Dec. 17, 2004);⁸⁰ *Darko Mrđa* (March 31, 2004);⁸¹ *Dragan Obrenović* (Dec. 10, 2003);⁸² *Dragan Zelenović* (Oct. 31, 2007);⁸³ *Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* (Feb. 22, 2001),⁸⁴ (June 12, 2002),⁸⁵ *Dragomir Milošević* (Dec. 12, 2007),⁸⁶ (Nov. 12, 2009);⁸⁷ *Duško Sikirica, Damir Došen & Dragan Kolundžija* (Sept. 3, 2001);⁸⁸ *Duško Tadic* (May 7, 1997),⁸⁹ (July 15, 1999),⁹⁰ (Nov.

⁷⁶ Prosecutor v. Ante Gotovina, Ivan Čermak, and Mladen Markač, Case No. IT-06-90-T, judgement, vols. I-II, (April 15, 2011).

⁷⁷ Prosecutor v. Biljana Plavšić, Case No. IT-00-39 & 40/1, sentencing judgement, (Feb. 27, 2003).

⁷⁸ Prosecutor v. Blagoje Simić, Miroslav Tadić and Simo Zarić, Case No. IT-95-9-T, (Oct. 17, 2003).

⁷⁹ Prosecutor v. Blagoje Simić, Miroslav Tadić and Simo Zarić, Case No. IT-95-9-A, (Nov. 28, 2006).

⁸⁰ Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-T, judgement, (Feb 26, 2001); Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-A, judgement, (Dec. 17, 2004).

⁸¹ Prosecutor v. Darko Mrđa, Case No. IT-02-59-S, sentencing judgement, (March 31, 2004).

⁸² Prosecutor v. Dragan Obrenović, Case No. IT-02-60/2-S, sentencing judgement, (Dec. 10, 2003).

⁸³ Prosecutor v. Dragan Zelenović, Case No. IT-96-23/2-A, judgement on sentencing appeal, (Oct. 31, 2007).

⁸⁴ Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, Case No. IT-96-23/1-T, judgement, (Feb. 22, 2001).

⁸⁵ Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, Case No. IT-96-23/1-A, judgement, (June 12, 2002).

⁸⁶ Prosecutor v. Dragomir Milošević, Case No. IT-98-29/1-T, judgement, (Dec. 12, 2007).

⁸⁷ Prosecutor v. Dragomir Milošević, Case No. IT-98-29/1-A, judgement, (Nov. 12, 2009).

⁸⁸ Prosecutor v. Duško Sikirica, Damir Došen & Dragan Kolundžija, Case No. IT-95-8-T, judgement on defence motions to acquit, (Sept. 3, 2001).

⁸⁹ Prosecutor v. Duško Tadic, Case No. IT-94-1-T, opinion and judgement, (May 7, 1997).

⁹⁰ Prosecutor v. Duško Tadic, Case No. IT-94-1-A, judgement, (July 15, 1999).

11, 1999),⁹¹ (Jan. 26, 2000);⁹²⁻⁹³ *Enver Hadžihasanović and Amir Kubura* (Apr. 22, 2008);⁹⁴ *Naser Orić* (July 3, 2008);⁹⁵ *Fatmir Limaj, Haradin Bala and Isak Musliu* (Nov. 30, 2005);⁹⁶ *Goran Jelisić* (Dec. 14, 1999);⁹⁷ (July 5, 2001);⁹⁸ *Jadranko Prlić et al* (May 29, 2013);⁹⁹ (Nov. 29, 2017);¹⁰⁰ *Jovica Stanišić and Franko Simatović* (May 30, 2013);¹⁰¹ *Mičo Stanišić, Stojan Župljanin* (Mar. 27, 2013);¹⁰² *Milan Babić* (June 29, 2004);¹⁰³ *Milan Lukić, Sredoje Lukić* (July 20, 2009);¹⁰⁴ *Milan Martić* (June 12, 2007);¹⁰⁵ (Oct. 8, 2008);¹⁰⁶ *Milan Simić* (Oct. 17, 2002);¹⁰⁷ *Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin* (Sept. 27, 2007);¹⁰⁸ *Milomir Stakić* (July 31, 2003),¹⁰⁹ (Mar. 22, 2006);¹¹⁰ *Milorad Krnojelac* (Mar. 15, 2002),¹¹¹ (Sept. 17, 2003);¹¹² *Miro-*

⁹¹ Prosecutor v. Duško Tadic, Case No. IT-94-1-T bis-R117, judgement, (Nov. 11, 1999).

⁹² Prosecutor v. Duško Tadic, Case No. IT-94-1-Abis, judgement in sentencing appeals, (Jan. 26, 2000).

⁹³ Prosecutor v. Duško Tadic, Case No.: IT-94-1-Abis, judgement in sentencing appeals, separate opinion of Judge Shahabuddeen (Jan. 26, 2000).

⁹⁴ Prosecutor v. Enver Hadžihasanović and Amir Kubura, Case No. IT-01-47-A, judgement, (Apr. 22, 2008).

⁹⁵ Prosecutor v. Naser Orić, Case No. IT-03-68-A, judgement, (July 3, 2008).

⁹⁶ Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu, Case No. IT-03-66-T, judgement, (Nov. 30, 2005).

⁹⁷ Prosecutor v. Goran Jelisić, Case No. IT-95-10-T, judgement, (Dec. 14, 1999).

⁹⁸ Prosecutor v. Goran Jelisić, Case No. IT-95-10-A, judgement, (July 5, 2001).

⁹⁹ Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić & Berislav Pušić, Case No. IT-04-74-T, vols. I-VI, (May 29, 2013).

¹⁰⁰ Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić & Berislav Pušić, Case No. IT-04-74-A, vols. I-III, (Nov. 29, 2017).

¹⁰¹ Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. IT-03-69-T, judgement, vols. I-II, (May 30, 2013).

¹⁰² Prosecutor v. Mičo Stanišić, Stojan Župljanin, Case No. IT-08-91-T, judgement, vols. I-III, (Mar. 27, 2013).

¹⁰³ Prosecutor v. Milan Babić, Case No. IT-03-72-S, sentencing judgement, (June 29, 2004).

¹⁰⁴ Prosecutor v. Milan Lukić, Sredoje Lukić, Case No. IT-98-32/1-T, judgement, (July 20, 2009).

¹⁰⁵ Prosecutor v. Milan Martić, Case No. IT-95-11-T, judgement, (June 12, 2007).

¹⁰⁶ Prosecutor v. Milan Martić, Case No. IT-95-11-A, judgement, (Oct. 8, 2008).

¹⁰⁷ Prosecutor v. Milan Simić, Case No. IT-95-9/2-S, sentencing judgement, (Oct. 17, 2002).

¹⁰⁸ Prosecutor v. Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin, Case No. IT-95-13/1, judgement, (Sept. 27, 2007).

¹⁰⁹ Prosecutor v. Milomir Stakić, Case No. IT-97-24-T, judgement, (July 31, 2003).

¹¹⁰ Prosecutor v. Milomir Stakić, Case No. IT-97-24-A, judgement, (Mar. 22, 2006).

¹¹¹ Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-T, judgement, (Mar. 15, 2002).

¹¹² Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, judgement, (Sept. 17, 2003).

slav Deronjić (July 20, 2005);¹¹³ Miroslav Kvočka, Mlađo Radić, Dragoljub Prcač, Zoran Zigić and Milošica Kos (Nov. 2, 2001),¹¹⁴ (Fev. 28, 2005);¹¹⁵ Miodrag Jokić (March 18, 2004),¹¹⁶ Mitar Vasiljević (Nov. 29, 2002),¹¹⁷ (Feb. 25, 2004);¹¹⁸ Mladen Naletilić (Mar. 31, 2003),¹¹⁹ (May 3, 2006);¹²⁰ Momčilo Krajišnik (Sept. 27, 2006),¹²¹ (March 17, 2009);¹²² Momčilo Perišić (Sept. 6, 2011);¹²³ Momir Nikolić (Mar. 8, 2006);¹²⁴ Nikola Šainović, Nebojša Pavković, Vladimir Lazarević (Feb. 26, 2009),¹²⁵ (Jan. 23, 2014);¹²⁶ Predrag Banović (Oct. 28, 2003);¹²⁷ Radislav Krstić (Aug. 2, 2001),¹²⁸ (Apr. 19, 2004);¹²⁹ Radoslav Brđanin (Sept. 1, 2004),¹³⁰ (Apr. 3, 2007);¹³¹ Radovan Karadžić (Oct. 12, 2009),¹³² (Jul. 13, 2013),¹³³ (March

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- ¹¹⁴ Prosecutor v. Miroslav Kvočka, Mlađo Radić, Dragoljub Prcač, Zoran Zigić and Milošica Kos, Case No. IT-98-30/1-T, judgment, (Nov. 2, 2001).
- ¹¹⁵ Prosecutor v. Miroslav Kvočka, Mlađo Radić, Dragoljub Prcač, Zoran Zigić and Milošica Kos, Case No. IT-98-30/1-A, judgment, (Fev. 28, 2005).
- ¹¹⁶ Prosecutor v. Miodrag Jokić, Case No. IT-01-42/1-S, sentencing judgement, (March 18, 2004).
- ¹¹⁷ Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-T, judgement, (Nov. 29, 2002).
- ¹¹⁸ Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-A, judgement, (Feb. 25, 2004).
- ¹¹⁹ Prosecutor v. Mladen Naletilić, a.k.a. “Tuta”, and Vinko Martinović, a.k.a. “Štela”, Case No. IT-98-34-T, judgement, (Mar. 31, 2003).
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- ¹²¹ Prosecutor v. Momčilo Krajišnik, Case No. IT-00-39-T, judgement, (Sept. 27, 2006).
- ¹²² Prosecutor v. Momčilo Krajišnik, Case No. IT-00-39-A, judgement, (March 17, 2009).
- ¹²³ Prosecutor v. Momčilo Perišić, Case No. IT-04-81-T, judgement, (Sept. 6, 2011).
- ¹²⁴ Prosecutor v. Momir Nikolić, Case No. IT-02-60/1-A, judgement, (Mar. 8, 2006).
- ¹²⁵ Prosecutor v. Nikola Šainović, Nebojša Pavković, Vladimir Lazarević, Case No. IT-05-87-T, judgement, vols. I-IV, (Feb. 26, 2009).
- ¹²⁶ Prosecutor v. Nikola Šainović, Nebojša Pavković, Vladimir Lazarević, Case No. IT-05-87-A, judgement, (Jan. 23, 2014).
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- ¹²⁸ Prosecutor v. Radislav Krstić, Case No. IT-98-33-T, judgement, (Aug. 2, 2001).
- ¹²⁹ Prosecutor v. Radislav Krstić, Case No. IT-98-33-A, judgement, (Apr. 19, 2004).
- ¹³⁰ Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-T, judgement, (Sept. 1, 2004).
- ¹³¹ Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-A, judgement, (Apr. 3, 2007).
- ¹³² Prosecutor v. Radovan Karadžić, Case No. IT-95-5/18-AR73.4, decision on Karadžić’s appeal of trial chamber’s decision on alleged Holbrooke agreement (Oct. 12, 2009).
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¹³⁴ Prosecutor v. Radovan Karadžić, Case No. IT-95-5/18-T, judgement, vols. I–IV, (March 24, 2016).

¹³⁵ Prosecutor v. Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj, Case No. IT-04-84-T, (Apr. 3, 2008).

¹³⁶ Prosecutor v. Ranko Češić, Case No. IT-95-10/1-S, sentencing judgement, (March 11, 2004).

¹³⁷ Prosecutor v. Ratko Mladić, Case No. IT-09-92-T, judgement, vols. I–V (Nov. 22, 2017).

¹³⁸ Prosecutor v. Sefer Halilović, Case No. IT-01-48-A, judgement, (Oct. 16, 2007).

¹³⁹ Prosecutor v. Slobodan Milošević, Case No. IT-02-54-T, decision on motion for judgement of acquittal, (June 16, 2004).

¹⁴⁰ Prosecutor v. Stanislav Galić, Case No. IT-98-29-T, judgement and opinion, (Dec. 5, 2003).

¹⁴¹ Prosecutor v. Stanislav Galić, Case No. IT-98-29-A, judgement, (Nov. 30, 2006).

¹⁴² Prosecutor v. Stevan Todorović, Case No. IT-95-9/1-S, sentencing judgement, (July 31, 2001).

¹⁴³ Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-T, judgment, (Mar. 3, 2000).

¹⁴⁴ Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-A, judgment, (July 29, 2004).

¹⁴⁵ Prosecutor v. Vojislav Šešelj, Case No. IT-03-67-T, judgement, vol. I–III, (Mar. 31, 2016).

¹⁴⁶ Prosecutor v. Vojislav Šešelj, Case No. IT-03-67-T, judgement, vol. 3, partially dissenting opinion of Judge Flavia Lattanzi – amended version, (Mar. 31, 2016).

¹⁴⁷ Prosecutor v. Vidoje Blagojević, Dragan Jokić, Case No. IT-02-60-T, judgement, (Jan. 17, 2005).

¹⁴⁸ Prosecutor v. Vidoje Blagojević, Dragan Jokić, Case No. IT-02-60-A, judgement, (May 9, 2007).

¹⁴⁹ Prosecutor v. Vlastimir Đorđević, Case No. IT-05-87/1-A, judgement, (Jan. 27, 2014).

¹⁵⁰ Prosecutor v. Vujadin Popović *et al.*, Case No. IT-05-88-T, judgement, (June 10, 2010).

¹⁵¹ Prosecutor v. Vujadin Popović *et al.*, Case No. IT-05-88-A, judgement, (Jan. 30, 2015).

¹⁵² Prosecutor v. Zdravko Tolimir, Case No. IT-05-88/2-A, judgement, (Apr. 8, 2015).

¹⁵³ Prosecutor v. Zdravko Tolimir, Case No. IT-05-88/2-T, judgement, (Dec. 12, 2012).

¹⁵⁴ Prosecutor v. Zdravko Tolimir, Case No. IT-05-88/2-A A172-1/2054bis, separate and partly dissenting opinion of Judge Antonetti, (Jul. 14, 2015).

tor v. Zlatko Aleksovski (Mar. 24, 2000);¹⁵⁵ and Zoran Kupreškić et al (Jan. 14, 2000).¹⁵⁶

Such jurisprudence will be explored comparing it to the ICTR case-law – in alphabetical order: Aloys Simba (Dec. 13, 2005),¹⁵⁷ (Nov. 27, 2007);¹⁵⁸ André Ntagerura, Emmanuel Bagambiki, Samuel Imanishimwe (Feb. 25, 2004);¹⁵⁹ Athanase Seromba (Dec. 13, 2006),¹⁶⁰ (March 12, 2008);¹⁶¹ Augustin Bizimungu (June 30, 2014);¹⁶² Augustin Ndindiliyimana (May 17, 2011);¹⁶³ Augustin Ngirabatware (Dec. 20, 2012),¹⁶⁴ (Dec. 18, 2014);¹⁶⁵ Callixte Kalimanzira (June 22, 2009),¹⁶⁶ (Oct. 20, 2010);¹⁶⁷ Callixte Nzabonimana (May 31, 2012),¹⁶⁸ (Sept. 29, 2014);¹⁶⁹ Dominique Ntawukulilyayo (Aug. 3, 2010),¹⁷⁰ (Dec. 14, 2011);¹⁷¹ Édou-

¹⁵⁵ Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-A, judgment, (Mar. 24, 2000).

¹⁵⁶ Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Vladimir Šantić (“Vlado”), Stipo Alilovic (“BRKO”), Drago Josipović, Marinko Katava, Dragan Papić, Case No. IT-95-16-T, judgment, (Jan. 14, 2000).

¹⁵⁷ Prosecutor v. Aloys Simba, Case No. ICTR-01-76-T, judgement and sentence, (Dec. 13, 2005).

¹⁵⁸ Aloys Simba v. Prosecutor, Case No. ICTR-01-76-A, judgement, (Nov. 27, 2007).

¹⁵⁹ Prosecutor v. André Ntagerura, Emmanuel Bagambiki, Samuel Imanishimwe, Case No. ICTR-99-46-T, judgment and sentence, (Feb. 25, 2004).

¹⁶⁰ Prosecutor v. Athanase Seromba, Case No. ICTR-2001-66-I, judgement, (Dec. 13, 2006).

¹⁶¹ Prosecutor v. Athanase Seromba, Case No. ICTR-2001-66-A, judgement, (March 12, 2008).

¹⁶² Augustin Bizimungu v. Prosecutor, Case No. ICTR-00-56B-A, judgement, (June 30, 2014).

¹⁶³ Prosecutor v. Augustin Ndindiliyimana, Augustin Bizimungu, François-Xavier Nzuwonemeye, Case No: ICTR-00-56-T, judgement and sentence, (May 17, 2011).

¹⁶⁴ Prosecutor v. Augustin Ngirabatware, Case No. ICTR-99-54-T, judgement and sentence, (Dec. 20, 2012).

¹⁶⁵ Augustin Ngirabatware v. Prosecutor, Case No. MICT-12-29, judgement, Dec. 18, 2014.

¹⁶⁶ Prosecutor v. Callixte Kalimanzira, Case No. ICTR-05-88-T, judgement, (June 22, 2009).

¹⁶⁷ Callixte Kalimanzira v. Prosecutor, Case No. ICTR-05-88-A, judgement, (Oct. 20, 2010).

¹⁶⁸ Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, judgement and sentence, (May 31, 2012).

¹⁶⁹ Callixte Nzabonimana v. Prosecutor, Case No. ICTR-98-44D-A, judgement, (Sept. 29, 2014).

¹⁷⁰ Prosecutor v. Dominique Ntawukulilyayo, Case No. ICTR-05-82-T, judgement and sentence, (Aug. 3, 2010).

¹⁷¹ Dominique Ntawukulilyayo v. Prosecutor, Case No. ICTR-05-82-A, judgement, (Dec. 14, 2011).

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- ¹⁷² *Prosecutor v. Édouard Karemera et al*, Case No. ICTR-98-44-T, judgement and sentence, (Feb. 2, 2012).
- ¹⁷³ *Édouard Karemera et al v. Prosecutor*, Case No. ICTR-98-44-A, judgement, (Sept. 29, 2014).
- ¹⁷⁴ *Eliézer Niyitegeka v. Prosecutor*, Case No. ICTR-96-14-A, judgement, (July 9, 2014).
- ¹⁷⁵ *Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Case No. ICTR- 96-10 & ICTR-96-17-T, judgement and sentence, (Feb. 21, 2003).
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- ¹⁷⁷ *Prosecutor v. Emmanuel Ndindabahizi*, Case No. ICTR-2001-71-I, judgement and sentence, (July 15, 2004).
- ¹⁷⁸ *Emmanuel Ndindabahizi v. Prosecutor*, Case No. ICTR-01-71-A, judgement, (Jan. 16, 2007).
- ¹⁷⁹ *Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, judgement, (Feb. 27, 2009).
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- ¹⁸¹ *Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-T, judgement and sentence, (Feb. 25, 2010).
- ¹⁸² *Prosecutor v. Ferdinand Nahimana et al*, Case No. ICTR-99-52-T, judgement, (Dec. 3, 2003).
- ¹⁸³ *Ferdinand Nahimana et al v. Prosecutor*, Case No. ICTR-99-52-A, judgement, (Nov. 28, 2007).
- ¹⁸⁴ *Prosecutor v. François Karera*, Case No. ICTR-01-74-T, Judgement and sentence, (Dec. 7, 2007).
- ¹⁸⁵ *François Karera v. Prosecutor*, Case No. ICTR-01-74-A, judgement, (Feb. 2, 2009).
- ¹⁸⁶ *Prosecutor v. GAA1*, Case No. ICTR-07-90-R77-I, judgement and sentence, (Dec. 4, 2007).
- ¹⁸⁷ *Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-T, judgement and sentence, (Nov. 1, 2010).
- ¹⁸⁸ *Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, judgement, (Dec. 6, 1999).
- ¹⁸⁹ *Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-A, judgement, (May 26, 2003).
- ¹⁹⁰ *Prosecutor v. Georges Ruggiu*, Case No. ICTR-97-32-I, judgement and sentence, (June 1, 2000).

Ndahimana (Dec. 30, 2011),¹⁹¹ (Dec. 16, 2013);¹⁹² *Hormisdas Nsengimana* (Nov. 17, 2009);¹⁹³ *Ignace Bagilishema* (June 7, 2001);¹⁹⁴ *Jean-Baptiste Gatete* (March 31, 2011),¹⁹⁵ (Oct. 9, 2012);¹⁹⁶ *Ildephonse Hategekimana* (Dec. 6, 2010);¹⁹⁷ *Il-déphonse Nizeyimana* (June 19, 2012);¹⁹⁸ *Jean Kambanda* (Sept. 4, 1998);¹⁹⁹ *Jean de Dieu Kamuhanda* (Jan. 22, 2004),²⁰⁰ (Sept. 19, 2005);²⁰¹ *Jean Mpambara* (Sept. 11, 2006);²⁰² *Jean-Paul Akayesu* (Sept. 2, 1998),²⁰³ (June 1, 2001);²⁰⁴ *Joseph Nzabirinda* (Feb. 23, 2007);²⁰⁵ *Justin Mugenzi et al* (Feb. 4, 2013);²⁰⁶ *Juvénal Kajelijeli* (Dec. 1, 2003);²⁰⁷ *Juvénal Rugambarara* (Nov. 16, 2007);²⁰⁸ *Kayishema and Ruzindana* (May 21, 1999),²⁰⁹ (June 1, 2001);²¹⁰ *Laurent Semanza* (May 15,

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- ¹⁹² Grégoire Ndahimana v. Prosecutor, Case No. ICTR-01-68-A, judgement, (Dec. 16, 2013).
- ¹⁹³ Prosecutor v. Hormisdas Nsengimana, Case No. ICTR-01-69-T, (Nov. 17, 2009).
- ¹⁹⁴ Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A, judgement, (June 7, 2001).
- ¹⁹⁵ Prosecutor v. Jean-Baptiste Gatete, Case No. ICTR-2000-61-T, judgement and sentence, (March 31, 2011).
- ¹⁹⁶ Jean-Baptiste Gatete v. Prosecutor, Case No. ICTR-00-61-A, judgement, (Oct. 9, 2012).
- ¹⁹⁷ Prosecutor v. Ildephonse Hategekimana, Case No. ICTR-00-55B-T, judgement and sentence, (Dec. 6, 2010).
- ¹⁹⁸ Prosecutor v. Ildéphonse Nizeyimana, Case No. ICTR-2000-55C-T, judgement and sentence, (June 19, 2012).
- ¹⁹⁹ Prosecutor v. Jean Kambanda, Case No. ICTR-97-23, judgement and sentence, (Sept. 4, 1998).
- ²⁰⁰ Prosecutor v. Jean de Dieu Kamuhanda, Case No. ICTR-95-54A-T, judgement, (Jan. 22, 2004).
- ²⁰¹ Jean de Dieu Kamuhanda v. Prosecutor, Case No. ICTR-95-54A-A, judgement, (Sept. 19, 2005).
- ²⁰² Prosecutor v. Jean Mpambara, Case No. ICTR-01-65-T, judgement, (Sept. 11, 2006).
- ²⁰³ Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, judgement, (Sept. 2, 1998).
- ²⁰⁴ Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, judgement, (June 1, 2001).
- ²⁰⁵ Prosecutor v. Joseph Nzabirinda, Case No. ICTR-2001-77-T, judgement and sentence, (Feb. 23, 2007).
- ²⁰⁶ Justin Mugenzi et al v. Prosecutor, Case No. ICTR-99-50-A, judgement, (Feb. 4, 2013).
- ²⁰⁷ Prosecutor v. Juvénal Kajelijeli, Case No. ICTR-98-44A-T, judgment and sentence, (Dec. 1, 2003).
- ²⁰⁸ Prosecutor v. Juvénal Rugambarara, Case No. ICTR-00-59-T, sentencing judgement, (Nov. 16, 2007).
- ²⁰⁹ Prosecutor v. Clément Kayishema and Ruzindana, Case No. ICTR 95-1-T, judgement, (May 21, 1999).
- ²¹⁰ Prosecutor v. Clément Kayishema and Ruzindana, Case No. ICTR-95-1-A, judgement, (June 1, 2001).

2003);²¹¹ *Léonidas Nshogoza* (July 7, 2009);²¹² *Michel Bagaragaza* (Nov. 17, 2009);²¹³ *Mikaeli Muhimana* (April 28, 2005);²¹⁴ (May 21, 2007);²¹⁵ *Musema* (Jan. 27, 2000);²¹⁶ *Omar Serushago* (Feb. 5, 1999);²¹⁷ *Paul Bisengimana* (Apr. 13, 2006);²¹⁸ *Pauline Nyiramasuhuko et al.* (June 24, 2011),²¹⁹ (Dec. 14, 2015);²²⁰ *Protais Zigiranyirazo* (Dec. 18, 2008);²²¹ (Nov. 16, 2009);²²² *Rutaganda* (Dec. 6, 1999);²²³ *Siméon Nchamihigo* (Nov. 12, 2008);²²⁴ (March 18, 2010);²²⁵ *Simon Bikindi* (Dec. 2, 2008);²²⁶ (March 18, 2010);²²⁷ *Sylvestre Gacumbitsi* (June 17, 2004);²²⁸ (July 7, 2006);²²⁹ *Tharcisse Muvunyi* (August 29, 2008);²³⁰ (Feb. 11,

²¹¹ Prosecutor v. Laurent Semanza, Case No. ICTR-97-20-T, judgement and sentence, (May 15, 2003).

²¹² Prosecutor v. Léonidas Nshogoza, Case No. ICTR-07-91-T, judgement (July 7, 2009).

²¹³ Prosecutor v. Michel Bagaragaza, Case No. ICTR-05-86-S, sentencing judgement, (Nov. 17, 2009).

²¹⁴ Prosecutor v. Mikaeli Muhimana, Case No. ICTR-95-1B-T, judgement and sentence, (April 28, 2005).

²¹⁵ Mikaeli Muhimana v. Prosecutor, Case No. ICTR-95-1B-A, judgement, (May 21, 2007).

²¹⁶ Prosecutor v. Musema, Case No. ICTR-96-13-A, judgement and sentence, (Jan. 27, 2000).

²¹⁷ Prosecutor v. Omar Serushago, Case No. ICTR-98-39-S, sentence, (Feb. 5, 1999).

²¹⁸ Prosecutor v. Paul Bisengimana, Case No. ICTR-00-60-T, judgment and sentence, (Apr. 13, 2006).

²¹⁹ Prosecutor v. Pauline Nyiramasuhuko *et al.*, Case No. ICTR-98-42-T, judgement and sentence, (June 24, 2011).

²²⁰ Prosecutor v. Pauline Nyiramasuhuko *et al.*, Case No. ICTR-98-42-A, judgement, (Dec. 14, 2015).

²²¹ Prosecutor v. Protais Zigiranyirazo, Case No. ICTR-01-73-T, judgement, (Dec. 18, 2008).

²²² Protais Zigiranyirazo v. Prosecutor, Case No. ICTR-01-73-A, judgement, (Nov. 16, 2009).

²²³ Prosecutor v. Rutaganda, Case No. ICTR-96-3-T, judgement and sentence, (Dec. 6, 1999).

²²⁴ Prosecutor v. Siméon Nchamihigo, Case No. ICTR-01-63-T, judgement and sentence, (Nov. 12, 2008).

²²⁵ Siméon Nchamihigo v. Prosecutor, Case No. ICTR-2001-63-A, judgement, (March 18, 2010).

²²⁶ Prosecutor v. Simon Bikindi, Case No. ICTR-01-72-T, judgement, (Dec. 2, 2008).

²²⁷ Simon Bikindi v. Prosecutor, Case No. ICTR-01-72-A, judgement, (March 18, 2010).

²²⁸ Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-T, judgement, (June 17, 2004).

²²⁹ Sylvestre Gacumbitsi v. Prosecutor, Case No. ICTR-2001-64-A, judgement, (July 7, 2006).

²³⁰ Tharcisse Muvunyi v. Prosecutor, Case No. ICTR-2000-55A-A, judgement, (Aug. 29, 2008).

2010);²³¹ *Tharcisse Renzaho* (July 14, 2009),²³² (Apr. 1, 2011);²³³ *Théoneste Bagosora* (Dec. 18, 2008);²³⁴ *Vincent Rutaganira* (March 14, 2005);²³⁵ and *Yussuf Muniyakazi* (July 5, 2010),²³⁶ (Sept. 28, 2011).²³⁷

Many authors have explored the legitimacy, legality, and the legacy of the former ICTY and ICTR criminal tribunals and explored the accountability for human rights atrocities in International Law. Collectively, their studies presented the judicial responses/mechanisms to the crime of genocide and how these Tribunals helped to pave the way to the International Criminal Court. See, for example, Yusuf Aksar, in *Implementing International Humanitarian Law: From The Ad Hoc Tribunals to a Permanent International Criminal Court* (2004),²³⁸ Guénaël Mettraux, *International Crimes and the Ad Hoc Tribunals*, (2006),²³⁹ William A. Schabas, in *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone* (2006),²⁴⁰ Anne-Marie de Brouwer and Alette Smeulers in *The Elgar Companion to the International Criminal Tribunal for Rwanda* (2016),²⁴¹ and others such as M. Cherif Bassiouni (1995),²⁴² Rachel Kerr (2004),²⁴³

²³¹ Prosecutor v. Tharcisse Muvunyi, Case No. ICTR-00-55A-T, judgement, (Feb. 11, 2010).

²³² Prosecutor v. Tharcisse Renzaho, Case No. ICTR-97-31-T, judgement and sentence, (July 14, 2009).

²³³ Tharcisse Renzaho v. Prosecutor, Case No. ICTR-97-31-A, judgement, (Apr. 1, 2011).

²³⁴ Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva, Case No. ICTR-98-41-T, judgement and sentence, (Dec. 18, 2008).

²³⁵ Prosecutor v. Vincent Rutaganira, Case No. ICTR-95-1C-T, judgment and sentence, (March 14, 2005).

²³⁶ Prosecutor v. Yussuf Muniyakazi, Case No. ICTR-97-36A-T, judgement and sentence, (July 5, 2010).

²³⁷ Prosecutor v. Yussuf Muniyakazi, Case No. ICTR-97-36A-A, judgement, (Sept. 28, 2011).

²³⁸ Yusuf Aksar, *Implementing International Humanitarian Law: From The Ad Hoc Tribunals to a Permanent International Criminal Court* (Routledge, 2004). pp. 7–42.

²³⁹ Guénaël Mettraux, *International Crimes and the Ad Hoc Tribunals*, (Oxford University Press, 2006). pp. 193–265.

²⁴⁰ William A. Schabas *Supra* note 56.

²⁴¹ Anne-Marie de Brouwer & Alette Smeulers eds., *The Elgar Companion to the International Criminal Tribunal for Rwanda* (Edward Elgar Publishing, 2016).

²⁴² M. Cherif Bassiouni, *Former Yugoslavia: Investigating Violations of International Humanitarian Law and Establishing an International Criminal Tribunal*, 18 *Fordham Int'l L.J.* 1191 (1995).

²⁴³ Rachel Kerr, *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics, and Diplomacy* (Oxford University Press, 2004).

Thierry Cruvellier (2006),²⁴⁴ Fred Grünfeld & Anke Huijboom (2007),²⁴⁵ Jackson Maogoto (2009),²⁴⁶ Nicholas A. Jones (2010),²⁴⁷ Helen Hintjens (2016),²⁴⁸ Barbora Holá & Alette Smeulers (2016),²⁴⁹ Payam Akhavan (2016),²⁵⁰ Kai Ambos & Stefanie Bock (2016),²⁵¹ Justice Hassan Bubacar Jallow (2016).²⁵²

From June 15 to July 17, 1998, in Rome, following a report of the International Law Commission of July 8, 1994,²⁵³ the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court drafted and approved the Rome Statute.²⁵⁴ The Statute entered into force on 1 July 2002, when the International Criminal Court (ICC) was vested with temporal jurisdiction. The ICC was created as the first permanent criminal tribunal with jurisdiction over genocide and other serious violations of International Criminal Law. Almost ten years before the ICC was granted temporal jurisdiction, M. Cherif Bassiouni published a paper – *The Time Has Come for an International Criminal Court* (1991) – in which

²⁴⁴ Thierry Cruvellier, *Court of Remorse: Inside the International Criminal Tribunal for Rwanda*, Translated by Chari Voss (University of Wisconsin Press, 2006).

²⁴⁵ Fred Grünfeld & Anke Huijboom, *The Failure to Prevent Genocide in Rwanda: The Role of Bystanders* (Martinus Nijhoff Publishers, 2007).

²⁴⁶ Jackson Maogoto, *The Experience of the Ad Hoc Tribunals for the Former Yugoslavia and Rwanda in The Legal Regime of the International Criminal Court: Essays in Honour of Professor Igor Blishchenko 63–74* (Martinus Nijhoff Publishers, 2009).

²⁴⁷ Nicholas A. Jones, *The Courts of Genocide: Politics and the Rule of Law in Rwanda and Arusha* (Routledge, 2010).

²⁴⁸ Helen Hintjens, *The Creation of the ICTR in The Elgar Companion to the International Criminal Tribunal for Rwanda 15–43* (Anne-Marie de Brouwer & Alette Smeulers eds., Edward Elgar Publishing, 2016).

²⁴⁹ Barbora Holá & Alette Smeulers, *Rwanda and the ICTR: facts and figures in The Elgar Companion to the International Criminal Tribunal for Rwanda 44–75* (Anne-Marie de Brouwer & Alette Smeulers eds., Edward Elgar Publishing, 2016).

²⁵⁰ Payam Akhavan, *Genocide in the ICTR in The Elgar Companion to the International Criminal Tribunal for Rwanda 79–109* (Anne-Marie de Brouwer & Alette Smeulers eds., Edward Elgar Publishing, 2016).

²⁵¹ Kai Ambos & Stefanie Bock, *Individual Criminal Responsibility in the ICTR in The Elgar Companion to the International Criminal Tribunal for Rwanda 202–231* (Anne-Marie de Brouwer & Alette Smeulers eds., Edward Elgar Publishing, 2016).

²⁵² Justice Hassan Bubacar Jallow, *The ICTR's Elaboration of the Core International Crimes of Genocide, Crimes Against Humanity and War Crimes and Modes of Liability in The Elgar Companion to the International Criminal Tribunal for Rwanda 447–487* (Anne-Marie de Brouwer & Alette Smeulers eds., Edward Elgar Publishing, 2016).

²⁵³ U.N. Doc. A/CN.4/L.491/Rev.1 (July 8, 1994).

²⁵⁴ United Nations. *Rome Statute* (July 17, 1998) 2187 UNTS 38544.

he described the pressing need for a permanent court with jurisdiction over genocide.²⁵⁵

Some of the international struggles to establish the ICC were presented by Leila Sadat Wexler (1996)²⁵⁶ and by Jackson Maogoto in their paper *Early Efforts to Establish an International Criminal Court*.²⁵⁷ Robert Cryer et al. handbook – *An introduction to International Criminal Law and Procedure* (2014) –,²⁵⁸ provided a systematic study of the creation of the ICC, its structure and composition, material jurisdiction, and enforcement mechanisms. Otto Triffterer and Kai Ambos put together a collective work – *The Rome Statute of the International Criminal Court: A Commentary* (2016),²⁵⁹ that provided a detailed analysis of the drafting history of the Rome Statute, its legal importance, the interpretation of its elements, and the process in which the Court was established.

A detailed analysis of the International Criminal Court was also conducted by Yusuf Aksar (2004),²⁶⁰ William A. Schabas (2007),²⁶¹ Benjamin N. Schiff (2008),²⁶² and Carsten Stahn (2015).²⁶³ Professor M. Cherif Bassiouni, in his colossal *The Legislative History of the International Criminal Court* (2005),^{264 265 266} provided a meticulous description and analysis of the chronology of relevant historical dates and events of the international criminal prosecution history.

²⁵⁵ M. Cherif Bassiouni, *The Time Has Come for an International Criminal Court*, 1 *Ind. Int'l & Comp. L. Rev.* 1 (1991).

²⁵⁶ Leila Sadat Wexler, *The Proposed Permanent International Criminal Court: An Appraisal*, 29 *Cornell Int'l L.J.* 665 (1996).

²⁵⁷ Jackson Maogoto, *Early Efforts to Establish an International Criminal Court in The Legal Regime of the International Criminal Court: Essays in Honour of Professor Igor Blishchenko* 3–22 (Martinus Nijhoff Publishers, 2009).

²⁵⁸ Robert Cryer, Håkan Friman, Darryl Robinson & Elizabeth Wilmshurst. *Supra* note 21. pp. 119–164.

²⁵⁹ Otto Triffterer & Kai Ambos eds., *The Rome Statute of the International Criminal Court: A Commentary* (Hart Publishing, 3d ed. 2016).

²⁶⁰ Yusuf Aksar. *Supra* note 238. pp. 43–68.

²⁶¹ William A. Schabas, *An Introduction to the International Criminal Court* (Cambridge University Press, 2007).

²⁶² Benjamin N. Schiff, *Building the International Criminal Court* (Cambridge University Press, 2008).

²⁶³ Carsten Stahn ed., *The Law and Practice of the International Criminal Court* (Oxford University Press, 2015).

²⁶⁴ M. Cherif Bassiouni, *The Legislative History of the International Criminal Court*, Vol. 1 (Transnational Publishers Inc., 2005).

²⁶⁵ M. Cherif Bassiouni, *The Legislative History of the International Criminal Court*, Vol. 2 (Transnational Publishers Inc., 2005).

²⁶⁶ M. Cherif Bassiouni, *The Legislative History of the International Criminal Court*, Vol. 3 (Transnational Publishers Inc., 2005).

Bassiouni also provided a thorough examination of the integrated text – article-by-article – of the Rome Statute, the Court’s Elements of Crimes, its nature, functions, mechanisms, Rules of Procedure, and Evidence. Years later, in 2009, M. Cherif Bassiouni again co-edited *The Legal Regime of the International Criminal Court: Essays in Honour of Professor Igor Blishchenko*,²⁶⁷ with new insights on the then-recent developments of the Court.

In 2002, an agreement between the United Nations and Sierra Leone’s Government established the Special Court for Sierra Leone (SCSL). The Court’s mandate was “to prosecute those persons who [bore] the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.”²⁶⁸ The Court was vested with the power to analyze and prosecute a broad spectrum of horrific, “widespread or systematic attacks against the civilian population of Sierra Leone,”²⁶⁹ committed by the members of the Armed Forces Revolutionary Council (AFRC) and the Revolutionary United Front (RUF). Such groups “launched an insurgency from Liberia’s Lofa County into Sierra Leone’s Kailahun District,” that continued until president Ahmad Tejan Kabbah of Sierra Leone declared the end of hostilities on January 18, 2002.²⁷⁰ The jurisprudence of the SCSL will be thoroughly scrutinized in this book, notably the *Norman Case* (March 24, 2004),²⁷¹ (May 14, 2004),²⁷² (May 28, 2004),²⁷³ (May 31, 2004);²⁷⁴ the *RUF case* (May 6, 2004),²⁷⁵

²⁶⁷ José Doria, Hans-Peter Gasser & M. Cherif Bassiouni eds., *The Legal Regime of the International Criminal Court: Essays in Honour of Professor Igor Blishchenko* (Martinus Nijhoff Publishers, 2009).

²⁶⁸ *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, judgment, (March 2, 2009). (*RUF case*). ¶ 1.

²⁶⁹ *Ibidem*. ¶ 1567.

²⁷⁰ *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, judgment, (May 18, 2012). ¶ 19.

²⁷¹ *Prosecutor v. Norman*, Case No. SCSL-04-14-PT, motion to recuse judge Winter from deliberating in the preliminary motion on the recruitment of child soldiers, (March 24, 2004).

²⁷² *Prosecutor v. Norman*, Case No. SCSL-04-14-PT, judge Winter’s response to motion to recuse her from deliberating on the preliminary motion on the recruitment of child soldiers, (May 14, 2004).

²⁷³ *Prosecutor v. Norman*, Case No. SCSL-04-14, motion to recuse judge Winter from deliberating in the preliminary motion on the recruitment of child soldiers, (May 28, 2004).

²⁷⁴ *Prosecutor v. Norman*, Case No. SCSL-2004-14-AR72(E), decision on preliminary motion based on lack of jurisdiction (child recruitment), (May 31, 2004).

²⁷⁵ *Prosecutor v. Sesay, Kallon, Gbao*, Case No. SCSL-2004-15-PT, decision on prosecution request for leave to amend the indictment (May 6, 2004). (*RUF case*).

(Feb. 20, 2006),²⁷⁶ (Oct. 25, 2006),²⁷⁷ (March 2, 2009),²⁷⁸ (Apr. 8, 2009),²⁷⁹ the AFRC case (June 20, 2007);²⁸⁰ the CDF case (Aug. 2, 2007),²⁸¹ (Aug. 2, 2007),²⁸² (May 28, 2008),²⁸³ the *Brima, Kamara, Kanu Case* (Feb. 22, 2008);²⁸⁴ and the *Taylor Case* (May 18, 2012).²⁸⁵

More recently, several papers were written after the Prosecutor of the Court opened its investigation of the first case of genocide against Al Bashir – see, for example, *The ICC's First Encounter with the Crime of Genocide: The Case against Al Bashir*, from the University of Cologne Professor Claus Kress (2015).²⁸⁶ The issue concerning the Prosecutor's investigation against Al Bashir is highly controversial. In 2005, an International Commission of Inquiry on Darfur, Sudan, was established by the Secretary-General according to Security Council Resolution 1564 (2004).²⁸⁷ The Commission was assigned to respond to the question: "Do the crimes perpetrated in Darfur constitute acts of genocide?" After collecting "substantial and reliable material" and performing an in-depth analysis, the Commission concluded that Al Bashir's Government had not pursued a policy of genocide against an ethnic group.²⁸⁸ The dichotomy between the findings of the U.N. Commission and the findings of the ICC Pre-Trial in issuing the Warrant of Arrest against Al

²⁷⁶ Prosecutor v. Sesay, Kallon and Gbao, Case No. SCSL-04-15-T, prosecution application for leave to amend indictment, (Feb. 20, 2006). (RUF case).

²⁷⁷ Prosecutor v. Sesay, Kallon and Gbao, Case No. SCSL-04-15-T, oral Rule 98 decision, transcript, (Oct. 25, 2006). (RUF case).

²⁷⁸ Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268.

²⁷⁹ Prosecutor v. Sesay, Kallon and Gbao, Case No. SCSL-04-15-T, sentencing judgment, (Apr. 8, 2009). (RUF case).

²⁸⁰ Prosecutor v. Brima, Kamara, Kanu, Case No. SCSL-04-16-T, judgment, (June 20, 2007 as revised on 19 July 2007). (AFRC case).

²⁸¹ Prosecutor v. Fofana, Kondewa, Case No. SCSL-04-14-T, judgment (Aug. 2, 2007). (CDF case).

²⁸² Prosecutor v. Fofana, Kondewa, Case No. SCSL-04-14-T, judgment, partially dissenting opinion of honorable justice Renate Winter (Aug. 2, 2007). (CDF case).

²⁸³ Prosecutor v. Fofana, Kondewa, Case No. SCSL-04-14-A, judgment (May 28, 2008). (CDF case).

²⁸⁴ Prosecutor v. Brima, Kamara, Kanu, Case No. SCSL-04-16-A, judgment, (Feb. 22, 2008).

²⁸⁵ Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270.

²⁸⁶ Claus Kress, *The ICC's First Encounter with the Crime of Genocide: The Case against Al Bashir in The Law and Practice of the International Criminal Court* 669–704 (Carsten Stahn ed., Oxford University Press, 2015).

²⁸⁷ U.N. Doc. S/2005/60 (Feb. 1, 2005).

²⁸⁸ *Idem.* ¶¶ 507–518.

Bashir²⁸⁹ is of pivotal importance for the academic investigation of this thesis as to whether the acts of killings and forcible displacements of persons committed by ISIS against Christians in Iraq configure genocide. In Darfur, the Commission considered that “killing and forcibly displacing members of some tribes did not (automatically) evince a specific intent to annihilate, in whole or in part, a group distinguished on racial, ethnic, national or religious grounds.” Instead, the Commission considered that the planned and organized attacks on villages “pursued the intent to drive the victims from their homes, primarily for purposes of counter-insurgency warfare.”²⁹⁰

Whether there was genocide or not in Darfur is an open question in legal scholarship. Its answer is of fundamental importance. For example, Professor Schabas questioned in his paper on the *State Plan or Policy Element in the Crime of Genocide* (2007):²⁹¹ *Has Genocide Been Committed in Darfur?* In this regard, Philip Alston (2005)²⁹² and Claus Kress (2005),²⁹³ Nina Bang-Jensen, and Stefanie Frease (2006)²⁹⁴ raised essential questions on the model of the Darfur Commission, the model of documenting atrocities and *reporting* for future responses to the crisis. Samuel Totten and Eric Markusen (2006),²⁹⁵ as well as Gérard Prunier (2011),²⁹⁶ made significant considerations as to how to reconcile theory and practice when confronting atrocities hard to prove intent, like genocide.

William A. Schabas (2006)²⁹⁷ and Gregor Noll (2016)²⁹⁸ very well theorized the issue of jurisdiction in International Criminal Law and lectured on the ma-

²⁸⁹ Prosecutor v. Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09, second decision on the prosecution’s application for a warrant of arrest, (July 12, 2010).

²⁹⁰ U.N. Doc. S/2005/60 (Feb. 1, 2005). Session I and II.

²⁹¹ William A. Schabas, *Has Genocide Been Committed in Darfur? The State Plan or Policy Element in the Crime of Genocide in The Criminal Law of Genocide: International, Comparative and Contextual Aspects* 39–47 (Ralph Henham & Paul Behrens eds., Ashgate Publishing Limited, 2007).

²⁹² Philip Alston, *The Darfur Commission as a Model for Future Responses to Crisis Situations*, 3 J. Int’l Crim. Just. 600 (2005).

²⁹³ Claus Kress, *The Darfur Report and Genocidal Intent*, 3 J. Int’l Crim. Just. 562 (2005).

²⁹⁴ Nina Bang-Jensen & Stefanie Frease, *Creating the ADT: turning a Good Idea into Reality in Genocide in Darfur: Investigating the Atrocities in the Sudan* 45–57 (Samuel Totten & Eric Markusen eds., Routledge, 2006).

²⁹⁵ Samuel Totten & Eric Markusen eds., *Genocide in Darfur: Investigating the Atrocities in the Sudan* (Routledge, 2006).

²⁹⁶ Gérard Prunier, *Darfur: Genocidal Theory and Practical Atrocities in Confronting genocide* 45–56 (René Provost & Payam Akhavan eds., Springer, 2011).

²⁹⁷ William A. Schabas *Supra* note 56.

²⁹⁸ Gregor Noll, *Theorizing Jurisdiction in The Oxford Handbook of the Theory of International Law* 600–617 (Anne Oford & Florian Hoffmann eds., Oxford University Press, 2016).

terial, temporal, and personal admissibility issues under the ICC Statute as well as under the former Yugoslavia, Rwanda, and Sierra Leone tribunal statutes. Professor Gregor Noll paid particular attention to the early developments of the ICC case-law with the *Thomas Lubanga Dyilo* case (January 29, 2007),²⁹⁹ (March 18, 2008),³⁰⁰ (April 8, 2009),³⁰¹ (March 14, 2012),³⁰² and (July 10, 2012).^{303 304} Ianin Cameron (2004),³⁰⁵ and Victor Tsilonis (2019),³⁰⁶ gave particular attention to the policy issues of jurisdiction and reflected upon the consequences of this approach over the permanent International Criminal Court. Pertaining to the intricate and controversial issue of universal jurisdiction for international crimes, M. Cherif Bassiouni (2001)³⁰⁷ and (2003)³⁰⁸, David A. Tallman (2003),³⁰⁹ Diane F. Orentlicher (2008),³¹⁰ Władysław Czapliński (2009),³¹¹

²⁹⁹ Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06, decision on the confirmation of charges, (Jan. 29, 2007).

³⁰⁰ Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06-1229-AnxA, written submissions of the United Nations Special Representative of the Secretary-General on Children and Armed Conflict submitted in application of Rule 103 of the Rules of Procedure and Evidence, (March 18, 2008).

³⁰¹ Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06, redacted version of decision on “indirect victims,” (Apr. 8, 2009).

³⁰² Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06, judgment pursuant to Art. 74 of the Statute, (March 14, 2012).

³⁰³ Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06, decision on sentence pursuant to Article 76 of the Statute, (July 10, 2012).

³⁰⁴ Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06, separate and dissenting opinion of judge Odio Benito, trial judgment, (July 10, 2012).

³⁰⁵ Cameron, Ianin. Jurisdiction and admissibility issues under the ICC Statute *in* The Permanent International Criminal Court: Legal and Policy Issues 65–94 (Dominic McGoldrick & Eric Donnelly eds., Hart Publishing, 2004).

³⁰⁶ Victor Tsilonis, *The Jurisdiction of the International Criminal Court* (Springer, 2019). pp. 75–102.

³⁰⁷ M. Cherif Bassiouni, Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice, 42 *Va. J. Int’l L.* 81 (2001).

³⁰⁸ M. Cherif Bassiouni. *Supra* note 20.

³⁰⁹ David A Tallman, Universal Jurisdiction: Lessons From Belgium’s Experience *in* Accountability for Atrocities: National and International Responses 375–409 (Jane E. Stromseth ed., Transnational Publishers Inc: Ardsley, 2003).

³¹⁰ Diane F. Orentlicher, Universal Jurisdiction: A Pragmatic Strategy in Pursuit of a Moralists’ Vision *in* The Theory and Practice of International Criminal Law Essays in Honor of M. Cherif Bassiouni 127–154 (Leila Nadya Sadat & Michael P. Scharf eds., Martinus Nijhoff Publishers, 2008).

³¹¹ Władysław Czapliński, Jus Cogens, Obligations Erga Omnes and International Criminal Responsibility *in* The Legal Regime of the International Criminal Court: Essays in Honour of Professor Igor Blishchenko 403–420 (Martinus Nijhoff Publishers, 2009).

Gerhard Werle (2014)³¹² and Aisling O’Sullivan (2017)³¹³ shed light on the historical perspectives, jurisdictional responses and the contemporary practice on the *erga omnes* duty to prosecute crimes in violation of *jus cogens* norms. In 2019, Victor Tsilonis wrote extensively about current challenges concerning the Jurisdiction of the International Criminal Court.³¹⁴

Regarding the jurisdiction of the International Criminal Court over crimes against humanity, Professors M. Larry May (2005),³¹⁵ Cherif Bassiouni (2011),³¹⁶ Norman Geras (2011),³¹⁷ Christopher K. Hall, Joseph Powderly & Niamh Hayes (2016),³¹⁸ Victor Tsilonis (2019),³¹⁹ and Robert Dubler SC & Matthew Kalyk (2018)³²⁰ wrote comprehensive works on the historical evolution, philosophical foundations, and developments on the typicity of such crime and in its relation with Customary International Law.³²¹ The works of Gideon Boas, James L. Bischoff & Natalie L. Reid (2009),³²² Cherif Bassiouni (2011),³²³ and Kai Ambos (2014)³²⁴ were also scrutinized in the legal analysis of the crime of persecution on religious grounds, as a crime against humanity, according to Article 7.1.h of the Rome Statute.³²⁵ A significant portion of the ICC case-law concerning genocide and crimes against humanity was also scrutinized in the present book, for instance (in alphabetical order), *Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-*

³¹² Gerhard Werle & Florian Jessberger. *Supra* note 24.

³¹³ Aisling O’Sullivan, *Universal Jurisdiction in International Criminal Law: The Debate and the Battle for Hegemony* (Routledge, 2017).

³¹⁴ Victor Tsilonis. *Supra* note 306. pp. 103–127.

³¹⁵ Larry May, *Crimes Against Humanity: A Normative Account* (Cambridge University Press, 2005).

³¹⁶ M. Cherif Bassiouni, *Crimes Against Humanity: Historical Evolution and Contemporary Application* (Cambridge University Press, 2011).

³¹⁷ Norman Geras, *Crimes Against Humanity: Birth of a Concept* (Manchester University Press, 2011). pp. 1–31.

³¹⁸ Christopher K. Hall, Joseph Powderly & Niamh Hayes, Article 7. Crimes Against Humanity in *The Rome Statute of the International Criminal Court: A Commentary* 144–294 (Otto Triffterer & Kai Ambos eds., Hart Publishing, 3d ed. 2016).

³¹⁹ Victor Tsilonis. *Supra* note 306. pp. 103–126

³²⁰ Robert Dubler SC & Matthew Kalyk, *Crimes Against Humanity in the 21st Century: Law, Practice and Threats to International Peace and Security* (Brill/Nijhoff, 2018). pp. 1–34.

³²¹ *Idem*. pp. 745–958.

³²² Gideon Boas, James L. Bischoff & Natalie L. Reid. *Supra* note 62. pp. 88–99.

³²³ M. Cherif Bassiouni. *Supra* note 316. pp. 396–405.

³²⁴ Kai Ambos. *Supra* note 63. pp. 104–108.

³²⁵ United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544. Article 7.1.h

Rahman (Apr. 27, 2007),³²⁶ Bosco Ntaganda (June 9, 2014),³²⁷ (July 8, 2019),³²⁸ (Nov. 7, 2019),³²⁹ Callixte Mbarushimana (Dec. 16, 2011);³³⁰ Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali (Jan. 23, 2012),³³¹ Germain Katanga (Sept. 30, 2008),³³² (March 7, 2014);³³³ Jean-Pierre Bemba Gombo (June 15, 2009),³³⁴ (March 21, 2016);³³⁵ Omar Hassan Ahmad Al Bashir (July 12, 2010);³³⁶ Thomas Lubanga Dyilo (Jan. 29, 2007)³³⁷ (March 18, 2008),³³⁸ (Apr. 8, 2009),³³⁹ (March 14, 2012),³⁴⁰ (July 10, 2012),³⁴¹ (July 10, 2012),³⁴² (Dec. 1, 2014),³⁴³ and William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang (Jan. 23, 2012).³⁴⁴

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- ³²⁶ Prosecutor v. Ahmad Muhammad Harun (“Ahmad Harun”) and Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”), Case No. ICC-02/05-01/07, decision on the prosecution application under Article 58(7) of the Rome Statute, (Apr. 27, 2007).
- ³²⁷ Prosecutor v. Bosco Ntaganda, Case No. ICC-01/04-02/06, decision pursuant to Article 61(7)(a) and (b) of the Rome Statute, (June 9, 2014).
- ³²⁸ Prosecutor v. Bosco Ntaganda, Case No. ICC-01/04-02/06, judgment, (July 8, 2019).
- ³²⁹ Prosecutor v. Bosco Ntaganda, Case No. ICC-01/04-02/06, sentencing judgment, (Nov. 7, 2019).
- ³³⁰ Prosecutor v. Callixte Mbarushimana, Case No. ICC-01/04-01/10, decision on the confirmation of charges, (Dec. 16, 2011).
- ³³¹ Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, Case No. ICC-01/09-02/11, decision on the confirmation of charges pursuant to Article 61(7)(a) and (b) of the Rome Statute, (Jan. 23, 2012).
- ³³² Prosecutor v. Germain Katanga, Case No. ICC-01/04-01/07, decision on the confirmation of charges, (Sept. 30, 2008).
- ³³³ Prosecutor v. Germain Katanga, Case No. ICC-01/04-01/07, judgment pursuant to article 74 of the Statute, (March 7, 2014).
- ³³⁴ Prosecutor v. Jean-Pierre Bemba Gombo, Case No. ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the charges of the Prosecutor against Jean-Pierre Bemba Gombo, (June 15, 2009).
- ³³⁵ Prosecutor v. Jean-Pierre Bemba Gombo, Case No. ICC-01/05-01/08, judgment pursuant to article 74 of the Statute, (March 21, 2016).
- ³³⁶ Prosecutor v. Omar Hassan Ahmad Al Bashir, Case No. ICC-02/05-01/09, second decision on the prosecution’s application for a warrant of arrest, (July 12, 2010).
- ³³⁷ Prosecutor v. Thomas Lubanga Dyilo. ICC-01/04-01/06. *Supra* note 299.
- ³³⁸ Prosecutor v. Thomas Lubanga Dyilo. ICC-01/04-01/06-1229-AnxA. *Supra* note 300.
- ³³⁹ Prosecutor v. Thomas Lubanga Dyilo. ICC-01/04-01/06. *Supra* note 301.
- ³⁴⁰ Prosecutor v. Thomas Lubanga Dyilo. ICC-01/04-01/06. *Supra* note 302.
- ³⁴¹ Prosecutor v. Thomas Lubanga Dyilo. ICC-01/04-01/06. *Supra* note 303.
- ³⁴² Prosecutor v. Thomas Lubanga Dyilo. ICC-01/04-01/06. *Supra* note 304.
- ³⁴³ Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06 A 5, judgment on the appeal of Mr. Thomas Lubanga Dyilo against his conviction, (Dec. 1, 2014).
- ³⁴⁴ Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang, Case No. ICC-01/09-01/11, decision on the confirmation of charges pursuant to Article 61(7)(a) and (b) of the Rome Statute, (Jan. 23, 2012).

A critical and practical aspect of the jurisdiction and the power of the Prosecutor of the ICC is related to two essential issues: First) the issue of selectivity in International Criminal Law and Second) the issue related to the decision as to what cases should be investigated. For example, Robert Cryer delineated profound aspects of this issue in *Prosecuting International Crimes: Selectivity and the International Criminal Law Regime* (2005).³⁴⁵ Conversely, Fabricio Guariglia and Emeric Rogier wrote the Selection of Situations and Cases by the OTP of the ICC (2015).³⁴⁶ William A. Schabas addressed the process of selecting the crimes which most seriously violated international public order in his handbook *The UN International Criminal Tribunals* (2006),³⁴⁷ as well as in his specific works on the topic: *Victor's Justice* (2010),³⁴⁸ and *Selecting Situations and Cases in The Law and Practice of the International Criminal Court* (2015).³⁴⁹

Another major issue related to jurisdiction resides in the relationship between national and the international system efforts in holding perpetrators of atrocities accountable. In this regard, see, for example, the critical contribution of Jane E. Stromseth in *Challenges in the Pursuit of Accountability* (2003).³⁵⁰ This discussion is essential to analyze four crucial aspects: Firstly) to analyze the states' cooperation with the international courts and tribunals – see, for example, Robert Cryer *et al.* (2007)³⁵¹ –; secondly) to analyze the prosecution of crimes under International Criminal Law by domestic courts; thirdly) to analyze the challenges related to the Principle of Complementarity; and fourthly) to analyze reparations for victims of genocide – see, for example, William A. Schabas (2003),³⁵² Jane E. Stromseth

³⁴⁵ Robert Cryer, *Prosecuting International Crimes: Selectivity and International Criminal Law Regime* (Cambridge University Press, 2005).

³⁴⁶ Fabricio Guariglia and Emeric Rogier, *The Selection of Situations and Cases by the OTP of the ICC in The Law and Practice of the International Criminal Court* 350–364 (Carsten Stahn ed., Oxford University Press, 2015).

³⁴⁷ William A. Schabas *Supra* note 56.

³⁴⁸ William A. Schabas, *Victor's Justice: Selecting Situations at the International Criminal Court*, 43 *J. Marshall L. Rev.* 535 (2010).

³⁴⁹ William A. Schabas, *Selecting Situations and Cases in The Law and Practice of the International Criminal Court* 365–381 (Carsten Stahn ed., Oxford University Press, 2015).

³⁵⁰ Jane E. Stromseth, *Challenges in the Pursuit of Accountability in Accountability for Atrocities: National and International Responses* 1–36 (Jane E. Stromseth ed., Transnational Publishers Inc: Ardsley, 2003).

³⁵¹ Robert Cryer, Håkan Friman, Darryl Robinson & Elizabeth Wilmschurst. *Supra* note 21.

³⁵² William A. Schabas. *Supra* note 12.

(2003),³⁵³ Aram A. Schvey (2003),³⁵⁴ Larry Charles Dembowski (2003),³⁵⁵ Carla Ferstman, Mariana Goetz, and Alan Stephens (2009)³⁵⁶ and Gerhard Werle (2014).³⁵⁷

The interconnection between the international criminal accountability and the domestic obligation to prosecute human rights violations of prior regimes was meticulously explored in the magisterial work of Diane F. Orentlicher (1991)³⁵⁸ and Juan E. Méndez (2007),³⁵⁹ along with David A. Tallman (2003),³⁶⁰ Amoury Combs Nancy (2018),³⁶¹ Jason Strain and Elizabeth Keyes (2003).³⁶² Importantly, Cherif Bassiouni M. (2003),³⁶³ E. van. Sliedregt (2003),³⁶⁴ Guénaél Mettraux (2006),³⁶⁵ and Sarah Nouwen (2016)³⁶⁶ wrote about the genocide's perpetrator, as well as about superior responsibility, the international criminal responsibility of non-state actors, and the issue of state criminality v. individual criminality, in the context of the crime of genocide.

³⁵³ Jane E. Stromseth, Challenges in the Pursuit of Accountability *in* Accountability for Atrocities: National and International Responses 1–36 (Jane E. Stromseth ed., Transnational Publishers Inc: Ardsley, 2003).

³⁵⁴ Aram A. Schvey, Striving for Accountability in the Former Yugoslavia *in* Accountability for Atrocities: National and International Responses 39–85 (Jane E. Stromseth ed., Transnational Publishers Inc: Ardsley, 2003).

³⁵⁵ Larry Charles Dembowski, The International Criminal Court: Complementarity *in* Accountability for Atrocities: National and International Responses 135–169 (Jane E. Stromseth ed., Transnational Publishers Inc: Ardsley, 2003).

³⁵⁶ Carla Ferstman, Mariana Goetz & Alan Stephens eds., Reparations for Victims of Genocide, War Crimes and Crimes against Humanity Systems in Place and Systems in the Making (Martinus Nijhoff Publishers, 2009).

³⁵⁷ Gerhard Werle & Florian Jessberger. *Supra* note 24.

³⁵⁸ Diane F. Orentlicher, Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime, 100 Yale L.J. 2537 (1991).

³⁵⁹ Juan E. Méndez, Accountability for Past Abuses *in* Genocide and Human Rights 429–456 (Mark Lattimer ed., Ashgate Publishing Limited, 2007).

³⁶⁰ David A Tallman *Supra* note 309. pp. 375–409.

³⁶¹ Nancy Amoury Combs, Deconstructing the Epistemic Challenges to Mass Atrocity Prosecutions, 75 Wash. & Lee L. Rev. 223 (2018).

³⁶² Jason Strain & Elizabeth Keyes, Accountability in the Aftermath of Rwanda's Genocide *in* Accountability for Atrocities: National and International Responses 87–133 (Jane E. Stromseth ed., Transnational Publishers Inc: Ardsley, 2003).

³⁶³ M. Cherif. Bassiouni. *Supra* note 20.

³⁶⁴ E. Van. Sliedregt, The Criminal Responsibility of Individuals for Violations of International Humanitarian Law (Asser Press, 2003).

³⁶⁵ Guénaél Mettraux *Supra* note 239.

³⁶⁶ Sarah Nouwen *Supra* note 59. pp. 738–762.

Regarding the responsibility to protect and the duty to prevent genocide as well as the Security Council's role in humanitarian intervention, this issue was substantively addressed in the International Criminal Law scholarship, with particular highlight to the leading work of William A. Schabas, "Genocide and the International Court of Justice: Finally, a duty to prevent the crime of crimes" (2007).³⁶⁷ Other scholars shed essential light on the issue – see, for example, Jack Donnelly (2007),³⁶⁸ Jonathan I. Charney (2007),³⁶⁹ Helene de Pooter (2009),³⁷⁰ Jeremy Sarkin and Carly Fowler (2010),³⁷¹ Serena Forlati (2011),³⁷² Mark Gibney (2011),³⁷³ Inger Skjelsbaek (2012),³⁷⁴ Andreas Zimmermann (2012),³⁷⁵ Milena Sterio (2015),³⁷⁶ Caroline E. Nabity (2016),³⁷⁷ Sarah Lesser (2017),³⁷⁸ and Marquise Houle (2017–2018).³⁷⁹ Particular attention is dedicated to selected ICJ case-law: *Reservations to Convention on the Prevention and Punishment of the Crime of*

³⁶⁷ William A. Schabas. *Supra* note 12.

³⁶⁸ Jack Donnelly, Genocide and humanitarian intervention *in in* Genocide and Human Rights 385–401 (Mark Lattimer ed., Ashgate Publishing Limited, 2007).

³⁶⁹ Jonathan I. Charney, Anticipatory Humanitarian Intervention in Kosovo *in* Genocide and Human Rights 403–426 (Mark Lattimer ed., Ashgate Publishing Limited, 2007).

³⁷⁰ Helene de Pooter, Obligation to Prevent Genocide: A Large Shell Yet to Be Filled, *The*, 17 *Afr. Y.B. Int'l L.* 287 (2009).

³⁷¹ Jeremy Sarkin; Carly Fowler, The Responsibility to Protect and the Duty to Prevent Genocide: Lessons to Be Learned from the Role of the International Community and the Media during the Rwandan Genocide and the Conflict in Former Yugoslavia, 33 *Suffolk Transnat'l L. Rev.* 35 (2010).

³⁷² Serena Forlati, Legal Obligation to Prevent Genocide: Bosnia v. Serbia and beyond, *The*, 31 *Polish Y.B. Int'l L.* 189 (2011).

³⁷³ Mark Gibney, Universal Duties: The Responsibility to Protect, the Duty to Prevent (Genocide) and Extraterritorial Human Rights Obligations, 3 *Global Resp. Protect* 123 (2011).

³⁷⁴ Inger Skjelsbaek, Responsibility to Protect or Prevent: Victims and Perpetrators of Sexual Violence Crimes in Armed Conflicts, 4 *Global Resp. Protect* 154 (2012).

³⁷⁵ Andreas Zimmermann, Security Council and the Obligation to Prevent Genocide and War Crimes, *The*, 32 *Polish Y.B. Int'l L.* 307 (2012).

³⁷⁶ Milena Sterio, The Applicability of the Humanitarian Intervention Exception to the Middle Eastern Refugee Crisis: Why the International Community Should Intervene against ISIS, 38 *Suffolk Transnat'l L. Rev.* 325 (2015).

³⁷⁷ Caroline E. Nabity, It's Genocide, Now What: The Obligations of the United States under the Convention to Prevent and Punish Genocide Being Committed at the Hands of ISIS, 8 *Creighton Int'l & Comp. L.J.* 70 (2016).

³⁷⁸ Sarah Lesser, Early Non-Military Intervention to Prevent Atrocity Crimes, 10 *Am. J. Mediation* 84 (2017).

³⁷⁹ Marquise Houle, The Responsibility to Protect, Military Intervention and Genocide, 8 *Int'l L. Y.B.* 139 (2017–2018).

Genocide, 1951 (May 28),³⁸⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, 1996 (July 11, 1996),³⁸¹ the *Democratic Republic of the Congo v. Belgium*, 2000 (February 14),³⁸² *Yugoslavia v. Bosnia and Herzegovina*, 2003, (Feb. 3),³⁸³ *Bosnia and Herzegovina v. Serbia and Montenegro*, 2007 (February 26),³⁸⁴ *Croatia v. Serbia*, 2008 (Nov. 18),³⁸⁵ and *Croatia v. Serbia*, 2015 (February 3).³⁸⁶ Notably, in 2019, Professor Robert Frau wrote in *The International Criminal Court and the Security Council*³⁸⁷ about the political issues and challenges in the relation between the United Nations Security Council and the International Criminal Court.

Significantly, back in 1997, Kurt Jonassohn had already considered the study of genocide from a comparative perspective with human rights.³⁸⁸ He also proposed a methodology for studying genocide through a comparative research approach. This same approach was lately adopted by Mark Lattimer, in 2007,³⁸⁹ and by Antonio Cassese, in 2008,³⁹⁰ who interpreted the atrocities of war through a human dimension. In two superlative works, Martin Shaw analyzed genocide through its moral and philosophical perspectives – *War and genocide: Organized Killing in Modern Societies* (2003),³⁹¹ and through its sociological aspect. Considering the sociological aspect of it, William A. Schabas analyzed the similarities and distinctions of both concepts in *Ethnic Cleansing and Genocide* (2003-

³⁸⁰ Reservations to Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, 1951 I.C.J. 15 (May 28).

³⁸¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, Preliminary Objections, judgment, 1996 1. C. J. 595 (July 11, 1996).

³⁸² *Democratic Republic of the Congo v. Belgium*. I.C.J. 3. *Supra* note 69.

³⁸³ *Bosnia and Herzegovina v. Yugoslavia*. I.C.J. 7. *Supra* note 70.

³⁸⁴ *Bosnia and Herzegovina v. Serbia and Montenegro*. I.C.J. 43. *Supra* note 71.

³⁸⁵ *Croatia v. Serbia*. I.C.J. 412. *Supra* note 72.

³⁸⁶ *Croatia v. Serbia*. I.C.J. 3. *Supra* note 73.

³⁸⁷ Robert Frau, *The International Criminal Court and the Security Council: The International Criminal Court as a Political Tool?* In *The International Criminal Court in Turbulent Times* 112–130 (Gerhard Werle & Andreas Zimmermann eds., Asser Press, 2019).

³⁸⁸ Kurt Jonassohn & Karin Solveig Björnson, *Genocide and Gross Human Rights Violation in Comparative Perspective* (Transaction Publishers, 1997).

³⁸⁹ Mark Lattimer ed., *Genocide and Human Rights* (Ashgate Publishing Limited, 2007).

³⁹⁰ Antonio Cassese, *The Human Dimension of International Law: Selected Papers* (Oxford University Press, 2008).

³⁹¹ Martin Shaw, *War and genocide: Organized Killing in Modern Societies* (Polity Press, 2003).

2004).³⁹² Later on, Martin Shaw, leaning on the sociological aspects of the issue, adopted, in *What is genocide?* (2007),³⁹³ a critical theoretical approach to point out the contradictions in the genocide legal theory. In the same year, Jacques Semelin explored, in *Purify and Destroy*, the political uses of genocide by governments to establish and uphold political power.

C.2. The literature on the hypothetical genocide of Christians in Iraq, perpetrated by ISIL/DAESH fighters

The Islamic State in Iraq and the Levant (ISIL/DAESH) occupied large parts of Iraq from 2014 to 2017. During this time, ISIL/DAESH members committed grave violations of International Criminal Law and international humanitarian law. In March 2015, an OHCHR³⁹⁴ mission field investigation in Iraq reported “reliable information about acts of violence perpetrated against civilians because of their affiliation or perceived affiliation to a religious group.”³⁹⁵ Later on, several other reports from states, official governmental organizations, and inter-governmental organizations – recounted atrocities committed by ISIL/DAESH in Iraq from 2014 to 2017. For instance, reports from the U.N. Secretary-General (June 5, 2015),³⁹⁶ (Aug. 28, 2018),³⁹⁷ from the Representative of the Office of the United Nations High Commissioner for Human Rights,³⁹⁸ the Representative of the Committee on the Elimination of Discrimination against Women,³⁹⁹ from the Representative of the UN Secretary-General (July 9, 2018),⁴⁰⁰ (Aug. 8, 2018),⁴⁰¹ the Representative of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions,⁴⁰² from the Security Council,⁴⁰³ from the European Parliament (Feb. 4, 2016),⁴⁰⁴ (2017),⁴⁰⁵ the UK Parliament,⁴⁰⁶ as well as from the US Department of State.⁴⁰⁷

³⁹² William A. Schabas, *Ethnic Cleansing and Genocide: Similarities and Distinctions*, 3 *Eur. Y.B. Minority Issues* 109 (2003–2004).

³⁹³ Martin Shaw, *What is Genocide?* (Polity Press, 2007).

³⁹⁴ The Office of the United Nations High Commissioner for Human Rights – OHCHR.

³⁹⁵ U.N. Doc. A/HRC/28/18 (March 27, 2015). *Preamble*.

³⁹⁶ U.N. Doc. A/69/926-S/2015/409 (June 5, 2015). ¶ 71.

³⁹⁷ U.N. Doc. A/73/347 (Aug. 28, 2018). ¶ 9.

³⁹⁸ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 78.

³⁹⁹ U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 9.

⁴⁰⁰ U.N. Doc. S/2018/677 (July 9, 2018). ¶ 3.

⁴⁰¹ U.N. Doc. S/PV.8324 (Aug. 8, 2018). ¶ 3.

⁴⁰² U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶¶ 23, 25, 28, 73.

⁴⁰³ S.C. Res. 2379 (Sept. 21, 2017). ¶ 1.

⁴⁰⁴ Eur. Parl., *Systematic Mass Murder of Religious Minorities by the so-called ‘ISIS/Daesh’* (2016/2529(RSP)), Resolution (Feb. 4, 2016). p. 35/79. h.

Besides, several reports from international non-governmental organizations explicitly indicated that ISIL/DAESH committed egregious atrocities against Christians in Iraq from 2014 to 2017. See, for example, the reports from 1) Genocide Watch, *ISIS is Committing Genocide* (2015);⁴⁰⁸ 2) Knights of Columbus, *Genocide Against Christians in the Middle East: A Report Submitted to Secretary of State John Kerry by the Knights of Columbus and in Defense of Christians* (2016);⁴⁰⁹ 3) The Hudson Institute, *The ISIS Genocide of Middle Eastern Christian Minorities and Its Jizya Propaganda Ploy* (2016)⁴¹⁰ and 4) Human Rights Watch, *Accountability for ISIS Crimes in Iraq* (2017).⁴¹¹ Such reports indicate that ISIL/DAESH fighters perpetrated mass and individual killings, executions by, *inter alia*, hanging, stoning, drowning, throwing persons off buildings, beheadings, crucifixions, shootings, burnings, and other forms of murders.

These reports also indicate the perpetration of the following acts specifically against Christians in Iraq, from 2014 to 2017: the taking of hostages, use of persons as human shields, torture, beatings, mutilation, amputation, rape, enslavement, extensive violence, and inhuman and degrading treatment, causing serious bodily or mental harm, sexual slavery and abuse of women and girls, abductions, enforced disappearances, intentional displacement of the Christian population, the kidnapping of children, separation of children from their mothers, systematic destruction of Christian places of worship, forced conversions, the destruction of their Christian cultural heritage and historic sites and monuments. There is a debate about whether the existing evidence of persecution of Chris-

⁴⁰⁵ Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Resolution 2190 (2017). ¶¶ 3, 3.1, 4.

⁴⁰⁶ UK Parliament, Genocide in Syria and Iraq, Early Day Motion, Sponsored by Robert Flello (Jan. 26, 2016).

⁴⁰⁷ U.S. Dep't of State, Department Press, Remarks by Secretary of State John Kerry (Mar. 17, 2016).

⁴⁰⁸ *ISIS is Committing Genocide*, GENOCIDE WATCH (Oct. 14, 2015). Conclusions, ¶ 2.

⁴⁰⁹ Knights of Columbus affirmed in its report that there is "overwhelming direct and circumstantial evidence" that ISIS and its affiliates committed genocide against Christians in Iraq (*Genocide Against Christians in the Middle East: A Report Submitted to Secretary of State John Kerry by the Knights of Columbus and in Defense of Christians*, KNIGHTS OF COLUMBUS, Observatory on intolerance and discrimination against Christians, Mar. 9, 2016). pp. 27, 38, 39, 54–131, 135–199.)

⁴¹⁰ *The ISIS Genocide of Middle Eastern Christian Minorities and Its Jizya Propaganda Ploy*, THE HUDSON INSTITUTE, Center for Religious Freedom, Nina Shea (August 2016). *passim*.

⁴¹¹ *Flawed Justice Report: Accountability for ISIS Crimes in Iraq*, HUMAN RIGHTS WATCH (December 2017). pp. 16, 21 and 27.

tians in Iraq by terrorist members of the ISIL/DAESH regime (2014-2017) amounts to genocide. Much of the controversy indicates that the documentation of ISIL/DAESH crimes against Christians is substantial yet incomplete.⁴¹²

Some crucial reasons for the incompleteness of data are: 1) Due to security concerns, access to different parts of Iraq was restricted until ISIL/DAESH's defeat in December 2017. Despite ISIL/DAESH's defeat in Iraq in December 2017, the terrorist group reportedly continues to attempt isolated attacks against civilians and security forces, particularly in the Baghdad region.⁴¹³ On October 18, 2018, the U.S. Department of State, through its Bureau of Consular Affairs, issued a red flag travel advisory for Iraq, the highest level of concern for visitors/foreigners.⁴¹⁴ In addition, from August 2018, eyewitnesses reported active foreign terrorist fighters in search of children for the purposes of trafficking and sexual slavery. This seriously impeded the verification and documentation of cases of genocide against Christians; 2) Owing to the fear of police involvement with armed groups, several families of victims were reluctant to report violations of rights to the Iraqi national police authorities; and 3) Most of the humanitarian advocacy agencies placed in the Autonomous Administration in Northern Iraq lack official access permits from the Iraqi government to the areas affected by conflict in Baghdad and in Mosul. This compromises the reporting and documentation of possible cases of genocide.⁴¹⁵

Nevertheless, despite the incompleteness of data, various bodies have suggested that these acts are consistent with the crime of genocide: In the United States, The Senate,⁴¹⁶ The House of Representatives,⁴¹⁷ separately,

⁴¹² Huma Haider, *The Persecution of Christians in the Middle East*. University of Birmingham. London: Assets Publishing Service – UK Government. February 16, 2017. pp. 11–12.

⁴¹³ Rep. of the S.C., *Monthly Forecast: Situation in Iraq*, February 2018 (Jan. 31, 2018).

⁴¹⁴ U.S. Dep't of State, Bureau of Consular Affairs. *Iraq Travel Advisory*. October 18, 2018.

⁴¹⁵ U.N. Doc. S/2018/770 (August 16, 2018). ¶ 10).

⁴¹⁶ S. 2377, 114th Cong. (Dec. 9, 2015). ¶ 7.

⁴¹⁷ 163 Cong. Rec. H5368 (daily ed. June 29, 2017) (statement of Rep. Ted Poe). p. H5369; 163 Cong. Rec. E1315 (daily ed. Oct. 3, 2017) (statement of Rep. Christopher H. Smith). Preamble; 164 Cong. Rec. S6876 (daily ed. Oct. 11, 2018) (statement of Rep. Mitch McConnell). ¶ 1; 164 Cong. Rec. H9600 (daily ed. Nov. 27, 2018) (statement of Rep. Christopher H. Smith). P. H9603; 164 Cong. Rec. E1606 – H.R. 390 (daily ed. Dec. 6, 2018) (statement of Rep. Anna G. Eshoo). Drafting. preamble; 165 Cong. Rec. X 1.1/A: X/A (daily ed. Jan. 10, 2017) (statement of Rep. Christopher H. Smith). Preamble; 165 Cong. Rec. H349 (daily ed. Jan. 9, 2019) (statement of Rep. Jeff Fortenberry). p. H352; 163 Cong. Rec. H4632 (daily ed. June 6, 2017) (statement of

as well as assembled,⁴¹⁸ The Department of State Secretary,⁴¹⁹ and its Office of the Spokesperson,⁴²⁰ its Office of the Legal Adviser,⁴²¹ the Special Presidential Envoy for the Global Coalition to Defeat ISIS,⁴²² as well as the U.S. Permanent Representative to the United Nations.⁴²³

Likewise, on numerous occasions, the European Parliament formally recognized that some of these atrocities might sustain a formal accusation of genocide, particularly the killings, slaughtering, beatings, extortion, torture, and other inhuman and degrading treatment, extermination, and systematic cleansing, forced displacement, abduction/kidnappings, deprivation of liberty, enslavement, human trafficking, hostage-taking, use of persons as human shields, or for suicide bombing, forced

Rep. Edward Royce). p. H4633; 165 Cong. Rec. H2350 (daily ed. Mar. 5, 2019) (statement of Rep. Jeff Fortenberry). p. H2350.

⁴¹⁸ H.R.Con.Res. 75, 114th Cong. (Sept. 9, 2015). ¶ 1; H.R. 4017, 114th Cong. (Nov. 16, 2015). Preamble; H.R.Con.Res. 75, 114th Cong. (Mar. 15, 2016). Dispositive part, p.2; H.R.Con.Res. 41, 114th Cong. (July 18, 2016). ¶ 7; H.R. 407, 115th Cong. (Dec. 12, 2017). Preamble; H. Res. 1117, 115th Cong. (Oct. 5, 2018). Preamble; H.R. 390, 115th Cong. (Nov. 29, 2018). Drafting. Preamble; Sec. 2. Findings. ¶ 3; H. Res. 259, 116th Cong. (Mar. 27, 2019). p. 2; 165 Cong. Rec. H349 (daily ed. Jan. 9, 2019) (statement of Rep. Jeff Fortenberry). p. H351; H. Res. 259, 116th Cong. (Mar. 27, 2019). p. 2.

⁴¹⁹ U.S. Dep't of State, Department Press, Remarks by Secretary of State John Kerry (Mar. 17, 2016).

⁴²⁰ U.S. Dep't of State, Office of the Spokesperson, Department Press, Briefing by Heather Nauert (Aug. 3, 2017); U.S. Dep't of State, Office of the Spokesperson, Department Press, Briefing by Heather Nauert (Aug. 15, 2017); U.S. Dep't of State, Office of the Spokesperson, Department Press, Briefing by Heather Nauert (Oct. 26, 2017); U.S. Dep't of State, Office of the Spokesperson, Department Press, Readout of USAID Administrator Green and Ambassador-at-Large for International Religious Freedom Samuel Brownback's Trip to Northern Iraq (July 5, 2018).

⁴²¹ U.S. Dep't of State, Office of the Legal Adviser, Digest of the United States Practice in International Law (2016). p. 780; U.S. Dep't of State, Office of the Legal Adviser, Digest of the United States Practice in International Law (2017). p. 283.

⁴²² U.S. Dep't of State, Department Press, Remarks by Special Presidential Envoy for the Global Coalition to Defeat ISIS Brett McGurk (June 22, 2017); U.S. Dep't of State, Department Press, Remarks by Special Presidential Envoy for the Global Coalition to Defeat ISIS Brett McGurk (July 8, 2017); U.S. Dep't of State, Department Press, Remarks by Special Presidential Envoy for the Global Coalition to Defeat ISIS Brett McGurk (July 13, 2017); U.S. Dep't of State, Department Press, Special Briefing by Special Presidential Envoy for the Global Coalition to Defeat ISIS Brett McGurk (Dec. 21, 2017); U.S. Dep't of State, Department Press, Remarks by Special Presidential Envoy for the Global Coalition to Defeat ISIS Brett McGurk (June 26, 2018).

⁴²³ U.S. Permanent Representative to the United Nations, Ambassador Nikki Haley, Explanation of Vote Following the Adoption of UN Security Council Resolution 2379 on Accountability for ISIS Atrocities (Sept. 21, 2017).

marriage, rape, sexual slavery of Christian women and children and other forms of sexual violence, separation of Christian children from their mothers, forcibly transferring them to another group, forceful conversions to Islam, systematic destruction of Christian places of worship and religious artifacts, the kidnapping of priests, vandalization of tombs and cemeteries, declarations and statements of doctrine and policy encompassing the destruction of Christians.⁴²⁴ Most of these declarations and statements were clearly broadcasted by ISIL/DAESH itself in their propaganda magazines *Dabiq*⁴²⁵ and *Rumiyah*.⁴²⁶ The number of Christians in Iraq

⁴²⁴ Eur. Parl., Committee on Legal Affairs and Human Rights, Threats Against Humanity Posed by the Terrorist Group Known as “IS”: Violence Against Christians and Other Religious or Ethnic Communities, Compendium of Amendments (Final version), Doc. No. 13618 (Sept. 30, 2014); Eur. Parl., Systematic Mass Murder of Religious Minorities by the so-called ‘ISIS/Daesh’ (2016/2529(RSP)), Resolution (Feb. 4, 2016); Eur. Parl., Situation in Northern Iraq/Mosul (TA(2016)0422), Resolution (Oct. 27, 2016). d; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Resolution 2190 (2017). ¶ 1; Eur. Parl., EU priorities for the UN Human Rights Council Sessions in 2017 (2017/2598(RSP)), Resolution (Mar. 16, 2017). ¶ 21; Eur. Parl., Committee on Legal Affairs and Human Rights, Humanitarian Consequences of the Actions of the Terrorist Group Known as “Islamic State”, Draft Resolution, Compendium of Amendments (Revised version), Doc. No. 13741 (Apr. 21, 2017); Eur. Parl., Committee on Legal Affairs and Human Rights, Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Report, Doc. No. 14402 (Sept. 22, 2017); Eur. Parl., Annual Report on Human Rights and Democracy in the World 2016 and the European Union’s Policy on the Matter (2017/2122(INI)), Resolution (Dec. 13, 2017).

⁴²⁵ This book analyzes the following *Dabiq* Magazine issues: *Dabiq*, Issue 1, Ramadan 1435 (July 2014); *Dabiq*, Issue 2, Ramadan 1435 (July 2014); *Dabiq*, Issue 3, Shawwal 1435 (July/August 2014); *Dabiq*, Issue 4, Dhul-Hijah 1435 (September 2014); *Dabiq*, Issue 5, Muharram 1436 (October 2014); *Dabiq*, Issue 6, Rabi’Al-Awwal 1436 (December, 2014); *Dabiq*, Issue 7, Rabi’ Al Akhir 1436 (February, 2015); *Dabiq*, Issue 8, Jumada Al-Akhirah 1436 (March, 2015); *Dabiq*, Issue 9, Sha’ban 1436 (May, 2015); *Dabiq*, Issue 10, Ramadan 1436 (July, 2015); *Dabiq*, Issue 11, Dhul-Qa’dah 1436 (September, 2015); *Dabiq*, Issue 12, Safar 1437 (November, 2015); *Dabiq*, Issue 13, Rabi’ Al-Akhir 1437 (January, 2016); *Dabiq*, Issue 14, Rajab 1437 (April, 2016); and *Rumiyah*, Issue 1, Dhul Hijah 1437 (September 2016).

⁴²⁶ This book analyzes the following *Rumiyah* Magazine issues: *Rumiyah*, Issue 2, Muharram 1438 (October 2016); *Rumiyah*, Issue 3, Safar 1438 (November 2016); *Rumiyah*, Issue 4, Rabi’ al-Awwal 1438 (December 2016); *Rumiyah*, Issue 5, Rabi’ al-Akhir 1438 (January 2017); *Rumiyah*, Issue 6, Jumada al-Ula 1438 (February 2017); *Rumiyah*, Issue 7, Jumada al-Akhirah 1438 (March 2017); *Rumiyah*, Issue 8, Rajab 1438 (April 2017); *Rumiyah*, Issue 9, Sha’ban 1438 (May 2017); and *Rumiyah*, Issue 10, Ramadan 1438 (June 2017).

is thought to have declined during the ISIL/DAESH regime, particularly in Mosul and in the Ninewa Plains.⁴²⁷

The international criminal law scholarship lacks works that analyze the specific issue of whether the ISIL/DAESH persecution of Christians in Iraq, from 2014 to early 2017, constituted genocide, within the meaning and scope of the 1948 Genocide Convention, or persecution, within the meaning of the 1998 Rome Statute. Four works are worthy of attention in this regard. They are rare texts that explore some of the research questions of this thesis: 1) Mindy Belz's book: *They Say We Are Infidels: On the Run From ISIS With Persecuted Christians in the Middle East* (2016);⁴²⁸ 2) The book edited by Ronald Rychlak and Jane Adolphe: *The Persecution and Genocide of Christians in Middle East: Prevention, Prohibition & Prosecution* (2017);⁴²⁹ 3) Sarah Myers Raben's paper: *The ISIS Eradication of Christians and Yazidis: Human Trafficking, Genocide, and the Missing International Efforts to Stop It* (2018)⁴³⁰ and Eric Osborne, Matthew Dowd, and Ryan McBrearty's paper: *Intending the Worst: The Case of ISIS's Specific Intent to Destroy the Christians of Iraq* (2019).⁴³¹

Three other pieces addressed the issue, but incidentally alone. They considered much more the general aspects and the machinery of ISIL/DAESH and its threat to global security, rather than what risks ISIL/DAESH directly posed for Christians in Iraq: the paper from Frederic Gilles Sourgens, *The End of Law: The ISIL/DAESH Case Study for a Comprehensive Theory of Lawlessness* (2015)⁴³² and the books from 1) Patrick Cockburn, *The Rise of Islamic State: ISIS and the New Sunni Revolution* (2015),⁴³³ 2) Robert Spencer, *The Complete Infidel's Guide to ISIS* (2015);⁴³⁴ 3) Lawrence Wright, *The Terror Years: From Al-Qaeda to the Islamic State* (2016),⁴³⁵ 4) Daniel Silander and John Janzekovic's book: *In-*

⁴²⁷ U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶ 32.

⁴²⁸ Mindy Belz, *They Say We Are Infidels: On the Run From ISIS With Persecuted Christians in the Middle East* (Tyndale House Publishers Inc., 2016).

⁴²⁹ Ronald Rychlak & Jane Adolphe eds., *The Persecution and Genocide of Christians in Middle East: Prevention, Prohibition & Prosecution* (Angelico Press, 2017).

⁴³⁰ Sarah Myers Raben, *The ISIS Eradication of Christians and Yazidis: Human Trafficking, Genocide, and the Missing International Efforts to Stop It*, 15 *Braz. J. Int'l L.* 239 (2018).

⁴³¹ Eric Osborne; Matthew Dowd; Ryan McBrearty, *Intending the Worst: The Case of ISIS's Specific Intent to Destroy the Christians of Iraq*, 46 *Pepp. L. Rev.* 545 (2019).

⁴³² Frederic Gilles Sourgens, *The End of Law: The ISIL/DAESH Case Study for a Comprehensive Theory of Lawlessness*, 39 *Fordham Int'l L.J.* 355 (2015).

⁴³³ Patrick Cockburn, *The Rise of Islamic State: ISIS and the New Sunni Revolution* (Verso, 2015).

⁴³⁴ Robert Spencer, *The Complete Infidel's Guide to ISIS* (Regnery Publishing, 2015).

⁴³⁵ Lawrence Wright, *The Terror Years: From Al-Qaeda to the Islamic State* (Alfred A. Knopf, 2016).

ternational Organizations and the Rise of ISIL/DAESH: Global Responses to Human Security Threats (2017)⁴³⁶ and 5) Robert Manne, *The Mind of the Islamic State* (2017).⁴³⁷ Also, two manuscripts in the book edited by Jacob Eriksson & Ahmed Khaleel, *Iraq After ISIS: The Challenges of Post-War Recovery*, are relevant in this context: 1) the text from Simon Mabon & Ana Maria Kumarasamy, *Da'ish, Stasis and Bare Life in Iraq*,⁴³⁸ contributes to understanding the political aspects in the process of the emergence of ISIL/DAESH and 2) the text from Razaw Salihi, *Terror and Torment: The Civilian Journey to Escape Iraq's War Against the "Islamic State,"*⁴³⁹ brings a civilian perspective on surviving Iraq's war against the Islamic State.

Although the papers and books cited above stand out in a scarcity of works, the epistemological approach of these works mentioned above regarded the crimes against Christians in Iraq much more through a political/policy and sociological lens than from a legal standpoint. Some scholars did indeed address the legal aspects related to ISIL/DAESH acts – see, for example, George S. Jr. Yacoubian *et al.* (2005),⁴⁴⁰ Coman Kenny (2017),⁴⁴¹ and Gabor Kajtar (2017)⁴⁴² –, but they did not consider – or did not address – the possibility of a genocide perpetrated by ISIL/DAESH against Christians in Iraq. The pertinent hundreds of Security Council's reports, resolutions, and other Councils' documents on the topic are scarcely mentioned by those works on ISIS in Iraq. Consequentially, the facts described in those documents are not tried against the elements of the crime of genocide. Therefore, there is an open flank in the field yet to be unpassionately clarified and academically investigated.

⁴³⁶ Daniel Silander, Don Wallace & John Janzekovic eds. *International Organizations and the rise of ISIL/DAESH: Global Responses to Human Security Threats* (Routledge, 2017).

⁴³⁷ Robert Manne, *The Mind of the Islamic State* (Prometheus Books, 2017).

⁴³⁸ Simon Mabon & Ana Maria Kumarasamy, *Da'ish, Stasis and Bare Life in Iraq in Iraq After ISIS: The Challenges of Post-War Recovery* 9–28 (Jacob Eriksson & Ahmed Khaleel eds., Palgrave Macmillan, 2019).

⁴³⁹ Razaw Salihi, *Terror and Torment: The Civilian Journey to Escape Iraq's War Against the "Islamic State" in Iraq After ISIS: The Challenges of Post-War Recovery* 79–98 (Jacob Eriksson & Ahmed Khaleel eds., Palgrave Macmillan, 2019).

⁴⁴⁰ George S. Jr. Yacoubian; Anna N. Astvatsaturova; Tracy M. Proietti, *Iraq and the ICC: Should Iraq Nationals be Prosecuted for the Crime of Genocide before the International Criminal Court, 1 War Crimes Genocide & Crimes against Human.* 47 (2005).

⁴⁴¹ Coman Kenny, *Prosecuting Crimes of International Concern: Islamic State at the ICC*, 33 *Utrecht J. Int'l & Eur. L.* 120 (2017).

⁴⁴² Gabor Kajtar, *The Use of Force against ISIL/DAESH in Iraq and Syria – A Legal Battlefield*, 34 *Wis. Int'l L.J.* 535 (2017).

D. Methodology

This book aims to determine the legal nature of the atrocities perpetrated by ISIL/DAESH against Christians in Iraq from 2014 to 2017 and to respond more appropriately to the critical issue of criminal accountability for international crimes. In doing so, this research ultimately intends to further the International Criminal Law scholarship on genocide and persecution as a crime against humanity.

This research employs both a doctrinal and comparative approach, with thoroughly scrutinized texts and detailed analyses as the primary research keys.⁴⁴³ However, this research intends to develop a body of theory that moves beyond simple descriptive research. After a thorough and meticulous reading of all the sources found, the work proceeds with a critical interpretation of them, striving to find the meanings, the connections, and the legal significance behind the ordinary text.⁴⁴⁴

This work encompasses a *historical-comparative* research method that analyzes both the international legislative history of genocide and crimes against humanity as well as the evolution of such crimes in the jurisprudence of international courts.⁴⁴⁵ In doing so, this research *piece* proceeds with a detailed, meticulous, methodical, and technical verification – *doctrinal research* – whether these two bodies of law allow for an interpretation of the elements of the crime of genocide to give substratum for an allegation of genocide against Christians in Iraq. This dragnet approach encompasses a close and robust *black law* and qualitative analysis of legal texts – laws, treaties, Security Council resolutions, and International Criminal Law jurisprudence – that support the research hypothesis.

The research methods used throughout this study also involve in-depth genocide case-law studies and their analyses. Employing both quantitative and qualitative analyses, it proceeds with a three-fold comparison: firstly, a comparison among the UN Tribunals – The ICJ, SCSL, the ICTR, ICTY, and their Residual Mechanism – and the ICC; secondly, a comparison between the international and the domestic (Iraqi) judicial mechanisms to hold perpetrators of genocide accountable and thirdly, a comparison between the Security Council Resolutions on Iraq and the compliance of states with them.

⁴⁴³ Please refer to: W. Lawrence Neuman, *Social Research Methods: Qualitative and Quantitative Approaches* (Pearson Education Limited, 7th. ed. 2014). p. 38.

⁴⁴⁴ *Idem.* p. 17.

⁴⁴⁵ *Idem.* p. 52.

The Security Council's Resolutions constitute a benchmark for protecting persons from direct and indirect consequences of armed conflicts. They establish a framework upon which states, armed/extremist groups, individuals, and private entities can be targets for specific sanctions. Conscious of its responsibility towards international peace and security, both in its duty to protect groups from genocide as well as in its obligation to prevent genocide, the United Nations Security Council is of paramount importance in keeping the relevant parties in line with the principles of international humanitarian law.

To better understand the juridical pattern of the Security Council in protecting groups from genocide, this research methodically scrutinized ordinary Security Council Resolutions, Security Council Resolutions under the authority of Chapter VII of the Charter of United Nations, reports from the Counter-Terrorism Committee (CCT), and the Counter-Terrorism Committee Executive Directorate (CTED), Presidential Statements, and conclusions of the Security Council Thematic Working Groups, such as the one on Iraq and the other on Children and Armed Conflict. Ultimately, the most critical Security Council organ that this research painstakingly followed was the Investigative Team in Iraq, whose primary duties, under Resolution 2379 (2017), included: *collecting, preserving, and storing evidence in Iraq of acts that may amount to war crimes, crimes against humanity and genocide committed by the terrorist group ISIL/DAESH (Da'esh) in Iraq.*

Several other UN documents were analyzed utilizing the triangulation research method,^{446 447} both in tandem and separately: UNAMI reports, General Assembly resolutions, Human Rights Council resolutions, and solemn meetings; reports from the UN General Assembly, the UN Secretary-General, Ad Hoc Committees, the High Commissioner on Human Rights and from the General Assembly Special Representatives on Iraq, and these Representatives: Rep. of the Committee on the Rights of the Child, Special Representative of the Secretary-General for Children and Armed Conflict, Rep. of the Office of the United Nations High Commissioner for Human Rights, Rep. of the Office of the United Nations High Commissioner for Human Rights, Rep. of the Committee on the Elimination of Racial Discrimination, and the Rep. of the Committee on the Elimination of Discrimination

⁴⁴⁶ "Triangulation departs from the idea that looking at something from multiple points of view improves accuracy." (W. Lawrence Neuman. *Supra* note 443. p. 166).

⁴⁴⁷ The term *triangulation* "has been employed somewhat more broadly by Denzin (1970: 310) to refer to an approach that uses 'multiple observers, theoretical perspectives, sources of data, and methodologies', but the emphasis has tended to be on methods of investigation and sources of data. (Alan Bryman, *Social Research Methods* (Oxford University Press, 4th. ed. 2012. p. 312).

against Women. Reports from international non-governmental organizations (NGOs), as well as documents from Governments and their bodies, such as from the US Congress, the US White House, the US Department of State, and from the Council of Europe – European Parliament, provided additional evidentiary bases.

Other documentary research and in-depth readings were necessary throughout this book. Electronic literature for analysis was available through Hein-Online. Similarly, daily news items related to the research topic were also followed-up. Speeches, statements, and memoranda made by various actors in this research were taken into consideration. Finally, the author aimed to liaise with experts in International Criminal Law and victims of ISIL/DAESH atrocities – through reports from international NGOs –, thus employing a mixed methodology approach, inclusive of interviews, courses, and seminars to better understand the interconnectivity and complexity of the terrorism phenomena with the practice of genocidal or persecutory acts.

As the search for existing evidence of ISIL/DAESH violations unfolded, the author encountered significant limitations to determine the exact magnitude of ISIL/DAESH acts. Due to several practical constraints, local and international actors found it very difficult to interview victims and collect material and documental evidence in the areas under the former regime of ISIL/DAESH, or under the influence of the terrorist groups. Among these reasons, the following may be indicated as examples: 1) the victims' fear of reprisal or retaliation by the perpetrators; 2) chronic instability in the region; 3) administrative restrictions in accessing the affected regions; 4) limited psychosocial support and counseling services for the victims; 5) a climate of widespread impunity for perpetrators; and 6) weak law enforcement.

Given the controversial character of the crime of genocide, this book did not dedicate time to analyzing the ISIL/DAESH atrocities against Christians in Iraq through an interdisciplinary approach (sociological, political, and international relations). The work exclusively focused on the foundational crime elements of *typicity* and legality of the criminal conduct perpetrated by ISIL/DAESH fighters.

E. Important caveats

Before the reader proceeds, there are some important caveats and clarifications:

- 1) Given the controversial character of the crime of genocide, this book did not dedicate time to analyzing the ISIL/DAESH atrocities against Christians in Iraq through an interdisciplinary approach, namely from a sociological, political, and international relations standpoint. This book exclusively focused on the foundational crime elements of *typicity* and *legality* of the criminal conduct perpetrated by ISIL/DAESH fighters;
- 2) The author recognizes that several reports from international and inter-governmental organizations accounted that ISIL/DAESH perpetrated war crimes in Iraq. Although these are serious crimes, they were excluded from the scope of examination in this work due to the critical time constraints the author was submitted to, while analyzing the possible perpetration of genocide and crimes against humanity by ISIL/DAESH in Iraq;
- 3) Because hundreds of cases are cited throughout the book, the author did not proceed with a full citation of them every time they are referenced in the footnotes. In order to find the full citation of the case, please refer to the first call number indicated with the Latin term *Supra* note #. When a citation makes an *exact* reference to an *immediate* previous citation, the author used the Latin terms *ibidem* and *idem*;
- 4) When multiple case law is cited in the very same reference call, the cases are all cited in chronological order and grouped according to the international courts that decided the cases;
- 5) Because hundreds of United Nations (U.N.) documents were cited throughout Chapters 1 to 4, the author, in an attempt to ease the readers' work, did not provide a full citation of the source in the footnotes, with the exception of U.N. Treaty Law, and Security Council Resolutions. In this sense, the author provides a citation exclusively with the U.N. Document call reference (U.N. Doc.). The reader may find at the end of each chapter a chart with the complete citation of U.N. sources, including the documents from the United Nations Assistance Mission for Iraq (UNAMI).
- 6) The term "child" refers to a human being under the age of 18 years-old;
- 7) The United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁴⁴⁸ indicates

⁴⁴⁸ United Nations. Commission on Human Rights. Body of principles for the protection of all persons under any form of detention or imprisonment. 7 March 1978. Resolution E/CN.4/RES/19(XXXIV).

that “arrest” refers to the *act* of apprehending a person and that “detention” refers to the *condition* of a detained person. Despite this indication, this research used these terms interchangeably;

- 8) The use of the term “human rights” – and interchangeably “fundamental rights” – is only and exclusively a reflection of the fact that the international laws regarding crimes against humanity and persecution necessarily require a substantial violation of “fundamental rights” – see, for example, Article 7.2.g of the Rome Statute. Therefore, this book does not explore the different meanings, the scope, and the theoretical aspects regarding the terms “human rights” and “fundamental rights.”
- 9) Finally, in this book, there are plenty of references to the terms “terrorism,” “terrorist groups,” “terrorist attacks,” “terrorist practices,” and “for terrorist purposes.” However, the author will not discuss the meaning, the scope, or other implications of these terms for the international legal and jurisprudential scholarship. Several U.N. mechanisms specifically name the Islamic State in Iraq and the Levant/IS/DAESH as “terrorist group,” and its fighters as “terrorist fighters.”⁴⁴⁹ Therefore, this Thesis only follows this approach.

⁴⁴⁹ See, for example: S.C. Res. 2170 (Aug. 15, 2014). ¶ 1, 4; S.C. Res. 2199 (Feb. 12, 2015). ¶ 15; S.C. Res. 2249 (Nov. 20, 2015). ¶ 3.

Chart of United Nations documents cited in the Introduction – Chronological order

1994

U.N. Doc. A/CN.4/L.491/Rev.1 (July 8, 1994).
Rep. of the Working Group on a Draft Statute for An International Criminal Court, International Law Commission.

2005

U.N. Doc. S/2005/60 (Feb. 1, 2005).
Rep. of the International Commission of Inquiry on Darfur to the Secretary-General Pursuant to Security Council Resolution 1564 (2004).

2015

U.N. Doc. A/HRC/28/18 (March 27, 2015).
Rep. of the Office of the United Nations High Commissioner for Human Rights, submitted to the Human Rights Council, Human Rights Situation in Iraq in the Light of Abuses Committed by The so Called Islamic State in Iraq and The Levant and Associated Groups.

U.N. Doc. A/69/926-S/2015/409 (June 5, 2015).
U.N. Secretary-General, Children and Armed Conflict.

2017

U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017).
Rep. of the Special Rapporteur on Minority Issues, submitted to the Human Rights Council concerning her mission to Iraq.

2018

U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018).
Rep. of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, submitted to the Human Rights Council concerning her mission to Iraq.

U.N. Doc. S/2018/677 (July 9, 2018).
Rep. of the U.N. Secretary-General submitted to the S.C, pursuant to the implementation of Res. 2367 (2017).

U.N. Doc. S/PV.8324 (Aug. 8, 2018).

Rep. of the U.N. Secretary-General submitted to the S.C, The Situation Concerning Iraq, pursuant to Res. 2367 (2017).

U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018).

Rep. of the Committee on the Elimination of Discrimination against Women, Seventh Periodic Report Submitted by Iraq Under Article 18 of the Convention.

U.N. Doc. S/2018/770 (August 16, 2018).

Rep. of the U.N. Secretary-General submitted to the S.C, pursuant to the Threat Posed by ISIL/DAESH (Da'esh) to International Peace and Security.

U.N. Doc. A/73/347 (Aug. 28, 2018).

U.N. Secretary-General, Effects of terrorism on the enjoyment of human rights.

Chart of documents from the United Nations Assistance Mission for Iraq (UNAMI) – Chronological order

2014

July 6, 2014 – Sept. 10, 2014.

Rep. of the Office of the United Nations High Commissioner for Human Rights, United Nations Assistance Mission for Iraq (UNAMI), Report on the Protection of Civilians in the Armed Conflict in Iraq.

I. ISIL/DAESH atrocities in Iraq

I.1. Timeline of ISIL/DAESH operations

I.1.1. The origins in Syria and Iraq

The origin of the Islamic State of Iraq and the Levant (ISIL/DAESH) dates back to 1999 with the establishment of the group *Jama'at al-Tawhid wal-Jihad*, under the leadership of a Jordanian national named Abu Musab al-Zarqawi.^{450 451} In 2003, the group was fully engaged in the Iraqi insurgency against Iraq's American-led invasion and occupation.^{452 453} In 2006, Sunni insurgents joined the group. They formed the *Mujahideen Shura Council*, which established the Islamic State of Iraq, in October 2006, as one of the divisions of Al-Qaida in Iraq.⁴⁵⁴ The newly established organization "emulated their adversaries and learned how to effectively conduct organized information activities."⁴⁵⁵

In 2011, following the waves of the civil war in Syria, the leader of the Islamic State of Iraq at that time, Abu Bakr al-Baghdadi, decided to expand the presence, the visibility, and the operations of the group in vast Sunni provinces of Syria, particularly in Raqqa, Idlib, Deir ez-Zor, and Aleppo.⁴⁵⁶ Following the occupation of these areas, al-Baghdadi announced the merging of the *Jabhat an-Nusra li-Ahli ash-Sham* (al-Nusra Front) together with the Islamic State of Iraq, forming a new single group under the name the Islamic State of Iraq and Al-Sham.⁴⁵⁷

However, a cojoined statement from al-Qaida's leader, Ayman al-Zawahiri, and the al-Nusra Front leader, Abu Mohammad Al-Julani, denied the merger, "stating that neither they nor anyone else in al-Nusra's leader-

⁴⁵⁰ NATO, "DAESH Information Campaign and its influence: Results of the Study" (Jan. 2016). p. 13.

⁴⁵¹ The legal foundations of the Islamic State, THE BROOKINGS INSTITUTION, The Brookings Project on U.S. Relations with the Islamic World (July 2016).

⁴⁵² NATO. *Supra* note 450. p. 13.

⁴⁵³ Fawaz A. Gerges, *ISIS: A History* (Princeton University Press, 2016). p. 50.

⁴⁵⁴ U.N. Doc. S/2011/366 (June 15, 2011). ¶ 14; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 15; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 18.

⁴⁵⁵ NATO. *Supra* note 450. p. 13.

⁴⁵⁶ *Ibidem*.

⁴⁵⁷ *Ibidem*.

ship, had been consulted.”⁴⁵⁸ The issuance of this statement by al-Qaeda and the al-Nusra Front “cut all connections with al-Baghdadi’s organization.”⁴⁵⁹ In 2013, several armed groups and foreign fighters joined the group forming an “all-encompassing entity” named the Islamic State of Iraq and al-Sham (Levant) – ISIL/DAESH, or Daesh.^{460 461} The group then occupied large parts of Syria and northern Iraq, particularly the Governorates of Anbar, Ninawa, Salah al-Din, Kirkuk, and Diyala.^{462 463}

1.1.2. The terrorist group names.

Daesh’ is the acronym of ad-Dawlah al-Islāmiyah fi ‘l-‘Irāq wa-sh-Shām. Depending on the Arabic conjugation, “the acronym ‘Daesh’ sounds like an Arabic word that can have several shades of meaning from ‘to trample down and crush’ to ‘a bigot who imposes his view on others,’”⁴⁶⁴ State members of the North Atlantic Treaty Organization (NATO) argued that the term ‘Daesh,’ instead of ‘ISIL/DAESH,’ should be the correct term to refer to the Islamic State, “because it is much more undermining to the organization than the use of their chosen name, ‘Islamic State/IS/ISIS/ISIL/DAESH,’ together with an epithet.”⁴⁶⁵ NATO considers that with the use of the term ‘ISIL/DAESH,’ member states are somehow acknowledging and recognizing that the group indeed comprises a state (the Islamic State of Iraq and the Levant) and recognizing its legitimacy.⁴⁶⁶

NATO also argued that “by using the name ‘the Islamic State,’ chosen by the terrorists themselves, news agencies participate in Daesh’s propaganda campaign.”⁴⁶⁷ Instead, “the use of the name Daesh in the public media,” argued NATO, would “send a clear message to the terrorists about the overwhelming majority of people worldwide that do not support their

⁴⁵⁸ *Ibidem.*

⁴⁵⁹ *Ibidem.*

⁴⁶⁰ U.N. Doc. S/2011/366 (June 15, 2011). ¶ 14; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 18.

⁴⁶¹ According to the NATO data, twenty-five organizations pledged their allegiance to ISIL/DAESH and ten more offered global support to it. (NATO. *Supra* note 450. p. 19).

⁴⁶² U.N. Doc. A/HRC/30/NGO/116 (Sept. 8, 2015). p. 2; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 18; U.N. Doc. A/73/352/Add.6 (Oct. 2018). ¶ 1; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 5.

⁴⁶³ NATO. *Supra* note 450. p. 14.

⁴⁶⁴ *Idem.* p. 10.

⁴⁶⁵ *Ibidem.*

⁴⁶⁶ *Ibidem.*

⁴⁶⁷ *Ibidem.*

campaign of violence to achieve their goals.”⁴⁶⁸ Notwithstanding NATO’s approach, this book will employ the terms ‘ISIL/DAESH’ and ‘Daesh’ interchangeably to refer to the self-proclaimed Islamic State of Iraq and the Levant for the sole reason that the former is the term extensively used in documents from the major organisms of the United Nations (U.N.) umbrella. The use of the term ISIL/DAESH in this book does not imply that the author supports ISIL/DAESH ideology or ISIL/DAESH atrocious acts in Iraq and Syria.

1.1.3. ISIL/DAESH power in Iraq

At the peak of its power, ISIL/DAESH seized, controlled, and exercised multiple layers of power on approximately 40 percent of the Iraqi territory.⁴⁶⁹ ISIL/DAESH then divided Ninewa Governorate into three governing entities, Jazeera, Tigris, and Ninewa.⁴⁷⁰ The group established a leader (*wali*) for each of these regions.⁴⁷¹ On June 29, 2014, the group 1) proclaimed itself a Caliphate, self-claiming the monopoly of law and order;⁴⁷² 2) asserted the role of unifying Sunni insurgent groups under goals similar to those of Al-Qaida; and 3) declared its “exclusive theological and political authority over the world’s Muslims.”⁴⁷³

Politically, ISIL/DAESH organized the Caliphate into several councils and departments: the Leadership Council, the Intelligence Council; the Military Council; the Fighter Assistance Council; the Legal Council; the Security Council, the Financial Council, and the Media Council.⁴⁷⁴ Operationally, ISIL/DAESH organized its fighters in small cells and lone wolves to carry out its “targeted hit-and-run operations.”⁴⁷⁵ Tactically, ISIL/DAESH “established safe havens in the Hamrin mountain range of north-eastern Iraq.”⁴⁷⁶ Taking advantage of flaws between the Iraqi forces and Kurdish forces,⁴⁷⁷ ISIL/DAESH commanded up to 30,000 fighters in the Levant.⁴⁷⁸ Of

⁴⁶⁸ *Idem*. pp. 10–11.

⁴⁶⁹ U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 18.

⁴⁷⁰ U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 12.

⁴⁷¹ *Ibidem*.

⁴⁷² William Harris, *Quicksilver War: Syria, Iraq and the Spiral of Conflict* (Oxford University Press, 2018), pp. 59–60.

⁴⁷³ U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 18.

⁴⁷⁴ NATO. *Supra* note 450. p. 21.

⁴⁷⁵ U.N. Doc. S/2020/717 (July 23, 2020). ¶ 10.

⁴⁷⁶ *Ibidem*.

⁴⁷⁷ The forces of the Autonomous Administration in Northern Iraq.

⁴⁷⁸ U.N. Doc. S/2015/739 (July 19, 2016). ¶ 11.

this total, 25,000 persons comprised “foreign terrorist fighters” (FTFs), coming from more than 100 (one hundred) countries.⁴⁷⁹ FTFs constituted the most crucial asset of the ISIL/DAESH terrorist network. They used to make regular daily movements between Iraq and the Syrian Arab Republic, particularly in the Anbar and Ninawa Provinces.⁴⁸⁰

Between June 2014 and December 2017, local and foreign ISIL/DAESH fighters waged war on Iraq and left the country in a situation of extreme political, economic, social, and military volatility.^{481 482} Internationally, ISIL/DAESH became a “global and unprecedented threat to international peace and security” “through its terrorist acts and its violent extremist ideology.”^{483 484} During this period, several U.N. entities reported that ISIL/DAESH fighters and commanders committed systematic and widespread violations of international human rights, humanitarian law, and criminal law against populations living in areas under ISIL/DAESH’s control, particularly against women and children.^{485 486 487}

Operating with broad impunity, ISIL/DAESH restricted several fundamental freedoms and instilled fear in the population living under its regime.^{488 489} In a systematic fashion, they committed murder, mass killings, ill-treatment, torture, arbitrary deprivation of liberty, forced conversions into Islam, kidnapping, hostage-taking, suicide bombings, use of civilians as human shields during the hostilities, and recruitment and use of children. They also perpetrated enslavement, human trafficking, forced trans-

⁴⁷⁹ U.N. Doc. S/2015/975 (Dec. 29, 2015). ¶ 78; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 18; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 5.

⁴⁸⁰ U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 18; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 5; U.N. Doc. S/2020/717 (July 23, 2020). ¶ 10.

⁴⁸¹ UNAMI (Nov. 6, 2018). p. 3.

⁴⁸² U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 19.

⁴⁸³ S.C. Res. 2490 (Sept. 20, 2019). Preamble, p. 1.

⁴⁸⁴ See also: S.C. Res. 2249 (Nov. 20, 2015). Preamble, p. 1; S.C. Res. 2379 (Sept. 21, 2017). Preamble, p.1.

⁴⁸⁵ U.N. Doc. S/2015/82 (Feb. 2, 2015). ¶ 48; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 9; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶¶ 18, 22; U.N. Doc. A/73/352/Add.6 (Oct. 12, 2018). ¶ 1; U.N. Doc. S/2018/1031 (Nov. 16, 2018). ¶ 8.

⁴⁸⁶ UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 6; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 10; UNAMI (Nov. 6, 2018). p. 3.

⁴⁸⁷ S.C. Res. 2299 (July 25, 2016). Preamble, p. 4; S.C. Res. 2367 (July 14, 2017). Preamble, p. 4; S.C. Res. 2490 (Sept. 20, 2019). Preamble, p.1.

⁴⁸⁸ U.N. Doc. S/2015/530 (July 13, 2015). ¶ 51; U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017). ¶ 15; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 23; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 10; U.N. Doc. S/2018/1031 (Nov. 16, 2018). ¶ 8.

⁴⁸⁹ UNAMI (May 1, 2015 – Oct. 31, 2015). p. 19.

fers of civilians, sale of women and children as spoils of war, forced marriage, rape, sexual slavery, and other forms of sexual violence. ISIL/DAESH fighters installed landmines, used weaponized chemical agents, and shelled civilian areas. They committed attacks on critical infrastructure, systematic destruction of places of worship, destruction of cultural heritage, trafficking of cultural property, and other violent acts seeking to destroy/eradicate/exterminate entire religious and ethnic groups.^{490 491 492 493}

ISIL/DAESH reportedly conducted a deliberate series of mass executions against Iraqi Security Forces in areas under its control.⁴⁹⁶ For instance, in one of the most notorious mass massacres in Iraq, ISIL/DAESH summarily executed 1,700 air force cadets on June 12, 2014, at Camp Speicher in Salah al-Din governorate.^{497 498} In another instance, they killed 175 Iraqi air force cadets at an airbase in Tikrit.⁴⁹⁹ ISIL/DAESH also mass executed a large number of unarmed Iraqi soldiers.⁵⁰⁰ On August 8, 2015, ISIL/DAESH reportedly “executed at least 300 civil servants employed by the Independent High Electoral Commission (IHEC) in Mosul, Ninewa.”⁵⁰¹

The escalation of crossfire attacks and asymmetric armed clashes between ISIL/DAESH, the NATO Coalition, and the Iraqi Security Forces

⁴⁹⁰ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 76; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶¶ 35, 76; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 32; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 9; U.N. Doc. S/2017/75 (Jan. 26, 2017). ¶ 36; U.N. Doc. CCPR/C/IRQ/CO/5/Add.1 (Aug. 18, 2017). ¶ 19; U.N. Doc. S/2017/881 (Oct. 19, 2017). ¶ 63; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 23; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶¶ 9, 10, 12.

⁴⁹¹ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 14; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 4; UNAMI (Nov. 6, 2018). p. 4.

⁴⁹² S.C. Res. 2490 (Sept. 20, 2019). Preamble, p.1.

⁴⁹³ 163 Cong. Rec. H4632 (daily ed. June 6, 2017) (statement of Rep. Edward Royce). p. H4633.

⁴⁹⁴ Eur. Parl., Systematic Mass Murder of Religious Minorities by the so-called ‘ISIS/Daesh’ (2016/2529(RSP)), Resolution (Feb. 4, 2016). B; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Resolution 2190 (2017). ¶ 3.2.

⁴⁹⁵ Punished for Daesh’s Crimes: Displaced Iraqis Abused by Militias and Government Forces, AMNESTY INTERNATIONAL (Oct. 18, 2016). p. 15.

⁴⁹⁶ UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 6, 8, 14, 16; UNAMI (Nov. 6, 2018). p. 4.

⁴⁹⁷ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 32; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 77; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 11.

⁴⁹⁸ AMNESTY INTERNATIONAL. *Supra* note 495. p. 7.

⁴⁹⁹ U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 11.

⁵⁰⁰ U.N. Doc. A/69/53/Add.1 (Sept. 1, 2014). Preamble, p.7.

⁵⁰¹ UNAMI (May 1, 2015 – Oct. 31, 2015). p. 9.

caused the indirect killing and maiming of thousands of children in urban centers.^{502 503} In several of these attacks, ISIL/DAESH denied humanitarian relief access to affected children.⁵⁰⁴ From June 2014 until the end of 2017, The United Nations Assistance Mission for Iraq (UNAMI) recorded at least 30,000 civilians killed and 55,150 injured in Iraq, either due to direct or indirect result of ISIL/DAESH actions.^{505 506} International observers concluded that some of these incidents might have constituted war crimes and crimes against humanity.^{507 508} The devastating impact of ISIL/DAESH attacks on civilians and civilian infrastructure was unfathomable.⁵⁰⁹

Following ISIL/DAESH's self-proclamation of the Caliphate, ISIL/DAESH imposed the *takfiri* doctrine with their own interpretation of the Islam faith and Muslim ideologies. By then, ISIL/DAESH started its systematic and deliberate intent to persecute and to destroy Christians in Iraq. Issuing a series of ultimatums, ISIL/DAESH declared Christians as "slaves of the cross"⁵¹⁰ and threatened them with executions.^{511 512} At the time, Christians in Iraq lived in an atmosphere of fear and intimidation.

In March 2015, an OHCHR mission field investigation in Iraq reported "reliable information about acts of violence perpetrated against civilians because of their affiliation or perceived affiliation to a religious group."⁵¹³

⁵⁰² U.N. Doc. A/68/878-S/2014/339 (May 15, 2014). ¶ 73; U.N. Doc. A/69/212 (July 31, 2014). ¶ 4; U.N. Doc. S/2015/82 (Feb. 2, 2015). ¶¶ 22, 51; U.N. Doc. A/69/926-S/2015/409 (June 5, 2015). ¶¶ 71, 74; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 57; U.N. Doc. A/70/836-S/2016/360 (Apr. 20, 2016). ¶¶ 8.a, 61; U.N. Doc. S/2016/396 (Apr. 27, 2016). ¶¶ 42, 46; U.N. Doc. A/71/205 (July 25, 2016). ¶ 4; U.N. Doc. A/72/361-S/2017/821 (Aug. 24, 2017). ¶ 78; U.N. Doc. S/2018/677 (July 9, 2018). ¶ 45; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 53.

⁵⁰³ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 9.

⁵⁰⁴ U.N. Doc. A/72/361-S/2017/821 (Aug. 24, 2017). ¶ 83.

⁵⁰⁵ UNAMI (Nov. 6, 2018). p. 3.

⁵⁰⁶ See also: U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 1.

⁵⁰⁷ UNAMI (Dec. 11, 2014 – April 30, 2015). pp. 4, 10.

⁵⁰⁸ See also: U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶¶ 22, 48; U.N. Doc. A/73/352/Add.6 (Oct. 12, 2018). ¶ 1; U.N. Doc. A/73/352/Add.6 (Oct. 2018). ¶ 1; U.N. Doc. S/2018/1031 (Nov. 16, 2018). ¶ 8.

⁵⁰⁹ U.N. Doc. A/69/926-S/2015/409 (June 5, 2015). ¶ 76; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 15; U.N. Doc. A/70/836-S/2016/360 (Apr. 20, 2016). ¶ 58, 61; S.C. Res. 2379 (Sept. 21, 2017). ¶ 1; U.N. Doc. S/2018/677 (July 9, 2018). ¶¶ 20, 38, 39; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 1.

⁵¹⁰ Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Resolution 2190 (2017). ¶ 4.

⁵¹¹ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 11.

⁵¹² U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶ 32.

⁵¹³ U.N. Doc. A/HRC/28/18 (March 27, 2015).

These reports indicated that ISIL/DAESH'S acts were particularly directed against the Christian and the Yazidi groups in the Iraqi territory.⁵¹⁴ Later on, several United Nations bodies considered the possibility that the acts perpetrated by ISIL/DAESH against Christians in Iraq, from 2014 to 2017, could fall within the definition of genocide, as determined by the 1948 U.N. Convention on the Prevention and Punishment of Genocide.⁵¹⁵ Likewise, at the end of 2014, Iraq's Cabinet issued Decision No. 92 (2014), "designating the suffering inflicted on Iraqi Yazidis, Turkmen, Christians, and the Shabak and other minority groups by ISIL/DAESH terrorist gangs as genocide."⁵¹⁶

Intending to provide logistical and financial support to its actions, recruit and indoctrinate new fighters, and to destabilize States outside Iraq, by "provoking a confrontation between 'believers' and 'apostates,'" ISIL/DAESH maintained a highly effective propaganda machinery throughout the internet and the social media.⁵¹⁷ With the use of sophisticated technologies and encryption tools, ISIL/DAESH fighters used to publish videos and photographs showing the group's atrocities against civilians every week.^{518 519}

As an attempted tactic to demonstrate the group's power, ISIL/DAESH extensively portrayed videos of their training sessions, of "blood-soaked battles scenes," and images of innocent persons being tortured, stoned to death, drowned, shot, or being thrown from tall buildings.⁵²⁰ Alarmingly,

⁵¹⁴ See, for example: U.N. Doc. A/HRC/28/18 (March 27, 2015); U.N. Doc. S/2016/92 (Jan. 29, 2016); U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017); U.N. Doc. S/2018/773 (Aug. 17, 2017); U.N. Doc. CCPR/C/IRQ/CO/5/Add.1 (Aug. 18, 2017); S.C. Res. 2379 (Sept. 21, 2017); U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017); U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018); U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018); U.N. Doc. A/HRC/39/NGO/X (Aug. 23, 2018); U.N. Doc. A/73/347 (Aug. 28, 2018); U.N. Doc. A/73/352/Add.6 (Oct. 2018).

⁵¹⁵ Contrary to this argument that ISIL/DAESH specifically intended the sole destruction of the group of Christians in Iraq, other arguments comprehend that ISIL/DAESH "intended war with everyone it encountered and terrorized even its own sympathizers." (William Harris. *Supra* note 472. p. 60).

⁵¹⁶ U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 104.

⁵¹⁷ U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶¶ 39, 41.

⁵¹⁸ U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 37; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 41.

⁵¹⁹ UNAMI (Dec. 11, 2014 – April 30, 2015). pp. 13, 20–21; UNAMI (May 1, 2015 – Oct. 31, 2015). p. 11.

⁵²⁰ Cubs in the Lions' Den: Indoctrination and Recruitment of Children Within Islamic State Territory, THE INTERNATIONAL CENTRE FOR THE STUDY OF RADICALISATION (ICSR) (July 23, 2018).

ISIL/DAESH fighters continually used children for propaganda on social media. Pictures of children being trained, wearing ISIL/DAESH uniforms and images and videos of boys perpetrating violent acts were commonplace in ISIL/DAESH online pamphlets.^{521 522}

1.1.4. The Global Coalition to Defeat ISIL/DAESH.

In September 2014, at the request of the Iraqi Government, a group comprising a myriad of actors formed a coalition to counter ISIL/DAESH (the “Coalition”; the “Counter-ISIL/DAESH Coalition”; the “International Coalition”; the “Global Coalition to Defeat ISIL/DAESH”).^{523 524} Domestically, the Coalition received open support from the Iraqi Government, the Iraqi security forces,⁵²⁵ from diverse actors of the Autonomous Administration in Northern Iraq,⁵²⁶ the People’s Defence Forces of the *Kurdish Workers Party*,⁵²⁷ the Sinjar Resistance Units,⁵²⁸ the Protection Force of Ezidkhan,⁵²⁹ and the Popular Mobilization Force.⁵³⁰ Internationally, the Coalition was

⁵²¹ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 18; UNAMI (Dec. 11, 2014 – April 30, 2015). pp. 11, 13, 20; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 16–17.

⁵²² U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 37; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶¶ 33–34.

⁵²³ Claire Mills, *ISIS/Daesh: the military response in Iraq and Syria*, HOUSE OF COMMONS PUBLISHING HOUSE, Mar. 8, 2017. p. 4.

⁵²⁴ U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 18.

⁵²⁵ “The Iraqi security forces, include[ed] entities such as the Iraqi police, under the Ministry of the Interior, and the Iraqi armed forces, under the [coordination of the] Ministry of Defence.” (*Idem.* ¶ 16).

⁵²⁶ “Kurdish actors in Iraq contributed significantly to the fight against ISIL/DAESH, notably the Kurdistan Regional Government, including the Kurdish Peshmerga (the armed forces of the Kurdistan Regional Government), the Peshmerga Zeravani (the military police) and the Peshmerga Asayish (the internal security forces).” (*Idem.* ¶ 19).

⁵²⁷ *Idem.* ¶ 20.

⁵²⁸ “The Sinjar Resistance Units were established in 2007 to protect Yazidi communities. [It] played a key role in the fight against ISIL/DAESH in and around Sinjar since 2014.” (*Idem.* ¶ 21).

⁵²⁹ “The Protection Force of Ezidkhan, a Yazidi armed group, was established in 2014 to support efforts against ISIL/DAESH.” (*Ibidem.*)

⁵³⁰ “Following the capture of Mosul by ISIL/DAESH in June 2014, the Popular Mobilization Forces, operating as an umbrella organization composed primarily of Shi’a but also Sunni tribal mobilization groups and minority groups (for example, brigade 36, comprising Yazidis and Turkmen), supported the [Iraqi] Government in combating ISIL/DAESH. On 26 November 2016, pursuant to the Popular Mobilization Commission Law, the Popular Mobilization Forces were recognized as an in-

initially supported by 68 states,⁵³¹ led by the United States.^{532 533} On August 29, 2015, Turkey formally joined the coalition,⁵³⁴ “allowing US aircraft to launch airstrikes against ISIS from Incirlik air force base.”^{535 536} In May 2017, at the Iraqi government’s request, NATO became a member of the “Global Coalition to Defeat ISIS” (NATO Mission in Iraq – NMI),⁵³⁷ expanding the scope of its operations held from 2004 to the end of 2011.⁵³⁸

Large-scale conjoined military tactics of the Coalition and domestic forces in Iraq defeated ISIL/DAESH’s operations in the Iraqi territory in December 2017.^{539 540} On December 9, 2017, Iraq’s Prime Minister declared the “final victory” over ISIL/DAESH.^{541 542} The group was then confined to “small pockets” in the territories of Iraq and the Syrian Arab Republic.⁵⁴³ With the intensification of the Coalition attacks against ISIL/DAESH, several of the terrorist group’s “fighters, planners and senior doctrinal, security and military commanders” were killed in targeted strikes or “left the immediate conflict zone.”^{544 545} From December 2017 onwards, ISIL/DAESH

dependent military formation within the Iraqi armed forces under the direct command of the Prime Minister.” (*Idem.* ¶ 17).

⁵³¹ Claire Mills. *Supra* note 523. p. 4.

⁵³² *Ibidem.*

⁵³³ By July 2020, the U.S. currently still had about 5,000 troops stationed in Iraq. (Rep. of the S.C., Monthly Forecast: Situation in Iraq, August 2020 (July 31, 2020). p. 7).

⁵³⁴ Claire Mills. *Supra* note 523. p. 33.

⁵³⁵ *Ibidem.*

⁵³⁶ “After December 2015, Turkey maintained a 1,000 strong military base at Bashiqa, to the north-east of Mosul, and has been training local tribal forces, largely comprised of Sunni Arabs, Turkmen and Kurdish Peshmerga. Once trained, those forces [operated] under the control of the Iraqi government.” (*Idem.* pp. 39–40).

⁵³⁷ NATO. *Supra* note 450. pp. 1–2, 157.

⁵³⁸ “From 2004 to end 2011, NATO helped Iraq provide for its own security by training Iraqi personnel and supporting the development of the country’s security institutions. NATO trained and mentored middle- and senior-level personnel from the Iraqi security forces in Iraq and outside of Iraq, at NATO schools and training centres.” (*Idem.* p. 232).

⁵³⁹ U.N. Doc. CCPR/C/IRQ/CO/5/Add.1 (Aug. 18, 2017). ¶ 1; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 18; U.N. Doc. S/2018/770 (August 16, 2018). ¶ 4.

⁵⁴⁰ United Nations. Security Council. Security Council Report: Monthly Forecast. February 2018. Situation in Iraq. p.14.

⁵⁴¹ U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 5; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 16; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 5.

⁵⁴² William Harris. *Supra* note 472. p. 93.

⁵⁴³ U.N. Doc. S/2018/705 (July 27, 2018). ¶¶ 1, 3–4.

⁵⁴⁴ *Idem.* ¶ 2.

⁵⁴⁵ U.N. Doc. S/2018/770 (August 16, 2018). ¶¶ 5, 8.

started a transitional period “from a proto-State structure into a [global] terrorist network.”^{546 547}

Despite the setbacks caused by the Coalition at the time, ISIL/DAESH collective discipline was still intact and the terrorist group maintained its determination to control Iraq’s territory and population.⁵⁴⁸ In a report dated July 27, 2018, U.N. Security Council member states estimated that, by then, between 20,000 and 30,000 individuals were still “fully engaged militarily” with ISIL/DAESH] in Iraq and the Syrian Arab Republic, “roughly equally distributed between the two countries.”⁵⁴⁹ Back on March 18, 2019, ISIL/DAESH had already circulated a *communiqué* “reasserting its presence and calling upon supporters to intensify the fight and take revenge for [the recent attacks against mosques in different countries].”⁵⁵⁰ These fighters “remain[ed] (...) fully engaged militarily and others concealed in sympathetic communities and urban areas.”⁵⁵¹

U.N. Security Council Reports showed that, despite the damage to the so-called Caliphate’s bureaucratic structures, many other ISIL/DAESH structures of the Caliphate remained intact. For instance, the collective discipline of ISIL/DAESH, the general security and finance bureaus,⁵⁵² the group’s immigration and logistics coordination office,⁵⁵³ the financial structures,⁵⁵⁴ the ability to channel funds across borders,⁵⁵⁵ and the ability to invest and infiltrate businesses in the region.⁵⁵⁶ These reports indicated that “ISIL/DAESH continue[d] to transition from a proto-State structure into a terrorist network.”⁵⁵⁷ By June 2018, ISIL/DAESH was still able “to extract and sell some oil and mount attacks [...] across the border into Iraq.”⁵⁵⁸

Recent reports from 2019 and 2020 indicated that, through sleeper cells, the Islamic State’s remnants in Iraq and the Levant continued to pose

⁵⁴⁶ U.N. Doc. S/2018/705 (July 27, 2018). ¶ 12.

⁵⁴⁷ See also: U.N. Doc. S/2018/80 (Jan. 31, 2018). ¶ 6; U.N. Doc. S/2018/705 (July 27, 2018). p.3, ¶ 12.

⁵⁴⁸ U.N. Doc. S/2018/770 (August 16, 2018). ¶ 6; U.N. Doc. S/2020/717 (July 23, 2020). p. 3.

⁵⁴⁹ U.N. Doc. S/2018/705 (July 27, 2018). ¶¶ 2–3.

⁵⁵⁰ U.N. Doc. S/2019/365 (May 2, 2019). ¶ 22.

⁵⁵¹ U.N. Doc. S/2018/770 (2018). ¶ 5.

⁵⁵² U.N. Doc. S/2018/705 (July 27, 2018). ¶ 4.

⁵⁵³ *Ibidem*.

⁵⁵⁴ *Idem*. ¶ 16.

⁵⁵⁵ *Idem*. ¶ 17.

⁵⁵⁶ *Idem*. ¶ 4.

⁵⁵⁷ *Idem*. ¶ 12.

⁵⁵⁸ U.N. Doc. S/2018/705 (July 27, 2018). p. 3.

resilient, serious, and evolving threats in Iraq.⁵⁵⁹ ISIL/DAESH continued launching “frequent asymmetrical attacks” against the Iraqi people,⁵⁶⁰ including against children,⁵⁶¹ by carrying out deadly attacks, particularly in Anbar, Baghdad, Diyala, Kirkuk, Ninawa, and Salah al-Din Governorates.⁵⁶²

A report from the French Ministry for Europe and Foreign Affairs, from November 2019, indicated that, by then, ISIL/DAESH: 1) continued its presence in Syria and Iraq through “active clandestine cells;⁵⁶³ 2) persisted, through its affiliates, as a terrorist group “in Africa, the Arabian Peninsula, South Asia, and South-East Asia;”⁵⁶⁴ and 3) continued the “spread of sophisticated propaganda calling for violence.”⁵⁶⁵ This *persistence* means that “ISIL/DAESH [was] adapting, consolidating and creating conditions for an eventual resurgence in its Iraqi and Syrian heartlands.”⁵⁶⁶

Alarming, a report from the U.N. Secretary-General informed that “the temporary stabilization of [ISIL/DAESH]’s military position in the east of the Syrian Arab Republic in early 2018 may have encouraged significant numbers of foreign terrorist fighters to remain in the conflict zone.”^{567 568} In October 2018, trying to tackle ISIL/DAESH’s resurgence, NATO established a training and capacity-building mission in Iraq to help “strengthen[ing] Iraqi security forces and Iraqi military education institutions so that Iraqi forces [could] prevent the return of ISIS/Da’esh.”⁵⁶⁹ In 2019, the Coalition to counter the Islamic State in Iraq and the Levant comprised 81 nations.^{570 571}

⁵⁵⁹ U.N. Doc. S/2018/80 (Jan. 31, 2018). ¶ 4; U.N. Doc. S/2018/705 (July 27, 2018). ¶¶ 1, 11; U.N. Doc. S/2018/705 (July 27, 2018). ¶ 13; U.N. Doc. S/2018/770 (August 16, 2018). ¶ 5; U.N. Doc. S/2019/101 (Feb. 1, 2019). ¶ 14; U.N. Doc. S/2020/140 (Feb. 21, 2020). ¶ 23; U.N. Doc. S/2020/363 (May 6, 2020). ¶ 24; U.N. Doc. S/2020/717 (July 23, 2020). p. 3.

⁵⁶⁰ U.N. Doc. S/2019/903 (Nov. 22, 2019). ¶ 29; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 22.

⁵⁶¹ U.N. Doc. A/73/907-S/2019/509 (June 20, 2019). ¶ 70.

⁵⁶² U.N. Doc. S/2019/903 (Nov. 22, 2019). ¶ 29.

⁵⁶³ France Ministry for Europe and Foreign Affairs, “Has Daesh been defeated?”, France Diplomacy (Nov. 2019).

⁵⁶⁴ *Ibidem*.

⁵⁶⁵ *Ibidem*.

⁵⁶⁶ U.N. Doc. S/2019/570 (July 15, 2019). ¶ 3.

⁵⁶⁷ U.N. Doc. S/2018/770 (August 16, 2018). ¶ 7.

⁵⁶⁸ See also: U.N. Doc. S/2019/103 (Feb. 1, 2019). ¶ 6.

⁵⁶⁹ NATO. *Supra* note 450. p. 1.

⁵⁷⁰ U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 18.

⁵⁷¹ By July 2020, the Coalition against ISIL/DAESH had about 2,500 troops in Iraq. (Rep. of the S.C., Monthly Forecast: Situation in Iraq, August 2020 (July 31, 2020). p. 7).

Iraqi judicial authorities have been unable to prosecute most of ISIL/DAESH's atrocious acts due to its courts' lack of material jurisdiction.⁵⁷² Genocide and crimes against humanity are not typified under Iraqi law.⁵⁷³ Consequently, domestic judicial authorities are prevented from prosecuting such crimes.^{574 575} Internationally, Iraq is not a signatory to the Rome Statute of the International Criminal Court, whose material jurisdiction comprises genocide.⁵⁷⁶ Consequently, Iraq did not grant jurisdiction to the Court. Also, Iraq has not acceded to the Protocol Additional to the Geneva Conventions of 12 August 1949 relative to the protection of victims of non-international armed conflicts (Additional Protocol II).⁵⁷⁷

1.1.5. International efforts to hold ISIL/DAESH terrorist fighters accountable

Following international efforts to hold ISIL/DAESH accountable for its acts, the Security Council, through Resolution 2379, from September 2017, established an Investigative Team "to support Iraqi efforts to [prosecute ISIL/DAESH fighters]," by "assisting with the collection, preservation, and storage of evidence."^{578 579} The Investigative Team was created with three substantive investigative priorities:

"(a) Attacks committed by ISIL/DAESH against the Yazidi community in the Sinjar district in August 2014;

(b) Crimes committed by ISIL/DAESH in Mosul between 2014 and 2016, including the execution of religious minorities, crimes involving sexual and gender-based violence and crimes against children;

(c) The mass killing of unarmed Iraqi air force cadets from Tikrit Air Academy in June 2014."⁵⁸⁰

Although the Investigative Team was generally vested with the competence to investigate the *execution of religious minorities*, no express mention of crimes committed by ISIL/DAESH against Christians in Iraq was made.

⁵⁷² HUMAN RIGHTS WATCH. *Supra* note 411. p. 27.

⁵⁷³ *Idem.* p. 21.

⁵⁷⁴ U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 19.

⁵⁷⁵ HUMAN RIGHTS WATCH. *Supra* note 411. p. 27.

⁵⁷⁶ U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2016). *passim*.

⁵⁷⁷ U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶¶ 10, 13.

⁵⁷⁸ *Idem.* ¶ 19.

⁵⁷⁹ See also: U.N. Doc. A/73/352/Add.6 (Oct. 12, 2018). ¶ 2.

⁵⁸⁰ U.N. Doc. S/2019/407 (May 17, 2019). ¶ 13.a, b, c

The Investigative Team was composed of experienced “international experts and Iraqi investigative judges and other criminal experts, including experienced members of the prosecution services, who will /work on an equal footing, under the authority of the Special Adviser.”⁵⁸¹

Upon creation, the Investigative Team’s mandate comprised twelve major commands:

Concerning the evidence:

- 1) to collect and preserve forensic material and excavation of mass graves;⁵⁸²
- 2) to collect, preserve, store, and analyze documentary and digital evidentiary material “pertaining to acts that may amount to war crimes, crimes against humanity and genocide committed by ISIL/DAESH (Da’esh) in Iraq,”^{583 584} and to “ensure an uninterrupted chain of custody of the evidence in its possession”;⁵⁸⁵
- 3) to collect and preserve testimonial evidence and protect witnesses following international standards;⁵⁸⁶
- 4) to collect and preserve existing documentary evidence from “Iraqi national authorities, other national Governments, victims and witness groups, civil society bodies and international and regional organizations, in accordance with international standards.”⁵⁸⁷

Concerning the ISIL/DAESH victims:

- 5) to protect and support survivors of ISIL/DAESH atrocities.⁵⁸⁸

Concerning the engagement with Iraqi authorities:

- 6) to promote accountability domestically as well as globally;⁵⁸⁹
- 7) to engage and cooperate with the Government of Iraq;⁵⁹⁰

⁵⁸¹ U.N. Doc. S/2018/118 (Feb. 14, 2018). ¶ 14.

⁵⁸² U.N. Doc. S/2019/407 (May 17, 2019). ¶¶ 34–42; U.N. Doc. S/2019/878 (Nov. 13, 2019). p. 9; U.N. Doc. S/2020/386 (May 11, 2020). p. 8.

⁵⁸³ U.N. Doc. S/2018/118 (Feb. 14, 2018). ¶ 5.

⁵⁸⁴ See also: U.N. Doc. S/2019/407 (May 17, 2019). ¶¶ 26–29.

⁵⁸⁵ U.N. Doc. S/2018/118 (Feb. 14, 2018). ¶ 8.

⁵⁸⁶ U.N. Doc. S/2018/1031 (Nov. 16, 2018). ¶ 30.d; U.N. Doc. S/2019/407 (May 17, 2019). ¶ 43; U.N. Doc. S/2019/878 (Nov. 13, 2019). p. 10; U.N. Doc. S/2020/386 (May 11, 2020). p. 9.

⁵⁸⁷ U.N. Doc. S/2018/1031 (Nov. 16, 2018). ¶ 30.a, d.

⁵⁸⁸ *Idem.* p. 10.

⁵⁸⁹ U.N. Doc. S/2018/118 (Feb. 14, 2018). ¶ 2; U.N. Doc. S/2018/1031 (Nov. 16, 2018). p. 12; U.N. Doc. S/2020/386 (May 11, 2020). pp. 15, 18; U.N. Doc. S/2019/407 (May 17, 2019). p. 17; U.N. Doc. S/2019/878 (Nov. 13, 2019). pp. 12, 15, 18.

- 8) to strengthen the capacity of Iraqi authorities;⁵⁹¹
- 9) to partner with all elements of Iraqi society.⁵⁹²

Concerning the engagement with international and intergovernmental authorities:

- 10) to support the United Nations Assistance Mission in Iraq;⁵⁹³
- 11) to engage with Security Council Member States in the fight against ISIL/DAESH;⁵⁹⁴
- 12) to ensure coherence with United Nations system entities.^{595 596}

The Government of Iraq expressly accepted the assistance through a “Term of Reference,” dated February 8, 2018, upon the condition that the Investigative Team would operate with full respect for the Guiding Principles⁵⁹⁷ and “for the sovereignty of Iraq and its jurisdiction over crimes committed in its territory.”⁵⁹⁸ The main tenet of the Term of Reference sought to promote

⁵⁹⁰ U.N. Doc. S/2018/1031 (Nov. 16, 2018). p. 9; U.N. Doc. S/2020/386 (May 11, 2020). p. 12; U.N. Doc. S/2019/407 (May 17, 2019). p. 12; U.N. Doc. S/2019/878 (Nov. 13, 2019). p. 12.

⁵⁹¹ U.N. Doc. S/2019/878 (Nov. 13, 2019). p. 14; U.N. Doc. S/2020/386 (May 11, 2020). p. 13.

⁵⁹² U.N. Doc. S/2019/407 (May 17, 2019). p. 13; U.N. Doc. S/2019/878 (Nov. 13, 2019). p. 14; U.N. Doc. S/2020/386 (May 11, 2020). p. 14.

⁵⁹³ U.N. Doc. S/2018/1031 (Nov. 16, 2018). p. 11; U.N. Doc. S/2019/407 (May 17, 2019). p. 16.

⁵⁹⁴ U.N. Doc. S/2018/1031 (Nov. 16, 2018). p. 15; U.N. Doc. S/2019/407 (May 17, 2019). p. 14; U.N. Doc. S/2019/878 (Nov. 13, 2019). p. 16; U.N. Doc. S/2020/386 (May 11, 2020). p. 16.

⁵⁹⁵ Namely: the Office of the Special Representative of the Secretary-General for Sexual Violence in Conflict, the Office on Genocide Prevention and the Responsibility to Protect, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, the United Nations Office on Drugs and Crime, the Counter-Terrorism Committee, the Counter-Terrorism Committee Executive Directorate, the Office of Counter-Terrorism, the United Nations Mine Action Service, the Office of the United Nations High Commissioner for Human Rights and the Human Rights Office of the United Nations Assistance Mission for Iraq. (U.N. Doc. S/2018/1031 (Nov. 16, 2018). p. 13).

⁵⁹⁶ U.N. Doc. S/2019/407 (May 17, 2019). p. 14; U.N. Doc. S/2019/878 (Nov. 13, 2019). p. 17; U.N. Doc. S/2020/386 (May 11, 2020). p. 16.

⁵⁹⁷ The Guiding Principles of the Investigative Team are: “*Principle 1: Operating with impartiality and independence; Principle 2: Fostering collective support in Iraq; Principle 3: Adhering to international standards and best practices; Principle 4: Focusing on those who bear the greatest responsibility.*” (U.N. Doc. S/2018/1031 (Nov. 16, 2018). ¶¶ 19–27).

⁵⁹⁸ U.N. Doc. S/2018/118 (Feb. 14, 2018). ¶ 4.

“accountability for acts that may amount to war crimes, crimes against humanity and genocide committed by ISIL/DAESH (Da’esh) and work[ing] with survivors, in a manner consistent with relevant national laws, to ensure that their interests in achieving accountability for ISIL/DAESH (Da’esh) are fully recognized.”⁵⁹⁹

Since then, “Iraq has therefore committed itself to prosecute international crimes, and the international community has committed itself to support such efforts.”⁶⁰⁰ Nevertheless, the investigation, documentation, and assessment of all violations of human rights and humanitarian law that occurred in ISIL/DAESH-controlled areas in Iraq, from 2014 to 2017, remained a challenge for the United Nations and particularly for most international NGOs.⁶⁰¹ The challenge involves a lack of documentation, lack of security, access constraints to conflict-affected areas, logistical limitations, and the victims’ fear of retaliation, fear of retribution, fear of repercussions, and stigma, particularly in cases of widespread sexual violence perpetrated by ISIL/DAESH against women and children.⁶⁰² Therefore, most of the violations demonstrated in international reports from this period in Iraq are considered to be significantly underreported or “illustrative of broader trends”⁶⁰³ due to the impossibility of obtaining data in the territories once controlled by ISIL/DAESH.⁶⁰⁴

I.2. Acts of persecution and discrimination against ethnic and religious minorities

Between June 2014 and December 2017, ISIL/DAESH fighters committed a plethora of deliberate, widespread, and systematic gross human rights and humanitarian abuses and international crimes against persons belonging to various religious and ethnic communities in areas under their control

⁵⁹⁹ U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 19.

⁶⁰⁰ *Ibidem*.

⁶⁰¹ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 61; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 53.

⁶⁰² U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 49; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶¶ 42, 55; U.N. Doc. A/70/836-S/2016/360 (Apr. 20, 2016). ¶ 62; U.N. Doc. A/72/361-S/2017/821 (Aug. 24, 2017). ¶ 79; U.N. Doc. S/2017/881 (Oct. 19, 2017). ¶ 49; U.N. Doc. A/73/907-S/2019/509 (June 20, 2019). ¶ 75; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶¶ 62, 74.

⁶⁰³ U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 41.

⁶⁰⁴ U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶ 4; U.N. Doc. A/70/836-S/2016/360 (Apr. 20, 2016). ¶ 58; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 62.

in Iraq, including the perpetration of atrocious acts against women, children, persons with disabilities and the elderly.^{605 606 607} ISIL/DAESH systematically targeted, persecuted, killed, injured, abducted, tortured, raped, sexually abused, enslaved, and forced to flee thousands of Christians, Yazidis (Yazidis), Shi'a Muslims, Sunni Muslims, Shi'a Shabaks, Shia Turkmen, Baha'is, Kaka'es, Assyrians, Zoroastrians, Faili Kurds, and Sabea-Mandean.^{608 609 610 611 612}

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- ⁶⁰⁵ U.N. Doc. A/69/53/Add.1 (Sept. 1, 2014). ¶ 1; U.N. Doc. A/HRC/RES/S-22/1 (Sept. 3, 2014). Preamble, p.1; U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 46; U.N. Doc. S/2015/82 (Feb. 2, 2015). ¶ 46; U.N. Doc. S/2015/530 (July 13, 2015). ¶ 44; U.N. Doc. A/HRC/30/NGO/116 (Sept. 8, 2015). p. 2; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 48; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 9; U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶ 55; U.N. Doc. S/2016/897 (Oct. 25, 2016). ¶ 44; U.N. Doc. A/HRC/34/50 (Jan. 17, 2017). ¶ 54; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 10; U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017). ¶¶ 15-16.
- ⁶⁰⁶ S.C. Res. 2233 (July 29, 2015). Preamble, p. 3; S.C. Res. 2249 (Nov. 20, 2015). Preamble, p. 1; S.C. Res. 2299 (July 25, 2016). Preamble, pp. 1, 4; S.C. Res. 2367 (July 14, 2017). Preamble, p. 1; S.C. Res. 2388 (Nov. 21, 2017). Preamble, pp. 2-3.
- ⁶⁰⁷ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 11; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 20; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 19-20; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 18; UNAMI (Jan. 2020). p. iv.
- ⁶⁰⁸ U.N. Doc. A/69/53/Add.1 (Sept. 1, 2014). Preamble, p.7; U.N. Doc. A/HRC/RES/S-22/1 (Sept. 3, 2014). Preamble, p.1; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 15; U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶¶ 49-50; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶¶ 16, 23; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 48; U.N. Doc. A/HRC/30/NGO/116 (Sept. 8, 2015). p. 2; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 50; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 9; U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶¶ 50, 55-56, 58; U.N. Doc. A/70/836-S/2016/360 (Apr. 20, 2016). ¶ 62; U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶¶ 29-30, 36-39, 40-47, 61; U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017). ¶ 16; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 11; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 60.
- ⁶⁰⁹ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 8; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). pp. 15-17; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 20; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 15-16; UNAMI (Nov. 6, 2018). p. 4.
- ⁶¹⁰ S.C. Res. 2388 (Nov. 21, 2017). ¶ 10.
- ⁶¹¹ UK Parliament, Genocide in Syria and Iraq, Early Day Motion, Sponsored by Robert Ffello (Jan. 26, 2016).
- ⁶¹² AMNESTY INTERNATIONAL. *Infra* note 785. p. 15; AMNESTY INTERNATIONAL. *Supra* note 495. p. 15; Flawed Justice Report: Accountability for ISIS Crimes in Iraq, HUMAN RIGHTS WATCH (December 2017). p. 16; AMNESTY INTERNATIONAL. *Infra* note 961. p. 15.

In areas under its control, ISIL/DAESH extensively submitted Christians and Yazidis to forced conversions to the Muslim faith.^{613 614 615} Most of the men who allegedly converted were ordered by ISIL/DAESH to “be transported to new locations where their conversion would be monitored.”⁶¹⁶ Alarming, married women who converted “were told by ISIL/DAESH that their previous marriages were not recognized in Islamic law and that they, as well as unmarried women who converted, would be given to ISIL/DAESH fighters as wives.”⁶¹⁷ ISIL/DAESH then issued orders that these women and girls should be forcibly married to its commanders and fighters.^{618 619} Women and girls who refused to convert or refused to be married to ISIL/DAESH fighters were subjected to physical violence. Many of these women were later reportedly killed.⁶²⁰

ISIL/DAESH continually and deliberately destroyed and looted cultural heritage, historic cities, cultural sites, archaeological sites, historical monuments, and symbols in Iraq. The group has also damaged Christian religious objects and removed crosses from the domes of churches by replacing them with ISIL/DAESH black flags. ISIL/DAESH destroyed places of worship/religious buildings and other sites dedicated to religion, such as churches, convents, monasteries, and Christian cemeteries, by blowing them up, burning, detonating them with grenades or other types of explosives, or by demolishing using bulldozers. The group also destroyed Sunni and Shi’a mosques, ancient Shrines belonging to the Kaka’e, Shabak Shi’a, Sufi, and Sunni communities, demolished public and private libraries, and burned thousands of books.^{621 622 623 624} In addition, ISIL/DAESH deliberately

⁶¹³ AMNESTY INTERNATIONAL. *Supra* note 495. *passim*.

⁶¹⁴ U.N. Doc. A/69/53/Add.1 (Sept. 1, 2014). Preamble, p.7; U.N. Doc. A/HRC/RES/S-22/1 (Sept. 3, 2014). Preamble, p.1; U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶ 55; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 9.

⁶¹⁵ UNAMI (Nov. 6, 2018). p. 4.

⁶¹⁶ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 15.

⁶¹⁷ *Ibidem*.

⁶¹⁸ U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶ 50; U.N. Doc. CCPR/C/IRQ/CO/5/Add.1 (Aug. 18, 2017). ¶ 19; U.N. Doc. S/2017/939 (Nov. 10, 2017). ¶ 4; U.N. Doc. A/72/865-S/2018/465 (May 16, 2018). ¶ 79; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶¶ 33, 60.

⁶¹⁹ S.C. Res. 2199 (Feb. 12, 2015). Preamble, p.2; S.C. Res. 2299 (July 25, 2016). Preamble, p. 5; S.C. Res. 2368 (July 20, 2017). Preamble, p. 6; S.C. Res. 2388 (Nov. 21, 2017). Preamble, pp. 2–3; S.C. Res. 2379 (Sept. 21, 2017). Preamble, p.1.

⁶²⁰ UNAMI (Dec. 11, 2014 – April 30, 2015). p. 22.

⁶²¹ U.N. Doc. A/69/53/Add.1 (Sept. 1, 2014). Preamble, p.7; U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 46; U.N. Doc. S/2015/82 (Feb. 2, 2015). ¶¶ 46, 50; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 76; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 25; U.N. Doc.

perpetrated acts of wanton destruction of private property and denied religious and ethnic groups access to essential humanitarian services.^{625 626}

In vast areas of Iraq under its control, ISIL/DAESH expelled or attempted to destroy the Yazidi group. ISIL/DAESH fighters: 1) tortured, severely ill-treated, enslaved, submitted to rape, forced marriages, sexual enslavement, and other forms of sexual violence thousands of women and girls from the Yazidi community; 2) recruited, indoctrinated, and used children in hostilities; 3) abducted women and children and submitted them to human trafficking; and 4) forced Yazidis, including young girls, to convert to Islam. Those who refused to convert were summarily killed or treated as sex slaves, if women. Yazidis attempting to flee were being killed or captured by ISIL/DAESH.^{627 628 629 630} According to reports from states, supranational organizations, international and domestic NGOs, and inter-governmental organizations, the atrocities perpetrated by ISIL/DAESH

S/2015/852 (Nov. 9, 2015). ¶ 21; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 50; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 12; U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶ 55; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 50; U.N. Doc. S/2016/592 (July 5, 2016). ¶ 17; U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶ 7; U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017). ¶ 15; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 10.

⁶²² S.C. Res. 2233 (July 29, 2015). Preamble, p. 4; S.C. Res. 2249 (Nov. 20, 2015). Preamble, p. 1, ¶ 3; S.C. Res. 2299 (July 25, 2016). Preamble, pp. 4–5; S.C. Res. 2367 (July 14, 2017). Preamble, p. 4; S.C. Res. 2368 (July 20, 2017). Preamble, p. 6.

⁶²³ UNAMI (Dec. 11, 2014 – April 30, 2015). pp. 17–19; UNAMI in Iraq (May 1, 2015 – Oct. 31, 2015). pp. 16–17; UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 9–10, 16; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 12.

⁶²⁴ AMNESTY INTERNATIONAL. *Supra* note 495. *passim*.

⁶²⁵ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 11; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 13.

⁶²⁶ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 50; U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶ 58.

⁶²⁷ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶¶ 17, 20, 35–37, 40, 45; U.N. Doc. A/69/926–S/2015/409 (June 5, 2015). ¶ 77; U.N. Doc. S/2015/530 (July 13, 2015). ¶¶ 44, 50; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶¶ 32, 37, 48–49; U.N. Doc. A/HRC/30/NGO/116 (Sept. 8, 2015). pp. 2–3; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶¶ 33, 42, 52–53; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 48; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 22; U.N. Doc. S/2016/361 (Apr. 20, 2016). ¶¶ 20, 40; U.N. Doc. S/2016/396 (Apr. 27, 2016). ¶ 43; U.N. Doc. A/71/303 (Aug. 5, 2016). ¶ 33; U.N. Doc. S/2016/1090 (Dec. 21, 2016). p. 7; U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). Preamble, p.1, ¶ 57; U.N. Doc. S/2017/75 (Jan. 26, 2017). ¶ 41; U.N. Doc. A/72/164 (July 18, 2017). ¶ 25; U.N. Doc. S/2017/881 (Oct. 19, 2017). ¶ 48; U.N. Doc. CED/C/IRQ/22-25 (Nov. 22, 2017). ¶ 16; U.N. Doc. A/72/865–S/2018/465 (May 16, 2018). ¶ 79; U.N. Doc. S/2018/677 (July 9, 2018). ¶ 40; U.N. Doc. A/HRC/41/46 (Abr. 23, 2019). ¶ 21; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶¶ 28, 60.

could amount to war crimes, crimes against humanity, and possibly the crime of genocide.^{631 632}

I.2.1. ISIL/DAESH targeting Christians in Iraq: Physical destruction of human lives, forced conversions, destruction of churches, rape, sexual violence, displacement, and mass graves

Throughout the hundreds of years of Iraqi history, different groups and entities have historically targeted Christian communities in the country because of their religious faith and their “perceived ties with the West.”⁶³³ The religious group of those who profess the Christian faith in Iraq consists of a myriad of communities with a broad spectrum of professing values:

“Armenian Catholics and Orthodox Christians, members of the Assyrian Church of the East, Assyrian Orthodox Christians, Chaldean Catholics, Evangelicals, other Protestants, Syriac Catholics, and Orthodox Christians, and other distinct religious groups that fall within the category of ‘Christian.’”⁶³⁴

^{635 636}

⁶²⁸ UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 14–15; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 13; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 20; UNAMI (May 1, 2015 – Oct. 31, 2015). p. 18; UNAMI (Aug. 2016). pp. 9–16.

⁶²⁹ Office of the United Nations High Commissioner for Human Rights, Internal Communication Clearance Form, UA, IRQ 4/2014 (July 24, 2014). p. 2; Office of the United Nations High Commissioner for Human Rights, Internal Communication Clearance Form, UA, IRQ 5/2014 (Aug. 18, 2014). p. 2; Office of the United Nations High Commissioner for Human Rights, Internal Communication Clearance Form, UA, IRQ 1/2015 (May 4, 2015). pp. 1–2.

⁶³⁰ AMNESTY INTERNATIONAL. *Infra* note 961. p. 11; ICSR. *Supra* note 520. p. 13.

⁶³¹ UNAMI (Jan. 2020). p. iv.

⁶³² See also: U.N. Doc. S/2016/897 (Oct. 25, 2016). ¶ 44.

⁶³³ U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶ 31.

⁶³⁴ *Ibidem*.

⁶³⁵ “Approximately 67 percent of Christians are Chaldean Catholics (an eastern rite of the Roman Catholic Church), and nearly 20 percent are members of the Assyrian Church of the East. The remainder are Syriac Orthodox, Syriac Catholic, Armenian Catholic, Armenian Apostolic, and Anglican and other Protestants. [...] There are approximately 2,000 registered members of evangelical Christian churches in the IKR, while an unknown number, mostly converts from Islam, practice the religion secretly.” (U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2019). p. 3).

⁶³⁶ “Shia Muslims, predominantly Arabs but also including Turkoman, Faili (Shia) Kurds, and others, constitute 55 to 60 percent of the population. [...] Sunni Mus-

The United States State Department estimated that, in 2002, the number of the Christian population in Iraq ranged from 800,000 to 1.4 million. After the 2003 invasion of US troops, these figures dramatically declined. In the years that followed until 2014, the group of Christians in Iraq was reduced to between 250,000 to 350,000, majorly living in the Ninewa Plain and the Autonomous Administration in Northern Iraq.^{637 638}

The Republic of Iraq's Constitution establishes Islam as the State's official religion⁶³⁹ and as a "foundational source" of legislation.⁶⁴⁰ The Constitution also establishes that "no law may be enacted contradicting the established provisions of Islam."⁶⁴¹ Domestic laws forbid the conversion of Muslims to other religions.⁶⁴² In case of a parent converting to Islam, the child must receive an "administrative designation."⁶⁴³ Islamic education and the study of the Quran is compulsory in primary and secondary schools.⁶⁴⁴ Although freedom of religious belief and practice is safeguarded in the Iraqi Constitution, the document mainly protects the "Islamic identity" and the "Islamic religion" of the Iraqi people, which is professed by 97 percent of the total population, which comprises 38.9 million (midyear 2019 estimate).^{645 646}

The Republic of Iraq "is a single, federal, independent and fully sovereign State with a republican, representative (parliamentary) and democratic system of government." The State is "an active founding member of the League of Arab States, the Organization of Islamic Cooperation, and the Movement of Non-Aligned Countries."⁶⁴⁷ Iraq has been a member-state of

lims are approximately 40 percent of the population, of which Arabs constitute 24 percent, Kurds 15 percent, and Turkomans the remaining 1 percent." (*ibidem*).

⁶³⁷ U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2019). p. 3.

⁶³⁸ U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶ 57; U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶¶ 31–32.

⁶³⁹ U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017). ¶ 7.

⁶⁴⁰ U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2019). p. 4–5.

⁶⁴¹ *Idem*. p. 1.

⁶⁴² *Idem*. p. 5.

⁶⁴³ *Ibidem*.

⁶⁴⁴ *Idem*. p. 8.

⁶⁴⁵ U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2019). pp. 3, 5.

⁶⁴⁶ Rep. of the Committee on the Elimination of Racial Discrimination, Combined Twenty-Second to Twenty-Fifth Periodic Reports Submitted by Iraq Under Article 9 of the Convention, U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017). ¶ 7.

⁶⁴⁷ U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017). ¶ 8.

the United Nations since 1945.⁶⁴⁸ Iraq is party to key international conventions on International Human Rights, International Humanitarian Law, and International Criminal Law, particularly those related to the right to life and physical integrity,⁶⁴⁹ the right of non-discrimination, and the rights of minorities.⁶⁵⁰ Iraq “has endured decades of authoritarianism, followed by a difficult transition that was marked by international presence, unrest, and continuous violence, resulting in thousands of civilian casualties.”⁶⁵¹

In June 2014, the Islamic State in Iraq and the Levant (ISIL/DAESH) occupied North Iraq and self-proclaimed the ‘Caliphate’ as “the only legitimate [Muslim] authority on the planet.”⁶⁵² ⁶⁵³ ISIL/DAESH then started a campaign to persecute and destroy religious and ethnic groups in Iraq, particularly the Christians and the Yazidis, through the perpetration of systematic and widespread violations and abuses of International Criminal Law, International Human Rights Law, and International Humanitarian Law in the territories under the control of the group.⁶⁵⁴ Evidence suggests that these acts may amount to war crimes, crimes against humanity, and genocide.⁶⁵⁵

Following the ISIL/DAESH self-proclamation of the Caliphate, the group imposed the *takfiri* doctrine with their own interpretation of the Islamic faith and Muslim ideologies. At the beginning of July 2014, ISIL/DAESH “significantly increased its restrictions on the Christian [...]

⁶⁴⁸ U.N. Doc. CRC/C/OPAC/IRQ/1 (May 9, 2012). ¶ 3.

⁶⁴⁹ Iraq is party to the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Optional Protocol thereto on the involvement of children in armed conflict, the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Elimination of All Forms of Discrimination against Women, the 1949 Geneva Conventions and the Protocol additional to the Geneva Conventions of 12 August 1949 (Additional Protocol I), the Convention on the Prevention and Punishment of the Crime of Genocide, and the International Convention for the Protection of All Persons from Enforced Disappearance.

⁶⁵⁰ Iraq is party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

⁶⁵¹ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 1.

⁶⁵² William Harris. *Supra* note 472. pp. 59–60.

⁶⁵³ See also: U.N. Doc. A/HRC/30/NGO/116 (Sept. 8, 2015). p. 2.

⁶⁵⁴ UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 6; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 10; U.N. Doc. S/2018/1031 (Nov. 16, 2018). ¶ 8.

⁶⁵⁵ U.N. Doc. S/2018/1031 (Nov. 16, 2018). ¶ 8.

communities within [Mosul].”⁶⁵⁶ An ultimatum followed these restrictions for Christians to leave Mosul and surrounding northern areas by July 14, 2014, or face execution.⁶⁵⁷

Although perceived as the “People of the Book” – ‘*Ahl Al-Kitab*’ in Arabic –, the ISIL/DAESH ultimatum to Christians declared them as “slaves of the cross.”^{658 659 660 661 662} In the ultimatum, ISIL/DAESH threatened Christians: “We will conquer your Rome, break your crosses, and enslave your women, by the permission of Allah, the Exalted.”⁶⁶³ ISIL/DAESH fighters proclaimed the “great glory of Allah” in allowing them to sell Christians’ sons and daughters as slaves at the slave market (*malak yamiin*),⁶⁶⁴ a slave market that “will commence in Rome by Allah’s power and might.”⁶⁶⁵ ISIL/DAESH solemnly ordered war against the *apostates*,⁶⁶⁶ a war against the Christians

⁶⁵⁶ UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 11–12.

⁶⁵⁷ *Ibidem*.

⁶⁵⁸ The expression *People of the Book* “is used in the Quran to refer to Jews, Christians and Sabaeans and emphasises the community of faith between those who possess monotheistic scriptures.” (Valeria Cetorelli & Ashraph, Sareta, A Demographic Documentation of ISIS’s Attack on the Yazidi Village of Kocho (*The London School of Economics and Political Science* – LSE, 2019). p. 8).

⁶⁵⁹ William Harris. *Supra* note 472. p. 60.

⁶⁶⁰ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 21.

⁶⁶¹ Valeria Cetorelli & Ashraph, Sareta. *Supra* note 658. p. 8.

⁶⁶² Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Resolution 2190 (2017). ¶ 4.

⁶⁶³ The complete ultimatum from ISIL/DAESH to Christians in Iraq reads: “We will conquer your Rome, break your crosses, and enslave your women, by the permission of Allah, the Exalted. This is His promise to us; He is glorified and He does not fail in His promise. If we do not reach that time, then our children and grandchildren will reach it, and they will sell your sons as slaves at the slave market. Finally, this certainty is the one that should pulse in the heart of every mujġhid from the Islamic State and every supporter outside until he fights the Roman crusaders near Dċbiq.” (KNIGHTS OF COLUMBUS. *Supra* note 409. pp. 8–9).

⁶⁶⁴ *Ibidem*.

⁶⁶⁵ Another part of the ultimatum from ISIL/DAESH to Christians in Iraq reads: “And nothing changes for the Islamic State, as it will continue to pronounce takfir [abandonment of Islam] upon the Jews, the Christians, the pagans, and the apostates from the Rċfidah, the Nusayriyyah, the Sahwah, and the tawċghġt [disbelievers]. It will continue to wage war against the apostates until they repent from apostasy. It will continue to wage war against the pagans until they accept Islam. It will continue to wage war against the Jewish state until the Jews hide behind their gharqad trees. And it will continue to wage war against the Christians until the truce decreed sometime before the Malhamah. Thereafter, the slave markets will commence in Rome by Allah’s power and might.” (*Idem*. p. 9).

⁶⁶⁶ *Apostates*, which can be understood as those not accepting Islam. *Ibidem*.

“until the truce decreed sometime before the *Malhamah*.”⁶⁶⁷ ISIL/DAESH had then started its systematic and deliberate intent to persecute and destroy Christians in Iraq.

Some reports suggested that, in pursuing their campaign to destroy Christians in Iraq, ISIL/DAESH fighters chose extremely efficient methods of direct physical destruction of lives, as well as *slow death* methods. Some of these *efficient methods* included: 1) mass and individual killings; and 2) executions by, *inter alia*, hanging, stoning, drowning, throwing persons off buildings, beheadings, crucifixions, shootings, burnings, and other forms of murder. *Slow death* methods included: 1) taking of hostages; 2) use of persons as human shields; 3) torture, beatings, mutilations, and amputations; 4) rape, sexual slavery, and abuse of women and girls; 5) inhuman and degrading treatment, causing serious bodily or mental harm; 5) abductions, human trafficking, enforced disappearances, and intentional displacement of the Christian population; 6) separation of children from their mothers; 7) systematic destruction of Christian places of worship; 8) forced conversions; 9) deprivation of liberty; and 10) use of persons as human shields or for suicide bombing.^{668 669 670 671 672} The bodies of an unknown number of Christian faith civilians continue to be discovered in mass graves in areas previously under the ISIL/DAESH domain.⁶⁷³

Issuing orders, declarations, and statements of doctrine, ISIL/DAESH compelled members of Christian communities, including young children, to either 1) convert to Islam; 2) pay a fine – in accordance with Sharia Law

⁶⁶⁷ *Ibidem*.

⁶⁶⁸ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 78; U.N. Doc. A/69/926-S/2015/409 (June 5, 2015). ¶ 71; S.C. Res. 2379 (Sept. 21, 2017). ¶ 1; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 9; U.N. Doc. S/2018/677 (July 9, 2018). p.3; U.N. Doc. S/PV.8324 (Aug. 8, 2018). p.3; U.N. Doc. A/73/347 (Aug. 28, 2018). ¶ 9; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶¶ 23, 25, 28, 73.

⁶⁶⁹ Michelle Nichols, Iraq Tells United Nations That Islamic State Committed Genocide, REUTERS, Feb. 17, 2015; Anugrah Kumar, ISIS Burns Christians Alive in Locked Caskets, Escaped Prisoner Reveals, CHRISTIAN POST, Jan. 6, 2016.

⁶⁷⁰ Eur. Parl., Systematic Mass Murder of Religious Minorities by the so-called ‘ISIS/Daesh’ (2016/2529(RSP)), Resolution (Feb. 4, 2016). p. 35/79. H; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Resolution 2190 (2017). ¶¶ 3, 3.1, 4.

⁶⁷¹ U.S. Dep’t of State, Department Press, Remarks by Secretary of State John Kerry (Mar. 17, 2016).

⁶⁷² UK Parliament, Genocide in Syria and Iraq, Early Day Motion, Sponsored by Robert Ffello (Jan. 26, 2016).

⁶⁷³ U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶ 63; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 77; U.N. Doc. S/2018/677 (July 9, 2018). ¶¶ 42, 43.

– called *jizyah* (toleration/protection tax); 3) face expulsion; or 4) face summary killings – death by the sword.^{674 675 676 677 678} Children were reported being beheaded by ISIL/DAESH members for refusing to convert to Islam.⁶⁷⁹ These orders were announced publicly in leaflets and through all the mosques' loudspeakers during Friday's prayers.^{680 681}

ISIL/DAESH systematically destroyed Christian places of worship or converted Christian churches/places of worship into mosques and bases. ISIL/DAESH intentionally looted or destroyed religious monuments, Christian cemeteries, religious artifacts, cultural heritage sites, and historic sites. The group also removed crosses and vandalized tombs. Several reports accounted for ISIL/DAESH's kidnapping and executions of the clergy, priests, and pastors.^{682 683 684 685 686 687} Several reports suggest that ISIL/

⁶⁷⁴ U.N. Doc. A/HRC/S-22/NGO/8 (Aug. 29, 2014). p.3; U.N. Doc. A/HRC/RES/S-22/1 (Sept. 3, 2014). p.1; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 21; U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶ 32.

⁶⁷⁵ UNAMI (July 6, 2014 – Sept. 10, 2014). p.11; UNAMI (Dec. 11, 2014 – Apr. 30, 2015). p.21.

⁶⁷⁶ Hamdi Alkhshali & Joshua Berlinger, *Facing Fines, Conversion or Death, Christian Families Flee Mosul*, CNN, July 20, 2014; Eleftheriou-Smith, Loulla-Mae. The Independent: British 'Vicar of Baghdad' claims Isis beheaded four children for refusing to convert to Islam. December 8, 2014; Jane Corbin, *Could Christianity Be Driven From Middle East?* BBC, April 15, 2015; Moni Basu, *Being Christian in Iraq after ISIS: In Biblical Lands of Iraq, Christianity in Peril After ISIS*, CNN, Nov. 21, 2016; Myers, Russell. The Mirror: ISIS behead four children in Iraq after they refuse to convert to Islam. December 8, 2017.

⁶⁷⁷ AMNESTY INTERNATIONAL. *Supra* note 495. p. 15; HUMAN RIGHTS WATCH. (December 2017). p. 16.

⁶⁷⁸ KNIGHTS OF COLUMBUS. *Supra* note 409. p. 4, 6).

⁶⁷⁹ Loulla-Mae Eleftheriou-Smith, *British 'Vicar of Baghdad' Claims Isis Beheaded Four Children For Refusing to Convert to Islam*, THE INDEPENDENT, Dec. 8, 2014; Russell Myers, *ISIS Behead Four Children in Iraq After They Refuse to Convert to Islam*, THE MIRROR, Dec. 8, 2017.

⁶⁸⁰ UNAMI, Protection of Civilians in the Armed Conflict in Iraq (July 6, 2014 – Sept. 10, 2014). p.11.

⁶⁸¹ THE HUDSON INSTITUTE. *Supra* note 410. p. 6.

⁶⁸² U.N. Doc. A/69/53/Add.1 (Sept. 1, 2014). Preamble, p.7; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶¶ 22, 78.

⁶⁸³ UNAMI (July 6, 2014 – Sept. 10, 2014). p.12; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 12; UNAMI (Dec. 11, 2014 – Apr. 30, 2015). p.19; UNAMI (May 1, 2015 – Oct. 31, 2015). p.16.

DAESH declarations encompassed a policy of destroying, eradicating, and exterminating the entire Christian community in Iraq.^{688 689 690}

After ISIL/DAESH's takeover of Mosul, Christian families and children fled Qaraqosh and other villages in the Nineveh Plains in massive numbers. Disabled, aged, and those unable to travel were left behind.^{691 692 693} ISIL/DAESH occupied and destroyed the houses of those who refused to convert to Islam and seized all their belongings, including identity docu-

⁶⁸⁴ Eur. Parl., Systematic Mass Murder of Religious Minorities by the so-called 'ISIS/Daesh' (2016/2529(RSP)), Resolution (Feb. 4, 2016). ¶ 8; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Resolution 2190 (2017). ¶¶ 3–4; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Report, Doc. No. 14402 (Sept. 22, 2017). ¶¶ 4, 22; Eur. Parl., Annual Report on Human Rights and Democracy in the World 2016 and the European Union's Policy on the Matter (2017/2122(INI)), Resolution (Dec. 13, 2017). ¶ 36.

⁶⁸⁵ 163 Cong. Rec. H5368 (daily ed. June 29, 2017) (statement of Rep. Ted Poe). p. H5369.

⁶⁸⁶ AMNESTY INTERNATIONAL. *Supra* note 495. p. 15.

⁶⁸⁷ *Iraq's Oldest Christian Monastery Destroyed by Islamic State*, BBC.COM, Jan. 20, 2016.

⁶⁸⁸ Eur. Parl., Threats Against Humanity Posed by the Terrorist Group Known as "IS": Violence Against Christians and Other Religious or Ethnic Communities (Final version), Doc. No. 13618 (Sept. 30, 2014). ¶ 7; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Resolution 2190 (2017). ¶¶ 3.2, 4; Eur. Parl., Annual Report on Human Rights and Democracy in the World 2016 and the European Union's Policy on the Matter (2017/2122(INI)), Resolution (Dec. 13, 2017). ¶ 36.

⁶⁸⁹ H.R.Con.Res. 75, 114th Cong. (Mar. 15, 2016). p. 2; H.R. 407, 115th Cong. (Dec. 12, 2017). Preamble; H.R. 390, 115th Cong. (Nov. 29, 2018). Drafting. Sec. 2. Findings. ¶ 3; 165 Cong. Rec. H349 (daily ed. Jan. 9, 2019) (statement of Rep. Jeff Fortenberry). p. H351.

⁶⁹⁰ 163 Cong. Rec. H4632 (daily ed. June 6, 2017) (statement of Rep. Edward Royce). p. H4633; 163 Cong. Rec. H5368 (daily ed. June 29, 2017) (statement of Rep. Ted Poe). p. H5369; 165 Cong. Rec. H2350 (daily ed. Mar. 5, 2019) (statement of Rep. Jeff Fortenberry). p. H2350; H. Res. 259, 116th Cong. (Mar. 27, 2019). p. 2.

⁶⁹¹ U.N. Doc. A/HRC/S-22/NGO/8 (Aug. 29, 2014). p.3; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 21; U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶¶ 32, 62; U.N. Doc. A/HRC/44/NGO/115 (June 30, 2020). p. 2.

⁶⁹² UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 11–12.

⁶⁹³ Hamdi Alkhshali & Joshua Berlinger, *Facing Fines, Conversion or Death, Christian Families Flee Mosul*, CNN, July 20, 2014; Jane Corbin, *Could Christianity Be Driven From Middle East?* BBC, April 15, 2015; Eliza Griswold, *Is this the end of Christianity in the Middle East?* THE NEW YORK TIMES, July 22, 2015; Moni Basu, *Being Christian in Iraq after ISIS: In Biblical Lands of Iraq, Christianity in Peril After ISIS*, CNN, Nov. 21, 2016; Hollie McKay, *Life After ISIS: Christians Say They Can't Go Home Without International Protection*, FOX NEWS, Dec. 14, 2017.

ments and indispensable survival items.^{694 695 696} In Mosul, the walls of houses, businesses, and farms belonging to Christians were marked with an Arabic letter “N” (ن) – the first letter of the Arabic word ‘nasara,’ nasrane (“Nazarene”), the Quran word referring to Christians)^{697 698} – as well as marked with the sign of “property of the Islamic State” (al-Dawla al-Islamiyya).^{699 700 701 702}

As the *mass exodus* of Christians advanced over other municipalities, ISIL/DAESH reportedly cut the water and electricity supply to these areas, such as the Nineveh Plain and Qaraqosh.^{703 704 705 706} ISIL/DAESH left the Christian group in Iraq in an atmosphere of fear and intimidation. As Christian women and girls were fleeing, they were physically and sexually abused and raped by ISIL/DAESH fighters at checkpoints.⁷⁰⁷ In ISIL/DAESH-controlled areas, these women and girls were systematically sold as sexual slaves.⁷⁰⁸ Prohibited by ISIL/DAESH fighters from going back to their

⁶⁹⁴ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶¶ 21–22; U.N. Doc. A/HRC/44/NGO/115 (June 30, 2020). p. 2.

⁶⁹⁵ UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 11–12; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 21; UNAMI (May 1, 2015 – Oct. 31, 2015). p. 15.

⁶⁹⁶ Eur. Parl., Systematic Mass Murder of Religious Minorities by the so-called ‘ISIS/Daesh’ (2016/2529(RSP)), Resolution (Feb. 4, 2016). p. 35/79. h.

⁶⁹⁷ U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶ 32.

⁶⁹⁸ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 11.

⁶⁹⁹ *Ibidem*.

⁷⁰⁰ Office of the United Nations High Commissioner for Human Rights, Internal Communication Clearance Form, UA, IRQ 4/2014 (July 24, 2014). p. 2; U.N. Doc. A/HRC/S-22/NGO/8 (Aug. 29, 2014). p.3; U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶ 62.

⁷⁰¹ U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2017). p.160.

⁷⁰² Eliza Griswold, *Is this the end of Christianity in the Middle East?* THE NEW YORK TIMES, July 22, 2015.

⁷⁰³ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 12.

⁷⁰⁴ Eur. Parl. Plenary sitting, Joint Motion for a Resolution Pursuant to Rule 123(2) and (4), of the Rules of Procedure. Systematic Mass Murder of Religious Minorities by The So-called ISIS/Daesh 2014–2019. (Feb. 3, 2016). ¶ 11.

⁷⁰⁵ THE HUDSON INSTITUTE. *Supra* note 410. p. 6.

⁷⁰⁶ Eliza Griswold, *Is this the end of Christianity in the Middle East?* THE NEW YORK TIMES, July 22, 2015.

⁷⁰⁷ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 12.

⁷⁰⁸ U.N. Doc. A/69/926–S/2015/409 (June 5, 2015). ¶ 71; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 9; U.N. Doc. A/70/836–S/2016/360 (Apr. 20, 2016). ¶ 62; U.N. Doc. S/2018/677 (July 9, 2018). ¶ 75; U.N. Doc. A/73/263 (July 27, 2018). ¶ 11; U.N. Doc. S/2018/770 (August 16, 2018). ¶ 10.

houses, Christians' inability to reconstitute themselves indicated to the international community the terrorist group's intent to destroy the religious group in Iraq. A Non-Governmental Organization with Special Consultative Status in the Human Rights Council estimated that, following ISIL/DAESH control of the Iraqi territory, "the Christian population of Iraq has shrunk to only 150,000 members, about 0.39 percent of the country's population."^{709 710}

Several United Nations bodies considered that the acts perpetrated by ISIL/DAESH against Christians in Iraq, from 2014 to 2017, could fall within the definition of genocide, as determined by the 1948 U.N. Convention on the Prevention and Punishment of Genocide: the United Nations Assistance Mission for Iraq (UNAMI),⁷¹¹ the United Nations Human Rights Committee,⁷¹² the United Nations Human Rights Council,⁷¹³ and United Nations Committee on the Elimination of Racial Discrimination.⁷¹⁴ Likewise, on numerous occasions, the Parliamentary Assembly of the Council of Europe⁷¹⁵ and the European Parliament formally recognized that evidence might sustain an accusation of genocide against ISIL/DAESH members for their acts against Christians in Iraq.⁷¹⁶ France⁷¹⁷ and the United Kingdom^{718 719 720}

⁷⁰⁹ U.N. Doc. A/HRC/44/NGO/115 (June 30, 2020). p. 2.

⁷¹⁰ See also: The United Nations High Commissioner for Human Rights estimated this figure in approximately 200,000 Christians. (U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 21); U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶ 32.

⁷¹¹ UNAMI (Dec. 11, 2014 – Apr. 30, 2015). p. i.

⁷¹² U.N. Doc. CCPR/C/IRQ/CO/5/Add.1 (Aug. 18, 2017). ¶¶ 1, 3.

⁷¹³ U.N. Doc. A/HRC/RES/S-22/1 (Sept. 3, 2014). p.1; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018).

⁷¹⁴ U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017). ¶ 16.

⁷¹⁵ Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Resolution 2190 (2017). ¶¶ 1, 2, 3, 3.1, 4.

⁷¹⁶ Eur. Parl., Threats Against Humanity Posed by the Terrorist Group Known as "IS": Violence Against Christians and Other Religious or Ethnic Communities (Final version), Doc. No. 13618 (Sept. 30, 2014); Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Resolution 2190 (2017). ¶ 1; Eur. Parl., EU priorities for the UN Human Rights Council Sessions in 2017 (2017/2598(RSP)), Resolution (Mar. 16, 2017). ¶ 21; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Compendium of Amendments, Doc. No. 14402 (Oct. 11, 2017); Eur. Parl., Annual Report on Human Rights and Democracy in the World 2016 and the European Union's Policy on the Matter (2017/2122(INI)), Resolution (Dec. 13, 2017).

⁷¹⁷ Permanent Mission of France to the United Nations, "The Fight Against Impunity for Atrocities: Bringing Daesh to Justice," Remarks by François Delattre, (Mar. 9, 2017).

also recognized the existence of at least circumstantial evidence to sustain that ISIL/DAESH might have committed genocide against Christians. Several international organizations followed this approach.⁷²¹

Also, several instances of political power in the United States considered ISIL/DAESH's atrocities against Christians in Iraq. In the US Congress, the Senate,⁷²² and the House of Representatives,⁷²³ separately, as well as assembled with concurring resolutions,⁷²⁴ recognized that the crimes committed by ISIL/DAESH against Christians in Iraq, from 2014 to 2017, could constitute genocide. In the U.S. Department of State, different spheres have also considered that the acts perpetrated by ISIL/DAESH against Christians had the required legal elements for the consideration of genocide: the Department of State Secretary,⁷²⁵ ⁷²⁶ the Office of the Spokesper-

⁷¹⁸ UK Parliament, Genocide in Syria and Iraq, Early Day Motion, Sponsored by Robert Ffello (Jan. 26, 2016).

⁷¹⁹ Arabella Lang & Ben Smith, *Declaring Daesh Massacres' Genocide*, HOUSE OF COMMONS PUBLISHING HOUSE, Apr. 15, 2016.

⁷²⁰ Patrick Wintour, *MPs Unanimously Declare Yazidis and Christians Victims of Isis Genocide: British Parliament Defies Government to Condemn Barbarity of Islamic State in Syria and Iraq*, THE GUARDIAN, April 20, 2016.

⁷²¹ For example: KNIGHTS OF COLUMBUS. *Supra* note 409. p. 10, 11, 27; THE HUDSON INSTITUTE. *Supra* note 410. pp. 1–2; AMNESTY INTERNATIONAL. *Supra* note 495. p.15; HUMAN RIGHTS WATCH. (December 2017). p. 16.

⁷²² S. 2377, 114th Cong. (Dec. 9, 2015). ¶ 7.

⁷²³ H.R. 4017, 114th Cong. (Nov. 16, 2015). Preamble; H. Res. 1117, 115th Cong. (Oct. 5, 2018). Preamble; H.R. 390, 115th Cong. (Nov. 29, 2018). Drafting. Preamble; H. Res. 259, 116th Cong. (Mar. 27, 2019). p. 2.

⁷²⁴ H.R.Con.Res. 75, 114th Cong. (Sept. 9, 2015). ¶ 1; H.R.Con.Res. 75, 114th Cong. (Mar. 15, 2016). Dispositive part; H.R.Con.Res. 41, 114th Cong. (July 18, 2016). ¶ 7; 165 Cong. Rec. X 1.1/A: X/A (daily ed. Jan. 10, 2017) (statement of Rep. Christopher H. Smith). Preamble; 163 Cong. Rec. E1315 (daily ed. Oct. 3, 2017) (statement of Rep. Christopher H. Smith). Preamble; 164 Cong. Rec. S6876 (daily ed. Oct. 11, 2018) (statement of Rep. Mitch McConnell). ¶ 1; 164 Cong. Rec. H9600 (daily ed. Nov. 27, 2018) (statement of Rep. Christopher H. Smith). P. H9603; 164 Cong. Rec. E1606 – H.R. 390 (daily ed. Dec. 6, 2018) (statement of Rep. Anna G. Eshoo). Drafting. Preamble; 165 Cong. Rec. H349 (daily ed. Jan. 9, 2019) (statement of Rep. Jeff Fortenberry). p. H352.

⁷²⁵ Amanda Holpuch, Harriet Sherwood & Owen Bowcott, *John Kerry: Isis Is Committing Genocide in Syria and Iraq, says US House*, THE GUARDIAN, Mar. 17, 2016; John Hudson, *Obama Administration Declares Islamic State Genocide Against Christians*, FOREIGN POLICY, Mar. 17, 2016; Andrea Mitchell, Cassandra Vinograd, F. Brinley Bruton & Abigail Williams, *Daesh Is Responsible For Genocide: Kerry: ISIS Is Committing Genocide Against Yazidis, Christians and Shiite Muslims*, NBC NEWS, Mar. 17, 2016.

⁷²⁶ U.S. Dep't of State, Department Press, Remarks by Secretary of State John Kerry (Mar. 17, 2016).

son,⁷²⁷ the Department Press,⁷²⁸ and the Office of the Legal Adviser⁷²⁹ In 2017, the U.S. Commission on International Religious Freedom⁷³⁰ and the U.S. Permanent Representative to the United Nations⁷³¹ indicated that ISIL/DAESH might have executed Christians near extinction in Iraq solely because they were Christians. However, none of these instances presented pieces of evidence to support their allegation of genocide, although their reports actually mentioned the existence of such evidence.

I.3. ISIL/DAESH self-appointed sharia courts: Sharia Law, sentences, the use of public executions, and mass graves

In areas under its control, ISIL/DAESH engaged in numerous unlawful detentions. The group “ran detention facilities managed by various entities: the Islamic police, the military police, the morality police, raid squads, and security forces.”⁷³² Moreover, ISIL/DAESH established self-appointed sharia courts that extrajudicially sentenced civilians to cruel, inhuman, de-

⁷²⁷ U.S. Dep’t of State, Office of the Spokesperson, Department Press, Briefing by Heather Nauert (Aug. 3, 2017); U.S. Dep’t of State, Office of the Spokesperson, Department Press, Briefing by Heather Nauert (Aug. 15, 2017); U.S. Dep’t of State, Office of the Spokesperson, Department Press, Briefing by Heather Nauert (Oct. 26, 2017); U.S. Dep’t of State, Office of the Spokesperson, Department Press, Readout of USAID Administrator Green and Ambassador-at-Large for International Religious Freedom Samuel Brownback’s Trip to Northern Iraq (July 5, 2018).

⁷²⁸ U.S. Dep’t of State, Department Press, Remarks by Special Presidential Envoy for the Global Coalition to Defeat ISIS Brett McGurk (June 22, 2017); U.S. Dep’t of State, Department Press, Remarks by Special Presidential Envoy for the Global Coalition to Defeat ISIS Brett McGurk (July 8, 2017); U.S. Dep’t of State, Department Press, Remarks by Special Presidential Envoy for the Global Coalition to Defeat ISIS Brett McGurk (July 13, 2017); U.S. Dep’t of State, Department Press, Special Briefing by Special Presidential Envoy for the Global Coalition to Defeat ISIS Brett McGurk (Dec. 21, 2017); U.S. Dep’t of State, Department Press, Remarks by Special Presidential Envoy for the Global Coalition to Defeat ISIS Brett McGurk (June 26, 2018).

⁷²⁹ U.S. Dep’t of State, Office of the Legal Adviser, Digest of the United States Practice in International Law (2016). p. 780; U.S. Dep’t of State, Office of the Legal Adviser, Digest of the United States Practice in International Law (2017). p. 283.

⁷³⁰ U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2017).

⁷³¹ U.S. Permanent Representative to the United Nations, Ambassador Nikki Haley, Explanation of Vote Following the Adoption of UN Security Council Resolution 2379 on Accountability for ISIS Atrocities (Sept. 21, 2017).

⁷³² U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 24.

grading treatment, and death. Women, young children, and persons with disabilities were among the long list of victims.^{733 734 735 736 737} Such “courts” lacked any power to exercise judicial authority, in total violation of international law.⁷³⁸ Through such “courts,” ISIL/DAESH ultimately instituted a state in which violence became a “necessary and ‘normal’ way of life,”⁷³⁹ instilling on civilians in Iraq “feelings of fear, insecurity, and disorientation.”⁷⁴⁰

The passing of “sentences” and the summary executions did not respect any fundamental principle of due process or fair trial guarantees.^{741 742} ISIL/DAESH victims were punished under the “guilty until proven innocent” rule without a previous lawful judgement.⁷⁴³ The executions were 1) often preceded by the enforced disappearances of victims, and 2) most of the time were held in public, in front of a civilian crowd.⁷⁴⁴

ISIL/DAESH courts punished civilians for a myriad of reasons:

1) For failing to comply with ISIL/DAESH’s strict code of conduct: civilians were rigidly and brutally punished on charges of adultery; charges for the practice of homosexual acts (sodomy); charges for watching football matches; charges for smoking cigarettes; charges for practicing magic; and

⁷³³ “In Mosul alone, Ninewa governorate, ISIL/DAESH has established at least 14 so-called ‘courts’.” (UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 10).

⁷³⁴ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 49; U.N. Doc. S/2015/82 (Feb. 2, 2015). ¶ 48; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶¶ 35, 48–49, 76; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶¶ 11, 20; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 24; U.N. Doc. A/73/347 (Aug. 28, 2018). ¶ 9; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 6.

⁷³⁵ UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 6, 15; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 10; UNAMI (Dec. 11, 2014 – April 30, 2015). pp. 11, 13–14, 22; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 9, 11–12, 17, 32; UNAMI (Aug. 2016). p. 11; UNAMI (Nov. 6, 2018). p. 4.

⁷³⁶ S.C. Res. 2379 (Sept. 21, 2017). Preamble, p.1.

⁷³⁶ Office of the United Nations High Commissioner for Human Rights, Internal Communication Clearance Form, UA, IRQ 5/2014 (Aug. 18, 2014). p. 1.

⁷³⁷ AMNESTY INTERNATIONAL. *Supra* note 495. *passim*.

⁷³⁸ UNAMI (May 1, 2015 – Oct. 31, 2015). p. 11.

⁷³⁹ ICSR. *Supra* note 520.

⁷⁴⁰ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 36

⁷⁴¹ UNAMI (May 1, 2015 – Oct. 31, 2015). p. 11.

⁷⁴² U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 48; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 24.

⁷⁴³ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 76

⁷⁴⁴ U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 25.

charges for using telephones, cellphones, and the internet.^{745 746 747} Music and CD stores were utterly banned in Mosul.⁷⁴⁸ In one instance, ISIL/DAESH “stopped a wedding procession in the Ghabat area of northern Mosul because of the decorated cars and loud music.”⁷⁴⁹ After much disagreement, “ISIL/DAESH fighters started shooting at the wedding party, killing the bride and the groom and injuring others.”⁷⁵⁰

2) ISIL/DAESH imposed a strict dress code on men and women. Women and girls above thirteen years of age who had refused to wear the veil (*niqab*) were sentenced to brutal beatings or stoning in public.^{751 752} Female students starting from the age of 10 were forced to cover their faces and hands in school premises.⁷⁵³ In the holy month of Ramadan, women were prohibited from leaving their homes from dawn to sunset.⁷⁵⁴ ISIL/DAESH also imposed harsh sentences on female doctors who did not abide by the group’s dress code.⁷⁵⁵ Reportedly, ISIL/DAESH inquired that hospitals make known “the marital status of the female doctors and stated that married women should wear black, while unmarried females other colours [sic], so as to be easily distinguishable.”⁷⁵⁶ On one occasion, “a female doctor reported that she was stopped from attending to an urgent case because she was not covered properly.”^{757 758} Male residents of Mosul were

⁷⁴⁵ UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 6, 15–16; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 14; UNAMI (Dec. 11, 2014 – April 30, 2015). pp. 13–14, 21, 24; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 17, 32.

⁷⁴⁶ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 49; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 49; U.N. Doc. S/2016/592 (July 5, 2016). ¶ 37; U.N. Doc. S/2017/75 (Jan. 26, 2017). ¶ 39; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 27; U.N. Doc. A/73/347 (Aug. 28, 2018). ¶ 9.

⁷⁴⁷ AMNESTY INTERNATIONAL. *Supra* note 495. p. 15; Jacob Eriksson & Ahmed Khaleel eds., *Iraq After ISIS: The Challenges of Post-War Recovery*. (Palgrave Macmillan, 2019). p. 84.

⁷⁴⁸ UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 14.

⁷⁴⁹ UNAMI (Dec. 11, 2014 – April 30, 2015). p. 16.

⁷⁵⁰ *Ibidem*.

⁷⁵¹ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 11; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 24.

⁷⁵² U.N. Doc. S/2015/530 (July 13, 2015). ¶ 51; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 6.

⁷⁵³ UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 14.

⁷⁵⁴ U.N. Doc. S/2015/530 (July 13, 2015). ¶ 51; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 12.

⁷⁵⁵ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 10.

⁷⁵⁶ *Ibidem*.

⁷⁵⁷ *Ibidem*.

⁷⁵⁸ See also: U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 19.

instructed by ISIL/DAESH fighters to adopt an Afghan-style of dressing (*shalwar kamiz*), to grow beards, and shave mustaches.⁷⁵⁹

3) For refusal to swear allegiance to ISIL/DAESH: ISIL/DAESH imposed charges on people for refusing to pledge allegiance to the group;^{760 761} for failing to support ISIL/DAESH fighters, as, for example, “for allegedly refusing to allow ISIL/DAESH to install and launch rockets from the rooftops of their houses;”^{762 763} persons were sentenced for allegedly assisting civilian residents in leaving areas under ISIL/DAESH’s control;⁷⁶⁴ civilians were punished for allegedly cooperating/collaborating with the Iraqi security forces (ISF) and its affiliated forces, and for supporting or aiding the Government of Iraq;^{765 766} ISIL/DAESH murdered victims for attempting to flee from Iraq or for assisting others in fleeing.⁷⁶⁷

4) For opposing ISIL/DAESH’s extreme ideology and *Takfiri* doctrines: ISIL/DAESH fighters sentenced to death those accused of blasphemy, apostasy, those considered infidels, and those who allegedly strayed from the group’s own interpretation of Islam and own interpretation of religious rulings.^{768 769 770 771} ISIL/DAESH killed even *Imams* who allegedly did not conform to the group’s ideologies, failed to praise the group’s atrocities, refused to join the insurgents, or denounced ISIL/DAESH fighters in their sermons and prayers.⁷⁷² ISIL/DAESH also imposed brutal punishments on civilians who failed to memorize the Quran and recite it publicly.^{773 774}

⁷⁵⁹ U.N. Doc. S/2015/530 (July 13, 2015). ¶ 51.

⁷⁶⁰ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 29.

⁷⁶¹ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 7.

⁷⁶² Office of the United Nations High Commissioner for Human Rights, Spokesperson for the UN High Commissioner for Human Rights: Ravina Shamdasani (Nov. 29, 2016). (2).

⁷⁶³ See also: UNAMI (May 1, 2015 – Oct. 31, 2015). p. 10.

⁷⁶⁴ U.N. Doc. S/2015/530 (July 13, 2015). ¶ 50; UNAMI (May 1, 2015 – Oct. 31, 2015). p. 9.

⁷⁶⁵ U.N. Doc. S/2015/82 (Feb. 2, 2015). ¶ 49; U.N. Doc. S/2016/396 (Apr. 27, 2016). ¶ 44; U.N. Doc. S/2016/592 (July 5, 2016). ¶ 37; U.N. Doc. S/2017/75 (Jan. 26, 2017). ¶ 39; U.N. Doc. S/2017/881 (Oct. 19, 2017). ¶ 51.

⁷⁶⁶ UNAMI (Dec. 11, 2014 – April 30, 2015). p. 12; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 9–12.

⁷⁶⁷ UNAMI (May 1, 2015 – Oct. 31, 2015). p. 9.

⁷⁶⁸ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 49; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶¶ 19, 48; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 49; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 9; U.N. Doc. S/2016/897 (Oct. 25, 2016). ¶ 45; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 26.

⁷⁶⁹ UNAMI (June 5 – July 5, 2014). p. 13; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 8, 11.

⁷⁷⁰ Office of the United Nations High Commissioner for Human Rights, Internal Communication Clearance Form, UA, IRQ 4/2014 (July 24, 2014). p. 2.

⁷⁷¹ AMNESTY INTERNATIONAL. *Supra* note 495.

5) ISIL/DAESH tortured or killed persons accused of banditry, such as theft/stealing.^{775 776}

6) ISIL/DAESH killed members of its own group “for refusing to fight or acting against its interests.”⁷⁷⁷

ISIL/DAESH imposed punishments/sentences included:

1) Deliberate torture and physical ill-treatment: mutilations and amputations, particularly of hands, fingers, and arms, including the amputation of children; floggings; lashings; and beating of the victims with cables and with plastic pipes.^{778 779 780}

2) Deliberate, systematic, unlawful execution/killing of civilians in areas under ISIL/DAESH control: killings through gunshots in the head; executions by firing squad; killings through public beheadings, including the beheading of children, elderly people, and members of the same family together; killings by throwing the victims from the top of tall buildings; killings by stoning, hanging; death by immolation; death by burning civilians alive, including the burning of children; death by the burying of persons alive, including children; killing by a sword bit above the person’s neck; killing by inflicting deep knife wounds on the victims’ bodies; death by drowning, by placing civilians in an iron cage that was submerged into the water; killing of civilian adults and children by rocket-propelled grenades; killings through crucifixion, including the crucifixions of children; the killing of entire families at once; the execution of prisoners.^{781 782 783 784 785} In different instances, ISIL/DAESH forced sons to behead their own fathers.⁷⁸⁶

⁷⁷² UNAMI (June 5 – July 5, 2014). p. 10; UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 7, 9; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 10–11.

⁷⁷³ ICSR. *Supra* note 520. pp. 17, 21.

⁷⁷⁴ UNAMI (May 1, 2015 – Oct. 31, 2015). p. 18.

⁷⁷⁵ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 49

⁷⁷⁶ UNAMI (Dec. 11, 2014 – April 30, 2015). pp. 13–14; UNAMI (May 1, 2015 – Oct. 31, 2015). p. 12.

⁷⁷⁷ UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 12, 32.

⁷⁷⁸ UNAMI (Dec. 11, 2014 – April 30, 2015). pp. 13–14, 24; UNAMI (May 1, 2015 – Oct. 31, 2015). p. 12; UNAMI (Aug. 2016). pp. 11, 16.

⁷⁷⁹ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶¶ 48–49, 76; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 11; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 9; U.N. Doc. S/2016/396 (Apr. 27, 2016). ¶ 44; U.N. Doc. A/73/347 (Aug. 28, 2018). ¶ 9; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶¶ 6, 48, 56.

⁷⁸⁰ AMNESTY INTERNATIONAL. *Supra* note 495. pp. 15, 44.

⁷⁸¹ U.N. Doc. A/69/53/Add.1 (Sept. 1, 2014). Preamble, p.7; U.N. Doc. A/HRC/RES/S-22/1 (Sept. 3, 2014). Preamble, p.1; U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶¶ 46, 76; U.N. Doc. S/2015/82 (Feb. 2, 2015). ¶ 46; U.N. Doc. CRC/C/IRQ/CO/2-4 (March 3,

Several victims were blindfolded before being tortured or executed, and their hands were tied behind their backs.⁷⁸⁷ Commonly, ISIL/DAESH made use of bulldozer tractors to its victims by forcing them to lie down on the street, and a tractor was driven over them, smashing them to death.⁷⁸⁸ Frequently, ISIL/DAESH fighters used to throw their victims' corpses into the Tigris River or simply leave the bodies on the side of the road.^{789 790}

Most of the ISIL/DAESH executions, beatings, and mutilations were performed during public events, in public places, and in front of a crowd,

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- 2015). ¶ 23.a; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶¶ 31, 35, 49, 76; U.N. Doc. S/2015/530 (July 13, 2015). ¶¶ 44, 50; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶¶ 11, 32; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 49; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 9; U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶ 55; U.N. Doc. S/2016/396 (Apr. 27, 2016). ¶¶ 44, 78; U.N. Doc. S/2016/592 (July 5, 2016). ¶ 37; U.N. Doc. S/AC.51/2016/2 (Aug. 18, 2016). ¶ 8.a; U.N. Doc. S/2016/897 (Oct. 25, 2016). ¶ 45; U.N. Doc. S/2017/75 (Jan. 26, 2017). ¶ 39; U.N. Doc. CCPR/C/IRQ/CO/5/Add.1 (Aug. 18, 2017). ¶ 19; U.N. Doc. A/72/361-S/2017/821 (Aug. 24, 2017). ¶ 78; U.N. Doc. S/2017/881 (Oct. 19, 2017). ¶¶ 51, 63; U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017). ¶¶ 15–16; U.N. Doc. S/2018/359 (Apr. 17, 2018). ¶ 18; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶¶ 25–28; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 11; U.N. Doc. A/73/347 (Aug. 28, 2018). ¶ 9; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶¶ 6, 56; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 6; U.N. Doc. A/74/845-S/2020/525 (June 9, 2020). ¶ 71).
- ⁷⁸² UNAMI (June 5 – July 5, 2014). pp. 10–11; UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 5–7, 14–15; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). pp. 7–10; UNAMI (Dec. 11, 2014 – April 30, 2015). pp. 12–13, 21; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 8–12, 17, 32.
- ⁷⁸³ S.C. Res. 2233 (July 29, 2015). Preamble, p. 3; S.C. Res. 2299 (July 25, 2016). Preamble, p. 4; S.C. Res. 2367 (July 14, 2017). Preamble, p. 4.
- ⁷⁸⁴ Office of the United Nations High Commissioner for Human Rights, Internal Communication Clearance Form, UA, IRQ 5/2014 (Aug. 18, 2014). p. 1; Office of the United Nations High Commissioner for Human Rights, Spokesperson for the UN High Commissioner for Human Rights: Ravina Shamdasani (Nov. 29, 2016). (2).
- ⁷⁸⁵ Iraq: Barwana Massacre – Botched Investigation, Families Waiting for Justice, AMNESTY INTERNATIONAL (June 10, 2015). L.
- ⁷⁸⁶ U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 28.
- ⁷⁸⁷ UNAMI (Dec. 11, 2014 – April 30, 2015). p. 21; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 11, 17.
- ⁷⁸⁸ UNAMI (May 1, 2015 – Oct. 31, 2015). p. 9; UNAMI (Aug. 2016). p. 13.
- ⁷⁸⁹ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 14; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 11; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 12.
- ⁷⁹⁰ U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017). ¶ 16; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 11.

which often included a large number of children.^{791 792 793} For example, in February 2016, following a “judgement” for theft by ISIL/DAESH, the group publicly amputated with a sword the right hands of three boys in Mosul.⁷⁹⁴ In another incident, in April 2016, in Tall Afar, Ninawa Governorate, ISIL/DAESH “killed a 15-year-old boy accused of being a disbeliever by tearing him apart between two cars driving in opposite directions.”^{795 796} In many instances, the public was encouraged to participate in the killings, for example, by stoning the victims.⁷⁹⁷ Following executions, ISIL/DAESH often displayed deceased bodies publicly, particularly by hanging them on the scaffolding of buildings, on electricity poles, or at the entrances of towns under the Group’s control.^{798 799} Such public spectacles in front of dozens of people were usually intended to warn those considering disobeying the group’s authority and rules.^{800 801}

ISIL/DAESH also targeted for public executions persons related to the public life of Iraq and Iraq’s security forces, including 1) candidates to former and current members of parliament, including female representatives; 2) former candidates and candidates for public offices; 3) current and former public servants and officials of the Government of Iraq; 4) former and current local mayors (*Mukhtar*); 5) employees of local Iraqi City Councils and members of governorate councils; 6) employees and former employees of The Independent High Electoral Commission (IHEC); 7) female community and political leaders; 8) members and former members/officers of Iraqi security forces (ISF), and current and former members of the police,

⁷⁹¹ U.N. Doc. S/2015/82 (Feb. 2, 2015). ¶ 47; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 19; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 49; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 9; U.N. Doc. A/73/347 (Aug. 28, 2018). ¶ 9..

⁷⁹² UNAMI (Sept. 11, 2014 – Dec. 10, 2014). pp. 6, 11; UNAMI (Dec. 11, 2014 – April 30, 2015). pp. 11–12; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 8–9, 12, 17; UNAMI (Aug. 2016). p. 11.

⁷⁹³ Office of the United Nations High Commissioner for Human Rights, Internal Communication Clearance Form, UA, IRQ 5/2014 (Aug. 18, 2014). p. 1.

⁷⁹⁴ U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 56.

⁷⁹⁵ *Ibidem*.

⁷⁹⁶ See also: UNAMI (Dec. 11, 2014 – April 30, 2015). p. 12.

⁷⁹⁷ U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 27.

⁷⁹⁸ UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 8; UNAMI (May 1, 2015 – Oct. 31, 2015). p. 9.

⁷⁹⁹ U.N. Doc. A/73/347 (Aug. 28, 2018). ¶ 9.

⁸⁰⁰ UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 10; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 21; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 9, 11–12.

⁸⁰¹ U.N. Doc. A/73/347 (Aug. 28, 2018). ¶ 9.

Iraqi Army officers, and other Iraqi security personnel; and 9) the Deputy Attorney General of Mosul Court of Appeal.^{802 803 804}

ISIL/DAESH fighters also sentenced Iraq's public figures to be tortured and publicly executed. The group deliberately tortured and murdered: 1) journalists, media workers, and associated personnel, including female journalists; 2) lawyers, for carrying out their professional duties, including female lawyers; 3) human rights activists and community leaders, including an alarming number of women leaders; 4) doctors and health workers, particularly "for refusing to work in field hospitals or treat wounded ISIL/DAESH fighters;"^{805 806 807} 5) a vast number of *imams*; 6) any kind of professionals "perceived to be associated with the [Iraqi] Government."⁸⁰⁸

As one of the most atrocious legacies of ISIL/DAESH's terror in Iraq, international investigations have already found more than two hundred mass graves in areas formerly controlled by ISIL/DAESH. The overwhelming majority of the deceased bodies and remains of victims found contain civilian men, women, and children. However, it also contains the corpses and remains of Iraqi Security Forces, police officers, and associated forces killed and buried by ISIL/DAESH.^{809 810} Shockingly, UNAMI estimated that

⁸⁰² U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶¶ 48, 51; U.N. Doc. S/2015/82 (Feb. 2, 2015). ¶ 47; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶¶ 29, 31; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶¶ 6, 19, 32; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 49; U.N. Doc. S/2018/359 (Apr. 17, 2018). ¶ 44; U.N. Doc. S/2018/975 (Oct. 31, 2018). ¶ 46.

⁸⁰³ UNAMI (June 5 – July 5, 2014). p. 10; UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 6, 11; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). pp. 6–7, 10; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 12; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 8–12, 15.

⁸⁰⁴ Office of the United Nations High Commissioner for Human Rights, Internal Communication Clearance Form, UA, IRQ 5/2014 (Aug. 18, 2014). p. 1.

⁸⁰⁵ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 48; U.N. Doc. A/HRC/28/14 (Dec. 12, 2014). ¶ 19; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 49; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 19; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 48; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 27; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 14.

⁸⁰⁶ S.C. Res. 2299 (July 25, 2016). Preamble, p. 1; S.C. Res. 2367 (July 14, 2017). Preamble, p. 1.

⁸⁰⁷ UNAMI (June 5 – July 5, 2014). p. 12; UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 5–6, 8, 10; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). pp. 7, 9–10; UNAMI (Dec. 11, 2014 – April 30, 2015). pp. 10–11, 13, 24; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 8, 10–11, 32.

⁸⁰⁸ U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 19.

⁸⁰⁹ U.N. Doc. A/HRC/RES/28/32 (April 8, 2015). ¶ 3; U.N. Doc. S/2015/82 (Feb. 2, 2015). ¶ 48; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 70; U.N. Doc. S/2016/396 (Apr. 27, 2016). ¶ 47; U.N. Doc. S/2017/75 (Jan. 26, 2017). ¶ 42; U.N. Doc. S/2017/881 (Oct. 19, 2017). ¶ 53; U.N. Doc. S/2018/42 (Jan. 17, 2018). ¶ 51; U.N. Doc. S/2018/975 (Oct. 31,

these mass graves contain from 6,000 to more than 12,000 ISIL/DAESH victims, most of whom have not yet been identified.^{811 812} To date, numerous mass graves have already been discovered by the ISF, the Iraqi Federal Police, the *Peshmerga* forces, international authorities, and by the Investigative Team (S.C. Res. 2379).⁸¹³ In Jalawla, Mosul, and Ramadi's sub-districts, authorities have found mass graves containing two hundred bodies.⁸¹⁴ In the Ninawa governorate, authorities found a mass grave containing at least four hundred corpses, which demonstrates that these ISIL/DAESH crime scenes were "sites of harrowing human loss, profound suffering, and shocking cruelty."^{815 816}

A 2016 Report from the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions showed that "many [of these] mass grave sites lack the necessary protection, leaving them exposed to damage by the elements and are subject to uncontrolled excavations."⁸¹⁷ In a report from the U.N. Secretary-General submitted to the Security Council, Iraqi Government officials informed UNAMI that "they had neither the resources nor the expertise to adequately protect or excavate these sites, with the possible loss or damage of forensic evidence and means of identification of the remains."⁸¹⁸ Forensics staff in Iraq lacked storage systems, DNA testing facilities, and basic tools, such as gloves and bleach.⁸¹⁹ The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions reported that, at the current pace, professionals of the Iraqi Medico-Legal Institute would take over 800 years to complete their task of identifying bodies found in ISIL/DAESH mass graves.⁸²⁰

2018). ¶ 47; U.N. Doc. S/2018/1031 (Nov. 16, 2018). ¶ 9; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 50.

⁸¹⁰ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 7; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 9; UNAMI (May 1, 2015 – Oct. 31, 2015). p. 30; UNAMI (Nov. 6, 2018). pp. 1–2.

⁸¹¹ U.N. Doc. S/2018/975 (Oct. 31, 2018). ¶ 47.

⁸¹² UNAMI (Nov. 6, 2018). pp. 1–2.

⁸¹³ U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 50.

⁸¹⁴ UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 9; U.N. Doc. S/2015/82 (Feb. 2, 2015). ¶ 49.

⁸¹⁵ U.N. Doc. S/2018/1031 (Nov. 16, 2018). ¶ 9.

⁸¹⁶ See also: U.N. Doc. S/2017/75 (Jan. 26, 2017). ¶ 42.

⁸¹⁷ U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 78.

⁸¹⁸ U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 50.

⁸¹⁹ U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 78.

⁸²⁰ *Idem.* ¶ 79.

I.4. ISIL/DAESH money

At the time of ISIL/DAESH atrocities in Iraq, the group was frequently portrayed as the wealthiest terrorist organization in the world. In 2014, the terrorist group's annual revenue reached a fortune of 1.9 billion dollars.^{821 822} Reports show that despite the damage to ISIL/DAESH bureaucratic structures, after its defeat in Iraq, in December 2017, the group's finance bureaus were intact.⁸²³ It is estimated that the remaining ISIL/DAESH fighters possessed between \$50 million and \$300 million of financial reserves in 2019.⁸²⁴ Reports show that it is very likely that ISIL/DAESH will redevelop financial self-sufficiency in the future to fund larger-scale attacks.⁸²⁵

ISIL/DAESH has possessed a wide degree of diversification in its sources of financing since 2014. It has been reported that a potential dwindling in the group's revenue streams is always fixed by quickly replacing the loss with other sources of income.⁸²⁶ There are seven major categories of income that have usually been utilized by ISIL/DAESH as its primary source of revenue:

1) Oil and agricultural products: the ISIL/DAESH seizure of oil fields and infrastructure, pipelines, storage tanks, and refineries and the direct or indirect selling/smuggling/trade of oil and gas; the selling of agricultural lands and smuggled agricultural products.^{827 828 829}

2) Extortion, confiscation, and robbery: the organized and systematic extortion of businesses, individuals, and of individuals seeking to flee from ISIL/DAESH's conflict zones; looting, confiscation, and selling of goods and

⁸²¹ U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 16.

⁸²² Caliphate in Decline: An Estimate of Islamic State's Financial Fortunes, THE INTERNATIONAL CENTRE FOR THE STUDY OF RADICALISATION (ICSR) (Feb. 17, 2018), p. 3.

⁸²³ U.N. Doc. S/2018/705 (July 27, 2018). ¶ 4.

⁸²⁴ U.N. Doc. S/2019/103 (Feb. 1, 2019). ¶ 12; U.N. Doc. S/2019/612 (July 31, 2019). ¶ 11.

⁸²⁵ See, for example: U.N. Doc. S/2019/103 (Feb. 1, 2019). ¶¶ 5, 9, 13; U.N. Doc. S/2020/53 (Jan. 20, 2020). ¶ 1.

⁸²⁶ U.N. Doc. S/2015/739 (Sept. 25, 2015). ¶ 3; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 17.

⁸²⁷ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 22; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 4; U.N. Doc. S/2015/739 (Sept. 25, 2015). ¶ 5; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶¶ 16–17, 20; U.N. Doc. S/2017/573 (Aug. 7, 2017). ¶ 21; U.N. Doc. S/2018/705 (July 27, 2018). ¶ 15; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 10; U.N. Doc. S/2019/103 (Feb. 1, 2019). ¶ 14.

⁸²⁸ S.C. Res. 2199 (Feb. 12, 2015). Preamble, p.1; S.C. Res. 2299 (July 25, 2016). Preamble, p. 5; S.C. Res. 2367 (July 14, 2017). Preamble, p. 5.

⁸²⁹ ICSR. *Supra* note 822. p. 8.

property, such as money, home furniture, vehicles, phones, electronics, and other possessions; confiscation and sale of precious metals, such as gold, silver, copper, and diamonds.^{830 831 832 833}

3) Taxes and fees: taxing the population living in territories under ISIL/DAESH control, including the collection of religious taxes, mobility/delivery taxes, taxes on basic food and raw materials for the population, taxes for electricity and water, taxes on businesses, financial transactions and cash withdrawals from banks, taxes on utilities, salaries, pensions and benefits, and customs duties and passage fees at checkpoints.^{834 835 836 837 838 839}

⁸³⁰ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 22; U.N. Doc. S/2015/739 (Sept. 25, 2015). ¶ 4; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶¶ 16, 18, 22; U.N. Doc. S/2015/739 (July 19, 2016). ¶¶ 14, 15; U.N. Doc. S/2017/881 (Oct. 19, 2017). ¶ 63; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 10; U.N. Doc. S/2019/103 (Feb. 1, 2019). ¶ 15; U.N. Doc. S/2019/570 (July 15, 2019). ¶ 72.

⁸³¹ S.C. Res. 2199 (Feb. 12, 2015). Preamble, p.2; S.C. Res. 2253 (Dec. 17, 2015). Preamble, p. 3.

⁸³² UNAMI (July 6, 2014 – Sept. 10, 2014). p. 16; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). pp. 13–14; UNAMI (Aug. 2016). p. 13.

⁸³³ ICSR. *Supra* note 822. pp. 7–8.

⁸³⁴ Estimated 8 million people lived in territories under ISIL/DAESH control between 2014 and 2017. (U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 18).

⁸³⁵ ISIL/DAESH attempted to legitimize a taxing system “by calling the “tax” a “religious tax” or “zakat”. The tax amounted “to at least 2.5 per cent of the capital earned from businesses, goods and agricultural products, including wheat, barley, cotton and livestock; from services of contractors and traders in Iraq’s western and northern provinces and from trucks entering the territories under ISIL/DAESH control.” (U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 18).

⁸³⁶ “According to UNAMI, the ISIL/DAESH tax on trucks generated around \$900 million per year. In some cases, the group extorted up to 10 per cent, on the grounds that “it is a nation in time of war.” (U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 18).

⁸³⁷ ISIL/DAESH also demanded “*jizyah*” tax on minorities in territory under its control. See Also: U.N. Doc. S/2015/739 (Sept. 25, 2015). ¶ 4).

⁸³⁸ “Based on figures for total revenue from zakat (Islamic alms-giving) and sums extrapolated from taxation income in Islamic State’s largest city of Mosul following its capture in the summer of 2014, the group received \$300–400m from taxation in 2014. Despite losing territory throughout the year, its tax income increased to \$400–800m in 2015, as the group consolidated and exploited its control over major population centers in Iraq.” (ICSR. *Supra* note 822. p. 7).

⁸³⁹ See also: U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 11; U.N. Doc. S/2015/739 (Sept. 25, 2015). ¶ 4; U.N. Doc. S/2015/739 (July 19, 2016). ¶ 14. U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 20; U.N. Doc. S/2017/573 (Aug. 7, 2017). ¶ 21; U.N. Doc. S/2018/705 (July 27, 2018). ¶ 15); U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 6.

4) Trafficking: drug trafficking; human trafficking, sale/trading of women and children for purposes of organ removal, enslavement (*'malak yamiin'*), for sexual slavery, for sexual exploitation and abuse; trafficking of arms; looting, smuggling, and illicit trafficking/selling of cultural heritage/property and antiquities from archaeological sites, museums, libraries, public archives, and religious sites from ISIL/DAESH-controlled territory in Iraq; illicit trade of wildlife and illicit trade of charcoal.^{840 841 842 843 844}

5) Money operations: money laundering; donations and revenue from foreign terrorist fighters, ISIL/DAESH's family members and from other various individuals seeking the advance of the "Caliphate"; cash couriers, unregistered money service businesses (*hawaladars*), wire transfers, and credit card withdrawals; imposition of rents on the looted property; the systematic use of the internet, mobile payment platforms, and financial technologies, such as cryptocurrencies, to raise funds and collect donations, particularly through social media.^{845 846 847}

6) Legitimate businesses: investing in "clean" individuals, legitimate businesses, and commercial fronts, both locally and beyond the Syrian Arab Republic and Iraq, "such as construction companies, money exchanges, agricultural entities, fisheries, and real estate, including hotels."⁸⁴⁸

⁸⁴⁰ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 22; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶¶ 35, 40; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶¶ 12, 16, 22; U.N. Doc. S/2015/739 (July 19, 2016). ¶ 16; U.N. Doc. A/71/303 (Aug. 5, 2016). ¶ 24; U.N. Doc. S/2016/949 (Nov. 10, 2016). ¶ 10; U.N. Doc. A/72/164 (July 18, 2017). ¶ 25; U.N. Doc. S/2017/939 (Nov. 10, 2017). ¶ 4; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 10; U.N. Doc. S/2018/770 (August 16, 2018). ¶ 11; U.N. Doc. S/2019/570 (July 15, 2019). ¶ 10; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 33.

⁸⁴¹ S.C. Res. 2199 (Feb. 12, 2015). ¶ 16; S.C. Res. 2233 (July 29, 2015). Preamble, pp. 3–4; S.C. Res. 2249 (Nov. 20, 2015). Preamble, p. 1; S.C. Res. 2253 (Dec. 17, 2015). Preamble, p. 3; S.C. Res. 2299 (July 25, 2016). Preamble, pp. 4–5; S.C. Res. 2367 (July 14, 2017). Preamble, pp. 4–5; S.C. Res. 2379 (Sept. 21, 2017). Preamble, p.1.

⁸⁴² UNAMI (Aug. 2016). p. 16; UNAMI (Nov. 6, 2018). pp. 3–4.

⁸⁴³ Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, Iraq: Guidance for Practitioners in Iraq, INSTITUTE FOR INTERNATIONAL CRIMINAL INVESTIGATIONS (IICI) (March 2018). p. 5.

⁸⁴⁴ ICSR. *Supra* note 822. p. 7.

⁸⁴⁵ U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶¶ 16, 20, 22, 24; U.N. Doc. S/2018/705 (July 27, 2018). ¶ 17; U.N. Doc. S/2019/103 (Feb. 1, 2019). ¶¶ 13, 16; U.N. Doc. S/2019/570 (July 15, 2019). ¶¶ 11, 73–74; U.N. Doc. S/2019/612 (July 31, 2019). ¶ 11; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 6; U.N. Doc. S/2020/53 (Jan. 20, 2020). ¶ 14).

⁸⁴⁶ S.C. Res. 2199 (Feb. 12, 2015). Preamble, p.2.

⁸⁴⁷ ICSR. *Supra* note 822. p. 7.

⁸⁴⁸ U.N. Doc. S/2017/573 (Aug. 7, 2017). ¶ 22; U.N. Doc. S/2018/14/Rev.1 (Feb. 27, 2018). ¶¶ 12–13; U.N. Doc. S/2018/705 (July 27, 2018). ¶ 16; U.N. Doc. S/2019/103 (Feb. 1,

7) Kidnapping: the kidnapping of persons for ransom.^{849 850 851}

I.5. Violations of International Humanitarian Law: ISIL/DAESH warfare machine

Throughout the ISIL/DAESH regime in Iraq, international organizations, governments, and several U.N. bodies reported that the terrorist group committed several International Humanitarian Law violations. ISIL/DAESH reportedly breached the principles of distinction, proportionality, and precaution numerous times. Thousands of innocent civilians perished due to direct and deliberate actions or due to secondary effects of the violence.

ISIL/DAESH reportedly closed gates of dams – or totally destroyed them –, deliberately cut off – attempted to cut off – clean water supplies and water connections. The group also took control of water barrages on the Euphrates River to redirect water flows and deliberately caused extensive flooding, which caused “the displacement of local residents and the destruction of agrarian land, livestock, and irrigation networks.”^{852 853} As secondary effects, thousands of civilians lacked access to clean water, and several children died from dehydration.^{854 855} Also, ISIL/DAESH cut electricity supply /connections and destroyed electricity stations in the areas under the group’s control, which meant, in most cases, that electrical water pumps would no longer work.⁸⁵⁶ As a consequence, access to public water was limited to one day per week in some locations.⁸⁵⁷

2019). ¶ 13; U.N. Doc. S/2019/570 (July 15, 2019). ¶ 10; U.N. Doc. S/2020/53 (Jan. 20, 2020). ¶ 13.

⁸⁴⁹ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 22; U.N. Doc. S/2018/705 (July 27, 2018). ¶ 15; U.N. Doc. S/2019/103 (Feb. 1, 2019). ¶ 14; U.N. Doc. S/2019/570 (July 15, 2019). ¶ 72.

⁸⁵⁰ S.C. Res. 2199 (Feb. 12, 2015). Preamble, p.2, ¶ 18; S.C. Res. 2253 (Dec. 17, 2015). Preamble, p. 3.

⁸⁵¹ ICSR. *Supra* note 822. p. 7.

⁸⁵² UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 8, 12; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 17.

⁸⁵³ U.N. Doc. S/2014/485 (July 11, 2014). ¶ 13; U.N. Doc. S/2015/530 (July 13, 2015). ¶ 18; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 8; U.N. Doc. A/72/865-S/2018/465 (May 16, 2018). ¶ 83.

⁸⁵⁴ UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 13, 16.

⁸⁵⁵ U.N. Doc. CRC/C/IRQ/CO/2-4 (March 3, 2015). ¶ 23.b.

⁸⁵⁶ UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 8, 12, 16; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 17.

⁸⁵⁷ U.N. Doc. S/2016/396 (Apr. 27, 2016). ¶ 57.

ISIL/DAESH deliberately destroyed bridges, including railway bridges, mined routes out of the cities, and took over major intersections and important roads leading out of Iraq.^{858 859} In districts like Muqdadiah, in Diyala, ISIL/DAESH had destroyed 90 percent of vital facilities after the Caliphate's self-proclamation.⁸⁶⁰ Also, ISIL/DAESH blew up the headquarters of several local Police Departments. It also blew up several government buildings, including local Council buildings and buildings belonging to the Ministry of Justice, Finance, and Municipalities.⁸⁶¹

Concerning access to food, ISIL/DAESH systematically demanded a share of the harvest from farmers.⁸⁶² Deliberately, the terrorist group burned crops and trapped civilians when they tried to collect humanitarian food packages dropped from airplanes.^{863 864} The group left the civilian population, including women and children, without food for periods of up to three days.⁸⁶⁵ On one occasion, "one woman was breastfeeding her three-month-old baby and, as ISIL/DAESH had not brought food and water for three days, [she] resorted to drinking water from the toilets of the building where [she was] being held."⁸⁶⁶ As secondary effects, during the ISIL/DAESH regime in Iraq, there have been severe shortages of food in the areas controlled by the group in Iraq.⁸⁶⁷ From January to April 2016, the prices of essential food commodities skyrocketed by over 800 percent.⁸⁶⁸ Several children, some as young as three years old, died from hunger.⁸⁶⁹

ISIL/DAESH attacks deliberately targeted hospitals, clinics, and health services, leaving them partially or entirely nonfunctional because of the damages. The group also used hospitals to secure military positions and looted medical supplies.^{870 871} ISIL/DAESH deliberately attacked medical

⁸⁵⁸ UNAMI (Dec. 11, 2014 – April 30, 2015). p. 17.

⁸⁵⁹ U.N. Doc. S/2015/82 (Feb. 2, 2015). ¶ 22; U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶ 40.

⁸⁶⁰ UNAMI (Dec. 11, 2014 – April 30, 2015). p. 17.

⁸⁶¹ *Ibidem*.

⁸⁶² U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 12.

⁸⁶³ U.N. Doc. S/2019/612 (July 31, 2019). ¶ 7.

⁸⁶⁴ UNAMI (Aug. 2016). p. 10.

⁸⁶⁵ *Idem*. p. 11.

⁸⁶⁶ *Ibidem*.

⁸⁶⁷ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 16; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 11.

⁸⁶⁸ U.N. Doc. S/2016/396 (Apr. 27, 2016). ¶ 57.

⁸⁶⁹ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 13; U.N. Doc. CRC/C/IRQ/CO/2-4 (March 3, 2015). ¶ 23.b.

⁸⁷⁰ U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶¶ 21, 48; U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶ 31; U.N. Doc. A/73/907-S/2019/509 (June 20, 2019). ¶ 76.

personnel, their homes, and their family members.⁸⁷² ISIL/DAESH systematically denied civilians critical medical assistance, frequently causing their death or severe health complications due to a lack of assistance.⁸⁷³ In addition, ISIL/DAESH constantly abducted civilians, including women, to force them to give blood to injured ISIL/DAESH members.⁸⁷⁴

Starting in early 2015, ISIL/DAESH extensively and consistently imposed severe restrictions on civilians' freedom of movement living in the areas under the group's control. In many instances, ISIL/DAESH leaders issued orders to close checkpoints to prevent residents from leaving controlled areas. Civilians attempting to flee ISIL/DAESH-controlled areas, including children as young as seven years old, were severely punished with corporal punishments and death if caught.^{875 876 877 878} To punish those who attempted to flee, ISIL/DAESH planted improvised explosive devices (IEDs) and mines along roads used as escape routes for civilians and left booby-traps and IEDs in civilian houses so that the victims would be severely injured or killed upon return from their attempted escape.^{879 880}

⁸⁷¹ U.N. Doc. A/69/926-S/2015/409 (June 5, 2015). ¶ 76; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 48; U.N. Doc. A/72/361-S/2017/821 (Aug. 24, 2017). ¶ 81; U.N. Doc. A/72/865-S/2018/465 (May 16, 2018). ¶ 83; U.N. Doc. A/73/907-S/2019/509 (June 20, 2019). ¶ 76; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 71.

⁸⁷² U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 48; U.N. Doc. A/73/907-S/2019/509 (June 20, 2019). ¶ 76.

⁸⁷³ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 16; U.N. Doc. S/2016/396 (Apr. 27, 2016). ¶ 57; U.N. Doc. A/72/361-S/2017/821 (Aug. 24, 2017). ¶ 83.

⁸⁷⁴ UNAMI (Aug. 2016). p. 12.

⁸⁷⁵ U.N. Doc. S/2015/530 (July 13, 2015). ¶ 50; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶¶ 6, 12; U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶ 40; U.N. Doc. S/2016/396 (Apr. 27, 2016). ¶ 45; U.N. Doc. S/2016/592 (July 5, 2016). ¶ 37; U.N. Doc. S/2017/881 (Oct. 19, 2017). U.N. Doc. A/72/865-S/2018/465 (May 16, 2018). ¶ 83; ¶ 63; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 51.

⁸⁷⁶ UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 14; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 23; UNAMI (May 1, 2015 – Oct. 31, 2015). p. 9; UNAMI (Aug. 2016). p. 10.

⁸⁷⁷ Office of the United Nations High Commissioner for Human Rights, Spokesperson for the UN High Commissioner for Human Rights: Ravina Shamdasani (Nov. 29, 2016). (2).

⁸⁷⁸ Jacob Eriksson & Ahmed Khaleel eds., *Iraq After ISIS: The Challenges of Post-War Recovery*. (Palgrave Macmillan, 2019). p. 84.

⁸⁷⁹ U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 24; U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶ 69; U.N. Doc. S/2017/881 (Oct. 19, 2017). ¶ 52; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 54.

⁸⁸⁰ UNAMI (Dec. 11, 2014 – April 30, 2015). p. 16;

Many civilians, including women, the elderly, and children, died while trying to leave Iraqi provinces on foot due to: heat waves, freezing temperatures during the winter, dehydration, starvation, or when caught in the coalition's crossfire against ISIL/DAESH.^{881 882} With the execution of such barbaric acts, ISIL/DAESH intended to create a state of fear among civilians to prevent them from leaving controlled areas in Iraq.⁸⁸³ On rare occasions, ISIL/DAESH fighters permitted that specific individuals traveled outside the controlled areas upon the imposition of a bail system, "guaranteeing that they will return within a set time limit, otherwise face forfeiture of their properties."^{884 885}

Deliberate actions of ISIL/DAESH fighters and active hostilities between ISIL/DAESH and the Coalition, particularly between 2015 and 2017, "significantly restricted humanitarian access to conflict-affected areas," particularly in Anbar, Kirkuk, Salah al-Din, and Ninawa Governorates.⁸⁸⁶ Constraints on the delivery of humanitarian assistance imposed by ISIL/DAESH imposed devastating effects on children.⁸⁸⁷ Trapped civilians caught in the crossfire remained in critical need of humanitarian aid.^{888 889 890} For instance, in July 2015,

"more than 8.2 million people across Iraq, or nearly 25 percent of the country's population, [were] estimated to require humanitarian assistance, including over 3 million internally displaced persons living in over 3,000 locations. Nearly half of all displaced persons [were] children. [...] Since 8 April, over 290,000 people ha[d] been internally displaced from Ramadi district. An

⁸⁸¹ U.N. Doc. CRC/C/IRQ/CO/2-4 (March 3, 2015). ¶ 23.b; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 66; U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶ 40; U.N. Doc. S/2016/592 (July 5, 2016). ¶ 37; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶¶ 51–52.

⁸⁸² UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 12–14.

⁸⁸³ U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶ 69.

⁸⁸⁴ UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 14.

⁸⁸⁵ In early January, 2015, "UNAMI/OHCHR received reports that residents of Mosul wishing to travel outside the city [had] to identify a family member to stand as guarantor for their return." (UNAMI (Dec. 11, 2014 – April 30, 2015). p. 23).

⁸⁸⁶ U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 75.

⁸⁸⁷ U.N. Doc. A/69/926-S/2015/409 (June 5, 2015). ¶ 74.

⁸⁸⁸ "The Iraqi Air Force delivered food and relief through a humanitarian airdrop operation over the [Iraqi] mountains on 4 and 5 August [of 2014]. However, civilians trapped on the mountain informed UNAMI that the supplies had not reached the intended targets and those that were insufficient to meet the needs of those trapped there." (UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 5, 12–13).

⁸⁸⁹ UNAMI (June 5 – July 5, 2014). p. 9; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 17.

⁸⁹⁰ U.N. Doc. S/2015/82 (Feb. 2, 2015). ¶ 22; U.N. Doc. S/2015/530 (July 13, 2015). ¶¶ 50, 57; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 56.

estimated 4.4 million people [were] in need of food assistance, 7.8 million people require[d] essential health-care services and 4.1 million [were] in critical need of access to safe water and sanitation.”⁸⁹¹

A year later, Iraq’s humanitarian operation became “one of the largest and most complex in the world.”⁸⁹² The number of persons in need of humanitarian assistance escalated to an estimated 10 million Iraqis, “including over 3.3 million internally displaced persons, [...] and the 3 million people believed to be living under ISIL/DAESH control.”^{893 894} In Mosul alone, over one million people were directly affected by the Coalition’s military operations.⁸⁹⁵ In December 2019, two years after ISIL/DAESH was declared defeated by the Coalition, over two million people still lacked humanitarian assistance, including an alarming number of at least 1 million children and internally displaced persons.⁸⁹⁶ The Iraqi Government’s assistance to those civilians who escaped ISIL/DAESH-controlled areas was minimal throughout the ISIL/DAESH regime in Iraq.⁸⁹⁷

ISIL/DAESH perpetrated extreme violence and brutality, specifically targeting civilians and public areas or simply carrying out indiscriminate attacks to terrorize the population.^{898 899} ISIL/DAESH made no “distinction between men and women, children and old people.”⁹⁰⁰ Therefore, the group violated the core principles of international humanitarian laws, such as distinction, precaution, and proportionality.⁹⁰¹

⁸⁹¹ U.N. Doc. S/2015/530 (July 13, 2015). ¶ 57.

⁸⁹² U.N. Doc. S/2016/592 (July 5, 2016). ¶ 48.

⁸⁹³ *Ibidem*.

⁸⁹⁴ See also: UNAMI (July 6, 2014 – Sept. 10, 2014). p. 13; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 66.

⁸⁹⁵ U.N. Doc. S/2016/592 (July 5, 2016). ¶ 48.

⁸⁹⁶ U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 8.

⁸⁹⁷ U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶ 52.

⁸⁹⁸ U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 21; U.N. Doc. S/2018/359 (Apr. 17, 2018). ¶ 18; U.N. Doc. CCPR/C/IRQ/CO/5/Add.1 (Aug. 18, 2017). ¶ 19; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 4.

⁸⁹⁹ S.C. Res. 2249 (Nov. 20, 2015). Preamble, p. 1.

⁹⁰⁰ U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 15.

⁹⁰¹ U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 25

Systematically, ISIL/DAESH fighters' warfare methods included:

- 1) The use of airstrikes, shelling, and other weaponized air operations on an almost daily basis;⁹⁰²
- 2) The systematic detonation of improvised explosive devices (IEDs), placed particularly in places of extensive agglomeration of civilians and on traffic routes;^{903 904}
- 3) The installation of rocket launchers on the rooftops of civilian houses;^{905 906}
- 4) Attacks with mortar shells;⁹⁰⁷
- 5) The launching of complex attacks with explosive-laden vehicles, including the use of cars and boats rigged with explosives;^{908 909}
- 6) The use of high-yield imported explosive devices, land mines, and booby-traps planted in the houses of internally displaced persons to prevent their return;^{910 911}
- 7) The use of weaponized commercial drones;^{912 913}

⁹⁰² UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 9, 11–12, 16; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 16; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 50.

⁹⁰³ UNAMI (June 5 – July 5, 2014). p. 9; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 16.

⁹⁰⁴ U.N. Doc. S/2015/82 (Feb. 2, 2015). ¶ 24; U.N. Doc. S/PV.7556 (Nov. 11, 2015). p. 3; U.N. Doc. S/2017/573 (Aug. 7, 2017). ¶ 18; U.N. Doc. A/72/361–S/2017/821 (Aug. 24, 2017). ¶ 78; U.N. Doc. S/2017/881 (Oct. 19, 2017). ¶¶ 26, 52; U.N. Doc. S/2018/677 (July 9, 2018). ¶ 39; U.N. Doc. S/2019/365 (May 2, 2019). ¶ 22; U.N. Doc. A/73/907–S/2019/509 (June 20, 2019). ¶ 74; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶¶ 7, 54.

⁹⁰⁵ UNAMI (May 1, 2015 – Oct. 31, 2015). p. 16; Office of the United Nations High Commissioner for Human Rights, Spokesperson for the UN High Commissioner for Human Rights: Ravina Shamdasani (Nov. 29, 2016). (2).

⁹⁰⁶ U.N. Doc. S/2016/396 (Apr. 27, 2016). ¶ 46; U.N. Doc. S/2017/75 (Jan. 26, 2017). ¶ 39; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 70.

⁹⁰⁷ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 9; U.N. Doc. S/2016/396 (Apr. 27, 2016). ¶ 46; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 50.

⁹⁰⁸ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 9; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 8; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 16.

⁹⁰⁹ U.N. Doc. S/2016/592 (July 5, 2016). ¶ 18; U.N. Doc. S/2017/881 (Oct. 19, 2017). ¶ 50; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 50.

⁹¹⁰ UNAMI (Dec. 11, 2014 – April 30, 2015). pp. 16–17.

⁹¹¹ U.N. Doc. S/2016/592 (July 5, 2016). ¶ 18; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 50.

⁹¹² U.N. Doc. S/2019/103 (Feb. 1, 2019). ¶ 23; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 50.

⁹¹³ “In addition to using commercially available drones, ISIL/DAESH has developed the capacity to modify them and to build its own models, using recycled parts from commercially available drones.” (U.N. Doc. S/2017/573 (Aug. 7, 2017). ¶ 18). See also: U.N. Doc. S/2018/770 (August 16, 2018). ¶ 12.

- 8) The use of weaponized chemical agents on the battlefield, such as sulfur mustard, chlorine, and other toxic industrial chemicals (TICs);^{914 915}
- 9) The use of snipers to shoot civilians;⁹¹⁶
- 10) The use of firing squads to execute civilians;⁹¹⁷
- 11) Suicide bomb attacks, using children as young as 9 years old for vesting explosive devices;^{918 919 920 921}
- 12) The constant use of bulldozers to destroy houses, and religious sites, to force entry to towns, and to kill people by laying them on streets and passing the bulldozer over them;⁹²²
- 13) The continued and systematic seizing of military hardware and equipment from the Iraqi security forces;⁹²³
- 14) ISIL/DAESH used civilian infrastructure and civilians as human shields, including an alarming number of women and children;^{924 925}

⁹¹⁴ UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 11; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 19; UNAMI (May 1, 2015 – Oct. 31, 2015). p. 17.

⁹¹⁴ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 47; U.N. Doc. S/PV.7556 (Nov. 11, 2015). p. 3; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 42; U.N. Doc. S/2016/396 (Apr. 27, 2016). ¶ 46; U.N. Doc. S/2016/592 (July 5, 2016). ¶ 38; U.N. Doc. S/2015/739 (July 19, 2016). ¶ 10; U.N. Doc. S/2016/897 (Oct. 25, 2016). ¶ 45; U.N. Doc. A/72/53/Add.1 (Sept. 29, 2017). ¶ 25; U.N. Doc. A/73/53/Add.1 (Sept. 28, 2018). ¶ 34; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 50.

⁹¹⁵ The White House, Report of the President of the USA Donald J. Trump, National Strategy for Countering Weapons of Mass Destruction (Dec. 2018). p. 1.

⁹¹⁶ UNAMI (Dec. 11, 2014 – April 30, 2015). p. 16; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 15; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 50.

⁹¹⁷ UNAMI (May 1, 2015 – Oct. 31, 2015). p. 8.

⁹¹⁸ U.N. Doc. S/PV.7556 (Nov. 11, 2015). p. 3; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 20; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 42; U.N. Doc. S/2016/592 (July 5, 2016). ¶¶ 17–18; U.N. Doc. S/2018/677 (July 9, 2018). ¶ 38..

⁹¹⁹ S.C. Res. 2299 (July 25, 2016). Preamble, p. 4; S.C. Res. 2367 (July 14, 2017). Preamble, p. 4; S.C. Res. 2379 (Sept. 21, 2017). Preamble, p.1.

⁹²⁰ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 8; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 12; UNAMI (Dec. 11, 2014 – April 30, 2015). pp. 11, 16; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 14–15.

⁹²¹ U.S. Dep't of State, Bureau of Counterterrorism, Country Reports on Terrorism (2019). p. 118).

⁹²² UNAMI (July 6, 2014 – Sept. 10, 2014). p. 9; UNAMI (May 1, 2015 – Oct. 31, 2015). p. 16; UNAMI (Aug. 2016). p. 13.

⁹²³ U.N. Doc. S/2015/82 (Feb. 2, 2015). ¶ 24.

⁹²⁴ UNAMI (June 5 – July 5, 2014). p. 9; UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 5, 9; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). pp. 13–14; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 16; UNAMI (May 1, 2015 – Oct. 31, 2015). p. 14.

- 15) The systematic destruction of civilian homes and civilian infrastructure by looting, pillaging, burning, and demolishing them as a punishment for families allegedly supporting the coalition against ISIL/DAESH fighters;^{926 927 928 929}
- 16) The implementation of systematic policies of violence, fear, persecution, and elimination of fundamental rights;^{930 931} and
- 17) The targeting of schools for destruction, particularly with the use of explosive devices.⁹³²

Recent reports showed that ISIL/DAESH still maintains the weaponry capacity of the so-called Caliphate times.⁹³³ Reports also showed alarming levels of civilian casualties, particularly children, trapped in the crossfire between ISIL/DAESH and the coalition forces battling the group.^{934 935}

⁹²⁵ U.N. Doc. S/2017/75 (Jan. 26, 2017). ¶¶ 35, 51; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶¶ 9, 15; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶¶ 33, 51.

⁹²⁶ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 46; U.N. Doc. S/2015/82 (Feb. 2, 2015). ¶¶ 46, 49; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶¶ 33, 76; U.N. Doc. S/2015/530 (July 13, 2015). ¶ 44; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 24; U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶ 55; U.N. Doc. S/2016/592 (July 5, 2016). ¶ 17. S.C. Res. 2253 (Dec. 17, 2015). Preamble, pp. 1, 3.

⁹²⁸ UNAMI (June 5 – July 5, 2014). p. 13; UNAMI (July 6, 2014 – Sept. 10, 2014). p. 8; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 9; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 15–16.

⁹²⁹ AMNESTY INTERNATIONAL. *Supra* note 495. *passim*.

⁹³⁰ UNAMI (June 5 – July 5, 2014). p. 9; UNAMI (July 6, 2014 – Sept. 10, 2014). p. 5; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 6; UNAMI (May 1, 2015 – Oct. 31, 2015). p. 32.

⁹³¹ U.N. Doc. A/69/53/Add.1 (Sept. 1, 2014). Preamble, p.7; U.N. Doc. A/HRC/RES/S-22/1 (Sept. 3, 2014). Preamble, p.1; U.N. Doc. S/2015/530 (July 13, 2015). ¶ 44; U.N. Doc. S/2016/592 (July 5, 2016). ¶ 17.

⁹³² U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 21; U.N. Doc. A/72/865-S/2018/465 (May 16, 2018). ¶ 80.

⁹³³ U.N. Doc. S/2019/103 (Feb. 1, 2019). ¶ 24.

⁹³⁴ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 9.

⁹³⁵ U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶¶ 20, 23, 25; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 10; U.N. Doc. S/2016/592 (July 5, 2016). ¶ 18; U.N. Doc. A/72/361-S/2017/821 (Aug. 24, 2017). ¶ 6; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶¶ 8, 47; U.N. Doc. A/74/845-S/2020/525 (June 9, 2020). ¶ 71.

1.5.1. Attacks against schools and education personnel.

ISIL/DAESH deliberately targeted schools for destruction.⁹³⁶ Besides, ISIL/DAESH used schools for military purposes, for instance, as detention centers, military training centers, depots, interrogation sites, recruiting points for minors to join ISIL/DAESH, and as bases to launch attacks.^{937 938} International reports revealed that ISIL/DAESH was involved in numerous incidents of deliberate attacks or threats of attacks on professors, teachers, and students, such as seizing belongings, threatening, abducting, torturing, executing, injuring, and killing educational personnel and pupils.^{939 940}

ISIL/DAESH has also reportedly used schools in areas under its control to 1) implement its own educational curriculum following its *takfiri* doctrines; 2) to spread its militarized radical ideological views; and 3) to “transform the pedagogical system into a system of mass indoctrination.”^{941 942 943} ISIL/DAESH prohibited most universities from teaching humanities disciplines, which the group considered “blasphemous.”⁹⁴⁴ Educators and professors that refused to submit to ISIL/DAESH educational rules, doctrines, and values were summarily tortured to death in public.⁹⁴⁵

⁹³⁶ U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 21; U.N. Doc. A/72/865-S/2018/465 (May 16, 2018). ¶ 80.

⁹³⁷ UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 13; UNAMI (May 1, 2015 – Oct. 31, 2015). p. 18.

⁹³⁸ U.N. Doc. A/69/926-S/2015/409 (June 5, 2015). ¶¶ 75, 77; U.N. Doc. S/2015/530 (July 13, 2015). ¶ 49; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 37; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 45; U.N. Doc. A/70/836-S/2016/360 (Apr. 20, 2016). ¶ 63; U.N. Doc. A/72/361-S/2017/821 (Aug. 24, 2017). ¶ 80; U.N. Doc. A/72/865-S/2018/465 (May 16, 2018). ¶ 81; U.N. Doc. A/73/907-S/2019/509 (June 20, 2019). ¶ 76; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶¶ 8, 67–68.

⁹³⁹ UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 14; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 14; UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 5–6.

⁹⁴⁰ U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 46; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 49; U.N. Doc. A/72/361-S/2017/821 (Aug. 24, 2017). ¶ 80; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 14.

⁹⁴¹ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 5; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). pp. 6, 14; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 24.

⁹⁴² U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 11; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 45; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 49; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶¶ 6, 65–66, 68.

⁹⁴³ ICSR. *Supra* note 520.

⁹⁴⁴ William Harris. *Supra* note 472. p. 68.

⁹⁴⁵ UNAMI (Dec. 11, 2014 – April 30, 2015). p. 24; U.N. Doc. A/70/836-S/2016/360 (Apr. 20, 2016). ¶ 63; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 66.

1.5.2. Displacement

As ISIL/DAESH gained full control over entire regions in Iraq, the group triggered a mass exodus of millions of people, creating “a scenario of mass and unpredictable internal displacement.”^{946 947 948} For instance, only the taking over of Mosul by ISIL/DAESH made more than 500,000 people flee their homes.⁹⁴⁹ Between 2014 and 2017, over six million Iraqi civilians became internally displaced due to ISIL/DAESH’s direct and indirect actions.⁹⁵⁰ ISIL/DAESH directly and expressly ordered that Christians and the Yazidis leave the villages they had lived in for centuries.⁹⁵¹ The humanitarian crisis created by the fight between ISIL/DAESH, the Coalition, and the Iraqi Security Forces indirectly affected millions in the region. The Special Rapporteur on the human rights of internally displaced persons on his mission to Iraq estimated that 8 million Iraqis required “some form of humanitarian assistance” in Iraq’s three years of violent internal conflict.⁹⁵² Hundreds of thousands of displaced women, children, people with disabilities, and the elderly were “left behind,” facing “extreme hardship” as a result of the displacement.^{953 954}

Since the Iraqi Government and the Coalition declared ISIL/DAESH’s defeat in December 2017, more than 4 million internally displaced persons “have returned to over 1,400 areas of origin across 35 districts and seven governorates of Iraq.”^{955 956} A report from the U.N. Secretary-General from May 2019 submitted to the Security Council pointed out that as of March 2019, “approximately 1.75 million people remain[ed] internally displaced in Iraq in approximately 3,200 locations across 104 districts.”⁹⁵⁷ The report

⁹⁴⁶ UNAMI (Aug. 2016). p. 6.

⁹⁴⁷ See also: U.N. Doc. A/HRC/29/NGO/95 (June 10, 2015). p. 2; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 39; U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶¶ 4, 6, 77.

⁹⁴⁸ See also: S.C. Res. 2367 (July 14, 2017). Preamble, p. 1.

⁹⁴⁹ U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶ 6; U.N. Doc. A/HRC/44/41/Add.1 (May 13, 2020). ¶ 7.

⁹⁵⁰ U.N. Doc. A/HRC/44/41/Add.1 (May 13, 2020). ¶ 6.

⁹⁵¹ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 9; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶¶ 35, 76; U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017). ¶ 15; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 10.

⁹⁵² U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶ 4.

⁹⁵³ U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 73.

⁹⁵⁴ See also: UNAMI (July 6, 2014 – Sept. 10, 2014). p. 12; U.N. Doc. A/HRC/44/41/Add.1 (May 13, 2020). ¶ 11.

⁹⁵⁵ U.N. Doc. S/2019/101 (Feb. 1, 2019). ¶¶ 50, 59.

⁹⁵⁶ See also: U.N. Doc. A/HRC/44/41/Add.1 (May 13, 2020). ¶¶ 7, 19.

⁹⁵⁷ U.N. Doc. S/2019/365 (May 2, 2019). ¶ 59.

also demonstrated that more than half of this amount of people faced displacement for longer than three years.⁹⁵⁸ Another report from the Special Rapporteur on the human rights of internally displaced persons on her mission to Iraq, from May 2020, showed that, by then, over four million people still remained in need of humanitarian assistance in the region.⁹⁵⁹ Ms. Cecilia Jimenez-Damary indicated that “two-thirds of the [Iraqi] displaced population, internally displaced persons in and out of camp settings lack[ed] or [had] limited access to food, shelter, potable water, sanitation, health care, education, and livelihood opportunities.”⁹⁶⁰

Children with alleged links to ISIL/DAESH faced even more significant hurdles and serious human rights violations in IDP camps in Iraq.⁹⁶¹ Many of these infants lacked official documentation or birth certificates or were generally blocked from accessing general civil documents.^{962 963 964} As a consequence, they could not access fundamental rights, such as being enrolled in schools. Many of them faced the risk of statelessness.⁹⁶⁵ The IDP camp administration severely restricts these children’s freedom of movement “due to their alleged affiliation with ISIL/DAESH or because their parents were [or still are] ISIL/DAESH fighters or commanders.”^{966 967 968} These children live in crowded camps under miserable conditions, “where

⁹⁵⁸ *Ibidem*.

⁹⁵⁹ U.N. Doc. A/HRC/44/41/Add.1 (May 13, 2020). ¶ 19.

⁹⁶⁰ *Idem*. ¶¶ 19, 43–44.

⁹⁶¹ The Condemned: Woman and Children Isolated, Trapped and Exploited in Iraq, AMNESTY INTERNATIONAL (Apr. 17, 2018). p. 20.

⁹⁶² “Without these documents, many women are unable to work, move freely or inherit property or pensions, and their children are often unable to attend school and are at risk of becoming stateless.” (*Idem*. pp. 22–23).

⁹⁶³ “Internally displaced persons face numerous barriers when they seek to obtain or renew civil documentation. Many have lost their documents or had them destroyed or confiscated in the course of displacement. Those having lived in areas controlled by ISIL/DAESH might hold documents that are not recognized by the Government of Iraq. Iraqi law requires that civil documents be obtained in one’s place of origin, to which internally displaced persons are often unable to travel.” (U.N. Doc. A/HRC/44/41/Add.1 (May 13, 2020). ¶ 25).

⁹⁶⁴ See also: U. N. Office of Counter-Terrorism (UNOCT), *Children affected by the foreign-fighter phenomenon: Ensuring a child rights-based approach*, (Oct. 7, 2019). p. 5.

⁹⁶⁵ *Ibidem*.

⁹⁶⁶ AMNESTY INTERNATIONAL. *Supra* note 961. p. 34.

⁹⁶⁷ “Some children are held in de facto detention in IDP camps; some are prevented from leaving by camp authorities; and others are unable to cross through checkpoints outside of the camps, either because they do not have their identity cards or fear they will be arrested.” (*Idem*. p. 24).

⁹⁶⁸ See also: U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 80.

they suffer from limited access to basic humanitarian services, such as food, water, shelter, medical care, and other essential services, along with a lack of respect for due process, the right to a fair trial and other fundamental rights.”^{969 970 971 972}

In virtue of these children’s perceived links with ISIL/DAESH, they are verbally harassed, sexually abused, subjected to rape and sexual exploitation, or otherwise intimidated and abused by the Iraqi military and by police forces or even by the administration of the IDP camp itself.^{973 974} Under anti-terrorism laws, several of these internally displaced children were subjected to arbitrary arrest by the authorities of the Autonomous Administration in Northern and Iraqi authorities. In detention centers, almost always held in unknown locations, these authorities perpetrated ill-treatment and torture against displaced boys and girls for their alleged involvement with armed groups.^{975 976}

Children were frequently detained along with adults and submitted to long detention periods.⁹⁷⁷ Under the 2005 Iraqi anti-terrorism, the Iraqi judicial system prescribed the death penalty to these minors, “regardless of age at the time of the alleged commission of the crime or time of conviction,”⁹⁷⁸ conduct that frontally violates international juvenile justice standards.⁹⁷⁹ Several internally displaced children in Iraq face the additional risk of suffering radicalization and indoctrination from terrorist

⁹⁶⁹ U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 42.

⁹⁷⁰ “In Iraq, for example, up to 13,000 children younger than 12 years old reportedly lack birth certificates or other documentation to establish their nationalities. Some may be of Iraqi parentage, while others may have one or two foreign parents.” (U. N. Office of Counter-Terrorism (UNOCT), *Children affected by the foreign-fighter phenomenon: Ensuring a child rights-based approach*, (Oct. 7, 2019). p. 5).

⁹⁷¹ See also: U.N. Doc. S/2019/103 (Feb. 1, 2019). ¶ 21.

⁹⁷² See also: Eur. Parl., Committee on Social Affairs, Health and Sustainable Development, International obligations concerning the repatriation of children from war and conflict zones, Report, Doc. No. 15055 (Jan. 29, 2020). ¶¶ 1, 9.

⁹⁷³ AMNESTY INTERNATIONAL. *Supra* note 961. pp. 26–29.

⁹⁷⁴ U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 42.

⁹⁷⁵ AMNESTY INTERNATIONAL. *Supra* note 961. *passim*.

⁹⁷⁶ U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 39; U.N. Doc. A/70/836–S/2016/360 (Apr. 20, 2016). ¶ 60; U.N. Doc. A/72/361–S/2017/821 (Aug. 24, 2017). ¶ 77; U.N. Doc. A/73/907–S/2019/509 (June 20, 2019). ¶ 72; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶¶ 43–44.

⁹⁷⁷ U.N. Doc. A/69/926–S/2015/409 (June 5, 2015). ¶ 73; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 39.

⁹⁷⁸ U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 40.

⁹⁷⁹ U.N. Doc. A/73/907–S/2019/509 (June 20, 2019). ¶ 82.

groups, including from the remaining pockets of ISIL/DAESH.⁹⁸⁰ For instance, the situation in *Al Hol*, an IDP camp in Iraq where 90% of the camp residents are women and children, is considered a “timebomb.”⁹⁸¹

In all strata of Iraqi society, these displaced children face “social marginalization and are at a high risk of exploitation and abuse.”⁹⁸² Internationally, a report from the U.N. Secretary-General submitted to the Security Council demonstrated that several countries of origin have refused to repatriate these children.⁹⁸³ Several of these children end up being victims of trafficking and sexual slavery at the hands of terrorist groups and militias.⁹⁸⁴ In a report from May 2020, the Special Rapporteur on the human rights of internally displaced persons on her mission to Iraq stated that the situation of internally displaced children in Iraq “– a generation traumatized by violence, deprived of education and opportunities – is among the most tragic legacies of the conflict against ISIL/DAESH.”⁹⁸⁵

1.5.3. Crimes of sexual order

In areas under ISIL/DAESH control, the group carried out deliberate and systematic acts of rape and other harrowing acts of sexual abuse/violence against women, girls, and boys.^{986 987 988 989} Children as young as 6 years of

⁹⁸⁰ U.N. Doc. S/2019/103 (Feb. 1, 2019). ¶ 20.

⁹⁸¹ Eur. Parl., Committee on Social Affairs, Health and Sustainable Development, International obligations concerning the repatriation of children from war and conflict zones, Report, Doc. No. 15055 (Jan. 29, 2020). ¶ 14.

⁹⁸² U.N. Doc. A/HRC/44/41/Add.1 (May 13, 2020). ¶ 43.

⁹⁸³ U.N. Doc. A/73/907-S/2019/509 (June 20, 2019). ¶ 83; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 43.

⁹⁸⁴ U.N. Doc. S/2018/770 (August 16, 2018). ¶ 10.

⁹⁸⁵ U.N. Doc. A/HRC/44/41/Add.1 (May 13, 2020). ¶ 42.

⁹⁸⁶ “The term conflict-related sexual violence refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked (temporally, geographically or causally) to a conflict.” (U.N. Doc. S/2016/361/Rev.1 (June 22, 2016). ¶ 2).

⁹⁸⁷ UNAMI (Dec. 11, 2014 – April 30, 2015). p. 22; UNAMI (Nov. 6, 2018). p. 4.

⁹⁸⁸ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶¶ 46, 76; U.N. Doc. S/2015/82 (Feb. 2, 2015). ¶ 46; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶¶ 35, 39, 76; U.N. Doc. S/2015/530 (July 13, 2015). ¶ 44; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶¶ 3, 42; U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶¶ 50, 55; U.N. Doc. S/2016/361 (Apr. 20, 2016). ¶ 40; U.N. Doc. S/2016/396 (Apr. 27, 2016). ¶ 78; U.N. Doc. S/AC.51/2016/2 (Aug. 18, 2016). ¶¶ 3, 8.a; U.N. Doc. CCPR/C/IRQ/CO/5/Add.1 (Aug. 18, 2017). ¶ 19; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 9; U.N. Doc. A/74/845-S/2020/525 (June 9, 2020). ¶ 72.

age were taken and raped by ISIL/DAESH fighters and commanders, most of the time daily.^{990 991} ISIL/DAESH leaders also used to gift women and girls to its fighters as sex slaves, as a reward for winning battles, or simply for winning Quran memorization competitions.^{992 993 994} Frequently, ISIL/DAESH fighters drugged women and girls to facilitate rape and render the victims into a more “docile” state.^{995 996} Severely traumatized women and children often attempted suicide after the incidents of rape and sexual abuse by members of ISIL/DAESH.⁹⁹⁷

Using communication platforms and encrypted messaging technology, ISIL/DAESH sold and traded abducted women and girls from approximately 20 different countries.⁹⁹⁸ ISIL/DAESH forced victims to smile while fighters took photographs to be used by the group in online bidding processes.⁹⁹⁹ Some girls were as young as seven-year-old.¹⁰⁰⁰ Tragically, ISIL/DAESH reportedly used medical professionals “to procure drugs and administer harmful treatments not justified by medical concerns, including hormone treatments, to accelerate the physical maturation of young girls in order to expedite their sale.”¹⁰⁰¹

⁹⁸⁹ S.C. Res. 2299 (July 25, 2016). Preamble, p p. 1, 4; S.C. Res. 2233 (July 29, 2015). Preamble, p. 3; S.C. Res. 2367 (July 14, 2017). Preamble, pp. 1, 4; S.C. Res. 2368 (July 20, 2017). Preamble, p. 6; S.C. Res. 2379 (Sept. 21, 2017). Preamble, p.1; S.C. Res. 2388 (Nov. 21, 2017). Preamble, pp. 2-3, ¶ 18.

⁹⁸⁹ AMNESTY INTERNATIONAL. *Supra* note 495. p. 15.

⁹⁹⁰ UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 13; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 22.

⁹⁹¹ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 40; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 42; U.N. Doc. A/72/865-S/2018/465 (May 16, 2018). ¶ 79; U.N. Doc. A/73/347 (Aug. 28, 2018). ¶ 31; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 60.

⁹⁹² UNAMI (July 6, 2014 – Sept. 10, 2014). p. 15; UNAMI (Sept. 11, 2014 – Dec. 10, 2014); UNAMI (May 1, 2015 – Oct. 31, 2015). p. 18.

⁹⁹³ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 37; U.N. Doc. S/2016/1090 (Dec. 21, 2016). p. 7.

⁹⁹⁴ ICSR. *Supra* note 520.

⁹⁹⁵ U.N. Doc. S/2016/1090 (Dec. 21, 2016). pp. 8–9.

⁹⁹⁶ See also: U.N. Doc. S/2016/361 (Apr. 20, 2016). ¶ 19; U.N. Doc. S/2016/361/Rev.1 (June 22, 2016). ¶ 19.

⁹⁹⁷ UNAMI (June 5 – July 5, 2014). p. 11; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 43; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 13.

⁹⁹⁸ U.N. Doc. S/2016/1090 (Dec. 21, 2016). pp. 7, 9.

⁹⁹⁹ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 37; U.N. Doc. S/2016/1090 (Dec. 21, 2016). p. 7.

¹⁰⁰⁰ UNAMI (Aug. 2016). p. 16.

¹⁰⁰¹ U.N. Doc. S/2016/1090 (Dec. 21, 2016). p. 8.

ISIL/DAESH destined women and girls to destinations such as Turkey, Syria, Palestine, Saudi Arabia, Qatar, Egypt, and Tunisia.¹⁰⁰² Routinely, ISIL/DAESH used to sell the very same woman or girl several times to enhance their profitability.¹⁰⁰³ Reports show that some women and girls were resold as many as 15 times.¹⁰⁰⁴ Additionally, to “maintain the girls’ financial value when sold on the market,” ISIL/DAESH also forced the victims to take contraceptive pills or injections or use drugs to induce abortion.¹⁰⁰⁵ Furthermore, ISIL/DAESH fighters and buyers were encouraged “not to ejaculate [inside] the women during the intercourse” to avoid pregnancies.¹⁰⁰⁶

After ISIL/DAESH abducted women and girls with the intent of selling them, the group kept their victims under captivity in appalling conditions for periods of up to nineteen months.¹⁰⁰⁷ While “waiting” to be sold, women and girls were brutally raped, subjected to sexual slavery, or severely beaten with sticks, clubs, plastic pipes, and other instruments until the point of passing out.¹⁰⁰⁸ In several public statements, ISIL/DAESH openly advocated for officially institutionalizing, regulating, and codifying sexual slavery.¹⁰⁰⁹ ISIL/DAESH fighters kept some of the victims in isolation for up to five days, with no food or water, even when victims were nourishing mothers.¹⁰¹⁰ In some cases, ISIL/DAESH held them in underground prisons with dirty water up to their knees.¹⁰¹¹

Women and girls who rarely managed to escape reported an existence filled with fear, deep emotional wounds, stigma, and repudiation as they returned to their communities.¹⁰¹² A survivor, who was subjected to slavery for 19 months by ISIL/DAESH, told international human rights investigators how ISIL/DAESH men “hit her when she tried to prevent them from taking her 13-year old daughter away from her.”^{1013 1014} She

¹⁰⁰² UNAMI (Aug. 2016). p. 16.

¹⁰⁰³ *Ibidem*.

¹⁰⁰⁴ IICI. *Supra* note 843. p. 5.

¹⁰⁰⁵ U.N. Doc. S/2016/1090 (Dec. 21, 2016). p. 9.

¹⁰⁰⁶ *Ibidem*.

¹⁰⁰⁷ UNAMI (Aug. 2016). p. 17.

¹⁰⁰⁸ *Idem*. p. 16.

¹⁰⁰⁹ U.N. Doc. S/2016/361 (Apr. 20, 2016). ¶ 21; UNAMI (Aug. 2016). p. 14; U.N. Doc. S/2016/949 (Nov. 10, 2016). ¶ 10.

¹⁰¹⁰ UNAMI (Aug. 2016). p. 16.

¹⁰¹¹ *Ibidem*.

¹⁰¹² U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 60.

¹⁰¹³ UNAMI (Aug. 2016). p. 15.

¹⁰¹⁴ *Ibidem*.

“screamed, begging them to leave the child. While she held her daughter’s hand tightly to prevent them from taking her away, an ISIL/DAESH member hit her on her hand, fracturing it, and dragged the child out. Since her escape, she stated that she has suffered from repeated nightmares of the event.”¹⁰¹⁵

ISIL/DAESH instituted a pattern of sexual violence as a multifaceted tool for multifold purposes:

- 1) As a systematic, widespread, and deliberate instrument of terrorizing, humiliating, and subjugating entire civilian communities, particularly religious and ethnic minorities;¹⁰¹⁶
- 2) As part of its strategy for controlling territory and “to advance key strategic priorities;”^{1017 1018}
- 3) As a tool “to suppress communities opposing its radical ideology;”¹⁰¹⁹
- 4) As a “tool of genocide against indigenous, religious, ethnic or political minorities;”^{1020 1021}
- 5) As a punishment instrument for women and girls who refused to convert;¹⁰²²
- 6) As a tactic of war against children belonging to minority groups;¹⁰²³ and
- 7) To broadcast ISIL/DAESH’s view that female bodies are “vessels for producing a new generation that can be raised in their own image, according to their radical ideology, and control over women’s sexuality and reproduction.”¹⁰²⁴

¹⁰¹⁵ *Ibidem*.

¹⁰¹⁶ U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 9; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 33

¹⁰¹⁷ UNAMI (Dec. 11, 2014 – April 30, 2015). p. 22.

¹⁰¹⁸ See also: U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 9; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 33.

¹⁰¹⁹ UNAMI (Dec. 11, 2014 – April 30, 2015). p. 22; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 33.

¹⁰²⁰ U.N. Doc. S/2016/361 (Apr. 20, 2016). ¶ 14.

¹⁰²¹ “Extremists groups such as ISIL/DAESH have raped women pursuant to a plan of self-perpetuation aimed at transmitting their ideology to a new generation who can be raised in their own image. In this way, women’s bodies [were] used as “biological weapons” to alter the demography of a region and to unravel existing kinship ties.” (*Ibidem*).

¹⁰²² UNAMI (Dec. 11, 2014 – April 30, 2015). pp. 20, 22.

¹⁰²³ U.N. Doc. CRC/C/IRQ/CO/2-4 (March 3, 2015). ¶ 44; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 42; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 9; U.N. Doc. S/AC.51/2016/2 (Aug. 18, 2016). ¶ 3; U.N. Doc. S/2016/1090 (Dec. 21, 2016). p. 5.

¹⁰²⁴ U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 9.

1.5.4. Recruitment and use of children in armed conflict.

Several instances and bodies of the United Nations have already recognized that ISIL/DAESH carried out systematic and deliberate recruitment and use of children in all areas under its control, including across borders. For example, the Secretary-General,¹⁰²⁵ the Security Council,^{1026 1027} the Office of the United Nations High Commissioner for Human Rights,^{1028 1029} the Human Rights Committee,¹⁰³⁰ the Committee on the Elimination of Racial Discrimination,¹⁰³¹ and the Committee on the Elimination of Discrimination against Women.¹⁰³² Reports showed that girls and boys as young as five were recruited and used by the group.^{1033 1034} The recruitment and use of children constituted “a central component of the political, military and ideological aims of ISIL/DAESH in Iraq.”^{1035 1036 1037}

There is abundant evidence that children from minority groups, including the Christian group, were recruited both to take part in hostili-

¹⁰²⁵ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶¶ 46, 54, 76; U.N. Doc. A/69/926-S/2015/409 (June 5, 2015). ¶¶ 7, 71–72; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶¶ 3, 29, 31–33; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 57; U.N. Doc. S/2015/530 (July 13, 2015). ¶¶ 44, 49; U.N. Doc. A/70/836-S/2016/360 (Apr. 20, 2016). ¶¶ 59, 67; U.N. Doc. S/2016/592 (July 5, 2016). ¶ 45; U.N. Doc. A/72/361-S/2017/821 (Aug. 24, 2017). ¶ 76; U.N. Doc. S/2017/881 (Oct. 19, 2017). ¶ 49; U.N. Doc. A/72/865-S/2018/465 (May 16, 2018). ¶¶ 16, 75, 82.

¹⁰²⁶ S.C. Res. 2169 (July 30, 2014). Preamble, p. 3; S.C. Res. 2233 (July 29, 2015). Preamble, p. 3; S.C. Res. 2299 (July 25, 2016). Preamble, p. 4; S.C. Res. 2379 (Sept. 21, 2017). p.1, ¶ 1.

¹⁰²⁷ U.N. Doc. S/AC.51/2016/2 (Aug. 18, 2016). ¶¶ 3, 7.d, 8.a.

¹⁰²⁸ UNAMI (July 6, 2014 – Sept. 10, 2014). pp. iii, 17; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 22; UNAMI (May 1, 2015 – Oct. 31, 2015). p. 18.

¹⁰²⁹ U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶¶ 3637.

¹⁰³⁰ U.N. Doc. CCPR/C/IRQ/CO/5/Add.1 (Aug. 18, 2017). ¶ 19.

¹⁰³¹ U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017). ¶ 15.

¹⁰³² U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 9.

¹⁰³³ UNAMI (Dec. 11, 2014 – April 30, 2015). p. 22.

¹⁰³⁴ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 44; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 37; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 32; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 10; U.N. Doc. S/2017/75 (Jan. 26, 2017). ¶ 40; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 27.

¹⁰³⁵ U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 27.

¹⁰³⁶ “While recruitment below the age of 18 has been prohibited in Iraq since 2010, child recruitment is not criminalized.” (*Idem.* ¶ 85).

¹⁰³⁷ For a more comprehensive understanding of the problem of ISIL/DAESH recruitment and use of children, please refer to: The children of Islamic State, QUILLIAM INTERNATIONAL, Noman Benotman, Nikita Malik (March 2016).

ties directly and actively engage in attacks or to be used for support functions:¹⁰³⁸

1) Active roles. ISIL/DAESH used children as combatants, actively participating in hostilities to: carry out suicide attacks; perform executions on civilians, soldiers, prisoners, and even on other ISIL/DAESH fighters; carry out shootings; conduct beheadings; launch small and medium-sized rockets; stay in the front line shielding ISIL/DAESH fighters during the fighting. ISIL/DAESH also used children for police functions, such as patrolling, manning checkpoints, and arresting and detaining individuals.^{1039 1040}

2) Support roles. ISIL/DAESH used children for: cooking; cleaning; carrying and transporting weapons; loading and unloading guns; manufacturing explosive devices; for videotaping attacks for propaganda purposes; and for donating blood for treating injured ISIL/DAESH fighters.¹⁰⁴¹ Children were also used for logistics: girl children were used as wives for fighters; children were used as informants, and acted as spies, scouts, and look-outs.¹⁰⁴² Under the group's surveillance, ISIL/DAESH also forced children to work as farmers and shepherds.¹⁰⁴³

ISIL/DAESH indoctrinated and trained large numbers of children through its courses in schools and youth military training camps, customized textbooks, and mobile apps.^{1044 1045 1046} Boys were reportedly being

¹⁰³⁸ U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 29; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 78; U.N. Doc. A/70/836-S/2016/360 (Apr. 20, 2016). ¶ 59; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 9; U.N. Doc. A/73/347 (Aug. 28, 2018). ¶ 35.

¹⁰³⁹ UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 17–18; UNAMI, UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 6; UNAMI (May 1, 2015 – Oct. 31, 2015). p. 18.

¹⁰⁴⁰ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶¶ 45–46, 76; U.N. Doc. A/69/926-S/2015/409 (June 5, 2015). ¶ 72; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶¶ 21, 29, 32, 34, 52; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 57; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 10; U.N. Doc. A/72/361-S/2017/821 (Aug. 24, 2017). ¶ 9; U.N. Doc. A/72/865-S/2018/465 (May 16, 2018). ¶¶ 75, 82; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 9; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶¶ 6–7, 29, 31–34, 54.

¹⁰⁴¹ UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 17–18.

U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 45; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶¶ 29, 32; U.N. Doc. A/72/865-S/2018/465 (May 16, 2018). ¶¶ 75, 79; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶¶ 32–33.

¹⁰⁴² U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 29; U.N. Doc. A/72/865-S/2018/465 (May 16, 2018). ¶ 75; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 32.

¹⁰⁴³ UNAMI (Dec. 11, 2014 – April 30, 2015). p. 20.

¹⁰⁴⁴ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 17; UNAMI (May 1, 2015 – Oct. 31, 2015). p. 14; UNAMI (Aug. 2016). p. 12.

¹⁰⁴⁵ U.N. Doc. CRC/C/IRQ/CO/2-4 (March 3, 2015). ¶ 23.c; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 46; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 10.

¹⁰⁴⁶ ICSR. *Supra* note 520. *passim*.

forced to watch videos of beheadings and other atrocities. If they refused, ISIL/DAESH fighters would severely beat them.¹⁰⁴⁷ Through manipulation, inducement, desensitization, constant exposure to violent images, and “normalization” of atrocities, the group sought to “‘re-programme’ [sic] children to disregard normal behaviour, [sic] judgements, ethics, and values,” and to “numb them to the value of human life.”^{1048 1049}

In youth training camps, ISIL/DAESH forced children as young as five-years-old to convert to Islam and to memorize the Quran.¹⁰⁵⁰ Children received training on combat tactics, the use of weapons, and the perpetration of acts of extreme violence.¹⁰⁵¹ To numb and embolden the children, ISIL/DAESH extensively resorted to forcing or inducing the minors to take drugs during the training sessions.¹⁰⁵² To ensure obedience, instill fear, and exert control over the recruited minors, ISIL/DAESH committed horrifying violence against children “using executions, amputations, physical mutilations, and other brutalities.”¹⁰⁵³ Children who rebelled or attempted to flee “were severely punished, including by being detained or executed.”¹⁰⁵⁴ Children who survived such atrocities were lately reported showing critical “signs of trauma, including extreme fatigue, sleep disturbances, dizziness, and difficulty concentrating.”¹⁰⁵⁵

The ISIL/DAESH campaign to recruit children included methods of forcefully taking minors from their family homes, schools, from IDPs and refugee camps, and orphanages, and in front of mosques during Friday prayers.^{1056 1057 1058} A 2014 report from the Office of the United Nations High Commissioner for Human Rights showed that some mothers, to avoid that ISIL/DAESH fighters took their sons and daughters, firmly embraced their children and “had thrown themselves off the mountains in desper-

¹⁰⁴⁷ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 45.

¹⁰⁴⁸ ICSR. *Supra* note 520. p. 13.

¹⁰⁴⁹ See also: U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 28

¹⁰⁵⁰ U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 33; UNAMI (Aug. 2016). p. 12.

¹⁰⁵¹ UNAMI (May 1, 2015 – Oct. 31, 2015). p. 14; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 33; UNAMI (Aug. 2016). p. 12; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 29.

¹⁰⁵² U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 29.

¹⁰⁵³ *Idem.* ¶ 56.

¹⁰⁵⁴ *Idem.* ¶ 31.

¹⁰⁵⁵ UNAMI (Aug. 2016). pp. 15–16.

¹⁰⁵⁶ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 17; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 18–19.

¹⁰⁵⁷ U.N. Doc. A/69/926-S/2015/409 (June 5, 2015). ¶ 72; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 37; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶¶ 32–33; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 28.

¹⁰⁵⁸ ICSR. *Supra* note 520. p. 3.

tion.”¹⁰⁵⁹ Vulnerable children, such as street children or children from families facing extreme economic hardship, were mainly targeted by ISIL/DAESH.¹⁰⁶⁰ ISIL/DAESH frequently displayed videos promising children “power and economic support.”¹⁰⁶¹ In some cases, ISIL/DAESH reportedly recruited even the sons and relatives of its own fighters.¹⁰⁶²

The exact number of child recruitment and use incidents by ISIL/DAESH remains considerably underdocumented still at the time of this book’s writing.¹⁰⁶³ Lack of access to conflict-affected areas and the fear of retaliation by the victims’ families account for the two main reasons for this lack of documentation.¹⁰⁶⁴ For instance, despite ISIL/DAESH’s defeat in Iraq in December 2017, the terrorist group reportedly continues to attempt isolated attacks against civilians and security forces, particularly in the Baghdad region.¹⁰⁶⁵ On October 18, 2018, the U.S. Department of State, through its Bureau of Consular Affairs, issued a red flag travel advisory for Iraq, the highest level of concern for visitors/foreigners.¹⁰⁶⁶ Also, many international humanitarian advocacy and reporting agencies placed in the Autonomous Administration in Northern Iraq lack official access permits from the Iraqi Government to the areas affected by the conflict in Baghdad and Mosul, which compromises the reporting of violations in these areas. Mostly, individual permission to visit certain areas and specific camps in Iraq is given on a case-by-case basis exclusively made on the field. Due to the fear of police involvement with armed groups, several families of victims were reluctant to report violations of rights to the Iraqi national police authorities.

However, the forced recruitment and use of children in Iraq is not a recent issue in the country’s history and does not constitute a problem created exclusively by ISIL/DAESH. For decades, other parties to the continuous conflict in Iraq have been recruiting as combatants for direct participation in the hostilities as well as to play support roles, such as the Iraqi military and other security forces, the pro-government forces, the Peo-

¹⁰⁵⁹ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 14.

¹⁰⁶⁰ U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶¶ 28, 30.

¹⁰⁶¹ *Idem.* ¶ 29.

¹⁰⁶² UNAMI (July 6, 2014 – Sept. 10, 2014). p. 17; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 32.

¹⁰⁶³ U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶¶ 32, 49

¹⁰⁶⁴ U.N. Doc. A/69/926-S/2015/409 (June 5, 2015). ¶ 77; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶¶ 53, 55.

¹⁰⁶⁵ United Nations. Security Council. Security Council Report: Monthly Forecast. (Feb. 2018). Situation in Iraq. p.14.

¹⁰⁶⁶ US Department of State. Bureau of Consular Affairs. Iraq Travel Advisory. (Oct. 18, 2018).

ple's Defence Forces of the *Kurdish Workers Party*, the Popular Mobilization Forces, the Protection Force of Ezidkhan, the Peshmerga Zeravani, Sunni tribal mobilization groups, the *Shasho*, various Turkmen-based self-defense groups, the Sinjar Resistance Units, the Protection Force of Ezidkhan, the Awakening Council (also known as the "Sons of Iraq"), non-State armed groups, armed militias, insurgent groups in the Iraqi territory, and terrorist groups such as the Al-Qaida in Iraq.¹⁰⁶⁷

1.5.5. Forced disappearances

In areas under its control, ISIL/DAESH carried out deliberate abductions/kidnappings of civilians, including thousands of women and children as young as six-years-old, both isolated and mass abductions.^{1068 1069 1070} Although the motives of why ISIL/DAESH used to perpetrate abductions are often unknown,¹⁰⁷¹ information suggests that the victims were targeted in virtue of varied reasons, such as:

¹⁰⁶⁷ U.N. Doc. A/61/529-S/2006/826 (Oct. 26, 2006). ¶ 44; U.N. Doc. A/62/609-S/2007/757 (Dec. 21, 2007). ¶ 53; U.N. Doc. A/63/785-S/2009/158 (Mar. 26, 2009). ¶¶ 59–60; U.N. Doc. A/64/742-S/2010/181 (Apr. 13, 2010). ¶ 81; U.N. Doc. A/65/820-S/2011/250 (Apr. 23, 2011). ¶ 97; U.N. Doc. S/AC.51/2011/6 (Oct. 3, 2011). ¶ 6; U.N. Doc. A/66/782-S/2012/261 (Apr. 6, 2012). ¶ 42; U.N. Doc. CRC/C/OPAC/IRQ/1 (May 9, 2012). ¶ 30; U.N. Doc. A/67/845-S/2013/245 (May 15, 2013). ¶ 69; U.N. Doc. S/2015/530 (July 13, 2015). ¶ 49; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶¶ 35, 37; U.N. Doc. A/70/836-S/2016/360 (Apr. 20, 2016). ¶ 59; U.N. Doc. A/72/361-S/2017/821 (Aug. 24, 2017). ¶¶ 76, 84; U.N. Doc. S/2017/881 (Oct. 19, 2017). ¶ 49; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶¶ 35–36, 38–40.

¹⁰⁶⁸ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 14; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 8–9, 13–14; UNAMI (June 5 – July 5, 2014). p. 12; UNAMI (Aug. 2016). p. 11; UNAMI (Nov. 6, 2018). p. 4.

¹⁰⁶⁹ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶¶ 46, 48, 76; U.N. Doc. S/2015/82 (Feb. 2, 2015). ¶¶ 46–47, 52; U.N. Doc. A/69/926-S/2015/409 (June 5, 2015). ¶ 7; U.N. Doc. S/2015/530 (July 13, 2015). ¶ 44; U.N. Doc. A/70/162 (July 20, 2015). ¶ 5; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶¶ 6, 32; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶¶ 32, 49; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 49; U.N. Doc. A/HRC/32/35/Add.1 (April 5, 2016). ¶ 55; U.N. Doc. A/70/836-S/2016/360 (Apr. 20, 2016). ¶ 65; U.N. Doc. S/2016/396 (Apr. 27, 2016). ¶ 78; U.N. Doc. S/2016/592 (July 5, 2016). ¶ 37; U.N. Doc. S/2016/897 (Oct. 25, 2016). ¶ 45; U.N. Doc. S/2017/75 (Jan. 26, 2017). ¶ 38; U.N. Doc. CCPR/C/IRQ/CO/5/Add.1 (Aug. 18, 2017). ¶ 19; U.N. Doc. A/72/361-S/2017/821 (Aug. 24, 2017). ¶ 82; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 9; U.N. Doc. A/73/347 (Aug. 28, 2018). ¶ 35; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 72; U.N. Doc. A/74/845-S/2020/525 (June 9, 2020). ¶ 74.

¹⁰⁷⁰ S.C. Res. 2388 (Nov. 21, 2017). Preamble, pp. 2–3.

¹⁰⁷¹ UNAMI (Dec. 11, 2014 – April 30, 2015). p. 14; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 20.

- 1) For the victims belonging to minority religious and ethnic groups;¹⁰⁷²
- 2) For human trafficking, slave trade, sexual exploitation, and for the payment of ransoms;¹⁰⁷³
- 3) For the victims' refusal to volunteer in fighting alongside ISIL/DAESH;¹⁰⁷⁴
- 4) For the victims' alleged cooperation with the international press;¹⁰⁷⁵
- 5) For the victims' alleged cooperation with the Iraqi Security Forces and with the Iraqi Government;^{1076 1077}
- 6) For victims merely being leaders from the Sunni Arab tribes;¹⁰⁷⁸
- 7) For shopkeepers allegedly raising food prices;¹⁰⁷⁹
- 8) For recruitment and use of children in forced military training;¹⁰⁸⁰
- 9) For the punishment of children or their families for trying to flee ISIL/DAESH-held areas;¹⁰⁸¹ or
- 10) For perpetrating killings and persecution of those who opposed ISIL/DAESH ideology, control, and rules.¹⁰⁸²

ISIL/DAESH reportedly abducted countless people from government and security force backgrounds and other persons of influence in the Iraqi society, such as former Government security officers, former parliamentary candidates, employees and former employees of the Independent High Electoral Commission (IHEC), Governors of Iraq provinces, current and former Iraqi Army officers and their families, *Imams*, staff from consular missions, and university professors and their families.^{1083 1084}

¹⁰⁷² U.N. Doc. A/69/926-S/2015/409 (June 5, 2015). ¶ 77; U.N. Doc. A/60/335 (Sept. 7, 2005). ¶ 13.

¹⁰⁷³ U.N. Doc. S/2016/361 (Apr. 20, 2016). ¶ 20.

¹⁰⁷⁴ UNAMI (May 1, 2015 – Oct. 31, 2015). p. 13.

¹⁰⁷⁵ *Idem*. p. 14.

¹⁰⁷⁶ UNAMI (Sept. 11, 2014 – Dec. 10, 2014). pp. 6, 9.

¹⁰⁷⁷ U.N. Doc. S/2017/75 (Jan. 26, 2017). ¶ 38.

¹⁰⁷⁸ UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 6.

¹⁰⁷⁹ U.N. Doc. S/2017/75 (Jan. 26, 2017). ¶ 38.

¹⁰⁸⁰ U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 73.

¹⁰⁸¹ *Ibidem*.

¹⁰⁸² UNAMI (Dec. 11, 2014 – April 30, 2015). pp. 10, 14; U.N. Doc. S/2016/396 (Apr. 27, 2016). ¶ 44.

¹⁰⁸³ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 10; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 9; UNAMI (Dec. 11, 2014 – April 30, 2015). pp. 12–14; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 8, 13–14.

¹⁰⁸⁴ U.N. Doc. S/2017/75 (Jan. 26, 2017). ¶ 38.

Several victims of ISIL/DAESH were being taken by the group from their homes, workplaces, or checkpoints.^{1085 1086} The exact fate and whereabouts of the vast majority of these forcibly disappeared victims remain still unknown at the time of the writing of this book.^{1087 1088}

Numerous sources confirmed that, after abduction/capture, ISIL/DAESH usually separated men from women, particularly Christian and Yazidi groups. Then, married women were separated from single ones; children were separated from their parents, and, finally, girl children were separated from the boys for further selling and recruitment and use.^{1089 1090} In one instance that ISIL/DAESH fighters were separating the young girls from the women, around 500 young girls were taken away.¹⁰⁹¹ Tragically, in this particular event, a thirteen-year-old girl was taken to a hall in Mosul that was full of young girls.¹⁰⁹² After seven days, she “was sold to an Iraqi ISIL/DAESH member, at the premises of a former court in Mosul, for 1,000 US dollars.”¹⁰⁹³

Chart of United Nations documents cited in Chapter I – Chronological order

2005

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¹⁰⁸⁵ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 30.

¹⁰⁸⁶ Office of the United Nations High Commissioner for Human Rights, Spokesperson for the UN High Commissioner for Human Rights: Ravina Shamdasani (Nov. 29, 2016). (2).

¹⁰⁸⁷ UNAMI (June 5 – July 5, 2014). p. 12; UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 7–8, 13; UNAMI (Sept. 11, 2014 – Dec. 10, 2014). p. 9; UNAMI (Dec. 11, 2014 – April 30, 2015). pp. 10, 13, 20; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 8, 13–14; UNAMI (Aug. 2016). pp. 13, 15.

¹⁰⁸⁸ U.N. Doc. S/2015/82 (Feb. 2, 2015). ¶ 52; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 73; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 28.

¹⁰⁸⁹ UNAMI (Sept. 11, 2014 – Dec. 10, 2014). pp. 13–14; UNAMI (Dec. 11, 2014 – April 30, 2015). p. 22; UNAMI (Aug. 2016). p. 15.

¹⁰⁹⁰ U.N. Doc. CRC/C/IRQ/CO/2-4 (March 3, 2015). ¶ 52; U.N. Doc. A/69/926–S/2015/409 (June 5, 2015). ¶ 77.

¹⁰⁹¹ UNAMI (Aug. 2016). p. 15.

¹⁰⁹² *Ibidem.*

¹⁰⁹³ *Ibidem.*

2006

U.N. Doc. A/61/529-S/2006/826 (Oct. 26, 2006).

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2009

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2011

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2013

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2019

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2020

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Chart of documents from the United Nations Assistance Mission for Iraq (UNAMI) – Chronological order

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Aug. 2016.

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2018

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UNAMI, *Unearthing Atrocities: Mass Graves in territory formerly controlled by ISIL/DAESH*.

2020

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2. The factual matrix of human rights and humanitarian law violations: an appraisal of the facts from the Nuremberg, the ICTR, the ICTY, the SCSL, and ICC tribunals

A. Germany

Following Adolf Hitler becoming the supreme leader or Führer of the Nationalsozialistische Deutsche Arbeiterpartei (National Socialist German Workers Party), the doctrines, practices, and policies of the Nazi Party were put in place in Germany and the occupied territories during the Second World War.¹⁰⁹⁴ Hitler's colossal doctrine conceived that "persons of so-called 'German blood' [as specified by the Nazi conspirators] were a 'master race' and were accordingly entitled to subjugate, dominate, or exterminate other' races."¹⁰⁹⁵

The Nazi party, with the support of the Schutzstaffel (the SS), then started the "Common Plan" of destroying and persecuting all opponents "whose political belief or spiritual aspirations were deemed to be in conflict with the aims of the Nazis."¹⁰⁹⁶ ¹⁰⁹⁷ The SS painstakingly planned, prepared, and executed crimes against peace, crimes against humanity, and war crimes both within Germany and within occupied territories, violating international treaties, agreements, assurances, rules, and war customs.¹⁰⁹⁸

Crimes of unspeakable evil were perpetrated, for instance: murder, mass killings, extermination, mutilations, amputations, beatings, torture, the taking and killing of hostages, kidnapping of children, forced medical experiments, slave labor, ill-treatment of prisoners of war, and persons on the high seas, the plunder and confiscation of public and private property, the indiscriminate destruction of cities, towns, and villages, forced displacement of civilians, deportation, devastation not justified by military necessity, and other inhumane acts committed against civilian popula-

¹⁰⁹⁴ 1 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 30.

¹⁰⁹⁵ *Idem.* p. 31.

¹⁰⁹⁶ *Idem.* p. 66.

¹⁰⁹⁷ See also: *Idem.* p. 31.

¹⁰⁹⁸ 1 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 29; United States of America vs. Friedrich Flick *et al.* Case 5 (1947). p. XIII.

tions.¹⁰⁹⁹ Hundreds of thousands of Jews, in particular, were systematically persecuted by the Nazis since 1933.¹¹⁰⁰ They were killed, tortured, locked in concentration camps, and deprived of their property/belongings.”¹¹⁰¹

At Nazi concentration camps, civilian inmate victims had all sorts of ailments, such as gangrenous wounds, tuberculosis, typhus, and other infectious diseases.¹¹⁰² The premises where inmates were placed had “appalling conditions.”¹¹⁰³ Very frequently, SS officers gave inmates little or nothing to eat.¹¹⁰⁴ At all times, the camps were surrounded by an electrically charged fence and by barbed wire.¹¹⁰⁵ Prisoners were tattooed with numbers for prison control.¹¹⁰⁶ Those who tried to escape were summarily shot to death.¹¹⁰⁷ Many prisoners were executed by gas or shooting or by injections. Mostly those who survived, showed “scars of a miserable existence under Nazi prison rule.”¹¹⁰⁸

B. Sierra Leone

In Sierra Leone, eleven years of internal civil conflict that commenced on March 23, 1991, left the country with a complex net of armed groups.¹¹⁰⁹ In particular, armed fighters formed two major rebel groups, the Armed Forces Revolutionary Council (AFRC) and the Revolutionary United Front (RUF). Such groups launched an insurgency movement from Liberia’s Lofa County into Sierra Leone’s Kailahun District that “continued until president Ahmad Tejan Kabbah of Sierra Leone announced the cessation of hostilities on January 18, 2002.” Thousands of civilians remained under the control of AFRC/RUF, including women and children.^{1110 1111} Documentary and witness evidence established that such groups and other retreating

¹⁰⁹⁹ 1 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 29.

¹¹⁰⁰ *Idem.* p. 66.

¹¹⁰¹ *Ibidem.*

¹¹⁰² 30 Trial of the Major War Criminals before the International Military Tribunal (1948). pp. 462–463.

¹¹⁰³ *Ibidem.*

¹¹⁰⁴ *Ibidem.*

¹¹⁰⁵ **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). p. 385.

¹¹⁰⁶ *Idem.* p. 416.

¹¹⁰⁷ *Idem.* p. 394.

¹¹⁰⁸ 30 Trial of the Major War Criminals before the International Military Tribunal (1948). pp. 462–463.

¹¹⁰⁹ Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 19.

¹¹¹⁰ *Idem.* ¶ 936.

¹¹¹¹ *Idem.* ¶ 18.

forces committed a broad-spectrum of horrific, systematic, and widespread attacks against Sierra Leone's civilian population.^{1112 1113}

C. Rwanda

In Rwanda, following the death of Rwandan president Juvénal Habyarimana in a plane crash, persons belonging to the Tutsi ethnicity were singled out and targeted in their communities by persons belonging to the Hutu ethnicity.^{1114 1115} Hutus accused the Tutsi of being involved in the shooting down with missiles of the president's Habyarimana aircraft on the evening of April 6, 1994. Hutu political forces associated with president Habyarimana then formed two militia groups after the crash: the Interahamwe and the Impuzamugambi. Both received training, support, weapons, ammunition, and intelligence from the official Rwandan army and from Rwandan police for a settling of accounts with the Tutsi.¹¹¹⁶ The plane crash event then triggered, in the territory of Rwanda, between April 6 and July 17, 1994, the widespread persecution, torture, rape, and killing of hundreds of thousands of civilians, solely because of their membership to the Tutsi ethnicity, including women, children, and the elderly.¹¹¹⁷

Fearing threats of death and different kinds of attacks on the physical and mental integrity of the Hutu, thousands of Tutsis fled their homes.

¹¹¹² Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 1567.

¹¹¹³ See also: Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 233; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶¶ 1522, 1606; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 279. ¶ 153.

¹¹¹⁴ Prosecutor v. Gaspard Kanyarukiga. ICTR-2002-78-T. *Supra* note 187. ¶ 660.

¹¹¹⁵ "In the early 1930s, Belgian authorities introduced a permanent distinction by dividing the population into three groups which they called ethnic groups, with the Hutu representing about 84% of the population, while the Tutsi (about 15%) and Twa (about 1%) accounted for the rest. In line with this division, it became mandatory for every Rwandan to carry an identity card mentioning his or her ethnicity. [...] The reference to ethnic background on identity cards was maintained, even after Rwanda's independence and was, at last, abolished only after the tragic events the country experienced in 1994." (Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 83).

¹¹¹⁶ Prosecutor v. Tharcisse Renzaho. ICTR-97-31-T. *Supra* note 232.

¹¹¹⁷ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 1; Prosecutor v. Gaspard Kanyarukiga. ICTR-2002-78-T. *Supra* note 187. ¶¶ 659-660.

They sought refuge in the country's communal bureaus, parishes, and churches.¹¹¹⁸ While seeking refuge,

“displaced female civilians were regularly taken by armed local militia and/or communal police and subjected to sexual violence, and/or beaten on or near the bureau communal premises. Displaced civilians were also murdered frequently on or near the bureau communal premises.”¹¹¹⁹

Dozens of women suffered atrocious acts of sexual nature, generally “accompanied by explicit threats of death or bodily harm.”¹¹²⁰ As a result of these acts perpetrated by police personnel and local militia fighters, female civilians “lived in constant fear, and their physical and psychological health deteriorated as a result of the sexual violence and beatings and killings.”¹¹²¹

Also, the Interahamwe erected roadblocks and checkpoints throughout Rwanda. Two main reasons were behind this procedure: 1) preventing Tutsi refugees from fleeing and 2) killing influential Tutsi people, such as primary teachers and university professors. Under the orders and supervision of the Hutu Jean-Paul Akayesu, the mayor of Rwandan Taba commune, the Interahamwe conducted house-to-house searches, interrogated and beat with rifles and sticks a significant number of Tutsi individuals.¹¹²²

D. Former Yugoslavia

During the dismantling of former Yugoslavia in the late 1990s, Serbian authorities – government personnel, the military, and the police – submitted thousands of Bosnian Muslim civilians to intolerable conditions of life exclusively for their religious background/identity, violating numerous human rights recognized in international instruments.¹¹²³ Serbian authorities adopted “cleaning-up,” restrictive, intimidatory, verbally abusive, and wide and systematic discriminatory measures against the victims, notably restrictions on freedom of movement, denial of employment, violations to

¹¹¹⁸ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 12a; Prosecutor v. Yussuf Munyakazi. ICTR-97-36A-T. *Supra* note 236. ¶ 321; Prosecutor v. Jean-Baptiste Gatete. ICTR-2000-61-T. *Supra* note 195. ¶ 633.

¹¹¹⁹ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 12a.

¹¹²⁰ *Ibid.*

¹¹²¹ *Ibid.*

¹¹²² *Idem.* ¶¶ 12, 16.

¹¹²³ Prosecutor v. Vujadin Popović *et al.* IT-05-88-A. *Supra* note 151. ¶ 753; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 991, 1165.

the right to privacy, and discriminatory measures on equal access to public services.¹¹²⁴ They were submitted to horrific acts of physical violence and subjected to severe psychological abuse by Bosnian Serb, in a context of an atmosphere of “intimidation, suffering, misery, the threat of execution, and pain.”¹¹²⁵ Most of these acts of violence took place in the context in which Serbian soldiers and police personnel arbitrarily arrested thousands of Muslim civilians in detention camps for indiscriminate periods of time.¹¹²⁶

Detained Bosnian Muslims, including women, young children, and elderly persons, were subjected to multiple severe beatings on a daily basis for long periods, day and night.¹¹²⁷ Serbian police authorities and soldiers perpetrated such atrocious violent acts on discriminatory grounds. The majority of victims were Bosnian Muslims and some Bosnian Croat detainees.¹¹²⁸ Majorly, the detainees were kept in cellars, guarded by the police

¹¹²⁴ Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 261; Prosecutor v. Radislav Krstić. IT-98-33-A. *Supra* note 129. ¶ 37; Prosecutor v. Vidoje Blagojević, Dražan Jokić. IT-02-60-T. *Supra* note 147. ¶¶ 308, 311, 328; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶¶ 784, 787, 804-805; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 664; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 991, 1064, 1337, 2496, 2512-2513, 2568; Prosecutor v. Ratko Mladić. IT-09-92-T, vol. 2. *Supra* note 137. ¶ 1485.

¹¹²⁵ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 143.

¹¹²⁶ The terms “unlawful,” “arbitrary,” and “illegal” detention/imprisonment employed here is regarded as the “deprivation of liberty of the individual without due process of law”. It consists of the following elements: “(1) an individual is deprived of his or her liberty; (2) the deprivation of liberty is carried out arbitrarily, that is, there is no legal basis for it; and (3) the perpetrator acted with the intent to deprive the individual arbitrarily of his or her liberty.” (Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 238). See also: Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 752).

¹¹²⁷ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶¶ 143, 272, 280; Prosecutor v. Blagoje Simić, Miroslav Tadić and Simo Zarić. IT-95-9-T. *Supra* note 78. ¶¶ 696, 703, 711, 770; Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶ 173; Prosecutor v. Milan Martić. IT-95-11-T. *Supra* note 105. ¶ 288; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 978; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶¶ 289, 603, 683; Prosecutor v. Vujadin Popović *et al.* IT-05-88-A. *Supra* note 151. ¶ 753; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1013, 1015, 1156, 1165, 1167, 1190, 1201, 1306, 1333, 1346, 1353, 2497; Prosecutor v. Ratko Mladić. IT-09-92-T, vol. 2. *Supra* note 137. ¶ 1762.

¹¹²⁸ Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶¶ 771-772; Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶ 189; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶¶ 676, 683.

the whole time for the duration of their detention.¹¹²⁹ Serbian soldiers kept many of the detainees in solitary confinement cells, isolation rooms, and dark rooms or kept them in incommunicado detention in many instances.¹¹³⁰ On rare occasions, some of the detainees were allowed outside the cell for 30 minutes a day.¹¹³¹ Those who tried to escape the prison facilities were killed immediately.¹¹³²

E. Darfur, Sudan.

In the early 2000s in Darfur, Sudan, the Sudanese government forces, the National Security and Intelligence Service, the Military Intelligence, the Janjaweed, and the rebels committed indiscriminate attacks against civilians.¹¹³³ These forces deliberately and extensively submitted civilians in Darfur to egregious forms of physical and mental torture and cruel and degrading treatment. Sudanese forces perpetrated barbaric acts such as killing by crucifixion, burning people to death, including children, extremely violent beatings, whippings, and skinning people. They stripped women of their clothes and raped them. These forces also committed extreme mental torture, verbal abuse, and humiliation, being “dragged along the ground by horses and camels from a noose placed around their necks.” Also, they performed forced extraction of eyes, keeping persons under the scorching sun for days on, suspending persons from the ceiling, and beating them repeatedly, among other cruel forms of torture.^{1134 1135} These forces also forced many mothers to watch their children being burned alive.¹¹³⁶

¹¹²⁹ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 923, 931, 949; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶¶ 584, 678; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1392, 1477, 1479.

¹¹³⁰ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 272; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1399, 1427; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 696; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 1479.

¹¹³¹ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 951.

¹¹³² Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶ 212.

¹¹³³ U.N. Doc. S/2005/60 (Feb. 1, 2005). ¶¶ 238, 241–250, 254–256, 269–279, 285–288, 301–317, 364–367.

¹¹³⁴ *Idem.* ¶¶ 274, 362, 365–373, 379.

¹¹³⁵ Reports showed that some civilians lost up to 17 family members due to Sudan Government attacks in the mountains. (*Idem.* ¶ 274).

¹¹³⁶ *Idem.* ¶ 365.

With the use of heavy weaponry, such as AK-47s, RPGs, Garanovs, Kalashnikovs, G-3s, G-4 assault rifles, Katyusha Hawns 106, Hawns 120 DShK, 12.7-mm machine guns mounted on vehicles, and rocket-propelled grenades, Government forces, and rebels killed thousands of civilians, including women, children, and the elderly. They perpetrated abductions, enforced disappearances and summary executions, burned civilian houses, destroyed schools and hospitals, perpetrated wanton destruction of villages or devastation not justified by military necessity, destroyed wells, and looted private properties and livestock.¹¹³⁷ Helicopters and Antonov aircraft were used during many of the attacks.¹¹³⁸

Government soldiers, acting together with Janjaweed planned, organized, and perpetrated several attacks against civilians involving sexual violence and rape.¹¹³⁹ In Wadi Tina, Northern Darfur, at about 6 in the morning on 7 January 2003, a woman

“was at her home in the village of Tarne. Around 3,000 Janjaweed riding horses and camels attacked the village. Around 8 in the morning on the second day at the wadi, [she] was raped for the first time. A very large group of Janjaweed arrived at the wadi. They selected a woman each and raped them. Over a period of a week, [she] was raped 14 times by different Janjaweed. [She] told them to stop. They said ‘you are women of *Torabora* and we will not stop this’. [Women] were called slaves and frequently beaten with leather straps, punched and slapped. [She] feared for [her] life if [she] [did] not have sex with them. [The women] were humiliated in front of other women and were forced to have sex in front of them. Other Janjaweed were watching.”¹¹⁴⁰

In another chilling incident outside the Zam Zam camp, three separate groups of women were sexually attacked at a government road checkpoint in Northern Darfur:

“Approximately 2 km after the checkpoint, around 20 soldiers dressed in camouflage uniforms drove up to the group of women and ordered them to stop while firing some gunshots. The women were told to get down off their donkeys and lie on the ground. The witness was holding her sister-in-law’s one-year-old child, who started to cry. One of the soldiers grabbed the child and threw it away on the side of the road. [...] Some soldiers held one of the other women down and started raping her. At the same time, the witness

¹¹³⁷ *Idem.* p. 3, ¶¶ 242, 252–253, 255, 269, 274, 349, 387–388.

¹¹³⁸ *Idem.* ¶¶ 186, 253, 277, 280, 282, 301, 387.

¹¹³⁹ *Idem.* ¶¶ 248, 275, 335, 346, 348, 353.

¹¹⁴⁰ *Idem.* ¶ 345.

was held down on the ground by soldiers who also pulled her clothing over her head. Four soldiers then had vaginal intercourse with her, one after the other. The soldiers were about finished raping the five women when the second group of women who went to El Fashir to sell wood arrived at the same location [and also raped the women].¹¹⁴¹

Women and young girls, as young as eight years old, were reportedly gang-raped in public, beaten, and whipped while suffering sexual violence, repeatedly raped while held in confinement for several days, and made sexual slaves.¹¹⁴² All over Darfur, Government soldiers and the Janjaweed raped women in front of their family members.¹¹⁴³ Many women and girls became pregnant as a result of rape.¹¹⁴⁴ The International Commission of Inquiry on Darfur, created by the U.N. Security Council, concluded that the Janjaweed and Government soldiers perpetrated such patterns of rape and sexual violence with a deliberate strategy to terrorize the civilian population.¹¹⁴⁵

Sudanese government forces and the Janjaweed shelled mountains with mortars, forcing the civilian population to leave their homes and villages.¹¹⁴⁶ The United Nations estimated that, in virtue of the attacks, around 1.65 million became internally displaced in Darfur, and more than 200,000 persons became refugees in neighboring Chad.¹¹⁴⁷ Thousands suffered from thirst and hunger.¹¹⁴⁸ Displaced persons were kept in overcrowded premises with limited food and water. Reportedly, several hundred children died due to disease outbreaks.¹¹⁴⁹ Over several days and months, civilians were attacked early in the morning before sunrise and during prayer time.¹¹⁵⁰

Sudanese government detainees were kept in incommunicado detention, locked 24 hours a day in cells with little or no light and ventilation at all for periods reaching months.¹¹⁵¹ Proper medical treatment for sick detainees was inexistent or insufficient.¹¹⁵² Reportedly, personnel from the

¹¹⁴¹ *Idem.* ¶ 350.

¹¹⁴² *Idem.* ¶¶ 333–334, 340–341, 348–349, 351, 353.

¹¹⁴³ *Idem.* ¶ 346.

¹¹⁴⁴ *Idem.* ¶ 334.

¹¹⁴⁵ *Idem.* ¶ 353.

¹¹⁴⁶ *Idem.* ¶ 325.

¹¹⁴⁷ *Idem.* p. 3, ¶¶ 186, 226.

¹¹⁴⁸ *Idem.* ¶ 274.

¹¹⁴⁹ *Idem.* ¶ 367.

¹¹⁵⁰ *Idem.* ¶ 241.

¹¹⁵¹ *Idem.* ¶¶ 370–371.

¹¹⁵² *Idem.* ¶ 370.

National Security and Intelligence Service and the Military Intelligence used to extensively torture the detained.¹¹⁵³

Most of the victims in Sudan belonged to African tribes, particularly the Fur, Masalit, and Zaghawa tribes.¹¹⁵⁴ Nevertheless, the International Commission of Inquiry on Darfur concluded later that “the intent of the attackers was not to destroy an ethnic group as such or part of the group.”¹¹⁵⁵ Instead, the Commission concluded that the intention of all the attacking forces in Darfur “was to murder all those men they considered as rebels, as well as forcibly expel the whole population so as to vacate the villages and prevent rebels from hiding among or getting support from the local population.”¹¹⁵⁶

2.1. Destruction and appropriation of private property

2.1.1. The Nazi context

Destruction or appropriation of private property constitutes an immemorial practice in armed conflicts, whether internal or international. During the Nazi regime, the SS committed pillage and appropriation of properties on a large scale, particularly goods belonging to the Jewish population. Among the long list of items appropriated from the Jews by the SS were currency in notes or gold, foreign currency, gold bars, gold brooches, gold rings, rings with brilliants, gold earrings, cuff links with brilliants, gold bracelets with brilliants, thousands of watches of most expensive Swiss makes, gold watches, jewels, trinkets, brilliants, thousands of kilos of pearls, hundreds of diamonds, precious stones, corals, old gold and silver coins of high collector’s value, valuable stamp collections, pure gold mechanical pencils, binoculars, textiles of all sorts, clothing of all types, linen, feathers for bedding, rags, wallets, razor blades, hair-cutting machines, scissors of all kinds, silver and gold cigarette cases, clinical thermometers, valuable furniture and household items, and other highly valuable items of different types.^{1157 1158}

¹¹⁵³ *Idem.* ¶ 379.

¹¹⁵⁴ *Idem.* ¶ 245.

¹¹⁵⁵ *Idem.* ¶ 514

¹¹⁵⁶ *Ibidem.*

¹¹⁵⁷ **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). pp. 706–712, 727–728.

¹¹⁵⁸ Pieces containing gold were either to be sold abroad or for melting down. (**United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). pp. 711–712).

Other items of low value, such as soap, lotions, and plates, were also confiscated.¹¹⁵⁹ SS also appropriated porcelain, platinum, and gold extracted from the teeth of concentration camp inmates.¹¹⁶⁰ Items of little value “were either destroyed or given to the population as premiums for good harvests.”¹¹⁶¹

2.1.2. The context of the Former Yugoslavia

In the late 1990s, radical governmental discriminatory policies against Bosnian Muslims took place in the Former Yugoslavia, mainly seeking their expulsion from the Yugoslavian territory. Municipalities, mostly inhabited by Muslim civilians, were taken by the military and the police. During and after the take-over of towns and villages, Serb forces systematically and extensively expelled Bosnian Muslims from their homes.¹¹⁶²

Serb forces forced Muslims and Serb Croats to surrender their personal belongings to the municipality, to local authorities, or to Bosnian Serb governmental authorities.¹¹⁶³ Serb forces ordered Muslim detainees to hand over all money and surrender identification documents.¹¹⁶⁴ Jewelry and valuables were confiscated.¹¹⁶⁵ Even the dead bodies of killed Bosnian Muslims, after mass executions, were searched for valuables by Serb soldiers before burial.¹¹⁶⁶

Acts of destruction, confiscation, appropriation, and plunder of private houses were carried out in multiple municipalities on a permanent basis with the deliberate discriminatory intent against Bosnian Muslims and Bosnian Croats. These acts were based on the victims’ identity *as belonging*

¹¹⁵⁹ *Idem.* p. 727.

¹¹⁶⁰ *Idem.* pp. 476–478.

¹¹⁶¹ *Idem.* pp. 727–728.

¹¹⁶² Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 824; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 2539–2540.

¹¹⁶³ Prosecutor v. Radislav Krstić. IT-98-33-A. *Supra* note 129. ¶ 37; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶¶ 765, 821, 823; Prosecutor v. Milan Martić. IT-95-11-T. *Supra* note 105. ¶ 288; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1342, 2539, 2542, 2544.

¹¹⁶⁴ Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 585; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1201, 1306, 2542.

¹¹⁶⁵ Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 846; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 823; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1201, 1306, 2542.

¹¹⁶⁶ Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 2542.

to a legally protected group.¹¹⁶⁷ Serb forces looted businesses and other establishments, such as restaurants, shops, offices, cafés, and gas stations belonging to Muslims.¹¹⁶⁸ Goods taken out of factories were appropriated.¹¹⁶⁹ While Serb Forces were specifically ordered to destroy all Bosnian Muslim private and commercial property and finally give them to the Serbs, private property/houses owned by Serbs were not touched.¹¹⁷⁰

2.2. Use of derogatory language, religious discrimination, and destruction of Mosques in the former Yugoslavia

Frequently, the Serbian military and police personnel verbally abused the Muslims, calling them “Balijas”/“Balija’s mothers” and forced them to sing “Chetnik” songs, used derogatory language against women, and stated that they should leave the territory or suffer.¹¹⁷¹ Serbian authorities cursed, threatened, warned, humiliated, and insulted Bosnian Muslims with ethnic slurs and ethnic affirmations such as: “Muslims were simply going to disappear,” “Muslims cannot live with others,” “Muslims are fictitious people,” or “Muslims and Croats must be separated forever.”¹¹⁷² Serb Forces also forced the detainees to make the sign of the cross, carve crosses with a knife on their bodies, or forced them to sign papers saying that they had “voluntarily joined the Serbian Orthodox religion.”¹¹⁷³ Some

¹¹⁶⁷ Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 873; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶¶ 820–821, 823, 825, 829–830, 833; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 2542–2545, 2546, 2555, 2558.

¹¹⁶⁸ Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 846; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶¶ 773, 823, 829; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 2543.

¹¹⁶⁹ Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 846.

¹¹⁷⁰ Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶¶ 823, 827; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 2543, 2555; Prosecutor v. Ratko Mladić. IT-09-92-T, vol. 2. *Supra* note 137. ¶ 1762.

¹¹⁷¹ Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 726; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1325, 1332, 1361, 2494, 2514.

¹¹⁷² Prosecutor v. Zdravko Tolimir. IT-05-88/2-A. *Supra* note 152. ¶ 576; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1033, 1035, 1477, 1306, 1826, 2516, 2494, 2496, 2514, 2756.

¹¹⁷³ Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1013, 1325, 2494, 2277.

victims were also forced to commit acts contrary to the Muslim faith, such as eating pork and drinking beer.¹¹⁷⁴

Through loudspeakers and radio broadcasts, Bosnian Serb leaders and soldiers made announcements with the objective of “creating fear and inciting inter-ethnic hatred amongst the population.”¹¹⁷⁵ They ordered that Muslim men should surrender their documents, women, and children or else be killed.¹¹⁷⁶ In Foča, for example,

“Bosnian Serb leaders made radio announcements that it was no longer possible for Bosnian Serbs to live with their Bosnian Muslim neighbors, that they could not be woken every morning by the hodza from the mosque, and that ‘the time had come for the Serbs to settle accounts with the balijas once and for all, and that the Serbs would no longer allow their ribs to be broken.’”¹¹⁷⁷

In a context of a wider discriminatory attack against Muslims in the Former Yugoslavia, Serbian military and police intentionally targeted for wanton destruction of personal religious symbols of significance to the Bosnian Muslim or Bosnian Croat people.¹¹⁷⁸ The perpetrators’ intent was “to wipe out traces of the Muslim culture and religion.”¹¹⁷⁹ Mosques – even those under UNESCO protection –, were intentionally damaged, demolished with heavy machinery, burned, used to store weapons and for training, shelled, destroyed by Serb Forces with tanks or explosives, or converted for another use such as being flattened and used as a parking lot.¹¹⁸⁰ Serb forces used the minarets of the mosques to play Serbian music.¹¹⁸¹ The minarets were also targeted and blown up with explosives to be finally razed to the ground.¹¹⁸² Even the tombs of mosques’ adjacent cemeteries were also removed.¹¹⁸³

¹¹⁷⁴ *Idem.* ¶ 2494.

¹¹⁷⁵ *Idem.* ¶ 2598.

¹¹⁷⁶ *Idem.* ¶¶ 759, 983.

¹¹⁷⁷ *Idem.* ¶ 2515.

¹¹⁷⁸ *Prosecutor v. Milomir Stakić.* IT-97-24-T. *Supra* note 109. ¶ 811; *Prosecutor v. Momčilo Krajišnik.* IT-00-39-T. *Supra* note 121. ¶¶ 780, 838; *Prosecutor v. Mićo Stanišić, Stojan Župljanin.* IT-08-91-T, vol. 1. *Supra* note 102. ¶ 524.

¹¹⁷⁹ *Prosecutor v. Momčilo Krajišnik.* IT-00-39-T. *Supra* note 121. ¶ 838.

¹¹⁸⁰ *Prosecutor v. Mićo Stanišić, Stojan Župljanin.* IT-08-91-T, vol. 1. *Supra* note 102. ¶¶ 525–526; *Prosecutor v. Radovan Karadžić.* IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 925, 927, 1039, 1068, 1354, 1356–1357, 1359, 1453, 1455, 1606, 1887, 1889, 2552.

¹¹⁸¹ *Idem.* ¶ 1355.

¹¹⁸² *Prosecutor v. Mićo Stanišić, Stojan Župljanin.* IT-08-91-T, vol. 1. *Supra* note 102. ¶ 526.

2.3. Mass executions

2.3.1. Mass executions in Rwanda

Throughout 1994, an official policy of mass extermination of Tutsis was put into action in Rwanda by the Hutus. It involved different levels of government power and local officials, with the participation of Rwandan soldiers, gendarmes, militia, and demobilized soldiers.¹¹⁸⁴ Under the instructions of military Tharcisse Renzaho, which were broadcast on Radio Rwanda, roadblocks and checkpoints were built by Hutus with the intent to “intercept, identify and kill Tutsis.”¹¹⁸⁵ Tutsi civilians had been targeted solely based on their ethnicity.¹¹⁸⁶ Following the crash of Rwanda’s President’s plane on 6 April 1994, Hutus alleged that Tutsis were involved in the event.¹¹⁸⁷ Since then, Hutus regarded the Tutsi as the “enemies” of Rwanda.¹¹⁸⁸ Hutus widely and systematically abducted and killed thousands of Tutsis in these interceptions.¹¹⁸⁹

During the same period, the Hutu Jean-Paul Akayesu, the mayor of Taba, one of Rwanda’s communes, instructed the Interahamwe, militias, the communal police, and local people to perpetrate mass killings of intellectual and influential Tutsi people at the roadblocks and in the bureaux communal.¹¹⁹⁰ Tutsi intellectuals, particularly teachers of all instruction levels, were considered by Hutus as “the source of all of the misery in Rwanda.”^{1191 1192} Under the orders of Akayesu, teachers were bound, tied, kicked in the chest, beaten with guns, clubs, hoes, and sticks, and suffered other atrocious kinds of torture.¹¹⁹³ Akayesu also ordered the killing of teachers with machetes and blows to the neck with agricultural tools.¹¹⁹⁴ Hutus also killed Tutsi teachers with bullets and grenades.¹¹⁹⁵

¹¹⁸³ Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 1453.

¹¹⁸⁴ Prosecutor v. Tharcisse Renzaho. ICTR-97-31-T. *Supra* note 232. ¶ 116.

¹¹⁸⁵ *Ibidem*.

¹¹⁸⁶ *Idem*. ¶ 5.

¹¹⁸⁷ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 123.

¹¹⁸⁸ Prosecutor v. Tharcisse Renzaho. ICTR-97-31-T. *Supra* note 232. ¶ 180.

¹¹⁸⁹ Prosecutor v. Pauline Nyiramasuhuko *et al.* ICTR-98-42-A. *Supra* note 220. ¶ 2125.

¹¹⁹⁰ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶¶ 20–21, 288–289, 313.

¹¹⁹¹ *Idem*. ¶ 288–289.

¹¹⁹² See also: *Idem*. ¶¶ 20, 427.

¹¹⁹³ *Idem*. ¶¶ 21, 288.

¹¹⁹⁴ *Idem*. ¶¶ 20, 313.

¹¹⁹⁵ *Idem*. ¶ 288.

Many teachers were left to die a slow death, being buried alive in ditches and mass graves.¹¹⁹⁶

In Rwanda, Hutus persecuted Tutsis based on their ethnicity in a widespread and systematic manner, seeking to destroy them as they fled from mass executions.¹¹⁹⁷ In 1994, thousands of Tutsi civilians, mostly women, children, and elderly people, suffering persecution from different entities, sought refuge in the premises of churches, parishes, mosques, and communal offices. As Tutsis took refuge in these places, the Rwandan Interahamwe attacked them with all sorts of guns, grenades, bladed weapons, and machetes.¹¹⁹⁸

At church premises, the Interahamwe deliberately slaughtered, tortured, and threatened Tutsi victims over multiple days.¹¹⁹⁹ Women and girls were repeatedly raped.¹²⁰⁰ In many instances, the Interahamwe demolished the churches with the use of bulldozers to crush those inside to death.¹²⁰¹ Some Interahamwe attacks killed 2,000 or 6,000 refugees at once.¹²⁰² Such multiple large-scale attacks were deliberately planned, instigated, and ordered by Hutu's official commanders and Interahamwe leaders.¹²⁰³ These commanders and leaders knew that their acts formed part of a broader attack against the Tutsi.¹²⁰⁴ The International Criminal Tribunal for Rwanda later concluded that these atrocities were committed by Hutus "as part of a widespread or systematic attack against the Tutsi civilian population on ethnic grounds" and, therefore, constituted a crime against humanity.¹²⁰⁵

¹¹⁹⁶ *Idem.* ¶¶ 288, 427.

¹¹⁹⁷ Prosecutor v. Gaspard Kanyarukiga. ICTR-2002-78-T. *Supra* note 187. ¶ 663.

¹¹⁹⁸ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 424; Prosecutor v. Yussuf Munyakazi. ICTR-97-36A-T. *Supra* note 236. ¶¶ 323, 341.

¹¹⁹⁹ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 932; Prosecutor v. Yussuf Munyakazi. ICTR-97-36A-T. *Supra* note 236. ¶ 322; Prosecutor v. Gaspard Kanyarukiga. ICTR-2002-78-T. *Supra* note 187. ¶ 661.

¹²⁰⁰ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 438.

¹²⁰¹ Prosecutor v. Gaspard Kanyarukiga. ICTR-2002-78-T. *Supra* note 187. ¶¶ 645, 649, 661, 663.

¹²⁰² *Idem.* ¶ 666.

¹²⁰³ Prosecutor v. Yussuf Munyakazi. ICTR-97-36A-T. *Supra* note 236. ¶ 322; Prosecutor v. Gaspard Kanyarukiga. ICTR-2002-78-T. *Supra* note 187. ¶ 663; Prosecutor v. Jean-Baptiste Gatete. ICTR-2000-61-T. *Supra* note 195. ¶ 641.

¹²⁰⁴ Prosecutor v. Gaspard Kanyarukiga. ICTR-2002-78-T. *Supra* note 187. ¶ 664.

¹²⁰⁵ *Ibidem.* See also: ¶ 645.

2.3.2. Mass executions in the Former Yugoslavia

In the late 1990s in the former Yugoslavia, Serbian authorities subjected to mass executions Muslim detainees, including women, children as young as three years old, and elderly as old as 85 years old.¹²⁰⁶ Victims were shot multiple times with guns and automatic rifles, individually or in groups, while in seclusion in detention camps or while trying to escape.¹²⁰⁷ They were frequently shot through the mouth, blindfolded shot, shot with their hands tied behind their necks, shot lined up in rows, shot from behind, or even tied together in pairs.¹²⁰⁸ When the shooting stopped, Serbian soldiers proceeded to certify that all the victims were dead and to pile up the dead bodies with loaders, tractors, excavators, bulldozers, caterpillars, scrapers, and mechanical diggers.¹²⁰⁹ Soldiers then proceeded to transport/load the bodies onto trucks, buses, and containers and to dispose of them in mass graves.¹²¹⁰ Majorly, the victims that were later found in the graves by independent international authorities were dressed in civilian clothing.¹²¹¹

As a mass execution policy of Serbian authorities, Bosnian Muslims or Bosnian Croats were deliberately used as human shields on the front lines

¹²⁰⁶ Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 346, 354, 362; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1064, 1142–1143, 1146; Prosecutor v. Ratko Mladić. IT-09-92-T, vol. 2. *Supra* note 137. ¶ 1762.

¹²⁰⁷ Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶¶ 198, 211, 218; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶¶ 295, 312–313, 328, 341, 346, 355; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1064, 1146.

¹²⁰⁸ Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶¶ 161, 211–212, 218; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶¶ 295, 313, 341; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1064, 1142, 1146, 1869.

¹²⁰⁹ Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶¶ 310, 328, 342, 352–353, 360; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 1143.

¹²¹⁰ Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 261; Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶¶ 161, 212, 217; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶¶ 295, 310–314, 328, 341–342, 346, 352, 353–355; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 1074; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1143, 1337, 1766, 1869.

¹²¹¹ Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶¶ 295, 346, 354, 362; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1064, 1146.

to protect Serb Forces or killed due to explosive blasts and grenades.¹²¹² As a consequence, the Muslim detainees lived in constant fear of being executed at any time by Bosnian soldiers and military personnel.¹²¹³ Besides, Muslims were coercively forced to leave their homes based on discriminatory ethnic/religious grounds. As part of a widespread and systematic attack, Serbian soldiers and police separated men, women, and children with the objective of dissolution of the group through the commission of (i) attacks against their homes; (ii) shelling of villages; (iii) destruction of mosques and other property; (iv) forcible arrest and removal from their homes; (v) detention in multiple detention facilities; (vi) mistreatment and killings.¹²¹⁴

2.4. Physical violence

2.4.1. Physical violence in Nazi concentration camps and the occupied territories

SS Nazi troops committed atrocious cruelties against civilians in the occupied territories during German expansion. They also committed cruel acts against prisoners in protective custody in concentration camps, rendering the victims helpless.¹²¹⁵ Among the brutalities imposed, SS officers: 1) perpetrated extreme beatings using guns, whips, clubs, and everything that was on the hand of SS men, causing deep unconsciousness or even death of victims; 2) tied persons in chains and then applied tourniquets; 3) crushed the fingers of persons with thumbscrews; 4) burned the skin of victims with cigarettes; 5) tortured with drip-apparatus, “under which the prisoners had to stand so long that they came away with serious purulent wounds on the scalp;” 6) lashed the back of concentration camp inmates

¹²¹² Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶¶ 312, 355; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶¶ 763, 819; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 2444, 2452, 2534, 2536–2537.

¹²¹³ Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 1766.

¹²¹⁴ Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶¶ 660, 675; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶¶ 807–808; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 686; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1004, 1006, 1039–1040, 1186, 1256, 1273, 1331, 1333, 1465.

¹²¹⁵ 30 Trial of the Major War Criminals before the International Military Tribunal (1948). p. 465; 36 Trial of the Major War Criminals before the International Military Tribunal (1949). p. 91.

with barbed wire sticks; 7) castrated men; 8) perpetrated floggings; 9) placed persons in bloodstained coffins; 10) deliberately threw grenades against inmates; 11) perpetrated punitive detachments on civilians and concentration camp inmates for minor reasons such as be found smoking cigarettes; 12) urinated into the mouth of inmates.^{1216 1217 1218} Although wounded victims cried in a loud voice for help, they could not be taken into care. Those who dared to help them were shot down by the SS men.¹²¹⁹

In 1944, the SS completed the construction of gas chambers to put into action the “final solution” – Hitler’s plan to kill hundreds of thousands of Jews.¹²²⁰ In the Nuremberg Trials, the Nazi-German Colonel Amen provided a disturbing description of this process in Auschwitz, comparing it to Treblinka. In his own words:

“Another improvement we made over Treblinka was that we built our gas chamber to accommodate 2,000 people at one time whereas at Treblinka their 10 gas chambers only accommodated 200 people each. The way we selected our victims was as follows: We had two SS doctors on duty at Auschwitz to examine the incoming transports of prisoners. The prisoners would be marched by one of the doctors who would make spot decisions as they walked by. Those who were fit for work were sent into the camp. Others were sent immediately to the extermination plants. Still another improve-

¹²¹⁶ **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). pp. 471–472; 4 Trial of the Major War Criminals before the International Military Tribunal (1947). pp. 140–141; 30 Trial of the Major War Criminals before the International Military Tribunal (1948). pp. 389, 465; 36 Trial of the Major War Criminals before the International Military Tribunal (1949). p. 91.

¹²¹⁷ “The inmates were harnessed before heavy rollers, and then they had to pull these rollers back and forth across a square of the newly established camp, and the new camp road which was being constructed. In this way they were to make the soil more solid on the square and on the road.” (**United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). p. 471).

¹²¹⁸ “Apart from the work, the Jews received various forms of corporal punishment. I recall one case where one was hit over the head with a pick by a kapo. One of the usual punishments was to make the inmates carry bricks wherever they went, for each slight infraction. Sometimes an inmate would carry as many as 5 or 6 bricks. These he would have to take wherever he went, to eat, to sleep, everywhere. Also, just to amuse themselves, the Germans would ride their bicycles and have inmates trot behind them wherever they went, as dogs.” (**United States of America v. Carl Krauch, et al. Case 6, Volume 8** (I.G. Farben case) (1947). p. 624).

¹²¹⁹ 36 Trial of the Major War Criminals before the International Military Tribunal (1949). p. 91.

¹²²⁰ 5 Trial of the Major War Criminals before the International Military Tribunal (1947). pp. 172–173.

ment we made over Treblinka was that at Treblinka the victims almost always knew that they were to be exterminated and at Auschwitz we endeavored to fool the victims into thinking that they were to go through a delousing process.”¹²²¹

Two practices were common after the dead bodies were removed from the gas chambers, removing human skin from the backs and chests and removing teeth. After the removal, the human skin

“was chemically treated and placed in the sun to dry. After that it was cut into various sizes for use as saddles, riding breeches, gloves, house slippers, and ladies” handbags. Tattooed skin was especially valued by SS men. Russians, Poles, and other inmates were used in this way, but it was forbidden to cut out the skin of a German. This skin had to be from healthy prisoners and free from defects.”¹²²²

Sometimes, when the number of human skins was inferior to what SS demanded, perfectly healthy young inmates would be killed exclusively to remove their skin.¹²²³ SS officers would inject deadly substances or shoot victims in the face so that the skin could be uninjured.¹²²⁴ After this process, all teeth containing gold and porcelain were extracted to be further sold.¹²²⁵ In this way, persons having good skin or good teeth in the concentration camps were always at imminent risk of being killed.¹²²⁶ In many cases, SS officers also requested that prisoners’ skulls and skeletons were removed for further enterprises.¹²²⁷ In these cases, the skull or the body were boiled.¹²²⁸ After that, “the soft parts were removed, and the bones were bleached, dried and reassembled.”¹²²⁹

Because children of tender years were unable to work in the camps, they were invariably “exterminated.”¹²³⁰ Because the gas chambers were usually full of adults, children were not gassed most of the time but just

¹²²¹ 11 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 417.

¹²²² 5 Trial of the Major War Criminals before the International Military Tribunal (1947). pp. 171–172.

¹²²³ *Ibidem.*

¹²²⁴ *Idem.* pp. 172–173.

¹²²⁵ *Ibidem.*

¹²²⁶ *Ibidem.*

¹²²⁷ *Ibidem.*

¹²²⁸ *Ibidem.*

¹²²⁹ *Ibidem.*

¹²³⁰ 11 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 417.

burned alive on big piles of sheets of wood and gasoline or burned in open fields with grills.¹²³¹ As children cried helplessly in a loud voice,

“the [Auschwitz] camp administration ordered that an orchestra be made by a hundred inmates and should play. They played very loud all the time. They played the Blue Danube or Rosamunde; so that even the people in the city of Auschwitz could not hear the screams. Without the orchestra, they would have heard the screams of horror; they would have been horrible screams. The people two kilometers from there could even hear those screams, namely, that came from the transports of children.”^{1232 1233}

If a child happened to be burned to death by more “merciful” SS people, they would first beat the child’s head “against a stone before putting it on the pile of fire and wood, so that the child lost consciousness [before being killed].”¹²³⁴ It is estimated that the Nazis killed several thousand children in this manner in the concentration camps.¹²³⁵

2.4.2. Physical violence in the context of Rwanda and Sierra Leone

Throughout 1994, as part of a broad intent to destroy Rwanda’s Tutsi population, Hutus submitted hundreds of thousands of Tutsis to barbaric acts of torture and physical violence in the Rwandan territory.¹²³⁶ As a hallmark of Hutu militia policy, Tutsis were beaten with clubs, machetes, small axes, and metal sticks to the point that their bones were broken or they could no longer walk.¹²³⁷ Tutsi women and girls were forcefully undressed in pub-

¹²³¹ **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). pp. 662–663.

¹²³² *Idem.* p. 663.

¹²³³ In a chilling hearing at Nuremberg, the Nazi German Colonel Amen stated that “very frequently women would hide their children under the clothes, but of course when we found them we would send the children in to be exterminated. We were required to carry out these exterminations in secrecy but of course the foul and nauseating stench from the continuous burning of bodies permeated the entire area and all of the people living in the surrounding communities knew that exterminations were going on at Auschwitz.” (11 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 417).

¹²³⁴ **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). p. 663.

¹²³⁵ *Ibidem.*

¹²³⁶ Prosecutor v. Gaspard Kanyarukiga. ICTR-2002-78-T. *Supra* note 187. ¶ 660; Édouard Karemera et al v. Prosecutor. ICTR-98-44-A. *Supra* note 173. ¶ 606.

¹²³⁷ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶¶ 17, 19, 396; Prosecutor v. Tharcisse Renzaho. ICTR-97-31-T. *Supra* note 232. ¶ 671.

lic, beaten, tortured, raped, and humiliated.¹²³⁸ Pregnant women were beaten on their bellies to the point of causing premature deliveries or miscarriages.¹²³⁹

In Sierra Leone, after 1999, RUF and AFRC fighters, Kamajors, and rebels beat to death, shot to death, and hacked to death large numbers of civilians indiscriminately, including babies, children, and women, with the sole objective of humiliating and dominating Sierra Leone communities during the armed conflict.¹²⁴⁰ Frequently, captured civilians “were stripped naked and forced to laugh, and line-up before the rebels molested and defiled them.”¹²⁴¹ In one instance, “the Kamajors slit open the stomach of one victim and displayed his entrails in a bucket before the remaining civilians.”¹²⁴² On another occasion, rebels using a machete “cleaved” a child in two, ironically as a “sacrifice for peace.”¹²⁴³ At the bridges near Kamboma, Kamajors ordered the killing of anyone who passed by.¹²⁴⁴

In addition, AFRC/RUF, rebels, Kamajors, and other retreating forces perpetrated other horrific crimes of physical violence against a large number of civilians.¹²⁴⁵ They committed acts such as floggings, cutting off body parts, shootings in the stomach, beatings (while tied up, often to death), knocking out of teeth of victims’ mouths, throwing of boiling water on victims, collective punishment, the carving of the letters “RUF” or “AFRC” on the victims’ bodies, and beheadings.¹²⁴⁶ Civilians were also extensively used as human shields.¹²⁴⁷ As a demonstration of power, rebels systematically “disemboweled civilians, and their intestines were stretched across a road to form a barrier. Human heads were placed on sticks on either side of the road to mark such barriers.”¹²⁴⁸

¹²³⁸ *Idem.* ¶¶ 437, 449.

¹²³⁹ *Idem.* ¶ 437.

¹²⁴⁰ *Prosecutor v. Brima, Kamara, Kanu.* SCSL-04-16-T. *Supra* note 280. ¶ 34; *Prosecutor v. Sesay, Kallon and Gbao.* SCSL-04-15-T. *Supra* note 279. ¶¶ 107, 118.

¹²⁴¹ *Prosecutor v. Sesay, Kallon and Gbao.* SCSL-04-15-T. *Supra* note 279. ¶ 118.

¹²⁴² *Prosecutor v. Fofana, Kondewa.* SCSL-04-14-T. *Supra* note 281. ¶ 386.

¹²⁴³ *Prosecutor v. Sesay, Kallon and Gbao.* SCSL-04-15-T. *Supra* note 268. ¶ 1598.

¹²⁴⁴ *Prosecutor v. Fofana, Kondewa.* SCSL-04-14-T. *Supra* note 281. ¶ 406.

¹²⁴⁵ *Prosecutor v. Sesay, Kallon and Gbao.* SCSL-04-15-T. *Supra* note 279. ¶ 153.

¹²⁴⁶ *Prosecutor v. Brima, Kamara, Kanu.* SCSL-04-16-T. *Supra* note 280. ¶ 34; *Prosecutor v. Fofana, Kondewa.* SCSL-04-14-T. *Supra* note 281. ¶¶ 405, 421, 653; *Prosecutor v. Sesay, Kallon and Gbao.* SCSL-04-15-T. *Supra* note 279. ¶¶ 146–147, 153; *Prosecutor v. Taylor.* SCSL-03-01-T. *Supra* note 270. ¶¶ 863, 1219, 1311, 1631.

¹²⁴⁷ *Prosecutor v. Sesay, Kallon and Gbao.* SCSL-04-15-T. *Supra* note 268. ¶ 1598; *Prosecutor v. Taylor.* SCSL-03-01-T. *Supra* note 270. ¶ 936.

¹²⁴⁸ *Prosecutor v. Brima, Kamara, Kanu.* SCSL-04-16-T. *Supra* note 280. ¶ 34.

As a widespread and systematic practice, AFRC troops and “Juntas” burned several innocent civilians alive, including an alarming number of children.¹²⁴⁹ Reports showed that children as young as a five-year-old girl were burned alive.¹²⁵⁰ Young children were usually locked in houses that were set ablaze or placed under mattresses set on fire.¹²⁵¹ Pregnant women were also mainly targeted without any apparent reason, either by RUF or AFRC fighters or by Sierra Leone soldiers. Victims were violently beaten, stabbed, and raped, usually until death.¹²⁵² For instance, AFRC troops and armed soldiers split open the belly of pregnant women and removed the fetuses.¹²⁵³ In a brutal demonstration of the insignificance of life and human dignity, “pregnant women were killed by having their stomachs slit open, and the foetus [sic] removed merely to settle a bet amongst the troops as to the gender of the foetus [sic].”¹²⁵⁴

The suffering of civilians in their family unit was horrifying. Fighters or soldiers forced civilian families into brutal acts of cruelty and mental trauma: married couples were ordered to strip and to have sexual intercourse in public or otherwise face death; sons were forced by rebels and soldiers to rape mothers; daughters were forced to touch their fathers’ penises publicly; brothers were forced to rape sisters; parents were subjected to physical and sexual violence in the presence of their children; victims “were made to choose between their own lives or those of their family members” and to observe one family member killed in their presence.¹²⁵⁵ After death, civilians received orders from soldiers or rebels to bury the corpses of their loved ones.¹²⁵⁶

¹²⁴⁹ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶¶ 34, 888; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 279. ¶ 107.

¹²⁵⁰ Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 1318.

¹²⁵¹ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶¶ 888, 1561; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 279. ¶ 147.

¹²⁵² Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶¶ 412, 888, 1561; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 279. ¶ 125.

¹²⁵³ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶¶ 1555, 1561.

¹²⁵⁴ *Idem.* ¶ 34.

¹²⁵⁵ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 34. See also: Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 1560; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 279. ¶¶ 109, 118, 120, 126, 148.

¹²⁵⁶ Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 279. ¶ 118

2.4.2.1. Mutilations in Sierra Leone

Amputations and mutilations constituted a hallmark of the AFRC/RUF, rebels, Kamajors, and other retreating forces in Sierra Leone.¹²⁵⁷ An unknown number of innocent civilians – estimated to be in the thousands – were subjected to this type of crime from 1999 until the end of the civil conflict.¹²⁵⁸ Civilians were subjected to horrific amputations, including amputation of arms and hands (unilateral and bilateral), fingers, feet, breasts, lips, and ears.¹²⁵⁹ An extensive number of witnesses testified “that rebels asked civilians whether they wanted short sleeves or long sleeves and their arms were amputated either at the elbow or at the wrist accordingly.”¹²⁶⁰ In bilateral amputations, the victims had both their right and left arms/hands amputated.

Shockingly, AFRC/RUF and other retreating forces would perform tongue amputations and eyeball amputations against civilians, including children, women, and young nursing mothers “to prevent [them] from telling others who had committed these acts against [them].”¹²⁶¹ Chillingly, Kamajors used to sing songs while mutilating and amputating women and children.¹²⁶² Amputated body parts were usually piled on the streets, tied together and displaced in public places, placed in big plastic bags, or simply buried in the dirt.¹²⁶³

Such atrocity extensively affected children in at least three ways:

First) AFRC/RUF, rebels, Kamajors, and other retreating forces amputated hundreds of children. In one instance, a 13-year-old young girl had both hands amputated.¹²⁶⁴ In another instance, the rebels “captured a boy named Samuel, whom they suspected of being a Kamajor, and severed both his hands and cut out his tongue.”¹²⁶⁵ Then, the rebels placed a bag over his

¹²⁵⁷ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 34; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 1521.

¹²⁵⁸ Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 1351.

¹²⁵⁹ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶¶ 34, 412; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶¶ 1521, 1554, 1556; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 279. ¶ 146; Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 1269.

¹²⁶⁰ Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 1521.

¹²⁶¹ Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶¶ 1269–1270, 1319.

¹²⁶² Prosecutor v. Fofana, Kondewa. SCSL-04-14-T. *Supra* note 281. ¶ 421

¹²⁶³ Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 1554; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 279. ¶ 118; Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 1319.

¹²⁶⁴ Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 1319.

¹²⁶⁵ Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 1559.

head with a written message for the ECOMOG, that the rebels “were around and would be back” to commit more atrocities.^{1266 1267} In Koidu, rebels inflicted severe physical violence on a 15-year-old boy. The boy had both hands “amputated at the wrist and both his legs were amputated at the ankle. He was then thrown alive into a latrine.”¹²⁶⁸ Terrifyingly, “the boy was still crying as the rebels walked away.”¹²⁶⁹

Second) AFRC/RUF, rebels, Kamajors, and other retreating forces obliged children to watch their family and loved ones’ amputations. On one occasion, after some children saw their mother gang-raped by rebels, they were ordered to watch their father being tied up to a tree and having his left hand amputated.¹²⁷⁰ The amputee later stated that: “My children were sitting in front of me. Where they were put, they were stirring, and they were looking, seeing me because they didn’t hide them. They were in the open, and they were seeing what was happening.”¹²⁷¹

Third) AFRC/RUF, rebels, Kamajors, and other retreating forces forced children to perform amputations on civilians.¹²⁷² In one instance, rebels forced a victim to “place his left hand on the wooden log, and the Commando ordered a junior rebel to cut it off.”¹²⁷³ As children usually did not have the same body strength as adult rebels, their blows sometimes did not entirely amputate the victims’ limbs when they attempted to perform amputations.¹²⁷⁴ On different occasions, the Commando had to complete the amputations of victims performed by children.¹²⁷⁵

Surviving victims of amputations suffered mental and physical consequences to an incalculable degree. Their suffering was immense once their lives “instantly and forever changed into one of dependence.”¹²⁷⁶ In Sierra Leone, most of the victims “were turned into beggars, unable to earn any other living and even today cannot perform even the simplest of tasks without the help of others.”¹²⁷⁷

¹²⁶⁶ The Economic Community of West African States Monitoring Group (ECOMOG).

¹²⁶⁷ Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 1559.

¹²⁶⁸ Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 279. ¶ 150.

¹²⁶⁹ *Ibidem*.

¹²⁷⁰ *Idem*. ¶ 148.

¹²⁷¹ *Ibidem*.

¹²⁷² Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 1554.

¹²⁷³ *Idem*. ¶ 1549.

¹²⁷⁴ *Ibidem*.

¹²⁷⁵ *Ibidem*.

¹²⁷⁶ Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 279. ¶ 155.

¹²⁷⁷ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 34.

2.4.3. Physical violence in the Former Yugoslavia detention camps

As a general practice, Muslim detainees were beaten/hit by the Serbian military with truncheons, metal bars, baseball bats, police batons, rifle butts, pistol butts, metal chains, thick pipes, grips of guns, sticks, thick electric cables, stakes, metal rods, rubber hoses, pieces of wood, wooden planks, wooden poles, wooden clubs, belts, chair legs, and pliers.¹²⁷⁸ The detainees were stripped to the waist and beaten on all parts of their bodies: on their heads, on their heads and stomachs, on their kidneys, on their hands, and on the soles of their feet.¹²⁷⁹ Prisoners were beaten on arrival, during the first hours of detention, while undergoing interrogations, or during their imprisonment in detention facilities. During beatings, soldiers jumped on detainees, and in many instances, the victims had their hands tied behind their backs.¹²⁸⁰

After these intense periods of beatings, the floor and the walls of the premises where detainees were beaten were always covered with hair, teeth, skin, blood, and sweat.¹²⁸¹ There are plenty of documented cases in which the victims were submitted to forced/non-anesthetic extraction of teeth or had their teeth knocked out with fists.¹²⁸² Many of the victims were

¹²⁷⁸ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 280; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶¶ 696, 703, 711, 719, 733, 770; Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶ 196; Prosecutor v. Milan Martić. IT-95-11-T. *Supra* note 105. ¶ 288; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶¶ 801, 821, 978; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶¶ 289, 585, 677–678; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 989, 1010, 1165, 1167, 1177, 1179, 1190, 1201, 1306, 1342, 1352, 1399, 1986.

¹²⁷⁹ Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 310; Prosecutor v. Milan Martić. IT-95-11-T. *Supra* note 105. ¶ 288; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 1010.

¹²⁸⁰ Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶¶ 340, 349; Prosecutor v. Milan Martić. IT-95-11-T. *Supra* note 105. ¶ 288; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 289, 585, 676; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1010, 1013, 1165, 1167, 2277.

¹²⁸¹ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 273; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 722; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 604; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 991, 1000, 1010, 1300, 1337, 1344, 1399, 1766, 1811, 2502.

¹²⁸² Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶¶ 696, 703, 711, 721, 772; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1013, 1986.

ordered by Serbian soldiers to lick their own blood on the floor and walls.¹²⁸³ Howls/moans/screams of pain and crying for help were audible to the other detainees to the point that they could not sleep at night.¹²⁸⁴

Civilians detained by the Serbian military were kicked with army boots, hit with fists, punched, stabbed, or cut on multiple places of the body with knives, penetrated with pointed stakes, truncheons, and all other kinds of objects into their anuses.¹²⁸⁵ Frequently, Serbian soldiers subjected the victims to attacks by dogs, forced detainees to graze grass like animals, urinated on the detainees, burned them with cigarettes, forced them to swallow bullets and extinguished cigarettes, forced them to eat their own excrement or to drink their own urine.¹²⁸⁶ Serb military and police forced the civilian detainees to stand for periods of up to twelve hours, to kneel on sharp stones until they fainted, and to lean on walls in stressful positions with their weight on the fingers spread out.¹²⁸⁷

As a result of these brutal beatings and acts of violence, several detainees suffered injuries so severe to the point of losing consciousness, losing one or both eyes completely, having severe breathing difficulties, urinating blood, of having difficulty sleeping due to intense bone ache.¹²⁸⁸ Soldiers beat the victims to the point their bodies were all “black and blue,” swollen and “kind of bluish,” of being unable to sit, to stand on their feet, or to walk for days – or could not move anymore –, and other various

¹²⁸³ Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 720.

¹²⁸⁴ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶¶ 143, 272; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶¶ 338, 348; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 990, 1026, 1344, 1348, 1427, 2502.

¹²⁸⁵ Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶¶ 703, 719, 728; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶¶ 821, 978; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶¶ 289, 603; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 999, 1165, 1167, 1177, 1179, 1190, 1201, 1301, 1306, 1332-1333, 1344, 2340, 2502-2503.

¹²⁸⁶ Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶¶ 719-720, 733; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 802; Prosecutor v. Milan Martić. IT-95-11-T. *Supra* note 105. ¶ 288; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 999, 1013, 1015, 1477, 2276, 2494.

¹²⁸⁷ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 950; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 676; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 1192.

¹²⁸⁸ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶¶ 147, 149, 151, 272; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 696; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 802; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1011, 1191, 1325, 1332, 1479, 2345, 2497.

health problems as a result of the unjust detention.¹²⁸⁹ Many detainees died following the beatings.¹²⁹⁰ In cases of death, the incident was usually followed by issuing false death reports by Serbian authorities.¹²⁹¹

As a routine practice, Serbian soldiers ordered Muslim detainees to beat each other, even their own family members.¹²⁹² Muslims were made to carry the dead bodies of their relatives, ordered to witness the beatings of other inmates, commanded to walk over dead bodies barefooted, or to “bite or suck each others’ penises while soldiers stood by and laughed.”¹²⁹³ The victims were also forced to lick each others’ buttocks and forced to eat their fellow detainees’ severed body parts.¹²⁹⁴

2.5. Malnutrition & water scarcity

2.5.1. Nazi concentration camps context and the occupied territories

In concentration camps such as Struthof, Belsen, Auschwitz, and Mau-thausen, German commanders intentionally submitted civilian inmates to a starvation diet, leaving them without water or food for periods of up to 14 days.¹²⁹⁵ If food was ever provided, it was served in terrible conditions and

¹²⁸⁹ Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶¶ 711, 770; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 310; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 796; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 676; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1012, 1399, 2497.

¹²⁹⁰ Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶ 196; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 718, 1021, 1205, 2345, 2347.

¹²⁹¹ Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 1426.

¹²⁹² Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶ 196; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 802; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 801; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 585; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1015, 1298, 1301, 1325, 1345, 1986, 2423.

¹²⁹³ Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 340. See also: Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 289; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1345, 1869, 2503.

¹²⁹⁴ Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1298, 2503.

¹²⁹⁵ 5 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 172.

in minimal rations per person, or even only liquid food.¹²⁹⁶ In most cases, commanders would give inmates only 1/12 of a loaf of bread.¹²⁹⁷ At one instance, the Red Cross sent 150 kilograms of chocolate to be distributed to children starving to death at the concentration camp. However, only ten kilograms were distributed. The commandant kept 140 kilograms of chocolate for himself and to “be used as barter to his personal advantage.”¹²⁹⁸

Lack of proper food in appropriate amounts would frequently leave the inmates with terrible immune system resistance and susceptible to infections to a horrible extent.¹²⁹⁹ An estimated 75 percent of the victims were bloated from hunger.¹³⁰⁰ Many of them would collapse several times a day and had to be carried by fellow victims.¹³⁰¹ From 1941 to 1945, hundreds died every day in the camps due to starvation, malnutrition, and acute thirst.¹³⁰² Jewish, Italian, Russian and French inmates accounted for most of the victims.¹³⁰³ In several cases, they “weighed 50 to 60 pounds at the time of death”, and their “internal organs had often shrunk to one-third of their normal size.”¹³⁰⁴

Hunger in some Nazi concentration camps was so severe that many Jewish inmates had to resort to cannibalism practices to feed themselves.¹³⁰⁵ Abundant evidence shows that these inmates have eaten the flesh from fellow Jewish dead bodies. They used to cut out soft body parts such as the liver and the heart of the dead and ate them.¹³⁰⁶

¹²⁹⁶ **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). pp. 396–397, 408–409; **United States of America v. Carl Krauch, et al. Case 6**, Volume 8 (I.G. Farben case) (1947). pp. 623–624; 30 Trial of the Major War Criminals before the International Military Tribunal (1948). p. 471.

¹²⁹⁷ 30 Trial of the Major War Criminals before the International Military Tribunal (1948). p. 471.

¹²⁹⁸ *Ibidem.*

¹²⁹⁹ **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). p. 396.

¹³⁰⁰ 30 Trial of the Major War Criminals before the International Military Tribunal (1948). p. 471.

¹³⁰¹ **United States of America v. Carl Krauch, et al. Case 6**, Volume 8 (I.G. Farben case) (1947). p. 624.

¹³⁰² 5 Trial of the Major War Criminals before the International Military Tribunal (1947). pp. 172, 174–175; 30 Trial of the Major War Criminals before the International Military Tribunal (1948). p. 471.

¹³⁰³ 5 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 174–175.

¹³⁰⁴ *Ibidem.*

¹³⁰⁵ *Ibidem.*

¹³⁰⁶ 30 Trial of the Major War Criminals before the International Military Tribunal (1948). p. 471.

2.5.2. Nutritional conditions in the Former Yugoslavia detention camps

Nutritional conditions were harsh in the detention camps in Former Yugoslavia. At least four reasons accounted for this fact: 1) There was insufficient food in terms of quantity as well as in terms of quality; 2) Detainees were rarely fed during long intervals of time, even those who had to labor exhaustively; 3) Detainees were given a very short time to eat their food, or else they would be beaten; and 4) The premises used to make the hygienization of food and kitchen utensils were completely inadequate.¹³⁰⁷

As a result of a deliberate policy to cause malnutrition, Serb soldiers made civilian Croats and Muslims suffer extreme weight loss of up to 60 kilograms per person during their detention at the camps.¹³⁰⁸ Hunger/starvation was so severe to some detainees that many of them had to resort to eating grass, insects, carbonized food, soldiers' leftovers, or food that was given to the dogs.¹³⁰⁹ When detainees were eventually given food, many of them had to eat it from the same cups used to relieve themselves or from the same bowls that the soldiers used to feed the dogs.¹³¹⁰ The food was usually spoiled, which frequently caused them stomach problems and stomach aches.¹³¹¹ Very often, the guards would purposely spill on the detainees' meals.¹³¹²

¹³⁰⁷ Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 738; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 912, 918, 928, 932, 938, 952; Prosecutor v. Milan Martić. IT-95-11-T. *Supra* note 105. ¶ 288; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶¶ 584, 676, 683, 774, 907; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 989, 1015, 1071, 1167, 1201, 1305, 1307, 1466, 1832, 1991, 1998, 2399.

¹³⁰⁸ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶¶ 139, 147–151; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 739; Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶ 193; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 912, 918, 932; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶¶ 584, 678; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1478, 1483–1984, 2509.

¹³⁰⁹ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 148; Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶ 193; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 912, 923, 928, 932, 952; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 584; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1325, 2339, 2399, 2508.

¹³¹⁰ Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 774; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 2399.

¹³¹¹ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 923, 932, 952; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 1166.

¹³¹² Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 907.

Potable water for drinking and for ordinary/domestic chores was extremely insufficient in the camps in terms of quantity and quality.¹³¹³ Due to the low quality of the water provided for detainees, intestinal and stomach problems were reported continuously.¹³¹⁴ It was also reported that the Serb military and police forced detainees to drink and to use for personal hygiene water that was not fit for human consumption, destined, in fact, for industrial use,¹³¹⁵ or to drink water stored in filthy glass bottles.¹³¹⁶

If women and children tried to collect rainwater or tried to escape the camp to get a drink of water, Serb soldiers would beat them with rifles, batons, and various other objects.¹³¹⁷ Running water pump stations were usually placed in containers outside the premises of the camp and were at the discretion/control of the guards.¹³¹⁸ Consequentially, at many times, Muslim detainees had to fight between themselves for a drink, to beg for water singing Serbian songs to obtain it, or to resort to drinking their own urine not to die from thirst.¹³¹⁹ Water for the shower was particularly scarce. In some instances, icy cold water was given to the detainees in extreme conditions during the winter.¹³²⁰

2.6. Water, Sanitation, and Hygiene (WASH-Cluster)

2.6.1. WASH in the context of the Nazi concentration camps and the occupied territories

The sanitary installations of the Nazi concentration camps were appalling. Toilets, latrines, and washrooms were absolutely inadequate, extremely filthy, muddy, and vermin-prevailing.¹³²¹ As a deliberate policy of the ad-

¹³¹³ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 913, 918, 923; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 989, 1021, 1201, 1388, 1984.

¹³¹⁴ Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 1388.

¹³¹⁵ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 933.

¹³¹⁶ *Idem.* ¶ 952.

¹³¹⁷ Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1388, 2277.

¹³¹⁸ *Idem.* ¶ 1009.

¹³¹⁹ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 931; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 338; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 1418.

¹³²⁰ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 919; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 1984.

¹³²¹ **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). pp. 271, 394; 5 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 174.

ministration of the camps, there was no cleaning material for toilets, and sanitary installations were never taken care of.¹³²² If baths of inmates were ever allowed by German commanders, they would be authorized only once a month.¹³²³ Consequently, hundreds of cases of scabies, body lice, and cases of extensive impetigo were reported every day in the camps.¹³²⁴ Infections of all sorts were always prevailing in the camps.¹³²⁵ Diarrhea, dysentery, and epidemics of typhus and tuberculosis continually exposed the camps to severe dangers to its members, provoking hundreds of deaths daily.¹³²⁶

2.6.2. WASH in the context of the Former Yugoslavia detention camps

Sanitation in the Former Yugoslavia detention camps was deplorable: 1) lice and scabies infestation were widespread; 2) flies made the situation unbearable; 3) skin diseases were prevalent; 4) there were widespread acute cases of diarrhea and dysentery; 5) toilet facilities were inadequate or non-existent; 6) the camps had limited or no shower or bath facilities. Some detainees had to resort to washing themselves in rivers, even during the winter; 7) there were no hygienic products or toiletries supplied, such as soap or toothpaste; 8) there was no water for bathing or for personal hygiene, and as a consequence, detainees could not bathe or brush their teeth; 9) there were no lavatory facilities for washing clothes.¹³²⁷

¹³²² **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). p. 396; 5 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 174.

¹³²³ 5 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 174.

¹³²⁴ **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). p. 360.

¹³²⁵ *Idem.* p. 396.

¹³²⁶ **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). pp. 360, 394; 5 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 174–175; 30 Trial of the Major War Criminals before the International Military Tribunal (1948). p. 471.

¹³²⁷ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 136; Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶ 200; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 911, 919, 923, 927–928, 934, 937, 939, 943–944, 953, 957, 960, 962; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶¶ 584, 678, 683, 774; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 915, 989, 1189, 1201, 1225, 1388, 1479, 1755, 1797, 1823, 1996, 2016, 2145, 2509.

In most detention camps, there were no toilets in the cells of the prison.¹³²⁸ Detainees were often forced to defecate and urinate in the rooms where they were kept, sometimes in buckets, pots, or beakers (that were not emptied for days), in barrels or nylon/plastic bags, in army flasks, in canisters, in improvised shelters made out of blankets, or they used to simply relieve themselves in their own pants.¹³²⁹ As a consequence, the stench in the cells was unbearable.¹³³⁰

In the camps served with outside toilets, the prisoners were systematically restricted from/denied the use of toilet facilities.¹³³¹ Toilets were usually blocked and filthy and were served with cold water only.¹³³² In some cases, Serbs sent detainees to isolation cells as punishment for having made a heater to heat water.¹³³³ Detainees were generally allowed five minutes in the morning and five minutes in the evening to use the toilets and had to wait hours before being allowed to use them.¹³³⁴ The soldiers severely beat many of the detainees with their rifles on their way to the toilets.¹³³⁵

¹³²⁸ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 923, 957; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1389, 1984, 1996.

¹³²⁹ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 911, 923, 925, 937, 953, 960; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 338; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶¶ 584, 678, 774; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1189, 1755, 2145, 2400, 2508.

¹³³⁰ Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 310; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶¶ 678, 774; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 2508.

¹³³¹ Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 348; Prosecutor v. Milan Martić. IT-95-11-T. *Supra* note 105. ¶ 288; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 1755.

¹³³² Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 136; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 934; Prosecutor v. Milan Martić. IT-95-11-T. *Supra* note 105. ¶ 288; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 1984.

¹³³³ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 151.

¹³³⁴ Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 584; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1177, 1755, 1984.

¹³³⁵ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 923, 960; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 348; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 774; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1009, 1755, 2277.

2.7. Other violations connected with the conditions of accommodation

2.7.1. Accommodation in the Nazi concentration camps and the occupied territories

The living conditions in the Nazi concentration camps were horrible.¹³³⁶ Due to overcrowding, the rooms in the concentration camps could not be cleaned.¹³³⁷ The ground was utterly bogged beyond control.¹³³⁸ There were no covers, sleeping bags, mattresses, or any kind of bedding.¹³³⁹ Inmates had to resort to sleeping directly on the floor.¹³⁴⁰ Without a heating system and proper clothing and shoes, thousands of prisoners had to stand in the cold during winter.¹³⁴¹ Several became ill with pneumonia and died.¹³⁴²

Thousands of inmates had to live underground in overcrowded tunnels built by themselves, especially for this purpose. Only a small part of the inmates had the “possibility to see the sunlight in the camp and to live in barracks.”¹³⁴³ Others had to live by the hundreds in train cars. Several of them died from suffocation.¹³⁴⁴

2.7.2. Accommodation in detention camps in the Former Yugoslavia

Serb military and police held Muslim detainees in unbearably overcrowded cells with insufficient room to sit, lie down, or move around.¹³⁴⁵

¹³³⁶ **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). p. 396.

¹³³⁷ 5 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 174.

¹³³⁸ **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). p. 393.

¹³³⁹ 30 Trial of the Major War Criminals before the International Military Tribunal (1948). p. 471.

¹³⁴⁰ *Ibidem*.

¹³⁴¹ **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). p. 396; 5 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 172; **United States of America v. Carl Krauch, et al.** Case 6, Volume 8 (I.G. Farben case) (1947). pp. 623–624.

¹³⁴² *Ibidem*.

¹³⁴³ **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). p. 396.

¹³⁴⁴ 5 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 172.

¹³⁴⁵ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶¶ 135–136; Prosecutor v. Blagoje Simić et al. IT-95-9-T. *Supra* note 78. ¶ 737; Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶ 191; Prosecutor v. Radoslav Brđanin. IT-

In one instance, more than 500 detainees had to share rooms smaller than 20 by 20 meters in size.¹³⁴⁶ There were documented cases in which detainees were simply kept in stables meant for livestock.¹³⁴⁷ During the winter, most of them were not provided with blankets.¹³⁴⁸

Moreover, due to a lack of sleeping space, the Serb military and police frequently packed detainees one on top of the other.¹³⁴⁹ They were forced either 1) to take turns to lie down and sleep or 2) to sleep sitting up or standing up.¹³⁵⁰ Many had to resort to sleeping on cardboard on the concrete floor, on wooden palettes, or simply directly on the concrete floor, or generally outside of the cell.¹³⁵¹ In extreme situations, Muslim detainees were also forced to lie amidst excrement.¹³⁵²

In the summer, the temperature in the facilities was so intensely hot due to heat waves that people fainted due to the heat.¹³⁵³ During the winter, wet conditions due to leaking roofs caused the temperature to decrease.¹³⁵⁴ There was insufficient or no heating at all to the point that the

99-36-T. *Supra* note 130. ¶¶ 917, 931, 936; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶¶ 584, 676; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1179, 1305, 1479, 1832, 1996, 2145-2146, 2277.

¹³⁴⁶ Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 678.

¹³⁴⁷ Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1003, 1392.

¹³⁴⁸ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 917, 925, 941; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1393, 1479.

¹³⁴⁹ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 136; Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶ 191; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶¶ 584, 774; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 989, 1166, 1179, 1189, 1201, 1225, 2016, 2507-2008.

¹³⁵⁰ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 947, 950; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 1996.

¹³⁵¹ Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 737; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 923, 941, 948, 950, 955, 959; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶¶ 584, 678; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1166, 1393, 1479, 2339.

¹³⁵² Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶ 191.

¹³⁵³ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 931, 959; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 320; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 584; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1418, 1823, 2008, 2507.

¹³⁵⁴ Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 2508.

detainees were exposed to freezing temperatures and contracted pneumonia and other respiratory diseases.¹³⁵⁵ Serb military punished those detainees who tried to make winter clothes out of blankets to solitary confinement cells, where temperatures were considerably lower than in the cells.¹³⁵⁶

There was no light in many of the rooms occupied by the victims.¹³⁵⁷ Guards frequently refused to open the windows of the rooms crowded with detainees, including a significant number of women and children, making it difficult for the detainees to breathe due to the lack of ventilation.¹³⁵⁸

2.7.3. Medical assistance in the detention camps

2.7.3.1. Medical assistance to concentration camps' inmates in Germany and the occupied territories

Medical assistance in Nazi concentration camps, including access to doctors and medication, was almost nonexistent.¹³⁵⁹ Overcrowded infirmaries had more than one prisoner sharing the same bed.¹³⁶⁰ Epidemics of all sorts were widespread, such as spotted fever, tuberculosis, and typhus.¹³⁶¹ General debilities and heart diseases were also striking.¹³⁶² Sick persons were not transported out of the barracks. Consequently, diseases were spread to a large number of people, and death rates were extremely high.¹³⁶³

¹³⁵⁵ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 151; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 2145, 2507–2508.

¹³⁵⁶ *Idem.* ¶ 138.

¹³⁵⁷ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 955; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 584; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 2507–2508.

¹³⁵⁸ Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶ 191; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 931, 951, 955, 959; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶¶ 584, 678; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1305, 1418, 1420, 2507.

¹³⁵⁹ 5 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 174; 30 Trial of the Major War Criminals before the International Military Tribunal (1948). p. 471.

¹³⁶⁰ **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). p. 359.

¹³⁶¹ *Idem.* pp. 360, 416. See also: 5 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 174.

¹³⁶² **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). p. 394.

¹³⁶³ *Idem.* pp. 394, 416.

It was a common practice that SS medical doctors gave lethal injections of Phenol, Evipan, or Benzine to inmates invalid for work.¹³⁶⁴ Patients with sickness in the body were systematically killed.¹³⁶⁵ Frequently, “prisoners were killed only because they had dysentery or vomited and gave the nurses too much trouble.”¹³⁶⁶ If an inmate fell sick or injured, they would often hide such condition, fearful that they would be sent to the gas chambers.¹³⁶⁷ Many would commit suicide out of fear of being gassed.¹³⁶⁸ Patients with mental disorders were summarily “liquidated by being led to the gas chamber and injected there or shot.”¹³⁶⁹

Under “the guise of medical science,” SS medical doctors committed a group of crimes that shocked the human conscience and proved their complete disregard for human life.¹³⁷⁰ SS performed numerous types of medical experiments on thousands of healthy civilian inmates in concentration camps.¹³⁷¹ Such medical experiments were always forced on thousands of victims, meaning that the persons submitted to such procedures were never volunteers.¹³⁷²

SS medical doctors performed all sorts of medical experiments, for instance, malaria experiments,¹³⁷³ experiments to determine the effects of

¹³⁶⁴ 5 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 172.

¹³⁶⁵ **United States of America v. Carl Krauch, et al.** Case 6, Volume 8 (I.G. Farben case) (1947). p. 624.

¹³⁶⁶ 5 Trial of the Major War Criminals before the International Military Tribunal (1947). pp. 172–173.

¹³⁶⁷ **United States of America v. Carl Krauch, et al.** Case 6, Volume 8 (I.G. Farben case) (1947). p. 624.

¹³⁶⁸ **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). p. 394.

¹³⁶⁹ 5 Trial of the Major War Criminals before the International Military Tribunal (1947). pp. 172–173.

¹³⁷⁰ **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). pp. 224–225.

¹³⁷¹ *Ibidem.* See also: 30 Trial of the Major War Criminals before the International Military Tribunal (1948). p. 471.

¹³⁷² 5 Trial of the Major War Criminals before the International Military Tribunal (1947). pp. 168–169.

¹³⁷³ “The victims were either bitten by mosquitoes or given injections of malaria spores taken from mosquitoes. Different kinds of treatment were applied, including quinine, pyrifin, neosalvarsan, antipyrin, pyramidon, and a drug called 2516 Behring.” Autopsies on the bodies of people showed that part of them died from these malaria experiments and other part died from the malaria itself. Hundreds “died later from diseases which were fatal because of the physical condition resulting from the malaria attacks. In addition, there were deaths resulting from poisoning due to overdoses of neosalvarsan and pyramidon.” (*Idem.* p. 169).

changing air pressure on human beings,^{1374 1375} experiments on the effect of cold water on human beings,^{1376 1377} Phlegmon experiments,¹³⁷⁸ saltwater experiments,¹³⁷⁹ sterilization experiments,¹³⁸⁰ gynecological experiments performed on young girls,¹³⁸¹ and applications of intravenous injections of

¹³⁷⁴ “As many as 25 persons were put at one time into a specially constructed van in which pressure could be increased or decreased as required. The purpose was to find out the effects on human beings of high altitude and of rapid descents by parachute.” (*Ibidem*).

¹³⁷⁵ “Most of the prisoners used died from these experiments, from internal hemorrhage of the lungs or brain. The survivors coughed blood when taken out. [...] The survivors were sent to invalid blocks and liquidated shortly afterwards. Only a few escaped.” (*Idem*. p. 170).

¹³⁷⁶ “This was done to find a way for reviving airmen who had fallen into the ocean. The subject was placed in ice cold water and kept there until he was unconscious. Blood was taken from his neck and tested each time his body temperature dropped one degree. This drop was determined by a rectal thermometer. Urine was also periodically tested. Some men stood it as long as 24 to 36 hours. The lowest body temperature reached was 19 degrees centigrade, but most men died at 25 or 26 degrees. When the men were removed from the ice water attempts were made to revive them by artificial sunshine, with hot water, by electro-therapy, or by animal warmth. For this last experiment prostitutes were used and the body of the unconscious man was placed between the bodies of two women. Himmler was present at one such experiment.” (*Ibidem*).

¹³⁷⁷ “Of those who survived [this experiment], many became mentally deranged. Those who did not die were sent to invalid blocks and were killed just as were the victims of the air pressure experiments.” (*Ibidem*).

¹³⁷⁸ In this experiment, patients were given “intramuscular and intravenous injections of pus from diseased persons.” Then, any medical treatment was “forbidden for 3 days, by which time serious inflammation and in many cases general blood poisoning [occured]. Then each group was “divided into groups of 10. Half were given chemical treatment with liquid and special pills every 10 minutes for 24 hours. The remainder [were] treated with sulfanamide and surgery. In some cases, all the limbs [were] amputated.” “[...] For these experiments Polish, Czech, and Dutch priests were ordinarily used. Pain was intense in such experiments. Most of the [...] persons who were used finally died. Most of the others became permanent invalids and were later killed.” (*Idem*. p. 171).

¹³⁷⁹ “In the fall of 1944, there were 60 to 80 persons who were subjected to saltwater experiments. They were locked in a room and for 5 days were given nothing for food but salt water. During this time their urine, blood, and excrement were tested. None of these prisoners died, possibly because they received smuggled food from other prisoners. Hungarians and Gypsies were used for these experiments.” (*Ibidem*).

¹³⁸⁰ 30 Trial of the Major War Criminals before the International Military Tribunal (1948). p. 471.

¹³⁸¹ *Ibidem*.

benzine to test human resistance to this substance.¹³⁸² Operations on the throat, stomach, gall bladder, and liver of healthy prisoners were executed simply to improve SS medical students' and doctors' surgical techniques.¹³⁸³ Even junior students with minimal surgical experience would perform complex, dangerous, and complicated medical procedures.¹³⁸⁴ Consequently, "many prisoners died on the operating table and many others from later complications."¹³⁸⁵

2.7.3.2. *Medical assistance in detention camps of the Former Yugoslavia*

At detention camps of the Former Yugoslavia, medical care for Muslim detainees was majorly inadequate or non-existent, and there was a shortage of medicines and supplies – or no medicine provided at all.¹³⁸⁶ In most cases, the Serbian military and police did not provide detainees with any medical treatment for their pre-existing health conditions, such as diabetes, high blood pressure, asthma, heart disease, epilepsy, kidney disease, tuberculosis, and mental illness, or for the injuries caused by the beatings, such as spinal column fractures, severed limbs, broken ribs, multiple bone fractures, and fractured skulls.¹³⁸⁷

¹³⁸² *Ibidem.*

¹³⁸³ "For this purpose, a needle was jabbed into the liver of a person and a small piece of the liver was extracted. No anesthetic was used. The experiment is very painful and often had serious results, as the stomach or large blood vessels were often punctured, resulting in hemorrhage. Many persons died of these tests for which Polish, Russian, Czech, and German prisoners were employed." (5 Trial of the Major War Criminals before the International Military Tribunal (1947). p. 170). See also: pp. 168–169.

¹³⁸⁴ *Ibidem.*

¹³⁸⁵ *Ibidem.*

¹³⁸⁶ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 141; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 913, 934, 945; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1166–1167, 1179, 1188, 1201, 1225, 1823, 1832, 2507.

¹³⁸⁷ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶¶ 150, 272; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 711; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 913, 920, 928, 954; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 1057; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 796; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶¶ 584, 676, 678; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1015, 1190, 1390, 1986, 2008, 2497.

Mentally disabled detainees did not receive any proper medical care either.¹³⁸⁸ Most of the victims suffered from deteriorated psychological health due to terrible mental trauma and fear.¹³⁸⁹ In many detention centers, Bosnian Muslims were frequently subjected to practices that caused deep mental suffering by Serbian authorities, such as sleep deprivation and having their heads pushed into buckets with human excrement.¹³⁹⁰ While these acts took place, the victims were usually ordered to laugh.¹³⁹¹ As a result of all these ill-treatments, they commonly displayed lasting psychological effects, such as post-traumatic stress syndrome, shocks due to fear, flashbacks from traumatic events, mental blocks, anxiety attacks, heart attacks, frequent nightmares, and chronic insomnia.¹³⁹² All of that required constant psychiatric supervision and continuous use of medication, which they did not have access to.¹³⁹³

2.8. Sexual violence and rape

2.8.1. Sexual violence and rape in the context of the Former Yugoslavian detention camps

There is plenty of evidence that the Serbian military, police, and authorities subjected Bosnian Muslim women, men, girls, and boys to acts of sexual violence. The victims were raped or gang-raped by Serb soldiers/police who guarded the detention camps on multiple occasions.¹³⁹⁴ Some women

¹³⁸⁸ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 148.

¹³⁸⁹ Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 1831.

¹³⁹⁰ Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 720; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 950; Prosecutor v. Milan Martić. IT-95-11-T. *Supra* note 105. ¶ 288; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 821; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 990.

¹³⁹¹ Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 733.

¹³⁹² Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶¶ 143–144, 147, 149–150; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 796.

¹³⁹³ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 151.

¹³⁹⁴ Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶¶ 728, 772; Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶¶ 193, 200; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 800; Prosecutor v. Milan Martić. IT-95-11-T. *Supra* note 105. ¶ 288; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 701; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶¶ 678, 682–683; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 916, 920, 990–991, 1015, 1021, 1201, 1225, 1269,

and children were taken away every day for the course of their detention. Some were chosen randomly, while others were systematically/intentionally called by their names and taken.¹³⁹⁵ Some were taken for a few hours and returned, while others were raped and sexually abused several times a day on a continuous basis for periods of up to two and a half months.¹³⁹⁶ For example, at Foča High School detention center, a woman was raped by Serbian soldiers approximately 150 times in the course of 40 days of detention.¹³⁹⁷

There were several manners in which members of Serb Forces forced Muslim detainees to perform sexual acts: 1) Male prisoners were forced to engage in “degrading sexual acts” with each other and to perform oral sex on each other in the presence of other detainees; 2) Muslim women, girls as young as seven and young boys were taken out at night and were forced to strip and perform sexual acts with elderly men or to dance and perform sexual acts in front of Bosnian Serb soldiers; 3) Frequently, naked women were taken to “rape rooms” for approximately 20 minutes or were taken away in the following days to be sexually abused and severely beaten; 4) Hundreds of Muslim men and women were frequently ordered “to undress completely and to dance together around the Serb soldiers while touching each others’ breasts and penises.”¹³⁹⁸

The victims had no choice but to obey the soldiers. Those who tried to resist were severely beaten and submitted to additional horrific acts of sexual violence. Victims were commonly taken to separate rooms, tied to desks, tied with chains that were for leading cattle, and raped with all sorts of objects such as police truncheons and knives, and had their lips, necks, and breasts bitten, causing them terrible pain, fear, and mental trauma.¹³⁹⁹

1346, 2500, 2504, 2506; Prosecutor v. Ratko Mladić. IT-09-92-T, vol. 2. *Supra* note 137. ¶ 1485.

¹³⁹⁵ Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 682; Prosecutor v. Ratko Mladić. IT-09-92-T, vol. 2. *Supra* note 137. ¶ 1485.

¹³⁹⁶ Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶ 193; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 682; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 916, 990–991, 2500. ¹³⁹⁷ Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 917.

¹³⁹⁸ Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 728; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 800; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶¶ 603, 682; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 916, 920, 922–923, 990, 1016–1017, 1269, 1831, 2500–2503; Prosecutor v. Ratko Mladić. IT-09-92-T, vol. 2. *Supra* note 137. ¶¶ 1485, 1493.

¹³⁹⁹ Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶¶ 162, 200; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 800; Prosecutor v. Milan

Many times, pliers were used to mistreat the victims, and many of them were beaten after the rape and needed medical assistance due to excessive bleeding.¹⁴⁰⁰

2.8.2. Sexual violence and rape in Sierra Leone

As a standard policy to terrorize the civilian population, AFRC and RUF fighters committed thousands of rapes against civilian women and girls throughout Sierra Leone.¹⁴⁰¹ Throughout the city of Freetown and the Western Area, hundreds of women and young girls – as young as nine years old – were brutally gang-raped by rebels, sometimes until death.¹⁴⁰² Evidence showed that at least seven armed rebels gang-raped some girls at the same time.¹⁴⁰³ Several victims were raped in the presence of their family members.¹⁴⁰⁴ For instance, on one occasion

“[the witness] wife was gang-raped by eight rebels as he and his children were forced to watch. He was ordered to count each rebel as they consecutively raped his wife, as they laughed and mocked him. After this ordeal, one of the rapists, Tamba Joe, took a knife and stabbed [the witness] wife in front of her entire family.”¹⁴⁰⁵

In addition to the penetration of the penis into the victims' vaginas and anuses, AFRC/RUF fighters used to insert all sorts of objects into victims' genitalia and anal areas, such as sticks, pieces of wood, and even pistols.¹⁴⁰⁶ Most of the victims were traumatically injured and mutilated due to the

Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 701; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 916, 920, 991, 1225, 2501, 2504; Prosecutor v. Ratko Mladić. IT-09-92-T, vol. 2. *Supra* note 137. ¶ 1493.

¹⁴⁰⁰ Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶ 193; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 682; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 991; Prosecutor v. Ratko Mladić. IT-09-92-T, vol. 2. *Supra* note 137. ¶ 1485.

¹⁴⁰¹ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 412; Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 876; Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 1016.

¹⁴⁰² Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶¶ 34, 992; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 1574; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 279. ¶ 126.

¹⁴⁰³ Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 1270.

¹⁴⁰⁴ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 991.

¹⁴⁰⁵ Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 279. ¶ 125.

¹⁴⁰⁶ *Idem.* ¶¶ 125–126, 130.

insertion of such foreign objects.¹⁴⁰⁷ Several times, fighters would deliberately slit the genitalia of several males and females exclusively to inflict pain and humiliation.¹⁴⁰⁸

AFRC/RUF rebels also submitted to forced marriages thousands of women and girls as young as 10-years-old.¹⁴⁰⁹ The most beautiful girls were brought to the senior commanders.¹⁴¹⁰ In addition to “serve” the rebels with forced sexual relations, women victims were expected to perform domestic chores.¹⁴¹¹ In addition to committing several acts of sexual violence, plenty of evidence showed that AFRC/RUF fighters abducted thousands of women and girls of school-going age to use them as sexual slaves, exercising powers of ownership over them.¹⁴¹²

The victims of such barbaric acts displayed clear signs of mental trauma, such as post-traumatic stress disorder and depression, and physical consequences, such as contamination with sexually transmitted infections, unwanted pregnancies due to sexual violence, and miscarriages as a result of the rapes.¹⁴¹³ Due to the well-founded fear of stigmatization, shame, rejection, retribution, and reprisal, several cases of sexual violence against women and children perpetrated by AFRC/RUF fighters were considered significantly underreported in Sierra Leone.¹⁴¹⁴

2.9. Forced labor & enslavement

2.9.1. Forced labor & enslavement in the Nazi concentration camps and the occupied territories

During the Nazi regime in Germany and occupied territories, the SS’s policy toward Germany’s slave laborers was clear: to make inmates under the

¹⁴⁰⁷ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 34; Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 882.

¹⁴⁰⁸ Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 279. ¶ 126.

¹⁴⁰⁹ *Idem.* ¶ 128.

¹⁴¹⁰ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 1045.

¹⁴¹¹ *Idem.* ¶ 412. See also: Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶¶ 1561–1562, 1565.

¹⁴¹² Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 412; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 1574; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 279. ¶ 128; Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶¶ 936, 1094.

¹⁴¹³ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 991; Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 882.

¹⁴¹⁴ Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 882.

custody of the SS to literally “work to death.”¹⁴¹⁵ ¹⁴¹⁶ SS guards would force inmates into hard jobs for days straight without any kind of rest, such as carrying rails around and pieces of machinery, working in the construction of tunnels, digging cellars, working in cement factories, and hardening road surfaces.¹⁴¹⁷ While performing a 12-hour shift of forced labor, Nazi personnel brutally tortured, beat, or whipped inmates to the point of victims losing consciousness.¹⁴¹⁸ Some inmates would receive harsh punitive detachments without any plausible reason.¹⁴¹⁹ Others were shot during their work by the SS guards.¹⁴²⁰ Consequentially, the death rate of inmates was correspondingly high.¹⁴²¹

2.9.2. Forced labor & enslavement in the Former Yugoslavia detention camps

Serbian military, police, and authorities forced Muslim detainees at the detention camps to perform several types of forced labor, such as clearing

¹⁴¹⁵ In Nazi Heinrich Himmler’s abominable own words on “the attitude of the SS toward Germany’s slave laborers,” in the Poznan speech of 4 October 1943: “What happens to a Russian, to a Czech, does not interest me in the slightest. [...] Whether nations live in prosperity or starve to death interests me only insofar as we need them as slaves for our Kultur; otherwise, it is of no interest to me. Whether 10,000 Russian females fall down from exhaustion while digging an anti-tank ditch interests me only insofar as the anti-tank ditch for Germany is finished. We shall never be rough and heartless when it is not necessary, but it is clear, we Germans, who are the only people in the world who have a decent attitude towards animals, will also assume a decent attitude towards these man animals. But it is a crime against our own blood to worry about them and give them ideals, thus causing our sons and grandsons to have a more difficult time with them.” (**United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). pp. 230–231).

¹⁴¹⁶ “[Inmates] had no color in their faces whatsoever. They were practically living corpses, covered with skin and bone, and completely broken in spirit. Everyone who was there knew that the inmates were kept there as long as they turn out work and that when they were physically unable to continue, they were disposed of.” (**United States of America v. Carl Krauch, et al.** Case 6, Volume 8 (I.G. Farben case) (1947). p. 624).

¹⁴¹⁷ **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). pp. 248–249, 396, 472; **United States of America v. Carl Krauch, et al.** Case 6, Volume 8 (I.G. Farben case) (1947). pp. 623–624. See also: p. 472.

¹⁴¹⁸ **United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). pp. 396, 408–409, 472.

¹⁴¹⁹ *Idem.* p. 472.

¹⁴²⁰ *Idem.* pp. 408–409.

¹⁴²¹ *Idem.* p. 472.

forests, felling trees, working in fields and factories, assisting in the construction of infrastructure projects, transporting bodies, and burying them in mass graves, digging of trenches, carrying of munitions at frontlines, and working on the frontline.¹⁴²² Detainees were guarded by members of the police as well as of armed forces in olive-drab uniforms. They were kept working without any food or water, in freezing conditions, suffering exhaustion, being beaten with rifle butts if they refused to work, and being exposed to injuries and killings in crossfire operations.¹⁴²³ Muslims and Croats were chosen by the Serbian military, police, and authorities to perform acts of forced labor with an explicit discriminatory nature by virtue of their religion/nationality.¹⁴²⁴

2.9.3. Forced labor & enslavement in Sierra Leone

AFRC/RUF fighters forced thousands of civilians to work in diamond mining pits in various locations of Sierra Leone.¹⁴²⁵ Civilians had to perform extensive shifts of work without rest for periods of up to two years.¹⁴²⁶ Duties varied from directly mining pits to other tasks such as carrying loads, farming, going on food-finding missions, and general domestic chores.¹⁴²⁷

Many civilian miners had to work naked, “in chains and tied with rope around their waists.”¹⁴²⁸ Fighters’ guns would always be pointed at the miners all over the diamond pits, so the victims could not escape.¹⁴²⁹ AFRC/RUF fighters would give miners only one plantain a day to eat.¹⁴³⁰ There was no medical assistance or medication for miners at all.¹⁴³¹

If civilians refused to mine or failed to find diamonds, AFRC/RUF fighters would often strip naked civilians, flog, stab, beat, rub with mud, shoot,

¹⁴²² Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 921; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶¶ 759, 815; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 908; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1021, 1179, 1195, 1201, 1255, 1298, 1300, 1394, 1479, 2424.

¹⁴²³ Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 908–909; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 1196, 2424.

¹⁴²⁴ Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 816.

¹⁴²⁵ Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 1744.

¹⁴²⁶ *Idem.* ¶ 1743.

¹⁴²⁷ *Idem.* ¶ 1970.

¹⁴²⁸ *Idem.* ¶ 1742.

¹⁴²⁹ *Idem.* ¶¶ 1698, 1742.

¹⁴³⁰ *Idem.* ¶ 1742.

¹⁴³¹ *Ibidem.*

and eventually kill them as an example to the other workers.¹⁴³² Whenever civilians found diamonds, the gemstones would be immediately taken by the fighters and given to the superior commanders.¹⁴³³

2.10. Child recruitment in Sierra Leone

Throughout Sierra Leone, children were an indispensable “tool” at the hands of RUF and AFRC forces from February 1998 onwards.¹⁴³⁴ Thousands of children as young as six, eight, nine, ten, and eleven years old were abducted, separated from their families, forcibly trained, and forced to actively participate in hostilities and to be used in support/logistical tasks in various locations throughout the country.¹⁴³⁵ The RUF and AFRC rebels regarded children as “fearless,” “full of agility,” and “more obedient than adults.”^{1436 1437}

“Young boys were of particular value [...] due to their loyalty to the movement and their ability to effectively conduct espionage activities, as their small size and agility made them particularly suitable for hazardous assignments. The younger children were particularly aggressive when armed and were known to kill human beings as if they were nothing more than ‘chickens’.”¹⁴³⁸

After being recruited, RUF subjected children to military training, which was, most of the time, the same training given to adults.¹⁴³⁹ Lessons included “military discipline, physical endurance, armour [*sic*] and artillery classes, and how to mount ambushes.”^{1440 1441} RUF and AFRC fighters as-

¹⁴³² *Idem.* ¶¶ 1631, 1742–1743.

¹⁴³³ *Idem.* ¶ 1742.

¹⁴³⁴ *Prosecutor v. Fofana, Kondewa.* SCSL-04-14-T. *Supra* note 281. ¶ 688; *Prosecutor v. Sesay, Kallon and Gbao.* SCSL-04-15-T. *Supra* note 268. ¶¶ 1616, 1708.

¹⁴³⁵ *Prosecutor v. Sesay, Kallon and Gbao.* SCSL-04-15-T. *Supra* note 268. ¶¶ 1617, 1649, 1661, 1674, 1677, 1691, 1699, 1701-1702, 1747; *Prosecutor v. Sesay, Kallon and Gbao.* SCSL-04-15-T. *Supra* note 279. ¶ 180.

¹⁴³⁶ *Prosecutor v. Taylor.* SCSL-03-01-T. *Supra* note 270. ¶ 1356.

¹⁴³⁷ See also: *Prosecutor v. Sesay, Kallon and Gbao.* SCSL-04-15-T. *Supra* note 268. ¶ 1703.

¹⁴³⁸ *Idem.* ¶ 1616.

¹⁴³⁹ *Idem.* ¶¶ 1619, 1633, 1647, 1684, 1707.

¹⁴⁴⁰ *Ibidem.*

¹⁴⁴¹ See also: *Prosecutor v. Brima, Kamara, Kanu.* SCSL-04-16-T. *Supra* note 280. ¶ 34; *Prosecutor v. Sesay, Kallon and Gbao.* SCSL-04-15-T. *Supra* note 268. ¶ 1638.

signed children both to “active combat” functions and “logistical support” functions.¹⁴⁴²

Active combat functions included: 1) to commit crimes such as killing, looting, burning civilian houses, burning civilians alive, raping civilians flogging civilians; 2) to actively participate in hostilities; 3) to attack officers of peacekeeping missions, particularly UNAMSIL peacekeepers; 4) to decapitate or behead civilians; 5) to mutilate and amputate civilians, including other children; 6) to take part in patrols; 7) to serve as bodyguards for higher-ranking Commanders; 8) to spy on enemy positions and to collect intelligence; 9) to gather information from civilians and opposition camps; 10) to guard military objectives; and 11) to carry guns and armament, such as light and heavy weapons, rocket launchers, and grenades.¹⁴⁴³

Tasks of logistical importance included: 1) to dig diamonds for their adult commanders; 2) to guard diamond mining pits; 3) to participate in food-finding missions; and 4) cooking and undertaking “laundry duties, fetch[ing] water and carry[ing] goods, including looted property and food for the forces.”¹⁴⁴⁴

RUF often drugged children during the training and after this period when child soldiers were in active combat.¹⁴⁴⁵ The most common substances that RUF habitually gave to children included “alcohol or drugs such as marijuana, amphetamines, and cocaine.”¹⁴⁴⁶ The administration of drugs usually followed the same pattern:

“The children’s legs would sometimes be “cut with blades [so] cocaine [could be] rubbed in the wounds,” which made them feel “like a big person” and see other people “like chickens and rats” that they could kill. Drugs were often ingested by smoke inhalation or by sniffing.”^{1447 1448}

¹⁴⁴² Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 1620.

¹⁴⁴³ *Idem*. ¶¶ 146, 1618, 1620, 1638, 1654, 1672, 1682, 1687, 1711, 1714–1715, 1719, 1725, 1729, 1731–1733. See also: Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 279. ¶ 180; Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶¶ 1311, 1356, 1403, 1483–1490, 1496, 1523, 1604, 1618, 1665, 1674, 1681, 1684, 1711–1712, 1719.

¹⁴⁴⁴ Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶¶ 1618, 1620, 1660, 1664, 1675; Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶¶ 1459, 1491–1496, 1523.

¹⁴⁴⁵ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 34.

¹⁴⁴⁶ Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 1623.

¹⁴⁴⁷ *Ibidem*.

¹⁴⁴⁸ See also: Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 1356.

Those children who were “unable to endure the training regime,”¹⁴⁴⁹ or who attempted escaping, or that refused to carry out orders were summarily killed by RUF fighters.¹⁴⁵⁰ If they survived, these child soldiers “were robbed of a childhood and most of them lost the chance of an education.”^{1451 1452}

¹⁴⁴⁹ Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 1641.

¹⁴⁵⁰ *Idem.* ¶ 1619.

¹⁴⁵¹ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 34.

¹⁴⁵² On March 14, 2012, the ICC Trial Chamber considered Thomas Lubanga Dyilo guilty of the crime of conscripting and enlisting children under the age of fifteen years into the Patriotic Forces for the Liberation of Congo (FPLC) and using them to participate actively in hostilities within the meaning of Articles 8(2)(e)(vii) and 25(3)(a) of the Rome Statute. Please refer to: Prosecutor v. Thomas Lubanga Dyilo. ICC-01/04-01/06. *Supra* note 340. ¶ 1358.

3. An assessment of the caselaw from Nuremberg, the ICTR, the ICTY, the SCSL, and ICC tribunals on genocide and crimes against humanity

3.1. Genocide

3.1.1. Overview, definition, protected legal values, elements, and the applicable law

In 1944, the Polish-Jewish jurist Raphael Lemkin coined and developed the term *genocide* as a new legal concept to portray the conduct perpetrated by the Nazis against certain groups of people, particularly the Jews – the Holocaust –, and, to a lesser degree, against the Gypsies.^{1453 1454 1455 1456 1457} The neologism *genocide* was formed by the juxtaposition of the Greek word *genos* (meaning tribe, race, or nation), followed by the Latin suffix *cide* (meaning killing).¹⁴⁵⁸ With his inaugural piece *Axis Rule in Occupied Europe*, Lemkin laid the foundations “for a definition of what would become the gravest of international crimes.”¹⁴⁵⁹ The Nuremberg Military Tribunal trials, which took place from 1945 to 1949 to hold accountable Nazi war criminals, did not profit from Lemkin’s work, in obedience to the foundations of *nullum crimen sine lege*.¹⁴⁶⁰ Consequently, the Nuremberg judgements “dealt with genocide as a crime against humanity.”¹⁴⁶¹

¹⁴⁵³ Raphael Lemkin. *Supra* note 6. pp. 3–9.

¹⁴⁵⁴ Douglas Irvin-Erickson. *Supra* note 7. *passim*.

¹⁴⁵⁵ Payam Akhavan. *Supra* note 8. pp. 91–101.

¹⁴⁵⁶ Gideon Boas, James L. Bischoff & Natalie L. Reid. *Supra* note 62. p.145.

¹⁴⁵⁷ Robert Cryer, Håkan Friman, Darryl Robinson & Elizabeth Wilmshurst. *Supra* note 21. p. 166.

¹⁴⁵⁸ Gideon Boas, James L. Bischoff & Natalie L. Reid. *Supra* note 62. p.145.

¹⁴⁵⁹ *Ibidem*.

¹⁴⁶⁰ In this regard, The ICTR Trial Chamber noted that “the crimes prosecuted by the Nuremberg Tribunal, namely the holocaust of the Jews or the *Final Solution*, were very much constitutive of genocide, but they could not be defined as such because the crime of genocide was not defined until later.” (Prosecutor v. Jean Kambanda. ICTR-97-23. *Supra* note 199. ¶ 14).

¹⁴⁶¹ Kevin Jon Heller. *Supra* note 28. p. 388.

It was only after World War II that “genocide developed from a category of crimes against humanity to an autonomous crime.”¹⁴⁶² ¹⁴⁶³ The General Assembly of the then-recently created United Nations subsequently recognized that genocide constituted an “odious scourge” that inflicted “great losses on humanity” “at all periods of history.”¹⁴⁶⁴ On December 9, 1948, through its Resolution 260 A (III), the General Assembly approved the Convention on the Prevention and Punishment of the Crime of Genocide (*hereinafter* The Genocide Convention, The U.N. Genocide Convention), which came into force on January 12, 1951. From then on, “genocide is, first and foremost, a legal concept.”¹⁴⁶⁵ In Article I, the Contracting Parties on the novel Genocide Convention confirmed that genocide might be committed in times of peace or in times of war.¹⁴⁶⁶ The crime of genocide was later typified in other instruments of international treaty law, namely in the Statutes of the ICTY,¹⁴⁶⁷ ICTR,¹⁴⁶⁸ and ICC (The Rome Statute).¹⁴⁶⁹ Both the Genocide Convention¹⁴⁷⁰ and the Rome Statute¹⁴⁷¹ define the crime of genocide with the same *verbatim*: an act “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.” Genocide is incontestably considered a *jus cogens* norm and also part of the customary International Criminal Law.¹⁴⁷² ¹⁴⁷³ ¹⁴⁷⁴

¹⁴⁶² Kai Ambos. *Supra* note 63. p. 1.

¹⁴⁶³ “The legal concept of genocide was forged in the crucible of post-Second World War efforts to prosecute Nazi atrocities. Its development took place in conjunction with that of other international crimes, especially crimes against humanity, with which it bears a close but complex and difficult relationship. The development and history of genocide as a legal concept cannot be properly understood without considering the parallel existence of crimes against humanity.” (William A. Schabas, *The Law and Genocide 123–141 in The Oxford Handbook of Genocide Studies* (Donald Bloxham & A. Dirk Moses eds. *Supra* note 18. p. 124–125).

¹⁴⁶⁴ G. A. Res. 260 A (III), Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1948). *Preamble*.

¹⁴⁶⁵ William A. Schabas, *The Law and Genocide 123–141 in The Oxford Handbook of Genocide Studies* (Donald Bloxham & A. Dirk Moses eds. *Supra* note 18. p. 123).

¹⁴⁶⁶ G. A. Res. 260 A (III), Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1948). Article I.

¹⁴⁶⁷ Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, U.N. Doc. S/RES/827 (May 25, 1993).

¹⁴⁶⁸ Statute of the International Criminal Tribunal for Rwanda, U.N. Doc. S/RES/955 (Nov. 8, 1994).

¹⁴⁶⁹ United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544.

¹⁴⁷⁰ G. A. Res. 260 A (III), Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1948). Article II.

¹⁴⁷¹ United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544. Article 6.

The instruments of international treaty law on genocide aim to protect at least three values:

Firstly, they aim to protect the very right of the physical existence of entire human groups,¹⁴⁷⁵ their moral integrity, and very dignity as “distinct entities.”¹⁴⁷⁶ In doing so, they aim to safeguard the manifold social, economic, cultural, historical, political, moral, and anthropological “future contributions” that human groups bring to humanity;^{1477 1478}

Secondly, recognizing that genocide is a “crime against all of humankind,”¹⁴⁷⁹ which affects “not only the group targeted for destruction,”¹⁴⁸⁰ they aim to protect humanity as a whole;

Thirdly, recognizing that genocide “constitutes a threat to international peace and security,”¹⁴⁸¹ they aim to establish “effective measures to bring to justice the persons who are responsible for [such crime]”¹⁴⁸² – individual criminal responsibility. In doing so, it aims to contribute to the process of international cooperation, “national reconciliation, restoration, and maintenance of peace.”¹⁴⁸³

In the present 1948 Convention, genocide means an act “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”¹⁴⁸⁴ For the Convention, genocide is characterized by two legal elements: the *mens rea* (moral elements/subjective elements) and the *actus reus* (material elements/objective elements).^{1485 1486 1487 1488}

¹⁴⁷² Prosecutor v. Musema. ICTR-96-13-A. *Supra* note 216. ¶ 151.

¹⁴⁷³ To date (March 11, 2023), the Convention on the Prevention and Punishment of the Crime of Genocide has been ratified by 153 contracting states.

¹⁴⁷⁴ Kai Ambos. *Supra* note 63. p. 2

¹⁴⁷⁵ G. A. Res. 96(I), The Crime of Genocide, Fifty-fifth plenary meeting, U.N. Doc. A/RES/96 (Dec. 11, 1946). *preamble*.

¹⁴⁷⁶ Prosecutor v. Milomir Stakić. IT-97-24-A. *Supra* note 110. ¶ 21.

¹⁴⁷⁷ *Ibidem*.

¹⁴⁷⁸ G. A. Res. 96(I), The Crime of Genocide, Fifty-fifth plenary meeting, U.N. Doc. A/RES/96 (Dec. 11, 1946). *preamble*.

¹⁴⁷⁹ Prosecutor v. Radislav Krstić. IT-98-33-A. *Supra* note 129. ¶ 36.

¹⁴⁸⁰ *Ibidem*.

¹⁴⁸¹ S.C. Res. 955 (Nov. 8, 1994). *preamble*.

¹⁴⁸² *Ibidem*.

¹⁴⁸³ *Ibidem*.

¹⁴⁸⁴ G. A. Res. 260 A (III), Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1948). Article II.

¹⁴⁸⁵ Prosecutor v. Kayishema and Ruzindana. ICTR 95-1-T. *Supra* note 209. ¶ 90; Prosecutor v. Goran Jelisić. IT-95-10-T. *Supra* note 97. ¶ 62.

¹⁴⁸⁶ U.N. Doc. A/CN.4/SER.A/1996/Add.I (Part 2) (1996). p. 44, ¶ 4.

¹⁴⁸⁷ U.N. Doc. A/51/10 (May 6, 1996 – July 26, 1996). p. 45. ¶ 8.

The *mens rea* refers to the specific *intent* to destroy, in whole or in part, specific groups of people – a national, ethnical, racial, or religious group – because of their “unique distinguishing characteristics (particular group identity).”^{1489 1490 1491} The *actus reus* refers to the *numerus clausus* list of acts that may be considered genocide if perpetrated with genocidal *intent*. Both the Genocide Convention and the Rome Statute define the genocide *actus reus* with the same *verbatim*: “Killing members of the group”;^{1492 1493} “Causing serious bodily or mental harm to members of the group;”¹⁴⁹⁴ “Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part”;^{1495 1496} “Imposing measures intended to prevent births within the group”;¹⁴⁹⁷ “Forcibly transferring children of the group to another group.”¹⁴⁹⁸ In Article III, the Genocide Convention punishes the inchoate forms of the crime, namely: conspiracy to commit genocide; direct and public incitement to commit genocide; attempt to commit genocide; and complicity in genocide.¹⁴⁹⁹

¹⁴⁸⁸ Kai Ambos suggests that “as opposed to what is suggested by some of the case law the structure of the genocide crime may be characterized by three constitutive elements: 1) the *actus reus* (objective elements) of the offence, which consists of one or several of the acts enumerated under Article 6(2) ICC Statute; 2) the corresponding *mens rea* (subjective element), as described in Article 30 ICC; and 3) an extended (ulterior) mental element, namely the intent to destroy (special subjective element), in whole or in part, a national, ethnical, racial or religious group as such.” (Kai Ambos. *Supra* note 63. p. 5).

¹⁴⁸⁹ Prosecutor v. Ratko Mladić., IT-09-92-T, vol. 3. *Supra* note 137. ¶ 3436.

¹⁴⁹⁰ See also: Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 521; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 698.

¹⁴⁹¹ See also: U.N. Doc. A/51/10 (May 6, 1996 – July 26, 1996). p. 44. ¶ 5.

¹⁴⁹² United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544. Art. 6. (a).

¹⁴⁹³ The Rome Statute follows the *verbatim* of the Genocide Convention, Article II. (G. A. Res. 260 A (III), Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1948).

¹⁴⁹⁴ United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544. Art. 6. (b).

¹⁴⁹⁵ *Idem*. Art. 6. (c).

¹⁴⁹⁶ In *Akayesu*, the ICTR Trial Chamber held that “the expression deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, should be construed as the methods of destruction by which the perpetrator does not immediately kill the members of the group, but which, ultimately, seek their physical destruction. (...) *inter alia*, subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirement.” (Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶¶ 505–506).

¹⁴⁹⁷ United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544. Art. 6. (d).

¹⁴⁹⁸ *Idem*. Art. 6. (e).

¹⁴⁹⁹ G. A. Res. 260 A (III), Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1948). III(b), (c), (d), (e).

The physical/biological destruction of the group, in whole or in part, must be the objective of the underlying conduct of the crime of genocide.^{1500 1501 1502} Nevertheless, “it is not necessary to prove the *de facto* destruction of the group.”^{1503 1504} Cultural destruction was not contemplated in the Genocide Convention nor the statutes that followed it. Concerning this issue, the ICTY Appeals Chamber in *Krstić* stated:

“Customary international law limits the definition of genocide to those acts seeking the physical or biological destruction of all or part of the group. [A]n enterprise attacking only the cultural or sociological characteristics of a human group in order to annihilate these elements which give to that group its own identity distinct from the rest of the community would not fall under the definition of genocide.”^{1505 1506}

¹⁵⁰⁰ Prosecutor v. Emmanuel Ndindabahizi. ICTR-2001-71-I. *Supra* note 177. ¶ 454; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 963; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 656; Prosecutor v. Mikaeli Muhimana. ICTR-95-1B-T. *Supra* note 214. ¶ 497; Prosecutor v. Jean Mpambara. ICTR-01-65-T. *Supra* note 202. ¶ 8.

¹⁵⁰¹ U.N. Doc. A/CN.4/SER.A/1996/Add.I (Part 2) (1996). p. 45, ¶ 12.

¹⁵⁰² U.N. Doc. A/51/10 (May 6, 1996 – July 26, 1996). pp. 45–46. ¶ 12.

¹⁵⁰³ “Nevertheless, the *de facto* destruction of the group may constitute evidence of the specific intent and may also serve to distinguish the crime of genocide from the inchoate offences (...) such as the attempt to commit genocide.” (Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 697).

¹⁵⁰⁴ In *Stakić*, the ICTY stated that, in cases of forced deportation, “it does not suffice to deport a group or a part of a group.” The Trial Chamber considered that “a clear distinction must be drawn between physical destruction and mere dissolution of a group. The expulsion of a group or part of a group does not in itself suffice for genocide.” (Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 519).

¹⁵⁰⁵ Prosecutor v. Radislav Krstić. IT-98-33-A. *Supra* note 129. ¶ 25.

¹⁵⁰⁶ This was also the conclusion of the ICTY when *Krstić* was still in the first instance at the Trial Chamber: “An enterprise attacking only the cultural or sociological characteristics of a human group in order to annihilate these elements which give to that group its own identity distinct from the rest of the community would not fall under the definition of genocide.” Interestingly, however, the Trial Chamber pointed that “where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of an intent to physically destroy the group.” The Court then concluded: “In this case, the Trial Chamber will thus take into account as evidence of intent to destroy the group the deliberate destruction of mosques and houses belonging to members of the group.” (Prosecutor v. Radislav Krstić., IT-98-33-T. *Supra* note 128. ¶ 580).

The correct determination of the targeted group, which is the object of international protection, must always be made on a case-by-case basis, considering both objective and subjective elements.^{1507 1508} This means that the victims of the attacked group are targeted because of “particular, distinct, and (...) common characteristics.”¹⁵⁰⁹ Groups are targeted due to their identity (*positive* approach), rather than a lack thereof (*negative* approach).¹⁵¹⁰ The victims of genocide are generally perceived as belonging to a group because the perpetrator of the crime identifies them as belonging to such a group. Nevertheless, in some instances, “the victim may perceive himself or herself to belong to the aforesaid group”¹⁵¹¹ – *self-identification*.¹⁵¹²

On September 2, 1998, the ICTR held a conviction of genocide against the Rwandan mayor of the Taba Commune, Jean-Paul Akayesu.¹⁵¹³ The Trial Chamber unanimously convicted Akayesu on the counts of “genocide” and “direct and public incitement to commit genocide”¹⁵¹⁴ for having planned, instigated, ordered, committed, or otherwise aided genocidal attacks of the Hutu ethnic group against the Tutsi in Rwanda.¹⁵¹⁵ Importantly, in such a ruling, rape was considered a form of genocide.¹⁵¹⁶ Also, the Trial Chamber held that no special status is required for the perpetrator of genocidal acts.¹⁵¹⁷ The ICTR Appeals Chamber later upheld the sentence on June 1, 2001, which unanimously dismissed each of the grounds of appeal raised

¹⁵⁰⁷ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 683–684; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 667; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 667; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 735; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 541.

¹⁵⁰⁸ Prosecutor v. Laurent Semanza. ICTR-97-20-T. *Supra* note 211. ¶ 317; Prosecutor v. Jean de Dieu Kamuhanda. ICTR-95-54A-T. *Supra* note 200. ¶ 630; Prosecutor v. Sylvestre Gacumbitsi. ICTR-2001-64-T. *Supra* note 228. ¶ 254; Prosecutor v. Athanase Seromba. ICTR-2001-66-T. *Supra* note 160. ¶ 318.

¹⁵⁰⁹ Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 735.

¹⁵¹⁰ Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 512; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 685; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 809; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 541.

¹⁵¹¹ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 683.

¹⁵¹² Prosecutor v. Clément Kayishema and Ruzindana. ICTR 95-1-T. *Supra* note 209. ¶ 98.

¹⁵¹³ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203.

¹⁵¹⁴ *Idem.* Section 8. Verdict.

¹⁵¹⁵ *Idem.* ¶¶ 672–675.

¹⁵¹⁶ *Idem.* ¶¶ 731–734.

¹⁵¹⁷ *Idem. Passim.*

by Jean-Paul Akayesu.¹⁵¹⁸ The Chamber confirmed all the counts on which Akayesu was convicted and upheld the sentence of life imprisonment handed down by the Trial Chamber.¹⁵¹⁹ Later, both the ICJ¹⁵²⁰ and the ICTY¹⁵²¹ acknowledged the perpetration of genocide in Srebrenica.

Notably, Professor Schabas lectures that “in addition to genocide itself, which is defined in Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, Article III describes four forms of participation in the crime: conspiracy, direct and public incitement, attempt, and complicity.”¹⁵²² Schabas explains that, concerning the attempted form of genocide, there are striking differences between “result-based” and “conduct-based” patterns of action.¹⁵²³ He clarifies that in conducts such as killing, inflicting harm, and transferring children, the perpetrator of such acts responds for the *attempted* form of the crime when they fail to achieve the desired result of the action, the destruction of a protected group.^{1524 1525} On the other hand, when the perpetrators’ actions concern an act such as preventing births, the perpetrators are fully responsible for their conduct, regardless of the outcome of their actions.^{1526 1527 1528}

3.1.2. The Protected Groups

Not all human groups fall under the protection of genocide.¹⁵²⁹ The most distinctive trait of the crime of genocide resides in its victims. The ultimate

¹⁵¹⁸ *Idem*. Section V. Disposition.

¹⁵¹⁹ *Ibidem*.

¹⁵²⁰ *Bosnia and Herzegovina v. Serbia and Montenegro*. I.C.J. 43. *Supra* note 71. ¶¶ 278–297.

¹⁵²¹ *Prosecutor v. Radislav Krstić*. IT-98-33-T. *Supra* note 128; *Prosecutor v. Radislav Krstić*. IT-98-33-A. *Supra* note 129; *Prosecutor v. Momir Nikolić* IT-02-60/1-A. *Supra* note 124. *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150; *Prosecutor v. Vujadin Popović et al.* IT-05-88-A. *Supra* note 151; *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-A. *Supra* note 152; *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T, vols. 1, 2, 3, 4. *Supra* note 134.

¹⁵²² William A. Schabas. *Supra* note 12. p. 307.

¹⁵²³ *Idem*. pp. 334–339.

¹⁵²⁴ *Prosecutor v. Jean-Paul Akayesu*. ICTR-96-4-T. *Supra* note 203. ¶ 509.

¹⁵²⁵ U.N. Doc. A/CN.4/SER.A/1996/Add.I (Part 2) (1996). p. 46, ¶ 17.

¹⁵²⁶ William A. Schabas. *Supra* note 12. pp. 334–339.

¹⁵²⁷ See also: **United States of America v. Ulrich Greifelt, et al.** Case 5 (RuSHA case) (1947). p. 110; *Prosecutor v. Jean-Paul Akayesu*. ICTR-96-4-T. *Supra* note 203. ¶¶ 507–508.

¹⁵²⁸ See also: U.N. Doc. A/CN.4/SER.A/1996/Add.I (Part 2) (1996). p. 46, ¶ 16.

¹⁵²⁹ Robert Cryer, Håkan Friman, Darryl Robinson & Elizabeth Wilmshurst. *Supra* note 21. p. 169.

victim of genocide is always a group protected by law.¹⁵³⁰ The U.N. Genocide Convention prescribes, in an exhaustive list, that the victim must belong to a specific national, ethnical, racial, or religious group *as such*.¹⁵³¹ Such *verbatim* was transliterated in the statutes of the ICTR,¹⁵³² ICTY,¹⁵³³ and of the ICC.¹⁵³⁴ ¹⁵³⁵ In *Prosecutor v. Blagojević & Jokić*, the ICTY considered that a group comprises its individuals and the “history, traditions, the relationship between its members, the relationship with other groups, [and] the relationship with the land.”¹⁵³⁶

The genocide perpetrator targets the victims because of their membership in the aforesaid protected groups.¹⁵³⁷ ¹⁵³⁸ This means that the genocide law aims to protect “mainly a collective legal interest, that is, the right of certain groups to exist, and to contribute to a pluralistic world.”¹⁵³⁹ Therefore, the destruction of the members belonging to these groups constitutes “the means used to achieve the ultimate criminal objective with respect to the group.”¹⁵⁴⁰ This ultimately means that the prohibited genocidal act – or acts – is (are) committed against an individual because of their membership in a particular group rather than by virtue of their particular identity, characteristics, and singularities.¹⁵⁴¹ ¹⁵⁴² These individuals “are important not per se but only as members of the group to which they belong.”¹⁵⁴³

¹⁵³⁰ *Prosecutor v. Duško Sikirica et al.* IT-95-8-T. *Supra* note 88. ¶ 89; *Prosecutor v. Jean Mpambara.* ICTR-01-65-T. *Supra* note 202. ¶ 8.

¹⁵³¹ G. A. Res. 260 A (III), Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1948). Article II.

¹⁵³² Statute of the International Criminal Tribunal for Rwanda, U.N. Doc. S/RES/955 (Nov. 8, 1994). Article 2.2.

¹⁵³³ Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, U.N. Doc. S/RES/827 (May 25, 1993). Article 4.2.

¹⁵³⁴ United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544. Article 6, *caput*.

¹⁵³⁵ See also: U.N. Doc. A/CN.4/SER.A/1996/Add.I (Part 2) (1996). p. 45, ¶ 9.

¹⁵³⁶ *Prosecutor v. Vidoje Blagojević, Dragan Jokić.* IT-02-60-T. *Supra* note 147. ¶ 666.

¹⁵³⁷ *Prosecutor v. Jean Mpambara.* ICTR-01-65-T. *Supra* note 202. ¶ 8; *Prosecutor v. François Karera.* ICTR-01-74-T. *Supra* note 184. ¶ 534; *Prosecutor v. Emmanuel Rukundo.* ICTR-2001-70-T. *Supra* note 179. ¶ 556; *Prosecutor v. Gaspard Kanyarukiga.* ICTR-2002-78-T. *Supra* note 187. ¶ 635.

¹⁵³⁸ U.N. Doc. A/CN.4/SER.A/1996/Add.I (Part 2) (1996). p. 45, ¶ 9.

¹⁵³⁹ Kai Ambos. *Supra* note 63. p. 3.

¹⁵⁴⁰ U.N. Doc. A/CN.4/SER.A/1996/Add.I (Part 2) (1996). p. 45, ¶ 6.

¹⁵⁴¹ *Ibidem*.

¹⁵⁴² *Prosecutor v. Jean-Paul Akayesu.* ICTR-96-4-T. *Supra* note 203. ¶ 521; *Prosecutor v. Musema.* ICTR-96-13-A. *Supra* note 216. ¶ 165; *Prosecutor v. Emmanuel Ndindabahizi.* ICTR-2001-71-I. *Supra* note 177. ¶ 454.

¹⁵⁴³ U.N. Doc. A/CN.4/SER.A/1996/Add.I (Part 2) (1996). p. 45, ¶ 9.

Neither the Genocide Convention nor other international statutes clearly define the meaning and scope of the protected groups (national, ethnical, racial, or religious groups *as such*).^{1544 1545} The preparatory work on the U.N. Convention itself made considerations that such concepts may, sometimes, overlap in practical considerations.¹⁵⁴⁶ In different instances, the ICTR recognized this very fact that the concepts of *national*, *ethnical*, *racial*, and *religious* groups do not share a “generally or internationally accepted definition.”^{1547 1548}

In *Prosecutor v. Ignace Bagilishema*, the ICTR considered that such concepts must always be assessed “in the light of a particular political, social, historical, and cultural context.”^{1549 1550} This means that, “although membership of the targeted group must be an objective feature of the society in question, there is also a subjective dimension.”¹⁵⁵¹ For instance, the Court regarded that

“a group may not have precisely defined boundaries and there may be occasions when it is difficult to give a definitive answer as to whether or not a victim was a member of a protected group. Moreover, the perpetrators of genocide may characterize the targeted group in ways that do not fully correspond to conceptions of the group shared generally, or by other segments of society.”¹⁵⁵²

The ICTR, in *Akayesu*, defined a “national” group taking into consideration the *Nottebohm* decision rendered by the International Court of Justice. Based on the *such* ruling, the Trial Chamber held that a national group is defined “as a collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties.”¹⁵⁵³ The International Commission of Inquiry on Darfur regarded “na-

¹⁵⁴⁴ *Prosecutor v. Radislav Krstić*, IT-98-33-T. *Supra* note 128. ¶ 555; *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶ 682; *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-T. *Supra* note 153. ¶ 735.

¹⁵⁴⁵ *Prosecutor v. Jean de Dieu Kamuhanda*. ICTR-95-54A-T. *Supra* note 200. ¶ 630.

¹⁵⁴⁶ *Ibidem*.

¹⁵⁴⁷ *Prosecutor v. Ignace Bagilishema*. ICTR-95-1A-T. *Supra* note 194. ¶ 65.

¹⁵⁴⁸ See also: *Prosecutor v. Georges Anderson Nderubumwe Rutaganda*. ICTR-96-3-T. *Supra* note 188. ¶ 56.

¹⁵⁴⁹ *Prosecutor v. Ignace Bagilishema*. ICTR-95-1A-T. *Supra* note 194. ¶ 65.

¹⁵⁵⁰ See also: *Prosecutor v. Georges Anderson Nderubumwe Rutaganda*. ICTR-96-3-T. *Supra* note 188. ¶ 56.

¹⁵⁵¹ *Prosecutor v. Ignace Bagilishema*. ICTR-95-1A-T. *Supra* note 194. ¶ 65.

¹⁵⁵² *Ibidem*.

¹⁵⁵³ *Prosecutor v. Jean-Paul Akayesu*. ICTR-96-4-T. *Supra* note 203. ¶ 512.

tional” groups as “those sets of individuals which have a distinctive identity in terms of nationality or national origin.”¹⁵⁵⁴ In 1986, the Special Rapporteur on the Draft Code of Offences against the Peace and Security of Mankind recognized a conceptual controversy with the terms “national” and “ethnic” groups. Doudou Thiam acknowledged that “a national group often comprises several different ethnic groups.”¹⁵⁵⁵ Doudou Thiam recognized that states that are perfectly homogeneous from an ethnic point of view are rare.¹⁵⁵⁶ For instance:

“In Africa, in particular, territories were divided without taking account of ethnic groups, and that has often created problems for young States shaken by centrifugal movements which are often aimed at ethnic regrouping. With rare exceptions (Somalia, for example), almost all African States have an ethnically mixed population. On other continents, migrations, trade, the vicissitudes of war and conquests have created such mixtures that the concept of the ethnic group is only relative or may no longer have any meaning at all.”¹⁵⁵⁷

An “ethnic” group was considered by the ICTR and by the International Commission of Inquiry on Darfur as a group whose members share a common language, shared traditions, or common cultural heritage.^{1558 1559 1560} On the other hand, both the ICTR and the Commission considered that a “racial” group “comprise those sets of individuals sharing some hereditary physical traits or characteristics,”¹⁵⁶¹ that are “often identified with a geographical region, irrespective of linguistic, cultural, national, or religious factors.”¹⁵⁶² Tracing the differences between the terms “ethnic” and “racial,” the Special Rapporteur on the Draft Code of Offences against the Peace and Security of Mankind considered that:

¹⁵⁵⁴ U.N. Doc. S/2005/60 (Feb. 1, 2005). ¶ 494.

¹⁵⁵⁵ *Idem.* ¶ 57.

¹⁵⁵⁶ *Ibidem.*

¹⁵⁵⁷ *Ibidem.*

¹⁵⁵⁸ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 513.

¹⁵⁵⁹ U.N. Doc. S/2005/60 (Feb. 1, 2005). ¶ 494.

¹⁵⁶⁰ “The word *ethnic* used in the [Genocide] Convention has been replaced by the word *ethnic* in article 17 to reflect modern English usage without in any way affecting the substance of the provision. Furthermore, the Commission was of the view that the article covered the prohibited acts when committed with the necessary intent against members of a tribal group.” (U.N. Doc. A/CN.4/SER.A/1996/Add.I (Part 2) (1996). p. 45, ¶ 9).

¹⁵⁶¹ U.N. Doc. S/2005/60 (Feb. 1, 2005). ¶ 494.

¹⁵⁶² Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 514.

“It seems that the ethnic bond is more cultural. It is based on cultural values and is characterized by a way of life, a way of thinking and the same way of looking at life and things. On a deeper level, the ethnic group is based on a cosmogony. The racial element, on the other hand, refers more typically to common physical traits.”¹⁵⁶³

A “religious” group was regarded by the ICTR, in *Akayesu*, as a group in which its “members share the same religion, denomination or mode of worship.”¹⁵⁶⁴ The International Commission of Inquiry on Darfur, by its turn, considered the membership element of religion, encompassing “sets of individuals having the same religion, as opposed to other groups adhering to a different religion.”¹⁵⁶⁵

These definitions are not absolute. Both the ICTR and the ICTY considered that such determination takes into consideration both objective and subjective criteria. According to the Courts, this criterion is always assessed on a case-by-case basis.¹⁵⁶⁶ The objective criteria consider aspects such as biological aspects, as well as the social or historical context.¹⁵⁶⁷ In contrast, the subjective criteria consider the perceptions of the perpetrators and the victims themselves (self-perception).¹⁵⁶⁸ According to the ICTR, the subjective aspect means that the perpetrator of genocide perceives the victim as belonging to a group slated for destruction.¹⁵⁶⁹ In some instances, “the victim may perceive himself/herself as a member of said group.”^{1570 1571 1572 1573} This being the case, it is crucially important that the group under consideration must be “stable” and “coherent,”^{1574 1575} consti-

¹⁵⁶³ U.N. Doc. A/CN.4/398 (March 11, 1986). ¶ 58.

¹⁵⁶⁴ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 515.

¹⁵⁶⁵ U.N. Doc. S/2005/60 (Feb. 1, 2005). ¶ 494.

¹⁵⁶⁶ Prosecutor v. Laurent Semanza. ICTR-97-20-T. *Supra* note 211. ¶ 317; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 684; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 667.

¹⁵⁶⁷ Prosecutor v. Laurent Semanza. ICTR-97-20-T. *Supra* note 211. ¶ 317.

¹⁵⁶⁸ *Ibidem*.

¹⁵⁶⁹ Prosecutor v. Musema. ICTR-96-13-A. *Supra* note 216. ¶ 161.

¹⁵⁷⁰ *Ibidem*.

¹⁵⁷¹ See also: Prosecutor v. Ignace Bagilishema. ICTR-95-1A-T. *Supra* note 194. ¶ 65; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 667.

¹⁵⁷² U.N. Doc. S/2005/60 (Feb. 1, 2005). ¶¶ 498–500, 518.

¹⁵⁷³ For the International Commission of Inquiry on Darfur, “the self-perception of people as members of tribes and the social networks connected to the tribal structures constituted the central feature of the demographics of Darfur.” (*idem*. ¶ 53).

¹⁵⁷⁴ Hiram Abtahi & Philippa Webb. *Supra* note 54. p. 1312.

¹⁵⁷⁵ See also: Gideon Boas, James L. Bischoff & Natalie L. Reid. *Supra* note 62. p. 147.

tuted in a continuous, irremediable, and permanent fashion.¹⁵⁷⁶ This excludes “mobile” groups, whose commitment to the group is based on a voluntary fashion, such as political, social, and economic groups.^{1577 1578 1579 1580}

When considering genocide offenses, Customary International Criminal Law has a well-established rule that groups must always be defined by their *positive* characteristics — i.e., national, ethnic, racial, or religious — rather than by their *negative* characteristics — i.e., not possessing a specific “distinct identity.”^{1581 1582} In *Stakić*, the ICTY Appeals Chamber considered that “the drafting history of the Genocide Convention (...) was meant to incorporate an understanding [that is] incompatible with the negative definition of target groups.”^{1583 1584} This, however, does not mean that more

¹⁵⁷⁶ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 511.

¹⁵⁷⁷ Prosecutor v. Goran Jelisić. IT-95-10-T. *Supra* note 97. ¶ 69; Prosecutor v. Musema. ICTR-96-13-A. *Supra* note 216. ¶ 162.

¹⁵⁷⁸ U.N. Doc. A/CN.4/SER.A/1996/Add.I (Part 2) (1996). p. 45, ¶ 9.

¹⁵⁷⁹ In *Vasiliauskas v. Lithuania*, the European Court of Human Rights considered that “there are some arguments to the effect that political groups were protected by customary international law on genocide in 1953.” However, the Court considered that “there are equally strong contemporaneous countervailing views. At this juncture, the Court reiterates that notwithstanding those views favouring the inclusion of political groups in the definition of genocide, the scope of the codified definition of genocide remained narrower in the Genocide Convention and was retained in all subsequent international-law instruments.” Therefore, the Court concluded: “In sum, the Court finds that there is no sufficiently strong basis for finding that customary international law as it stood in 1953 included “political groups” among those falling within the definition of genocide.” (*Vasiliauskas v. Lithuania*, App. No. 35343/05 (Eur. Ct. H.R. Oct. 20, 2015). ¶ 175. See also: ¶¶ 178, 181).

¹⁵⁸⁰ During the drafting of the Rome Statute, “there was a suggestion to expand the definition of the crime of genocide contained the [Genocide] Convention to encompass social and political groups. This suggestion was supported by some delegations who felt that any gap in the definition should be filled. However, other delegations expressed opposition to amending the definition [of genocide] contained in the [Genocide] Convention, which was binding on all States as a matter of customary law and which had been incorporated in the implementing legislation of the numerous States parties to the Convention.” (M. Cherif Bassiouni. *Supra* note 265. p. 42).

¹⁵⁸¹ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 685; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 809.

¹⁵⁸² “A negatively defined group — for example all *non-Serbs* in a particular region— thus does not meet the definition.” (Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 809).

¹⁵⁸³ Prosecutor v. Milomir Stakić. IT-97-24-A. *Supra* note 110. ¶ 22.

than one characteristic could be targeted at the same time. More than one group may be targeted for genocide at the same time.^{1585 1586}

3.1.3. Actus reus: Objective elements

The Genocide Convention and the Rome Statute establish a *numerus clausus* list of the underlying prohibited acts of genocide – *actus reus*: “killing members of the group,”¹⁵⁸⁷ “causing serious bodily or mental harm to members of the group,”¹⁵⁸⁸ “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part,”¹⁵⁸⁹ “imposing measures intended to prevent births within the group,”¹⁵⁹⁰ and “forcibly transferring children of the group to another group.”^{1591 1592 1593}

The existence of a genocidal plan or policy is not a legal constituent element of the crime of genocide. However, it might be an essential element in facilitating proof of the crime and the perpetrator’s intent.¹⁵⁹⁴

3.1.3.1. Destroy

The underlying act of killing members of a group as an act of genocide refers to the group’s *destruction*. Such destruction entails two requirements: 1) the perpetrator of the genocidal act must *intentionally* kill one or more group members and 2) proof of a result.^{1595 1596} The term *destroy* in the Genocide

¹⁵⁸⁴ For the ICTY, “given that negatively defined groups lack specific characteristics, defining groups by reference to a negative would run counter to the intent of the Genocide Convention’s drafters.” (*Ibidem*).

¹⁵⁸⁵ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 686, 735.

¹⁵⁸⁶ In such cases, “the elements of the crime of genocide must be considered in relation to each group separately.” (*Idem*. ¶ 686).

¹⁵⁸⁷ United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544. Art. 6. (a).

¹⁵⁸⁸ *Idem*. Art. 6. (b).

¹⁵⁸⁹ *Idem*. Art. 6. (c).

¹⁵⁹⁰ *Idem*. Art. 6. (d).

¹⁵⁹¹ *Idem*. Art. 6. (e).

¹⁵⁹² G. A. Res. 260 A (III), Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1948). Article II.

¹⁵⁹³ See also: United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544. Article 6.

¹⁵⁹⁴ Prosecutor v. Goran Jelišić, IT-95-10-A. *Supra* note 98. ¶ 48; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 830.

¹⁵⁹⁵ Prosecutor v. Clément Kayishema and Ruzindana. ICTR 95-1-T. *Supra* note 209. ¶ 100; Prosecutor v. Laurent Semanza. ICTR-97-20-T. *Supra* note 211. ¶ 319; Prosecutor v. Jean de Dieu Kamuhanda. ICTR-95-54A-T. *Supra* note 200. ¶ 632; Prosecutor v. Gaspard Kanyarukiga. ICTR-2002-78-T. *Supra* note 187. ¶ 637; Prosecutor v. Il-

Convention, as well as in Customary International Law, means, exclusively, the physical or biological destruction of a human group^{1597 1598} – through death or other destructive means.¹⁵⁹⁹ The term excludes the possibility of *cultural genocide* or *sociological genocide*.^{1600 1601 1602 1603} Nevertheless, while attacks on cultural and religious symbols of the targeted group while such attacks “may not constitute underlying acts of genocide, they may be considered evidence of intent to physically destroy the group.”^{1604 1605} For the ICTR Trial Chamber, in *Prosecutor v. Jean Mpambara*, “the commission of even a single instance of one of the prohibited acts is sufficient [to prove genocide], provided that the accused genuinely intends by that act to destroy at least a substantial part of the group.”¹⁶⁰⁶

3.1.3.2. *Causing serious bodily or mental harm to members of the group*

Although directly killing persons through the immediate cessation of human life – the complete failure of the neuronal and cardiorespiratory functions – may represent the most precise method of committing genocide,

dephonse Hategekimana. ICTR-00-55B-T. *Supra* note 197. ¶ 687; *Prosecutor v. Édouard Karemera et al.* ICTR-98-44-T. *Supra* note 172. ¶ 1608.

¹⁵⁹⁶ *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶ 689; *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-T. *Supra* note 153. ¶ 736; *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 542.

¹⁵⁹⁷ *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 657.

¹⁵⁹⁸ See also: *Prosecutor v. Laurent Semanza*. ICTR-97-20-T. *Supra* note 211. ¶ 315; *Prosecutor v. Mikaeli Muhimana*. ICTR-95-1B-T. *Supra* note 214. ¶ 497.

¹⁵⁹⁹ *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 666; *Prosecutor v. Momčilo Krajišnik*. IT-00-39-T. *Supra* note 121. ¶ 854.

¹⁶⁰⁰ *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 822. See also: *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 658; *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 553.

¹⁶⁰¹ “The (International Court of Justice) notes that the travaux préparatoires of the Convention show that the drafters originally envisaged two types of genocide, physical or biological genocide, and cultural genocide, but that this latter concept was eventually dropped in this context.” (*Croatia v. Serbia*. I.C.J. 3. *Supra* note 73. ¶ 136).

¹⁶⁰² See also: *Prosecutor v. Jean-Paul Akayesu*. ICTR-96-4-T. *Supra* note 203. ¶ 500; *Prosecutor v. Juvénal Kajelijeli*. ICTR-98-44A-T. *Supra* note 207. ¶ 813; *Prosecutor v. Mikaeli Muhimana*. ICTR-95-1B-T. *Supra* note 214. ¶ 497.

¹⁶⁰³ See also: Robert Cryer, Håkan Friman, Darryl Robinson & Elizabeth Wilmshurst. *Supra* note 21. p. 179.

¹⁶⁰⁴ *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 553.

¹⁶⁰⁵ See also: *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 822.

¹⁶⁰⁶ *Prosecutor v. Jean Mpambara*. ICTR-01-65-T. *Supra* note 202. ¶ 8.

serious bodily or mental harm may also constitute genocide when committed with genocidal intent against protected groups.^{1607 1608} Serious harm has been constructed as a genocidal act in which the perpetrator inflicts on the victim either physical injury (*bodily harm*) or “some type of impairment of mental faculties” (*mental harm*) with the intent to destroy a national, ethnical, racial or religious group as such, in whole or in part.¹⁶⁰⁹

The determination of what constitutes *harm* and *serious* depends on each case’s particular circumstances, using a *common-sense* approach.^{1610 1611} To establish the *mens rea* for the underlying offense, the threshold of such determination requires that the acts that cause bodily or mental harm must be inflicted intentionally and be of a serious nature sufficient to threaten the destruction of the targeted group *in whole or in part*.^{1612 1613} Importantly, this determination does not require proof of a result.¹⁶¹⁴

In *Prosecutor v. Sylvestre Gacumbitsi* and in *Prosecutor v. Vidoje Blagojević, Dragan Jokić*, the ICTR, and the ICTY, respectively, specified that the harm need not be permanent or irremediable.¹⁶¹⁵ However, a serious bodily or mental harm to suffice an accusation on counts of genocide must result “in a grave and long-term disadvantage to a person’s ability to lead a normal and constructive life,” such as those that cause “disfigurement or causes

¹⁶⁰⁷ *Prosecutor v. Jean-Paul Akayesu*. ICTR-96-4-T. *Supra* note 203. ¶¶ 502, 504; *Prosecutor v. Jean-Baptiste Gatete*. ICTR-2000-61-T. *Supra* note 195. ¶ 584; *Prosecutor v. Augustin Ndindiliyimana et al.* ICTR-00-56-T. *Supra* note 163. ¶ 2075.

¹⁶⁰⁸ U.N. Doc. A/CN.4/SER.A/1996/Add.I (Part 2) (1996). p. 46, ¶ 15.

¹⁶⁰⁹ *Prosecutor v. Jean de Dieu Kamuhanda*. ICTR-95-54A-T. *Supra* note 200. ¶ 633.

¹⁶¹⁰ *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 811; *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-T. *Supra* note 153. ¶ 738; *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 545.

¹⁶¹¹ *Prosecutor v. Clément Kayishema and Ruzindana*. ICTR 95-1-T. *Supra* note 209. ¶¶ 108, 110, 113; *Prosecutor v. Jean de Dieu Kamuhanda*. ICTR-95-54A-T. *Supra* note 200. ¶ 634.

¹⁶¹² *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶ 690; *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 811; *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-T. *Supra* note 153. ¶ 738; *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 544.

¹⁶¹³ *Prosecutor v. Laurent Semanza*. ICTR-97-20-T. *Supra* note 211. ¶ 323; *Prosecutor v. Jean de Dieu Kamuhanda*. ICTR-95-54A-T. *Supra* note 200. ¶ 633; *Prosecutor v. Gaspard Kanyarukiga*. ICTR-2002-78-T. *Supra* note 187. ¶ 637; *Prosecutor v. Jean-Baptiste Gatete*. ICTR-2000-61-T. *Supra* note 195. ¶ 584; *Prosecutor v. Grégoire Ndhimana*. ICTR-01-68-T. *Supra* note 191. ¶ 805; *Prosecutor v. Édouard Karemera et al.* ICTR-98-44-T. *Supra* note 172. ¶ 1609.

¹⁶¹⁴ *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 811.

¹⁶¹⁵ *Prosecutor v. Sylvestre Gacumbitsi*. ICTR-2001-64-T. *Supra* note 228. ¶ 291; *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 645.

any serious injury to the external, internal organs or senses.”¹⁶¹⁶ In this vein, the bodily or the mental harm perpetrated on members of a group must be serious enough “as to threaten its destruction in whole or in part.”¹⁶¹⁷ In *Prosecutor v. Augustin Ndindiliyimana, Augustin Bizimungu, and François-Xavier Nzuwonemeye*, the ICTR established that torture and other serious physical violence, as well as sexual violence and rape, may constitute serious bodily or mental harm for the effects of accountability for genocide crimes.^{1618 1619 1620}

In the international criminal case-law, serious bodily harm is referred to as 1) acts “so violent or of such intensity that they immediately cause the malfunctioning of one or many essential mechanisms of the human body;” 2) acts that have an “impact on one or more elements of the human structure, which disables the organs of the body and prevents them from functioning as normal;” or 3) acts that handicap the victims making them “unable to be a socially useful unit or a socially existent unit of the group.”¹⁶²¹ The harm caused by these acts “need not bring about death.”¹⁶²²

¹⁶¹⁶ *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 645.

¹⁶¹⁷ U.N. Doc. A/51/10 (May 6, 1996 – July 26, 1996), p. 46. ¶ 14.

¹⁶¹⁸ *Prosecutor v. Augustin Ndindiliyimana et al.* ICTR-00-56-T. *Supra* note 163. ¶ 2075.

¹⁶¹⁹ In *Croatia v. Serbia*, the parties disagreed “on whether causing serious bodily or mental harm to members of the group must contribute to the destruction of the group, in whole or in part, in order to constitute the actus reus of genocide for purposes of Article II (b) of the Convention.” Croatia argued that “there is no need to show that the harm itself contributed to the destruction of the group.” On the other hand, Serbia contended that the harm “must be so serious that it threatens the group with destruction.” Then, the ICJ considered that, in the context of Genocide Convention, article II, *caput*, and considering the Convention’s object and purpose, “the ordinary meaning of ‘serious’ is that the bodily or mental harm referred to in subparagraph (b) of that Article must be such as to contribute to the physical or biological destruction of the group, in whole or in part.” (*Croatia v. Serbia*. I.C.J. 3. *Supra* note 73. ¶ 157.

¹⁶²⁰ For the ICTY Trial Chamber, in *Krajišnik*, the scope and meaning of the condition of “causing serious bodily” is “somewhat open to interpretation, but a fair and consistent construction of this clause alongside the four other types of actus reus is that, in order to pass as the actus reus of genocide under (ii), the act must inflict such “harm” as to contribute, or tend to contribute, to the destruction of the group or part thereof. Harm amounting to “a grave and long-term disadvantage to a person’s ability to lead a normal and constructive life” has been said to be sufficient for this purpose.” (*Prosecutor v. Momčilo Krajišnik*. IT-00-39-T. *Supra* note 121. ¶ 862).

¹⁶²¹ *Prosecutor v. Clément Kayishema and Ruzindana*. ICTR 95-1-T. *Supra* note 209. ¶ 107.

¹⁶²² *Ibid.*

The scope of actions which may constitute serious bodily or mental harm depends on the circumstances of each case (case-by-case basis).^{1623 1624 1625 1626 1627} However, the perpetration of certain conducts strongly suggests the infliction of such serious bodily or mental harm as a genocidal act. For instance: 1) torture, inhumane or degrading treatment; 2) rape and other forms of sexual violence; 3) interrogations combined with beatings; 4) inflicting intense fear or terror, intimidation or threat, such as threats of death; 5) harm that causes serious damage, deformity, malfunctioning, extensive injury or impairment of the body senses or the body external or internal organs; 6) the fear of being captured; 7) confiscation of identification documents; 8) systematic expulsion from homes; 9) separation/forcibly transference of the women, children, and elderly people; 10) imposition of inhumane living conditions; 11) forced labor, excessive work, or physical exertion; 12) failure to provide adequate accommodation/shelter/housing; 13) failure to provide food and water; 14) lack

¹⁶²³ Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 545, 2586.

¹⁶²⁴ Prosecutor v. Clément Kayishema and Ruzindana. ICTR 95-1-T. *Supra* note 209. ¶ 110; Prosecutor v. Sylvestre Gacumbitsi. ICTR-2001-64-T. *Supra* note 228. ¶ 291; Prosecutor v. Mikaeli Muhimana. ICTR-95-1B-T. *Supra* note 214. ¶ 502; Prosecutor v. Théoneste Bagosora *et al.* ICTR-98-41-T. *Supra* note 234. ¶ 2117; Prosecutor v. Callixte Kalimanzira. ICTR-05-88-T. *Supra* note 166. ¶ 159; Prosecutor v. Tharcisse Renzaho. ICTR-97-31-T. *Supra* note 232. ¶ 762; Prosecutor v. Gaspard Kanyarukiga. ICTR-2002-78-T. *Supra* note 187. ¶ 637.

¹⁶²⁵ The jurisprudence of International Criminal Law considers that serious mental harm refers to “more than minor or temporary impairment of mental faculties.” (Prosecutor v. Augustin Ndindiliyimana *et al.* ICTR-00-56-T. *Supra* note 163. ¶ 2075).

¹⁶²⁶ Importantly, in the Eichmann case, the District Court of Jerusalem considered that serious bodily or mental harm of members of the group can be caused “by the enslavement, starvation, deportation and persecution [...] and by their detention in ghettos, transit camps and concentration camps in conditions which were designed to cause their degradation, deprivation of their rights as human beings, and to suppress them and cause them inhumane suffering and torture.” (Eichmann case *apud* Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 503).

¹⁶²⁷ For the ICTY Trial Chamber, in *Tolimir*, “the determination of the seriousness of the bodily or mental harm inflicted on members of a group must be made on a case-by-case basis, with appropriate consideration given to the particular circumstances of each case.” For the Chamber, “the harm must be of such a serious nature as to contribute or tend to contribute to the destruction of all or part of the group; although it need not be permanent or irreversible, it must go ‘beyond temporary unhappiness, embarrassment or humiliation’ and inflict ‘grave and long-term disadvantage to a person’s ability to lead a normal and constructive life.’” (Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 738).

of clothing; 15) failure to provide medical care; 16) failure to provide hygienic sanitation facilities; 17) persecution; 18) deportation; 19) mutilation; and 20) other “serious acts of physical violence falling short of killing that seriously injure the health, cause disfigurement, or cause any serious injury to the external or internal organs or senses (to members of the targeted national, ethnical, racial or religious group).”^{1628 1629}

The *seriousness* of such (bodily and mental) *harm* is not assessed based on their capability of being permanent or irremediable.¹⁶³⁰ It suffices that the *harm* is serious enough to go “beyond temporary unhappiness, embarrassment or humiliation.”^{1631 1632} Accordingly, the bodily harm inflicted on

¹⁶²⁸ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 690; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶¶ 645, 647, 652; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶¶ 812, 815, 992; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 737; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 545; Prosecutor v. Ratko Mladić., IT-09-92-T, vol. 3. *Supra* note 137. ¶ 3453.

¹⁶²⁹ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 504; Prosecutor v. Clément Kayishema and Ruzindana. ICTR 95-1-T. *Supra* note 209. ¶¶ 108-111; Prosecutor v. Musema. ICTR-96-13-A. *Supra* note 216. ¶ 156; Prosecutor v. Jean de Dieu Kamuhanda. ICTR-95-54A-T. *Supra* note 200. ¶ 634; Prosecutor v. Sylvestre Gacumbitsi. ICTR-2001-64-T. *Supra* note 228. ¶¶ 29, 291; Prosecutor v. Mikaeli Muhimana. ICTR-95-1B-T. *Supra* note 214. ¶ 502; Prosecutor v. Théoneste Bagosora *et al.* ICTR-98-41-T. *Supra* note 234. ¶ 2117; Prosecutor v. Callixte Kalimanzira. ICTR-05-88-T. *Supra* note 166. ¶ 159; Prosecutor v. Tharcisse Renzaho. ICTR-97-31-T. *Supra* note 232. ¶ 762; Prosecutor v. Dominique Ntawukulilyayo. ICTR-05-82-T. *Supra* note 170. ¶ 452; Prosecutor v. Gaspard Kanyarukiga. ICTR-2002-78-T. *Supra* note 187. ¶ 637; Prosecutor v. Jean-Baptiste Gatete. ICTR-2000-61-T. *Supra* note 195. ¶ 584; Prosecutor v. Augustin Ndindiliyimana *et al.* ICTR-00-56-T. *Supra* note 163. ¶ 2075; Prosecutor v. Grégoire Ndahimana. ICTR-01-68-T. *Supra* note 191. ¶ 805; Prosecutor v. Édouard Karemera *et al.* ICTR-98-44-T. *Supra* note 172. ¶ 1609.

¹⁶³⁰ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 502; Prosecutor v. Clément Kayishema and Ruzindana. ICTR 95-1-T. *Supra* note 209. ¶¶ 108, 110; Prosecutor v. Musema. ICTR-96-13-A. *Supra* note 216. ¶ 156; Prosecutor v. Jean de Dieu Kamuhanda. ICTR-95-54A-T. *Supra* note 200. ¶ 634; Prosecutor v. Sylvestre Gacumbitsi. ICTR-2001-64-T. *Supra* note 228. ¶ 291; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 690; Prosecutor v. Mikaeli Muhimana. ICTR-95-1B-T. *Supra* note 214. ¶ 502; Prosecutor v. Théoneste Bagosora *et al.* ICTR-98-41-T. *Supra* note 234. ¶ 2117; Prosecutor v. Callixte Kalimanzira. ICTR-05-88-T. *Supra* note 166. ¶ 159; Prosecutor v. Tharcisse Renzaho. ICTR-97-31-T. *Supra* note 232. ¶ 762; Prosecutor v. Dominique Ntawukulilyayo. ICTR-05-82-T. *Supra* note 170. ¶ 452; Prosecutor v. Augustin Ndindiliyimana *et al.* ICTR-00-56-T. *Supra* note 163. ¶ 2075.

¹⁶³¹ Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 811.

¹⁶³² See also: Prosecutor v. Clément Kayishema and Ruzindana. ICTR 95-1-T. *Supra* note 209. ¶ 107; Prosecutor v. Jean de Dieu Kamuhanda. ICTR-95-54A-T. *Supra* note 200.

the victim need not be irreversible,^{1633 1634} but must impose a long-lasting impact on the victims' ability to lead a normal and constructive life."¹⁶³⁵ Consequentially, even when the genocidal methods chosen by the perpetrator are inefficient or do not bring a *de facto* destruction of the group, such fact does not preclude a finding of genocidal intent.¹⁶³⁶

3.1.3.3. *Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part*

Genocide can also be perpetrated by *inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part*.¹⁶³⁷ This refers to circumstances/conditions of life that do not immediately kill the members of a protected group but which purposefully will lead them to a slow death/physical destruction, in whole or in part.^{1638 1639} Examples of such conditions are abundant in international criminal case law: lack of proper housing/accommodation for a reasonable period, systematic expulsion of persons from their homes, resettlement, lack of clothing, lack of hygiene, reducing required medical services and essential medical supplies below a minimum, excessive work or physical exertion, rape, the contamination of water pumps, the starving of a group of people or subjecting a group of people to a subsistence diet.^{1640 1641 1642}

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- ¶ 634; Prosecutor v. Jean-Baptiste Gatete. ICTR-2000-61-T. *Supra* note 195. ¶ 584; Prosecutor v. Grégoire Ndahimana. ICTR-01-68-T. *Supra* note 191. ¶ 805; Prosecutor v. Édouard Karemera *et al.* ICTR-98-44-T. *Supra* note 172. ¶ 1609.
- ¹⁶³³ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 690; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 811; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 738; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 543.
- ¹⁶³⁴ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 502; Prosecutor v. Laurent Semanza. ICTR-97-20-T. *Supra* note 211. ¶¶ 320, 322; Prosecutor v. Édouard Karemera *et al.* ICTR-98-44-T. *Supra* note 172. ¶ 1609.
- ¹⁶³⁵ Prosecutor v. Zdravko Tolimir. IT-05-88/2-A. *Supra* note 152. ¶ 207.
- ¹⁶³⁶ Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 522; Prosecutor v. Radislav Krstić. IT-98-33-A. *Supra* note 129. ¶ 32.
- ¹⁶³⁷ Prosecutor v. Kayishema and Ruzindana. ICTR 95-1-T. *Supra* note 209. ¶ 115.
- ¹⁶³⁸ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 505; Prosecutor v. Kayishema and Ruzindana. ICTR 95-1-T. *Supra* note 209. ¶¶ 115, 116; Prosecutor v. Musema. ICTR-96-13-A. *Supra* note 216. ¶ 157; Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 518; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 741; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 546.
- ¹⁶³⁹ Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 814.

Customary international law does not require proof that a result – the destruction of the group – was accomplished.¹⁶⁴³ This consideration means that international criminal tribunals do not require proof that the methods of destruction “actually led to death or serious bodily or mental harm of members of the protected group.”¹⁶⁴⁴ In practice, when direct evidence of “whether the conditions of life imposed on the group were deliberately calculated to bring about its physical destruction” is lacking, a trial chamber “can be guided by the objective probability of these conditions leading to the physical destruction of the group in part.”^{1645 1646}

3.1.3.4. *Imposing measures intended to prevent births within the group*

International Criminal Law jurisprudence does not require that the perpetrator chooses the most efficient method to accomplish their objective of destroying the targeted part.¹⁶⁴⁷ According to ICTR’s *Prosecutor v. Clément Kayishema et al* rationale, the perpetrator needs not to choose a “persistent pattern of conduct” in their genocidal acts.¹⁶⁴⁸ So, for instance, *imposing measures intended to prevent births within the group* constitutes a *slow method* of destroying a group as opposed to a *more efficient* method of destruction. In *Prosecutor v. Radovan Karadžić* and *Prosecutor v. Zdravko Tolimir*, the ICTY defined that *slow death* methods are those that do not immediately kill the members of the groups but which, ultimately, seek to cause serious bodily or mental harm and final physical destruction.^{1649 1650 1651}

¹⁶⁴⁰ *Prosecutor v. Jean-Paul Akayesu*. ICTR-96-4-T. *Supra* note 203. ¶ 506; *Prosecutor v. Kayishema and Ruzindana*. ICTR 95-1-T. *Supra* note 209. ¶¶ 115–116; *Prosecutor v. Musema*. ICTR-96-13-A. *Supra* note 216. ¶ 157.

¹⁶⁴¹ *Prosecutor v. Omar Hassan Ahmad Al Bashir*. ICC-02/05-01/09. *Supra* note 289. ¶ 38.

¹⁶⁴² *Prosecutor v. Milomir Stakić*. IT-97-24-T. *Supra* note 109. ¶ 517; *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶ 691; *Prosecutor v. Vujadin Popović et al*. IT-05-88-T. *Supra* note 150. ¶ 815; *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-T. *Supra* note 153. ¶ 740; *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 547.

¹⁶⁴³ *Prosecutor v. Milomir Stakić*. IT-97-24-T. *Supra* note 109. ¶ 517; *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶ 691; *Prosecutor v. Vujadin Popović et al*. IT-05-88-T. *Supra* note 150. ¶ 814; *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-T. *Supra* note 153. ¶ 741; *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 546.

¹⁶⁴⁴ *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 546.

¹⁶⁴⁵ *Idem*. ¶ 548.

¹⁶⁴⁶ See also: *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-T. *Supra* note 153. ¶ 742.

¹⁶⁴⁷ *Prosecutor v. Radislav Krstić*. IT-98-33-A. *Supra* note 129. ¶ 32.

¹⁶⁴⁸ *Prosecutor v. Clément Kayishema et al*. ICTR-95-1-A. *Supra* note 210. ¶ 163.

In *Prosecutor v. Athanase Seromba*, the ITCR's Appeals Chamber recalled that, in the context of genocide, "direct and physical perpetration is not limited to direct physical killing" and that "other acts can constitute direct participation in the *actus reus* of the crime."¹⁶⁵² Therefore, the act of *imposing measures intended to prevent births within the group* may be constructed as including not only physical acts but also mental ones.^{1653 1654} Examples of such punishable methods under the Genocide Convention abound once it establishes a *numerus apertus* list.¹⁶⁵⁵ In *Prosecutor v. Zdravko Tolimir*, the ICTY conceived that the determination of the seriousness of the *harm* – or the determination of the efficiency of the destruction method – is always made on a case-by-case basis.¹⁶⁵⁶ They may include, for example, using persons as human shields, the forcible transfer of children, the recruitment and use of children of a protected group, providing the victims extremely insufficient food, poisoned food, severely insufficient water for drinking and personal hygiene, rape, sexual mutilation, the practice of enforced sterilization, forced birth control, forced separation of males and females, prohibition of marriages, and forceful procreation/impregnation.^{1657 1658 1659}

¹⁶⁴⁹ Please refer to: *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-A. *Supra* note 152. ¶ 203. See also: ¶ 225

¹⁶⁵⁰ For the ICTY jurisprudence, serious bodily or mental harm "must be of such a serious nature as to contribute or tend to contribute to the destruction of all or part of the group." Although it "need not be permanent or irreversible, it must go beyond temporary unhappiness, embarrassment or humiliation and inflict "grave and long-term disadvantage to a person's ability to lead a normal and constructive life." (*Idem*. ¶ 201).

¹⁶⁵¹ See also: *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T. *Supra* note 134. ¶ 2586.

¹⁶⁵² *Prosecutor v. Athanase Seromba*. ICTR-2001-66-A. *Supra* note 161. ¶ 161.

¹⁶⁵³ *Prosecutor v. Jean-Paul Akayesu*. ICTR-96-4-T. *Supra* note 203. ¶ 508; *Prosecutor v. Musema*. ICTR-96-13-A. *Supra* note 216. ¶ 158.

¹⁶⁵⁴ *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 818; *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-T. *Supra* note 153. ¶ 743.

¹⁶⁵⁵ These conducts include, *inter alia*, "subjecting the group to a subsistence diet; failing to provide adequate medical care; systematically expelling members of the group from their homes; and generally creating circumstances that would lead to a slow death such as the lack of proper food, water, shelter, clothing, sanitation, or subjecting members of the group to excessive work or physical exertion." (*Prosecutor v. Zdravko Tolimir*. IT-05-88/2-A. *Supra* note 152. ¶ 225).

¹⁶⁵⁶ *Idem*. ¶ 201.

¹⁶⁵⁷ *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶ 691; *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 665; *Prosecutor v. Momčilo Krajišnik*. IT-00-39-T. *Supra* note 121. ¶ 854; *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-T. *Supra* note 153. ¶ 743; *Prosecutor v. Zdravko Tolimir*. IT-05-

In *Prosecutor v. Radovan Karadžić*, the ICTY considered that intentionally subjecting persons to rape and other acts of sexual violence, in virtue of being part of a protected group, as such, could cause profound mental or physical suffering or injury, one of the elements of the crime of genocide.¹⁶⁶⁰ In *Prosecutor v. Jean-Paul Akayesu*, the ICTR explicitly considered the possibility of sexual crimes to constitute genocide.¹⁶⁶¹ In *Édouard Karemera et al. v. Prosecutor*, the ITCR's Appeals Chamber went even further in considering that when genocidal crimes of a sexual nature "are allegedly perpetrated by subordinates in multiple locations, an indication of location is not always possible."¹⁶⁶² The Court, therefore, established that, in the circumstances like these, an indictment is not defective when it "fails to specify the exact location and dates of the rapes and sexual assaults."^{1663 1664}

3.1.3.5. Is a genocidal plan or policy required?

The jurisprudence of international *ad hoc* criminal courts has repeatedly recognized that the existence of a genocidal plan is not an element required for a conviction for genocide.^{1665 1666} In *Siméon Nchamihigo v. Prosecutor*,¹⁶⁶⁷ *Prosecutor v. Clément Kayishema et al.*,¹⁶⁶⁸ *Prosecutor v. Vujadin Popović et*

88/2-A. *Supra* note 152. ¶ 225; *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T. *Supra* note 134. ¶ 447.

¹⁶⁵⁸ *Prosecutor v. Clément Kayishema and Ruzindana*. ICTR 95-1-T. *Supra* note 209. ¶ 117; *Prosecutor v. Musema*. ICTR-96-13-A. *Supra* note 216. ¶ 158.

¹⁶⁵⁹ Forceful procreation is constituted when female victims of genocide are impregnated "by a man of another group [the perpetrator of genocide], with the intent to have her give birth to a child who will consequently not belong to its mother's group." (*Prosecutor v. Jean-Paul Akayesu*. ICTR-96-4-T. *Supra* note 203. ¶¶ 507-508).

¹⁶⁶⁰ *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T. *Supra* note 134. ¶¶ 2500, 2501, 2581.

¹⁶⁶¹ *Prosecutor v. Jean-Paul Akayesu*. ICTR-96-4-T. *Supra* note 203. *passim*; *Prosecutor v. Jean-Paul Akayesu*. ICTR-96-4-A. *Supra* note 204. *passim*.

¹⁶⁶² *Édouard Karemera et al v. Prosecutor*. ICTR-98-44-A. *Supra* note 173. ¶ 594.

¹⁶⁶³ *Ibidem*.

¹⁶⁶⁴ "The Appeals Chamber is not convinced that the Indictment is defective in failing to specify the exact location and dates of the rapes and sexual assaults for which Karemera and Ngirumpatse were convicted. (...) Where crimes are alleged to have been perpetrated by subordinates in multiple locations, indication of location is not always possible." (*Ibidem*.)

¹⁶⁶⁵ Aloys Simba v. Prosecutor. ICTR-01-76-A. *Supra* note 158. ¶ 260.

¹⁶⁶⁶ See also: Kai Ambos. *Supra* note 63. p. 17.

¹⁶⁶⁷ *Siméon Nchamihigo v. Prosecutor*. ICTR-2001-63-A. *Supra* note 225. ¶ 363.

¹⁶⁶⁸ *Prosecutor v. Clément Kayishema et al*. ICTR-95-1-A. *Supra* note 210. ¶¶ 94, 134, 138.

al.,¹⁶⁶⁹ *Prosecutor v. Goran Jelisić*,¹⁶⁷⁰ and *Prosecutor v. Goran Jelisić*,¹⁶⁷¹ both the ICTR and the ICTY repeated such *motto* – that, in the context of proving specific intent, premeditation, and a “high-level genocidal plan” are not required in order to convict an accused of genocide.^{1672 1673}

However, international criminal courts recognized that it would be hard to conceive that a genocidal enterprise could be made effective without the guidelines of such a plan or organization.¹⁶⁷⁴ Consequently, the existence of such a plan or policy may become a crucial element in order to constitute further evidence to support/facilitate proof of genocide.¹⁶⁷⁵ For instance, in *Prosecutor v. Radislav Krstić*, the ICTY Appeals Chamber stated that the definition of genocide in the Elements of Crimes adopted by the ICC “indicates clearly that genocide requires that ‘the conduct took place in the context of a manifest pattern of similar conduct.’”¹⁶⁷⁶ In *Prosecutor v. Goran Jelisić*, the ICTY Appeals Chamber considered that, in genocide cases, “the evidence may be consistent with the existence of a plan or policy, or may even show such existence, and the existence of a plan or policy may facilitate proof of the crime.”¹⁶⁷⁷

In *Prosecutor v. Fatmir Limaj et al.*¹⁶⁷⁸ and *Ferdinand Nahimana et al. v. Prosecutor*,¹⁶⁷⁹ the ICTY and the ICTR, respectively, defined “plan” as an intentional design of criminal conduct that will be perpetrated later in time. Such a *plan* may be constituted of a myriad of elements. In *Prosecutor v. Vujadin Popović et al.*, for example, the ICTY considered that “attacks on cul-

¹⁶⁶⁹ *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 830.

¹⁶⁷⁰ *Prosecutor v. Goran Jelisić.* IT-95-10-T. *Supra* note 97. ¶ 85.

¹⁶⁷¹ *Prosecutor v. Goran Jelisić.*, IT-95-10-A. *Supra* note 98. ¶ 48.

¹⁶⁷² *Prosecutor v. Kayishema and Ruzindana.* ICTR 95-1-T. *Supra* note 209. ¶ 91; *Prosecutor v. Goran Jelisić.* IT-95-10-T. *Supra* note 97. ¶ 85; *Prosecutor v. Vidoje Blagojević, Dragan Jokić.* IT-02-60-T. *Supra* note 147. ¶ 656; *Siméon Nchamihigo v. Prosecutor.* ICTR-2001-63-A. *Supra* note 225. ¶ 363; *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 830; *Prosecutor v. Vujadin Popović et al.* IT-05-88-A. *Supra* note 151. ¶¶ 435, 440.

¹⁶⁷³ The element of premeditation as a necessary condition for the perpetration of genocide was rejected during the *travaux préparatoires* of the Genocide Convention. (*Prosecutor v. Jean-Paul Akayesu.* ICTR-96-4-T. *Supra* note 203. ¶ 501).

¹⁶⁷⁴ *Prosecutor v. Kayishema and Ruzindana.* ICTR 95-1-T. *Supra* note 209. ¶ 94.

¹⁶⁷⁵ *Prosecutor v. Goran Jelisić.*, IT-95-10-A. *Supra* note 98. ¶ 48; *Prosecutor v. Vujadin Popović et al.* IT-05-88-A. *Supra* note 151. ¶ 435; *Prosecutor v. Radovan Karadžić.* IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 550.

¹⁶⁷⁶ *Prosecutor v. Radislav Krstić.* IT-98-33-A. *Supra* note 129. ¶ 224.

¹⁶⁷⁷ *Prosecutor v. Goran Jelisić.*, IT-95-10-A. *Supra* note 98. ¶ 48.

¹⁶⁷⁸ *Prosecutor v. Fatmir Limaj et al.* IT-03-66-T. *Supra* note 96. ¶ 513.

¹⁶⁷⁹ *Ferdinand Nahimana et al v. Prosecutor.* ICTR-99-52-A. *Supra* note 183. ¶ 479.

tural and religious property and symbols of the targeted group often occur alongside physical and biological destruction and may legitimately be considered as evidence of an intent to physically destroy the group.”¹⁶⁸⁰

In *Prosecutor v. Radovan Karadžić*, the court considered that the plan/policy of the burning of several mosques in Foča constituted a clear evidence of genocidal intent.¹⁶⁸¹ In *Prosecutor v. Goran Jelisić* and *Prosecutor v. Vidoje Blagojević, Dragan Jokić*, the ICTY also considered that the policy of grouping members of a protected group for their deliberate and systematic killing and subsequent piling of the bodies into mass graves could serve as an indication of genocide.¹⁶⁸² Also, in *Prosecutor v. Milomir Stakić*,¹⁶⁸³ the ICTY made considerations as to whether an allegation of systematic expulsion from homes could constitute part of a *plan* or *policy* to create circumstances that would lead to a slow death of persons in a protected group. In *Prosecutor v. Radovan Karadžić*, the court considered whether the complete perpetrator’s knowledge of the inability of victims from protected groups to reconstitute themselves would sustain an allegation of genocidal intent/genocidal plan.¹⁶⁸⁴

The strategy of making speeches via loudspeakers – or by other public means – to create fear and incite hatred against ethnic and or religious groups was proved as evidence of a genocide plan in *Prosecutor v. Radovan Karadžić* (ICTY)¹⁶⁸⁵ and *Prosecutor v. Vujadin Popović et al.* (ICTY).¹⁶⁸⁶ The court’s *rationale* in *Prosecutor v. Goran Jelisić* (ICTY) is that certain statements issued by alleged perpetrators of genocide have the potential to demonstrate 1) a “general context of public persecutions”¹⁶⁸⁷ and 2) full awareness of the discriminatory nature of biological/physical killing/destruction operations of persons belonging to a protected group.

3.1.4. Mens rea: Subjective elements

The most distinguishable, unique, specific, predominant characteristic of the crime of genocide is the *dollus specialis* – “specific intent” (*mens rea*)¹⁶⁸⁸ –,

¹⁶⁸⁰ *Prosecutor v. Vujadin Popović et al.* IT-05-88-A. *Supra* note 151. ¶ 822.

¹⁶⁸¹ *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T. *Supra* note 134. ¶¶ 925, 926.

¹⁶⁸² *Prosecutor v. Goran Jelisić*. IT-95-10-T. *Supra* note 97. ¶ 90; *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 674.

¹⁶⁸³ *Prosecutor v. Milomir Stakić*. IT-97-24-T. *Supra* note 109. ¶ 517.

¹⁶⁸⁴ *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T. *Supra* note 134. ¶¶ 920, 2589.

¹⁶⁸⁵ *Idem*. ¶¶ 983, 2598.

¹⁶⁸⁶ *Prosecutor v. Vujadin Popović et al.* IT-05-88-A. *Supra* note 151. ¶ 1318.

¹⁶⁸⁷ *Prosecutor v. Goran Jelisić*. IT-95-10-T. *Supra* note 97. ¶ 73.

present at the moment of the commission of the criminal act.^{1689 1690} Therefore, the *intent* is a constitutive element of the crime, which requires evidence beyond a reasonable doubt that the genocide perpetrator sought to execute the act for which he was charged (proof of the mental state).^{1691 1692}

The intent refers to the deliberate will to commit the underlying legal acts of physically destroying, in whole or in part, protected groups of people, as *such* – a national, ethnic, racial, or religious group (*actus reus*).¹⁶⁹³ It is this very aim intended by the perpetrator, rather than the “actual physical destruction,” that suffices the legal requirements of the crime of genocide.¹⁶⁹⁴ Unlike crimes such as murder and persecution *per se*, the ultimate victim of genocide is always a distinct group protected by International Criminal Law rather than the individuals who are a part of such a group.^{1695 1695}

¹⁶⁸⁸ “The *mens rea* required for the crime of genocide—intent to destroy, in whole or in part, a national, ethnical, racial or religious group” (...) has been referred to variously as, for instance, special intent, specific intent, *dolus specialis*, particular intent and genocidal intent” and they may be used interchangeably. (Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 520); (Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 549).

¹⁶⁸⁹ Prosecutor v. Jean Kambanda. ICTR-97-23. *Supra* note 199. ¶ 16; Prosecutor v. Zdravko Tolimir. IT-05-88/2-A. *Supra* note 152. ¶ 564.

¹⁶⁹⁰ “Insofar as Tolimir suggests that *ex post facto* evidence cannot support an inference of genocidal intent, the Appeals Chamber reiterates that, as a general principle, it is not an error of law to rely on material originating from outside the time period of the Indictment, so long as it has probative value.” (Prosecutor v. Zdravko Tolimir. IT-05-88/2-A. *Supra* note 152. ¶ 569).

¹⁶⁹¹ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 498.

¹⁶⁹² Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 520; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 823; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 744; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 549.

¹⁶⁹³ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 498; Prosecutor v. Kayishema and Ruzindana. ICTR 95-1-T. *Supra* note 209. ¶ 91; Prosecutor v. Musema. ICTR-96-13-A. *Supra* note 216. ¶ 164; Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶¶ 520–522; Prosecutor v. Radislav Krstić. IT-98-33-A. *Supra* note 129. ¶ 8; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 851; Prosecutor v. Ephrem Setako. ICTR-04-81-T. *Supra* note 181. ¶ 466; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶¶ 817, 820; Prosecutor v. Dominique Ntawukulilyayo. ICTR-05-82-T. *Supra* note 170. ¶ 452; Prosecutor v. Jean-Baptiste Gatete. ICTR-2000-61-T. *Supra* note 195. ¶ 582; Prosecutor v. Augustin Ndindiliyimana *et al.* ICTR-00-56-T. *Supra* note 163. ¶¶ 2072, 2074; Prosecutor v. Zdravko Tolimir. IT-05-88/2-A. *Supra* note 152. ¶ 246.

¹⁶⁹⁴ Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 522; Prosecutor v. Slobodan Milošević. IT-02-54-T. *Supra* note 139. ¶ 126.

Intent, then, means, in practice, that the acts of the accused against a national, ethnical, racial, or religious group are not accidental or consequential of negligence.^{1697 1698} The accused must have committed the prohibited acts with a “particular state of mind,”¹⁶⁹⁹ in a “conscious, intentional or volitional” fashion,¹⁷⁰⁰ with proved evidence of knowledge that their actions can (and will) cause the destruction of a separate, distinct group protected by international law, in whole or in part, *as such*.¹⁷⁰¹

The expression “as such” in this context reveals the *dollus specialis* – surplus of intent – of the perpetrator as a critical element for the crime of genocide.^{1702 1703 1704 1705 1706} This means that the persons targeted by the per-

¹⁶⁹⁵ Prosecutor v. Kayishema and Ruzindana. ICTR 95-1-T. *Supra* note 209. ¶ 98; Prosecutor v. Musema. ICTR-96-13-A. *Supra* note 216. ¶ 165; Prosecutor v. François Karera. ICTR-01-74-T. *Supra* note 184. ¶ 534.

¹⁶⁹⁶ This specific intent “is what differentiates genocide from the crime against humanity of persecution. Even though they both have discriminatory elements, some of which are common to both crimes, in the case of persecution, the perpetrator commits crimes against individuals, on political, racial or religious grounds. It is this factor that establishes a demarcation between genocide and most cases of ethnic cleansing.” (Prosecutor v. Duško Sikirica *et al.* IT-95-8-T. *Supra* note 88. ¶ 89).

¹⁶⁹⁷ Prosecutor v. Mikaeli Muhimana. ICTR-95-1B-T. *Supra* note 214. ¶ 495.

¹⁶⁹⁸ U.N. Doc. A/CN.4/SER.A/1996/Add.1 (Part 2) (1996). p. 44, ¶¶ 4, 5.

¹⁶⁹⁹ *Idem*. p. 44. ¶ 5.

¹⁷⁰⁰ *Ibidem*.

¹⁷⁰¹ Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 670.

¹⁷⁰² Prosecutor v. Radislav Krstić., IT-98-33-T. *Supra* note 128. ¶ 551; Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 520; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 698; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 670; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 821; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 551.

¹⁷⁰³ Prosecutor v. Musema. ICTR-96-13-A. *Supra* note 216. ¶ 166.

¹⁷⁰⁴ Bosnia and Herzegovina v. Serbia and Montenegro. I.C.J. 43. *Supra* note 71. ¶ 187.

¹⁷⁰⁵ U.N. Doc. A/51/10 (May 6, 1996 – July 26, 1996). p. 45. ¶ 7.

¹⁷⁰⁶ In *Niyitegeka*, the ICTR Appeals Chamber considered that the term *as such*, “constituted an important element of genocide, the crime of crimes.” For the Court, “the expression *as such* was deliberately included by the authors of the Genocide Convention in order to reconcile the two diverging approaches in favour of and against including a motivational component as an additional element of the crime.” The term *as such* “has the *effet utile* of drawing a clear distinction between mass murder and crimes in which the perpetrator targets a specific group because of its nationality, race, ethnicity or religion.” In other words, the Appeals Chamber recognized that the term *as such* “clarifies the specific intent requirement. It does not prohibit a conviction for genocide in a case in which the perpetrator was also

perpetrator are not randomly/accidentally attacked but rather chosen exclusively because of their membership in a group.^{1707 1708} According to Professor Kai Ambos, the Article 30 of the Rome Statute¹⁷⁰⁹ prescribes the general rule in International Criminal Law for the *mens rea*.¹⁷¹⁰ It requires that the acts of the accused (*actus reus*) are committed under a specific mental state that can be divided into *cognitive knowledge* [Article 30 (2)(b), (3)], and *volitional will* [Article 30 (2)(a)].¹⁷¹¹

In the term *as such* resides the crucial differentiation between genocide and the crime against humanity of persecution.¹⁷¹² Both crimes are committed on a discriminatory basis. Still, while the perpetrator of persecution targets *individuals* because of their affiliation with a racial or religious group, for example, the perpetrator of genocide necessarily intends to destroy the group itself and to destroy the very right of existence of that group as an autonomous entity.^{1713 1714}

Determining that the perpetrator specifically and purposefully intended the result of their action – specific *cognitive* genocidal intent –¹⁷¹⁵ is often impossible. This is so due to two main reasons: 1) The intent is founded on the mental state of the perpetrator of genocide¹⁷¹⁶ – the “psychological nexus between the physical result and the mental state of the perpetrator.”¹⁷¹⁷ Only the perpetrator himself has first-hand [*cognitive*] knowledge of his own mental state, and he is unlikely to testify to his own

driven by other motivations that are legally irrelevant in this context.” (Eliézer Niyitegeka v. Prosecutor. ICTR-96-14-A. *Supra* note 174. ¶ 53).

¹⁷⁰⁷ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 498; Prosecutor v. Duško Sikirica *et al.* IT-95-8-T. *Supra* note 88. ¶ 89; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 669.

¹⁷⁰⁸ United Nation, Report of the Commission to the General Assembly on the work of its forty-eighth session, Yearbook of the International Law Commission, Vol. II, U.N. Doc. A/CN.4/SER.A/1996/Add.I (Part 2) (1996). p. 45, ¶ 7.

¹⁷⁰⁹ United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544.

¹⁷¹⁰ Kai Ambos. *Supra* note 30. p. 266.

¹⁷¹¹ *Idem.* pp. 18, 24, 269.

¹⁷¹² Prosecutor v. Duško Sikirica *et al.* IT-95-8-T. *Supra* note 87. ¶ 89.

¹⁷¹³ Prosecutor v. Radislav Krstić., IT-98-33-T. *Supra* note 128. ¶ 553; Prosecutor v. Duško Sikirica *et al.* IT-95-8-T. *Supra* note 87. ¶ 89; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 699; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 746; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 551.

¹⁷¹⁴ Prosecutor v. Clément Kayishema and Ruzindana. ICTR 95-1-T. *Supra* note 209. ¶ 89.

¹⁷¹⁵ Prosecutor v. Musema. ICTR-96-13-A. *Supra* note 216. ¶ 164.

¹⁷¹⁶ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 523.

¹⁷¹⁷ Prosecutor v. Musema. ICTR-96-13-A. *Supra* note 216. ¶ 166.

genocidal intent;”¹⁷¹⁸ 1719 2) It must be proved that the *mens rea* was formed prior to the commission of the genocidal acts.¹⁷²⁰ Unveiling this perpetrator’s *particular intent* to destroy a protected group *as such* is judicially challenging, as the ICTY well recognized in *Prosecutor v. Vujadin Popović et al.*,¹⁷²¹ *Prosecutor v. Milomir Stakić*¹⁷²², and *Prosecutor v. Goran Jelisić*.¹⁷²³

The U.N. International Law Commission considered that the extent of such *cognitive* knowledge “of the details of a plan or a policy to carry out the crime of genocide” may “vary depending on the position of the perpetrator in the governmental hierarchy or the military command structure.”¹⁷²⁴ In practice, this means that the perpetrator need not have a full “knowledge of every detail of a comprehensive plan or policy of genocide.”¹⁷²⁵ Indeed, the preparatory work of the Genocide Convention did not consider that premeditations were a legal ingredient of the crime of genocide.¹⁷²⁶ Professor Kai Ambos proposed a manner to infer the nature of such perpetrator’s knowledge. Ambos explained that, in order to assess *intent*, the following quantitative and qualitative sub-issues need to be formulated:

- “(1) Is it necessary to intend the destruction of a significant number of members of the group (quantitative element)?
- (2) Would it be sufficient to intend to destroy a significant section of the group, for example, the leaders (qualitative element)?
- (3) Would it be sufficient to intend to destroy a reasonably significant number or section of a part of a group?”¹⁷²⁷

In 2007, in *Bosnia and Herzegovina v. Serbia and Montenegro*, the International Court of Justice recognized that, in assessing the occurrence of genocide, it is not enough to verify the occurrence of certain acts prohibited by International Criminal Law.¹⁷²⁸ However, the occurrence of certain acts may provide a substantial substratum to infer the will of the genocide pepe-

¹⁷¹⁸ *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 823.

¹⁷¹⁹ See also: *Prosecutor v. Jean-Paul Akayesu*. ICTR-96-4-T. *Supra* note 203. ¶ 523; *Prosecutor v. Callixte Kalimanzira*. ICTR-05-88-T. *Supra* note 166. ¶ 731.

¹⁷²⁰ *Prosecutor v. Kayishema and Ruzindana*. ICTR 95-1-T. *Supra* note 209. ¶ 91.

¹⁷²¹ *Prosecutor v. Vujadin Popović et al.* IT-05-88-A. *Supra* note 151. ¶ 823.

¹⁷²² *Prosecutor v. Milomir Stakić*. IT-97-24-T. *Supra* note 109. ¶ 522.

¹⁷²³ *Prosecutor v. Goran Jelisić*. IT-95-10-T. *Supra* note 97. ¶ 78.

¹⁷²⁴ U.N. Doc. A/CN.4/SER.A/1996/Add.I (Part 2) (1996). p. 45, ¶ 10.

¹⁷²⁵ *Ibidem*.

¹⁷²⁶ *Prosecutor v. Goran Jelisić*. IT-95-10-T. *Supra* note 97. ¶ 100.

¹⁷²⁷ See also: Kai Ambos. *Supra* note 30. p. 41.

¹⁷²⁸ *Bosnia and Herzegovina v. Serbia and Montenegro*. I.C.J. 43. *Supra* note 71. ¶ 187.

trator, when *direct* evidence of *cognitive* genocidal intent is lacking. Such intent may still be *inferred* (*inferential/circumstantial/indirect* evidence) from several facts and circumstances – all circumstantial evidence taken together.^{1729 1730 1731} Therefore, the *factual matrix* can prove the genocidal intent *beyond any reasonable doubt*.^{1732 1733}

¹⁷²⁹ Prosecutor v. Clément Kayishema and Ruzindana. ICTR 95-1-T. *Supra* note 209. ¶ 93; Prosecutor v. Laurent Semanza. ICTR-97-20-T. *Supra* note 211. ¶ 313; Prosecutor v. Emmanuel Ndinabahizi. ICTR-2001-71-I. *Supra* note 177. ¶ 454; Prosecutor v. Aloys Simba. ICTR-01-76-T. *Supra* note 157. ¶ 413; Sylvestre Gacumbitsi v. Prosecutor. ICTR-2001-64-A. *Supra* note 229. ¶¶ 40-41; Prosecutor v. Jean Mpambara. ICTR-01-65-T. *Supra* note 202. ¶ 8; Ferdinand Nahimana et al v. Prosecutor. ICTR-99-52-A. *Supra* note 183. ¶ 524; Prosecutor v. François Karera. ICTR-01-74-T. *Supra* note 184. ¶ 534; Prosecutor v. Emmanuel Rukundo. ICTR-2001-70-T. *Supra* note 179. ¶ 557; Prosecutor v. Yussuf Munyakazi. ICTR-97-36A-T. *Supra* note 236. ¶ 494; Prosecutor v. Gaspard Kanyarukiga. ICTR-2002-78-T. *Supra* note 187. ¶ 636; Prosecutor v. Grégoire Ndahimana. ICTR-01-68-T. *Supra* note 191. ¶ 804; Prosecutor v. Callixte Nzabonimana. ICTR-98-44D-T. *Supra* note 168. ¶ 1704; Prosecutor v. Augustin Ndirabatware. ICTR-99-54-T. *Supra* note 164. ¶ 1327.

¹⁷³⁰ Prosecutor v. Goran Jelišić, IT-95-10-A. *Supra* note 98. ¶ 47; Prosecutor v. Duško Sikirica et al. IT-95-8-T. *Supra* note 87. ¶ 61; Prosecutor v. Radislav Krstić. IT-98-33-A. *Supra* note 129. ¶¶ 32, 34; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 704; Prosecutor v. Vujadin Popović et al. IT-05-88-T. *Supra* note 150. ¶¶ 820, 823; Prosecutor v. Radovan Karadžić. IT-95-5/18-AR98bis. *Supra* note 133. ¶ 80; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 550.

¹⁷³¹ Prosecutor v. Jean-Pierre Bemba Gombo. ICC-01/05-01/08. *Supra* note 335. ¶ 239; Prosecutor v. Bosco Ntaganda. ICC-01/04-02/06. *Supra* note 328. ¶ 69.

¹⁷³² Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 523; Prosecutor v. Kayishema and Ruzindana. ICTR 95-1-T. *Supra* note 209. ¶ 93; Prosecutor v. Mikaeli Muhimana. ICTR-95-1B-T. *Supra* note 214. ¶ 496; Sylvestre Gacumbitsi v. Prosecutor. ICTR-2001-64-A. *Supra* note 229. ¶ 40; Aloys Simba v. Prosecutor. ICTR-01-76-A. *Supra* note 158. ¶ 264; Prosecutor v. François Karera. ICTR-01-74-T. *Supra* note 184. ¶ 534; Ferdinand Nahimana et al v. Prosecutor. ICTR-99-52-A. *Supra* note 183. ¶ 524; Prosecutor v. Siméon Nchamihigo. ICTR-01-63-T. *Supra* note 224. ¶ 331; Prosecutor v. Protais Zigiranyirazo. ICTR-01-73-T. *Supra* note 221. ¶ 398; Prosecutor v. Théoneste Bagosora et al. ICTR-98-41-T. *Supra* note 234. ¶ 2116; Prosecutor v. Emmanuel Rukundo. ICTR-2001-70-T. *Supra* note 179. ¶ 557; Prosecutor v. Callixte Kalimanzira. ICTR-05-88-T. *Supra* note 166. ¶ 731; Prosecutor v. Tharcisse Renzaho. ICTR-97-31-T. *Supra* note 232. ¶ 761; Prosecutor v. Ephrem Setako. ICTR-04-81-T. *Supra* note 181. ¶ 467; Prosecutor v. Yussuf Munyakazi. ICTR-97-36A-T. *Supra* note 236. ¶ 494; Prosecutor v. Dominique Ntawukulilyayo. ICTR-05-82-T. *Supra* note 170. ¶ 451; Prosecutor v. Ildephonse Hategekimana. ICTR-00-55B-T. *Supra* note 197. ¶ 669; Prosecutor v. Jean-Baptiste Gatete. ICTR-2000-61-T. *Supra* note 195. ¶ 583; Prosecutor v. Édouard Karemera et al. ICTR-98-44-T. *Supra* note 172. ¶ 1607; Prosecutor v. Callixte Nzabonimana. ICTR-98-44D-T. *Supra* note 168. ¶ 1704; Prosecutor v. Ildephonse Nizeyimana. ICTR-2000-55C-T. *Supra* note 198. ¶ 1492.

In the light of the ICTY's and ICTR's jurisprudence, genocidal intent may be inferred from a certain number of concrete facts, circumstances, presumptions of facts or *indicia*,^{1734 1735} including, but not limited to: 1) the general context of the perpetration of the underlying prohibited acts of genocide; 2) the specific characteristics of the members of the protected group targeted for destruction; 3) the systematic and repetitive culpable acts of targeting of persons in virtue of their belonging to a particular group; 4) the scale and frequency of atrocities committed; 5) the geographical location of the perpetrator's attacks; 6) the weapons employed in the attack(s); 7) the objective probability that the perpetrator's imposition of conditions of life on a protected group will lead to the effective physical destruction of such group, in whole or in part; 8) the extent of bodily injuries perpetrated against the victims of the protected group; 9) the length of time that the members of the protected group were exposed to genocidal acts; 10) the impact that the disappearance or the destruction of *part* of the protected group would have for the survival of the *entire* group; 11) objective proofs of the accused's mental state with respect to the deliberate perpetration of the underlying acts of genocide; 12) the perpetrator's statements, deeds, use of derogatory language, and public demonstrations in support of destructive acts against a protected group; 13) the methodical way of planning genocidal acts; 14) the participation/involvement of government or military personnel in the genocidal acts; 15) the existence of underlying discriminatory political doctrines against a protected group; 16) the confiscation or destruction of the targeted group's property; 17) the exclusion of members of other groups from the perpetrator's attacks against the targeted group; and 18) other perpetrator's culpable acts committed against the targeted group.^{1736 1737}

¹⁷³³ Prosecutor v. Radislav Krstić. IT-98-33-A. *Supra* note 129. ¶¶ 32–33; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 704, 968; Prosecutor v. Zdravko Tolimir. IT-05-88/2-A. *Supra* note 152. ¶¶ 246–247, 561, 564; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶¶ 820, 823; Prosecutor v. Ratko Mladić., IT-09-92-T, vol. 3. *Supra* note 137. ¶ 3435.

¹⁷³⁴ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 523.

¹⁷³⁵ The International Commission of Inquiry on Darfur also considered that “whenever direct evidence of genocidal intent is lacking, as is mostly the case, intent can be inferred from many acts and manifestations or factual circumstances.” (U.N. Doc. S/2005/60 (Feb. 1, 2005). ¶ 502).

¹⁷³⁶ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 523; Prosecutor v. Kayishema and Ruzindana. ICTR 95-1-T. *Supra* note 209. ¶ 93; Prosecutor v. Mikaeli Muhimana. ICTR-95-1B-T. *Supra* note 214. ¶ 496; Prosecutor v. Siméon Nchamihigo. ICTR-01-63-T. *Supra* note 224. ¶ 331; Prosecutor v. Emmanuel Rukundo. ICTR-2001-70-T. *Supra* note 179. ¶ 557; Prosecutor v. Callixte Kalimanzira. ICTR-05-88-T.

Examples abound regarding the admission of indirect evidence in genocide case law. The jurisprudence of the ICTR, for example, has extensively ruled in this regard: *Prosecutor v. Emmanuel Ndingabhazi*,¹⁷³⁸ *Prosecutor v. Jean Mpambara*,¹⁷³⁹ *Aloys Simba v. Prosecutor*.¹⁷⁴⁰ *Ferdinand Nahimana et al. v. Prosecutor*,¹⁷⁴¹ *Prosecutor v. François Karera*,¹⁷⁴² *Prosecutor v. Siméon Nchamihigo*,¹⁷⁴³ *Prosecutor v. Théoneste Bagosora et al.*,¹⁷⁴⁴ *Prosecutor v. Protais Zigiranyirazo*,¹⁷⁴⁵ *Prosecutor v. Emmanuel Rukundo*,¹⁷⁴⁶ *Prosecutor v. Callixte Kalimanzira*,¹⁷⁴⁷ *Prosecutor v. Tharcisse Renzaho*,¹⁷⁴⁸ *Prosecutor v. Hormisdas Nsengimana*,¹⁷⁴⁹ *Prosecutor v. Ephrem Setako*,¹⁷⁵⁰ *Siméon Nchamihigo v. Prosecutor*,¹⁷⁵¹ *Prosecutor v. Yussuf Munyakazi*,¹⁷⁵² *Prosecutor v. Gaspard Kanyarukiga*,¹⁷⁵³ *Prosecutor v. Jean-Baptiste Gatete*,¹⁷⁵⁴ *Prosecutor v. Augustin Ndingilyimana et*

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- Supra* note 166. ¶ 731; *Prosecutor v. Tharcisse Renzaho*. ICTR-97-31-T. *Supra* note 232. ¶ 761; *Prosecutor v. Hormisdas Nsengimana*, Case No. ICTR-01-69-T, (Nov. 17, 2009). ¶ 832; *Prosecutor v. Ephrem Setako*. ICTR-04-81-T. *Supra* note 181. ¶ 467; *Prosecutor v. Dominique Ntawukulilyayo*. ICTR-05-82-T. *Supra* note 170. ¶ 451; *Callixte Kalimanzira v. Prosecutor*. ICTR-05-88-A. *Supra* note 167. ¶ 89; *Prosecutor v. Gaspard Kanyarukiga*. ICTR-2002-78-T. *Supra* note 187. ¶ 636; *Prosecutor v. Jean-Baptiste Gatete*. ICTR-2000-61-T. *Supra* note 195. ¶ 583; *Prosecutor v. Augustin Ndingilyimana et al.* ICTR-00-56-T. *Supra* note 163. ¶ 2073.
- ¹⁷³⁷ *Prosecutor v. Goran Jelisić*. IT-95-10-T. *Supra* note 97. ¶¶ 73, 75; *Prosecutor v. Duško Sikirica et al.* IT-95-8-T. *Supra* note 88. ¶ 77; *Prosecutor v. Milomir Stakić*. IT-97-24-T. *Supra* note 109. ¶ 526; *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶¶ 704, 906, 970; *Prosecutor v. Vidoje Blagojević et al.* IT-02-60-A. *Supra* note 148. ¶ 123; *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 823; *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-A. *Supra* note 152. ¶¶ 246, 252–253; *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 550.
- ¹⁷³⁸ *Prosecutor v. Emmanuel Ndingabhazi*. ICTR-2001-71-I. *Supra* note 177. ¶ 454.
- ¹⁷³⁹ *Prosecutor v. Jean Mpambara*. ICTR-01-65-T. *Supra* note 202. ¶ 8.
- ¹⁷⁴⁰ *Aloys Simba v. Prosecutor*. ICTR-01-76-A. *Supra* note 158. ¶ 264.
- ¹⁷⁴¹ *Ferdinand Nahimana et al. v. Prosecutor*. ICTR-99-52-A. *Supra* note 183. ¶ 524.
- ¹⁷⁴² *Prosecutor v. François Karera*. ICTR-01-74-T. *Supra* note 184. ¶ 615–616.
- ¹⁷⁴³ *Prosecutor v. Siméon Nchamihigo*. ICTR-01-63-T. *Supra* note 224. ¶ 331.
- ¹⁷⁴⁴ *Prosecutor v. Théoneste Bagosora et al.* ICTR-98-41-T. *Supra* note 234. ¶ 2116.
- ¹⁷⁴⁵ *Prosecutor v. Protais Zigiranyirazo*. ICTR-01-73-T. *Supra* note 221. ¶ 798.
- ¹⁷⁴⁶ *Prosecutor v. Emmanuel Rukundo*. ICTR-2001-70-T. *Supra* note 179. ¶ 557.
- ¹⁷⁴⁷ *Prosecutor v. Callixte Kalimanzira*. ICTR-05-88-T. *Supra* note 166. ¶ 731.
- ¹⁷⁴⁸ *Prosecutor v. Tharcisse Renzaho*. ICTR-97-31-T. *Supra* note 232. ¶ 761.
- ¹⁷⁴⁹ *Prosecutor v. Hormisdas Nsengimana*, Case No. ICTR-01-69-T, (Nov. 17, 2009). ¶ 832.
- ¹⁷⁵⁰ *Prosecutor v. Ephrem Setako*. ICTR-04-81-T. *Supra* note 181. ¶ 467.
- ¹⁷⁵¹ *Siméon Nchamihigo v. Prosecutor*. ICTR-2001-63-A. *Supra* note 225. ¶ 136.
- ¹⁷⁵² *Prosecutor v. Yussuf Munyakazi*. ICTR-97-36A-T. *Supra* note 236. ¶ 494.
- ¹⁷⁵³ *Prosecutor v. Gaspard Kanyarukiga*. ICTR-2002-78-T. *Supra* note 187. ¶¶ 636, 653.
- ¹⁷⁵⁴ *Prosecutor v. Jean-Baptiste Gatete*. ICTR-2000-61-T. *Supra* note 195. ¶ 583.

al.,¹⁷⁵⁵ and *Prosecutor v. Pauline Nyiramasuhuko*.¹⁷⁵⁶ Also, the ICTY has comprehensively ruled on the acceptance of inferential evidence to prove genocidal intent. See, for example: *Prosecutor v. Goran Jelišić*,¹⁷⁵⁷ *Prosecutor v. Milomir Stakić*,¹⁷⁵⁸ *Prosecutor v. Radislav Krstić*,¹⁷⁵⁹ *Prosecutor v. Radoslav Brđanin*,¹⁷⁶⁰ *Prosecutor v. Vidoje Blagojević, Dragan Jokić*,¹⁷⁶¹ *Prosecutor v. Vujadin Popović et al.*,¹⁷⁶² and *Prosecutor v. Ratko Mladić*

Importantly, the statutory and case-law frameworks allow the admittance of Press and NGO reports as 1) *prima facie* reliable evidence of mens rea, “provided that they offer sufficient guarantees of impartiality”; as 2) corroboratory evidence, determined on a case-by-case basis, and as 3) an instrumental tool to assess Prosecution’s allegations.^{1763 1764 1765} *The criminal intent to commit genocide need not be the sole motivation of the perpetrator’s attack against a protected group.*¹⁷⁶⁶

¹⁷⁵⁵ *Prosecutor v. Augustin Ndindiliyimana et al.* ICTR-00-56-T. *Supra* note 163. ¶ 2073.

¹⁷⁵⁶ *Prosecutor v. Pauline Nyiramasuhuko et al.* ICTR-98-42-A. *Supra* note 220. ¶ 1029.

¹⁷⁵⁷ *Prosecutor v. Goran Jelišić*, IT-95-10-A. *Supra* note 98. ¶ 47.

¹⁷⁵⁸ *Prosecutor v. Milomir Stakić*. IT-97-24-T. *Supra* note 109. ¶ 526.

¹⁷⁵⁹ *Prosecutor v. Radislav Krstić*. IT-98-33-A. *Supra* note 129. ¶ 33.

¹⁷⁶⁰ *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶ ¶ 704, 968–970.

¹⁷⁶¹ *Prosecutor v. Vidoje Blagojević et al.* IT-02-60-A. *Supra* note 148. ¶ 123.

¹⁷⁶² *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 823; *Prosecutor v. Vujadin Popović et al.* IT-05-88-A. *Supra* note 151. ¶¶ 544, 553.

¹⁷⁶³ In *Prosecutor v. Jean-Paul Akayesu*, for example, the ICTR Trial Chamber considered as evidence photographs and videos of the British cameraman, Simon Cox. (*Prosecutor v. Jean-Paul Akayesu*. ICTR-96-4-T. *Supra* note 203. ¶¶ 116, 161–162).

¹⁷⁶⁴ In *Prosecutor v. Callixte Mbarushimana*, for example, the ICC Pre-Trial Chamber, analyzing documents emanating from Human Rights Watch, considered that “the source of the documents, the purpose for which the information contained therein was gathered and the nature and relevance of the information contained therein,” satisfied relevant *due process* elements and had, therefore, “probative value.” (*Prosecutor v. Callixte Mbarushimana*. ICC-01/04-01/10. *Supra* note 330. ¶¶ 71, 78).

¹⁷⁶⁵ See also: *Prosecutor v. Jean-Pierre Bemba Gombo*. ICC-01/05-01/08. *Supra* note 335. ¶¶ 269–271.

¹⁷⁶⁶ *Prosecutor v. Aloys Simba*. ICTR-01-76-T. *Supra* note 157. ¶ 412; *Prosecutor v. François Karera*. ICTR-01-74-T. *Supra* note 184. ¶ 534; *Prosecutor v. Théoneste Bagosora et al.* ICTR-98-41-T. *Supra* note 234. ¶ 2115; *Prosecutor v. Emmanuel Rukundo*. ICTR-2001-70-T. *Supra* note 179. ¶ 557; *Prosecutor v. Callixte Kalimanzira*. ICTR-05-88-T. *Supra* note 166. ¶ 158; *Prosecutor v. Tharcisse Renzaho*. ICTR-97-31-T. *Supra* note 232. ¶ 760; *Prosecutor v. Ephrem Setako*. ICTR-04-81-T. *Supra* note 181. ¶ 466; *Prosecutor v. Yussuf Munyakazi*. ICTR-97-36A-T. *Supra* note 236. ¶ 493; *Prosecutor v. Dominique Ntawukililyayo*. ICTR-05-82-T. *Supra* note 170. ¶ 450; *Prosecutor v. Gaspard Kanyarukiga*. ICTR-2002-78-T. *Supra* note 187. ¶ 636; *Prosecutor v. Ildephonse Hategekimana*. ICTR-00-55B-T. *Supra* note 197. ¶ 668; *Prosecutor v.*

The *de facto* destruction of the targeted group, in whole or in part, is not required to prove *mens rea*, although it might serve “to distinguish the crime of genocide from the inchoate offenses (...), such as the attempt to commit genocide.”¹⁷⁶⁷ Besides, it is not also necessary to prove that the perpetrator of the genocidal acts “chose the most efficient method to accomplish his objective of destroying the targeted part.”¹⁷⁶⁸ Customary international law considers that “even where the method selected will not implement the perpetrator’s intent to the fullest, leaving that destruction incomplete, this ineffectiveness alone does not preclude a finding of genocidal intent.”^{1769 1770}

The mere knowledge that certain genocidal acts are being committed against a protected group does not suffice the legal requirements for conviction and sentencing. The ICTY firmly consolidated such rationale in *Prosecutor v. Radislav Krstić* (ICTY),¹⁷⁷¹ *Prosecutor v. Slobodan Milošević*,¹⁷⁷² *Prosecutor v. Vidoje Blagojević, Dragan Jokić*,¹⁷⁷³ *Prosecutor v. Protais Zigiranyirazo*,¹⁷⁷⁴ *Prosecutor v. Vujadin Popović et al.*,¹⁷⁷⁵ and *Prosecutor v. Vujadin Popović et al.*,¹⁷⁷⁶ In *Prosecutor v. Milomir Stakić*, the court went even one step further in sustaining that proof of *de facto* destruction of the group in part would not be required in genocide cases.¹⁷⁷⁷ However, in *Prosecutor v. Radoslav Brđanin*, the ICTY concluded that the *de facto* destruction of the group “may constitute evidence of the specific intent and may also serve to distinguish the crime of genocide from the inchoate offenses (...) such as the attempt to commit genocide”.¹⁷⁷⁸

Regarding the genocidal *mens rea*, it is also important to highlight that the crime of genocide “do(es) not require that the aider and abettor share

Jean-Baptiste Gatete. ICTR-2000-61-T. *Supra* note 195. ¶ 582; *Prosecutor v. Grégoire Ndahimana*. ICTR-01-68-T. *Supra* note 191. ¶ 803; *Prosecutor v. Édouard Karemera et al.* ICTR-98-44-T. *Supra* note 172. ¶ 1606; *Prosecutor v. Ildéphonse Nizeyimana*. ICTR-2000-55C-T. *Supra* note 198. ¶ 1491.

¹⁷⁶⁷ *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶ 697.

¹⁷⁶⁸ *Prosecutor v. Radislav Krstić*. IT-98-33-A. *Supra* note 129. ¶ 32.

¹⁷⁶⁹ *Ibidem*.

¹⁷⁷⁰ See also: *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-T. *Supra* note 153. ¶ 748.

¹⁷⁷¹ *Prosecutor v. Radislav Krstić*. IT-98-33-A. *Supra* note 129. ¶¶ 37, 134.

¹⁷⁷² *Prosecutor v. Slobodan Milošević*. IT-02-54-T. *Supra* note 139. ¶ 126.

¹⁷⁷³ *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 656.

¹⁷⁷⁴ *Prosecutor v. Protais Zigiranyirazo*. ICTR-01-73-T. *Supra* note 221. ¶ 798.

¹⁷⁷⁵ *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 820.

¹⁷⁷⁶ *Prosecutor v. Vujadin Popović et al.* IT-05-88-A. *Supra* note 151. ¶ 820.

¹⁷⁷⁷ *Prosecutor v. Milomir Stakić*. IT-97-24-T. *Supra* note 109. ¶¶ 517, 522.

¹⁷⁷⁸ *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶ 697.

the *mens rea* of the principal perpetrator.¹⁷⁷⁹ Proving the principal perpetrator's specific intent is sufficient to prove genocidal intent,¹⁷⁸⁰ as well established by the ICTR in *Prosecutor v. Clément Kayishema et al.*,¹⁷⁸¹ *Prosecutor v. Protais Zigiranyirazo*,¹⁷⁸² *Prosecutor v. Tharcisse Renzaho*,¹⁷⁸³ and *Dominique Ntawukulilyayo v. Prosecutor*,¹⁷⁸⁴ and by the ICTY in *Prosecutor v. Vidoje Blagojević, Dragan Jokić*.¹⁷⁸⁵ The ICTR and the ICTY have a vast jurisprudence of persons convicted of committing genocide or aiding and abetting and ordering, or directly and publicly incitement to commit genocide. From the ICTR, see, for example: *Prosecutor v. Athanase Seromba*,¹⁷⁸⁶ *Prosecutor v. François Karera*,¹⁷⁸⁷ *Prosecutor v. Siméon Nchamihigo*,¹⁷⁸⁸ *Prosecutor v. Simon Bikindi*,¹⁷⁸⁹ *Prosecutor v. Protais Zigiranyirazo*,¹⁷⁹⁰ *Prosecutor v. Théoneste Bagosora, Anatole Nsengiyumva*,¹⁷⁹¹ *Prosecutor v. Emmanuel Rukundo*,¹⁷⁹² *Prosecutor v. Tharcisse Muvunyi*,¹⁷⁹³ *Prosecutor v. Dominique Ntawukulilyayo*,¹⁷⁹⁴ *Prosecutor v. Gaspard Kanyarukiga*,¹⁷⁹⁵ and *Prosecutor v. Jean-Baptiste*.¹⁷⁹⁶

Notably, the existence of a personal motive does not preclude a finding of specific genocidal intent.¹⁷⁹⁷ In such instances, the International

¹⁷⁷⁹ *Dominique Ntawukulilyayo v. Prosecutor*. ICTR-05-82-A. *Supra* note 171. ¶ 222.

¹⁷⁸⁰ *Ibid.*

¹⁷⁸¹ *Prosecutor v. Clément Kayishema et al.* ICTR-95-1-A. *Supra* note 210. ¶ 170.

¹⁷⁸² *Prosecutor v. Protais Zigiranyirazo*. ICTR-01-73-T. *Supra* note 221. ¶ 798.

¹⁷⁸³ *Prosecutor v. Tharcisse Renzaho*. ICTR-97-31-T. *Supra* note 232. ¶ 779.

¹⁷⁸⁴ *Dominique Ntawukulilyayo v. Prosecutor*. ICTR-05-82-A. *Supra* note 171. ¶ 222.

¹⁷⁸⁵ *Prosecutor v. Vidoje Blagojević et al.* IT-02-60-A. *Supra* note 148. ¶ 127.

¹⁷⁸⁶ *Prosecutor v. Athanase Seromba*. ICTR-2001-66-I. *Supra* note 160. ¶ 372.

¹⁷⁸⁷ *Prosecutor v. François Karera*. ICTR-01-74-T. *Supra* note 184. ¶ 569.

¹⁷⁸⁸ *Prosecutor v. Siméon Nchamihigo*. ICTR-01-63-T. *Supra* note 224. ¶ 381.

¹⁷⁸⁹ *Prosecutor v. Simon Bikindi*. ICTR-01-72-T. *Supra* note 226. Chapter V.

¹⁷⁹⁰ *Prosecutor v. Protais Zigiranyirazo*. ICTR-01-73-T. *Supra* note 221. ¶ 447.

¹⁷⁹¹ *Prosecutor v. Théoneste Bagosora et al.* ICTR-98-41-T. *Supra* note 234. ¶ 2158.

¹⁷⁹² *Prosecutor v. Emmanuel Rukundo*. ICTR-2001-70-T. *Supra* note 179. ¶ 591.

¹⁷⁹³ *Prosecutor v. Tharcisse Muvunyi*. ICTR-00-55A-T. *Supra* note 231. ¶ 134.

¹⁷⁹⁴ *Prosecutor v. Dominique Ntawukulilyayo*. ICTR-05-82-T. *Supra* note 170. ¶ 460.

¹⁷⁹⁵ *Prosecutor v. Gaspard Kanyarukiga*. ICTR-2002-78-T. *Supra* note 187. ¶ 667.

¹⁷⁹⁶ *Prosecutor v. Jean-Baptiste Gatete*. ICTR-2000-61-T. *Supra* note 195. *passim*.

¹⁷⁹⁷ *Prosecutor v. Goran Jelisić*, IT-95-10-A. *Supra* note 98. ¶ 49; *Prosecutor v. Milomir Stakić*. IT-97-24-A. *Supra* note 110. ¶ 45; *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 825; *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 554.

¹⁷⁹⁸ *Prosecutor v. Aloys Simba*. ICTR-01-76-T. *Supra* note 157. ¶ 412; *Prosecutor v. François Karera*. ICTR-01-74-T. *Supra* note 184. ¶ 534; *Prosecutor v. Théoneste Bagosora et al.* ICTR-98-41-T. *Supra* note 234. ¶ 2115; *Prosecutor v. Emmanuel Rukundo*. ICTR-2001-70-T. *Supra* note 179. ¶ 557; *Prosecutor v. Callixte Kalimanzira*. ICTR-05-88-T. *Supra* note 166. ¶ 158; *Prosecutor v. Tharcisse Renzaho*. ICTR-97-31-T. *Supra*

Commission of Inquiry on Darfur has already stated that “this special [genocidal] intent must not be confused with motive, namely, the particular reason that may induce a person to engage in criminal conduct.”¹⁸⁰⁰ For the Commission, genocide perpetrators may possess underlying motives behind their genocidal acts, for example “the desire to appropriate the goods belonging to that [targeted] group or set of persons,” or “the urge to take revenge for prior attacks by members of that group or by the desire to please his superiors who despise that group.”¹⁸⁰¹ The Commission concluded that, “from the viewpoint of criminal law, what matters is not the motive, but rather whether or not there exists the requisite special intent to destroy a group.”¹⁸⁰²

This means that “in genocide cases, the reason(s) why the accused sought to destroy the victim group has no bearing on guilt.”^{1803 1804} In *Prosecutor v. Tharcisse Renzaho*, the ICTR clearly stated that the existence of personal motive “does not preclude him from having the specific intent to commit genocide,”^{1805 1806 1807} provided that the *intent* to destroy is proven

pra note 232. ¶ 760; *Prosecutor v. Ephrem Setako*. ICTR-04-81-T. *Supra* note 181. ¶ 466; *Prosecutor v. Yussuf Munyakazi*. ICTR-97-36A-T. *Supra* note 236. ¶ 493; *Prosecutor v. Dominique Ntawukulilyayo*. ICTR-05-82-T. *Supra* note 170. ¶ 450; *Prosecutor v. Gaspard Kanyarukiga*. ICTR-2002-78-T. *Supra* note 187. ¶ 636; *Prosecutor v. Ildephonse Hategekimana*. ICTR-00-55B-T. *Supra* note 197. ¶ 668; *Prosecutor v. Jean-Baptiste Gatete*. ICTR-2000-61-T. *Supra* note 195. ¶ 582; *Prosecutor v. Grégoire Ndahimana*. ICTR-01-68-T. *Supra* note 191. ¶ 803; *Prosecutor v. Édouard Karemera et al.* ICTR-98-44-T. *Supra* note 172. ¶ 1606; *Prosecutor v. Ildéphonse Nizeyimana*. ICTR-2000-55C-T. *Supra* note 198. ¶ 1491.

¹⁷⁹⁹ U.N. Doc. A/CN.4/SER.A/1989/Add.I (Part 2) (1989). ¶ 154.

¹⁸⁰⁰ U.N. Doc. S/2005/60 (Feb. 1, 2005). ¶ 493.

¹⁸⁰¹ *Ibid.*

¹⁸⁰² *Ibid.*

¹⁸⁰³ *Prosecutor v. Milomir Stakić*. IT-97-24-A. *Supra* note 110. ¶ 45.

¹⁸⁰⁴ See also: *Prosecutor v. Goran Jelisić*, IT-95-10-A. *Supra* note 98. ¶ 49; *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 825.

¹⁸⁰⁵ *Prosecutor v. Tharcisse Renzaho*. ICTR-97-31-T. *Supra* note 232. ¶ 760.

¹⁸⁰⁶ Kai Ambos teaches that “while the motive inquires about the reasons behind a certain conduct (‘why’), the intent merely goes to the psychological state of mind during the act. Thus, the fact that the perpetrators may act with motives other than destruction does not exclude the existence of genocidal intent.” (Kai Ambos. *Supra* note 63. p. 40).

¹⁸⁰⁷ See also: *Prosecutor v. Emmanuel Rukundo*. ICTR-2001-70-T. *Supra* note 179. ¶ 557; *Prosecutor v. Callixte Kalimanzira*. ICTR-05-88-T. *Supra* note 166. ¶ 158; *Prosecutor v. Hormisdas Nsengimana*, Case No. ICTR-01-69-T, (Nov. 17, 2009). ¶ 831; *Prosecutor v. Ephrem Setako*. ICTR-04-81-T. *Supra* note 181. ¶ 466; *Prosecutor v. Dominique Ntawukulilyayo*. ICTR-05-82-T. *Supra* note 170. ¶ 450; *Prosecutor v. Gaspard*

beyond a reasonable doubt, as established in *Prosecutor v. Clément Kayishema et al.* (ICTR),¹⁸⁰⁸ *Eliézer Niyitegeka v. Prosecutor* (ICTR),¹⁸⁰⁹ *Prosecutor v. Emmanuel Rukundo* (ICTR),¹⁸¹⁰ *Prosecutor v. Gaspard Kanyarukiga* (ICTR).^{1811 1812} It is also not necessary that the perpetrator is exclusively/solely motivated by a genocidal intent.¹⁸¹³

3.1.5. “In whole or in part.”

In establishing specific genocidal intent, proof that the perpetrator intended the “complete annihilation of a group” is not necessary¹⁸¹⁴ – the extermination of the group in its entirety throughout the world.¹⁸¹⁵ It is well established in the International Criminal Law jurisprudence that a large number of victims does not constitute an element of the crime of genocide.^{1816 1817} See, for example, *Grégoire Ndahimana v. Prosecutor* (ICTR),¹⁸¹⁸ *Prosecutor v. Ratko Mladić* (ICTY),¹⁸¹⁹ and *Callixte Nzabonimana v.*

Kanyarukiga. ICTR-2002-78-T. *Supra* note 187. ¶ 636; *Prosecutor v. Jean-Baptiste Gatete*. ICTR-2000-61-T. *Supra* note 195. ¶ 582; *Prosecutor v. Augustin Ndindiliyimana et al.* ICTR-00-56-T. *Supra* note 163. ¶ 2072.

¹⁸⁰⁸ *Prosecutor v. Clément Kayishema et al.* ICTR-95-1-A. *Supra* note 210. ¶ 161.

¹⁸⁰⁹ *Eliézer Niyitegeka v. Prosecutor*. ICTR-96-14-A. *Supra* note 174. ¶ 53.

¹⁸¹⁰ *Prosecutor v. Emmanuel Rukundo*. ICTR-2001-70-T. *Supra* note 179. ¶ 557.

¹⁸¹¹ *Prosecutor v. Gaspard Kanyarukiga*. ICTR-2002-78-T. *Supra* note 187. ¶ 635.

¹⁸¹² See also: *Prosecutor v. Goran Jelisić*. IT-95-10-T. *Supra* note 97. ¶ 49; *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 669.

¹⁸¹³ *Prosecutor v. Emmanuel Rukundo*. ICTR-2001-70-T. *Supra* note 179. ¶ 557; *Prosecutor v. Callixte Kalimanzira*. ICTR-05-88-T. *Supra* note 166. ¶ 158; *Prosecutor v. Tharcisse Renzaho*. ICTR-97-31-T. *Supra* note 232. ¶ 760; *Prosecutor v. Hormisdas Nsengimana*, Case No. ICTR-01-69-T, (Nov. 17, 2009). ¶ 831; *Prosecutor v. Ephrem Setako*. ICTR-04-81-T. *Supra* note 181. ¶ 466; *Prosecutor v. Dominique Ntawukulilyayo*. ICTR-05-82-T. *Supra* note 170. ¶ 450; *Prosecutor v. Gaspard Kanyarukiga*. ICTR-2002-78-T. *Supra* note 187. ¶ 636; *Prosecutor v. Jean-Baptiste Gatete*. ICTR-2000-61-T. *Supra* note 195. ¶ 582; *Prosecutor v. Augustin Ndindiliyimana et al.* ICTR-00-56-T. *Supra* note 163. ¶ 2072.

¹⁸¹⁴ *Prosecutor v. Athanase Seromba*. ICTR-2001-66-T. *Supra* note 160. ¶ 319.

¹⁸¹⁵ *Prosecutor v. Jean-Paul Akayesu*. ICTR-96-4-T. *Supra* note 203. ¶ 497.

¹⁸¹⁶ *Grégoire Ndahimana v. Prosecutor*. ICTR-01-68-A. *Supra* note 192. ¶ 231.

¹⁸¹⁷ However, it is authoritative to mention that “where only part of a protected group is targeted that part must constitute a substantial part of that group such that it is significant enough to have an impact on the group as a whole. In determining substantiality, considerations may include: the relative numerical size of the targeted part, the prominence of the part of the group within the larger whole, and the area of the perpetrators’ activity and control”. (*Prosecutor v. Ratko Mladić*, IT-09-92-T. *Supra* note 137. ¶ 172).

¹⁸¹⁸ *Grégoire Ndahimana v. Prosecutor*. ICTR-01-68-A. *Supra* note 192. ¶ 231.

Prosecutor (ITCR).¹⁸²⁰ Therefore, there is no numeric threshold.^{1821 1822} It is sufficient to prove the perpetrator's intent to destroy a substantial part thereof (in part).¹⁸²³ Accordingly, the genocidal *mens rea* may be manifested in two forms: 1) the intent to destroy a group *en masse* (in whole), or 2) the intent to destroy a group *selectively* (in part).^{1824 1825} The first refers to the aim of destroying large numerical portions of the targeted group through the perpetration of certain prohibited acts prescribed in the statutes of International Criminal Law courts.^{1826 1827} The second refers to the desire to exterminate a limited/'selected number of persons whose disappearance would have a huge impact upon the survival of the group.^{1828 1829}

¹⁸¹⁹ *Prosecutor v. Ratko Mladić*, IT-09-92-T. *Supra* note 137.

¹⁸²⁰ *Callixte Nzabonimana v. Prosecutor*. ICTR-98-44D-A. *Supra* note 169. ¶ 126.

¹⁸²¹ *Prosecutor v. Laurent Semanza*. ICTR-97-20-T. *Supra* note 211. ¶ 316; *Prosecutor v. Sylvestre Gacumbitsi*. ICTR-2001-64-T. *Supra* note 228. ¶ 258; *Prosecutor v. Aloys Simba*. ICTR-01-76-T. *Supra* note 157. ¶ 412; *Prosecutor v. Théoneste Bagosora et al.* ICTR-98-41-T. *Supra* note 234. ¶ 2115; *Prosecutor v. Callixte Kalimanzira*. ICTR-05-88-T. *Supra* note 166. ¶ 158; *Prosecutor v. Tharcisse Renzaho*. ICTR-97-31-T. *Supra* note 232. ¶ 760; *Prosecutor v. Ephrem Setako*. ICTR-04-81-T. *Supra* note 181. ¶ 466; *Prosecutor v. Yussuf Munyakazi*. ICTR-97-36A-T. *Supra* note 236. ¶ 493; *Prosecutor v. Dominique Ntawukulilyayo*. ICTR-05-82-T. *Supra* note 170. ¶ 450; *Prosecutor v. Ildephonse Hategekimana*. ICTR-00-55B-T. *Supra* note 197. ¶ 668; *Prosecutor v. Jean-Baptiste Gatete*. ICTR-2000-61-T. *Supra* note 195. ¶ 582; *Prosecutor v. Grégoire Ndahimana*. ICTR-01-68-T. *Supra* note 191. ¶ 803; *Prosecutor v. Édouard Karemera et al.* ICTR-98-44-T. *Supra* note 172. ¶ 1606.

¹⁸²² *Prosecutor v. Milomir Stakić*. IT-97-24-T. *Supra* note 109. ¶ 522; *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 831; *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-T. *Supra* note 153. ¶ 749; *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-A A172-1/2054bis. *Supra* note 154. p. 98/2054 BIS; *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 555.

¹⁸²³ *Prosecutor v. Athanase Seromba*. ICTR-2001-66-T. *Supra* note 160. ¶ 319.

¹⁸²⁴ According to the ICTY, "genocidal intent may therefore be manifest in two forms. It may consist of desiring the extermination of a very large number of the members of the group, in which case it would constitute an intention to destroy a group *en masse*. However, it may also consist of the desired destruction of a more limited number of persons selected for the impact that their disappearance would have upon the survival of the group as such." (*Prosecutor v. Vujadin Popović et al.* IT-05-88-A. *Supra* note 151. ¶ 82).

¹⁸²⁵ See also: *Prosecutor v. Kayishema and Ruzindana*. ICTR 95-1-T. *Supra* note 209. ¶ 97; *Prosecutor v. Goran Jelisić*. IT-95-10-T. *Supra* note 97. ¶ 82; *Prosecutor v. Radislav Krstić*. IT-98-33-A. *Supra* note 129. ¶ 8.

¹⁸²⁶ *Prosecutor v. Goran Jelisić*. IT-95-10-T. *Supra* note 97. ¶ 82.

¹⁸²⁷ *Prosecutor v. Georges Anderson Nderubumwe Rutaganda*. ICTR-96-3-A. *Supra* note 189. ¶ 524

¹⁸²⁸ *Prosecutor v. Goran Jelisić*. IT-95-10-T. *Supra* note 97. ¶ 82.

Importantly, although the determination of the occurrence of genocide does not require a numeric threshold of victims, it must be proved, beyond a reasonable doubt, “that the perpetrator acted with the intent to destroy the group as such, in whole or in part.” The intent to destroy a protected group must be to destroy at least a relatively considerable portion of individuals whose destruction would jeopardize the existence of the whole group as such.^{1830 1831} According to the *rationale* of *Prosecutor v. Milomir Stakić*, “it is not necessary to establish, with the assistance of a demographer, the size of the victimized population in numerical terms.”¹⁸³² It suffices to prove, without reasonable doubt, that the perpetrator had the intent to destroy at least a substantial part of the group, whose elimination would be significant to the survival of the entire group, such as the elimination of the group’s leadership or the elimination of its male members.^{1833 1834}

The determination of whether the destruction of a fractioned part of the targeted group is substantial enough (*substantiality requirement*) to

¹⁸²⁹ In *Jelisić*, the ICTY considered that “the character of the attack on the leadership must be viewed in the context of the fate or what happened to the rest of the group. If a group has its leadership exterminated, and at the same time or in the wake of that, has a relatively large number of the members of the group killed or subjected to other heinous acts, for example deported on a large scale or forced to flee, the cluster of violations ought to be considered in its entirety in order to interpret the provisions of the [Genocide] Convention in a spirit consistent with its purpose.” (*Ibidem*).

¹⁸³⁰ *Prosecutor v. Duško Sikirica et al.* IT-95-8-T. *Supra* note 87. ¶ 65; *Prosecutor v. Vidoje Blagojević, Dragan Jokić.* IT-02-60-T. *Supra* note 147. ¶ 668; *Prosecutor v. Zdravko Tolimir.* IT-05-88/2-T. *Supra* note 153. ¶ 749.

¹⁸³¹ *Prosecutor v. Clément Kayishema and Ruzindana.* ICTR 95-1-T. *Supra* note 209. ¶¶ 96-97; *Prosecutor v. Goran Jelisić.* IT-95-10-T. *Supra* note 97. ¶ 82; *Prosecutor v. Laurent Semanza.* ICTR-97-20-T. *Supra* note 211. ¶ 316; *Prosecutor v. Emmanuel Ndindabahizi.* ICTR-2001-71-I. *Supra* note 177. ¶ 454; *Prosecutor v. Aloys Simba.* ICTR-01-76-T. *Supra* note 157. ¶ 412; *Prosecutor v. François Karera.* ICTR-01-74-T. *Supra* note 184. ¶ 534; *Prosecutor v. Gaspard Kanyarukiga.* ICTR-2002-78-T. *Supra* note 187. ¶ 635; *Prosecutor v. Ildephonse Hategekimana.* ICTR-00-55B-T. *Supra* note 197. ¶ 668.

¹⁸³² *Prosecutor v. Milomir Stakić.* IT-97-24-T. *Supra* note 109. ¶ 522.

¹⁸³³ *Prosecutor v. François Karera.* ICTR-01-74-T. *Supra* note 184. ¶ 534; *Prosecutor v. Callixte Kalimanzira.* ICTR-05-88-T. *Supra* note 166. ¶¶ 158, 730; *Prosecutor v. Tharcisse Renzaho.* ICTR-97-31-T. *Supra* note 232. ¶ 760; *Prosecutor v. Ephrem Setako.* ICTR-04-81-T. *Supra* note 181. ¶ 466; *Prosecutor v. Dominique Ntawukulilyayo.* ICTR-05-82-T. *Supra* note 170. ¶ 450; *Prosecutor v. Jean-Baptiste Gatete.* ICTR-2000-61-T. *Supra* note 195. ¶ 582; *Prosecutor v. Augustin Ndindiliyimana et al.* ICTR-00-56-T. *Supra* note 163. ¶ 2072.

¹⁸³⁴ *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶¶ 865-866.

meet such legal requirement and represent a danger of destruction to the entire group – *relative weight* – involves the consideration of several factors that must always be analyzed on a case-by-case basis.¹⁸³⁵ These factors include but are not limited to: 1) the “numeric size of the targeted part of the group,” “measured not only in absolute terms but also in relation to the overall size of the entire group;” 2) whether the targeted portion of the group is *emblematic* of the overall group, such as its leadership; 3) the prominence of the targeted portion; and 4) whether the targeted portion is essential to the survival of the whole group, such as the destruction of its male members.^{1836 1837} Also, customary international law supports the understanding that genocide might be perpetrated “even when the discriminatory intent only extends to “a limited geographic zone.”^{1838 1839}

A crucial question regarding the targeting of a specific group and the numeric threshold of victims necessary to establish genocide is whether more than one group can be targeted at the same time by the same perpetrators. In making considerations about genocidal acts committed against both Bosnian Muslims as well as Bosnian Croats in the Former Yugoslavia, the ICTY concluded, in *Prosecutor v. Radoslav Brđanin*, on the possibility of perpetrators to target *at the same time* more than one protected group, provided that the elements of the crime of genocide are considered in relation to each group separately.¹⁸⁴⁰

Besides, Customary International Law also allows the possibility of the characterization of the crime of genocide even when the perpetrators’ intent to destroy a group is limited to a geographical area or a single community, which means the possibility that the elimination of a certain por-

¹⁸³⁵ *Prosecutor v. Radislav Krstić*. IT-98-33-A. *Supra* note 129. ¶ 12; *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶ 702; *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 832; *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-T. *Supra* note 153. ¶ 749.

¹⁸³⁶ *Prosecutor v. Duško Sikirica et al.* IT-95-8-T. *Supra* note 87. ¶ 65. See also: *Prosecutor v. Milomir Stakić*. IT-97-24-T. *Supra* note 109. ¶ 525; *Prosecutor v. Radislav Krstić*. IT-98-33-A. *Supra* note 129. ¶ 12; *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶¶ 701–702; *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶¶ 832, 865–866; *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-T. *Supra* note 153. ¶ 749; *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-A A172-1/2054bis. *Supra* note 154. p. 98/2054 BIS.

¹⁸³⁷ *Prosecutor v. Clément Kayishema and Ruzindana*. ICTR 95-1-T. *Supra* note 209. ¶ 96.

¹⁸³⁸ *Prosecutor v. Duško Sikirica et al.* IT-95-8-T. *Supra* note 87. ¶ 68.

¹⁸³⁹ See also: *Prosecutor v. Milomir Stakić*. IT-97-24-T. *Supra* note 109. ¶ 523; *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶ 703.

¹⁸⁴⁰ *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶ 735.

tion of the group may accomplish the intent of “purifying an entire region” inhabited by such group.¹⁸⁴¹ In *Prosecutor v. Radoslav Brđanin*, the ICTY confirmed the characterization of genocide even when the specific intent to destroy a group, in part, extends to an area “difficult to precisely determine.”¹⁸⁴²

Likewise, the ITCR’s Appeals Chamber understood, in *Callixte Kalimanzira v. Prosecutor*, that the local concentration of crimes – specifically at Kalimanzira’s prefecture – rather than at the national level was not a relevant factor to assess the gravity of such crimes.¹⁸⁴³ Most importantly, the Chamber conceived the idea of the *indivisible character* of the crime of genocide. For the Chamber, “the genocide that was committed in Rwanda between 6 April 1994 and 17 July 1994, which resulted in the killings of hundreds of thousands of Tutsis, is indivisible.”¹⁸⁴⁴

3.2. Crimes against humanity.

3.2.1. Legal Definition and chapeau elements

It is a core principle of Customary International Law that civilians must always be protected at all times, in peacetime and in circumstances of armed conflicts.¹⁸⁴⁵ Therefore, the targeting of civilians and civilian objects is absolutely forbidden under Customary International Law and may not be derogated under the allegation of military necessity.¹⁸⁴⁶ Likewise, attacks on the civilian population are not also supported by “*tu quoque*” allegations.¹⁸⁴⁷ Therefore, certain acts purposefully directed against any civil-

¹⁸⁴¹ *Prosecutor v. Goran Jelisić*. IT-95-10-T. *Supra* note 97. ¶ 83; *Prosecutor v. Duško Sikirica et al.* IT-95-8-T. *Supra* note 88. ¶ 68; *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶ 703; *Prosecutor v. Radislav Krstić*. IT-98-33-A. *Supra* note 129. ¶¶ 15, 16, 28.

¹⁸⁴² *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶ 967.

¹⁸⁴³ *Callixte Kalimanzira v. Prosecutor*. ICTR-05-88-A. *Supra* note 167. ¶ 229.

¹⁸⁴⁴ *Ibidem*.

¹⁸⁴⁵ *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 544.

¹⁸⁴⁶ *Prosecutor v. Dragoljub Kunarac et al.* IT-96-23/1-A. *Supra* note 85. ¶¶ 87, 91; *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 544; *Prosecutor v. Stanislav Galić*. IT-98-29-A. *Supra* note 141. ¶ 130; *Prosecutor v. Brima, Kamara, Kanu*. SCSL-04-16-T. *Supra* note 280. ¶ 216.

¹⁸⁴⁷ “The existence of an attack from one side against the other side’s civilian population would neither justify the attack by that other side against the civilian population of its opponent nor displace the conclusion that the other side’s forces were in fact targeting a civilian population as such.” (*Prosecutor v. Dragoljub Kunarac et al.* IT-96-23/1-A. *Supra* note 85. ¶ 87).

ian population – *actus reus* –, when committed in a context of widespread or systematic attacks, may constitute a crime against humanity within the scope and jurisdiction of international criminal courts.¹⁸⁴⁸ The Rome Statute defines a “crime against humanity” as an act “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”^{1849 1850} Crimes against humanity may be perpetrated in peace times and in times of armed conflict.^{1851 1852}

In different instances, the ICTR, the ICTY, and the SCSL had already had the opportunity to define the general distinguishable elements or conditions to determine whether a particular act – or a set of acts – may amount to a crime against humanity (*chapeau* elements): (i) there must be an attack; (ii) the attack must be either widespread or systematic; (iii) a civilian population must be the specific target of the attack; (iv) the perpetrator must know that there is a such widespread or systematic attack targeting a civilian population; (v) the perpetrator must understand that their acts are part of the attack.^{1853 1854 1855 1856} The ICTR, in addition to these elements, still considers the following: (vi) “the act must be inhumane in nature and character, causing great suffering, or serious injury to body or to mental or physical health;”¹⁸⁵⁷ and (vii) “the act must be committed on one or more discriminatory grounds, namely, national, political, ethnic, racial or religious grounds.”¹⁸⁵⁸

¹⁸⁴⁸ Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶¶ 85, 99; Prosecutor v. Radoslav Brđanin. IT-99-36-A. *Supra* note 131. ¶ 257; Prosecutor v. Zdravko Tolimir. IT-05-88/2-A. *Supra* note 152. ¶ 142.

¹⁸⁴⁹ United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544. Article 7.

¹⁸⁵⁰ See also: Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 75; Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 585; Prosecutor v. Laurent Semanza. ICTR-97-20-T. *Supra* note 211. ¶ 333.

¹⁸⁵¹ M. Cherif Bassiouni. *Supra* note 316. p. 30.

¹⁸⁵² U.N. Doc. S/2005/60 (Feb. 1, 2005). ¶ 178.

¹⁸⁵³ Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶¶ 85–86; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 705; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 876.

¹⁸⁵⁴ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 578.

¹⁸⁵⁵ Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 76.

¹⁸⁵⁶ See also: **The Nuremberg Tribunal: United States of America v. Oswald Pohl, et al. Case 4** (Pohl case) (1947). p. 207; United States of America vs. Friedrich Flick *et al.* Case 5 (1947). p. XIX.

¹⁸⁵⁷ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 578.

¹⁸⁵⁸ *Ibid.*

3.2.1.1. Attack

The concepts of “attack” against a civilian population and “armed conflict” in customary international law are not identical and must be distinguished from one another.^{1859 1860} The former is considered “an element of a crime against humanity” and the latter “a jurisdictional requirement pursuant to the [the law of crimes against humanity].”¹⁸⁶¹ The distinction between an attack and an armed conflict “reflects the position in customary international law that crimes against humanity may be committed in peacetime and independent of an armed conflict.”^{1862 1863} Different from the jurisdictional requirements from the ICTR, SCSL, and ICC, the Statute of the ICTY required that the underlying crimes were “committed in armed conflict, whether international or internal in character.”¹⁸⁶⁴

¹⁸⁵⁹ Prosecutor v. Goran Jelisić, IT-95-10-A. *Supra* note 98. ¶ 141; Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 86; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 30; Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 623; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 131; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 543; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 706; Prosecutor v. Nikola Šainović *et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 144; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 873; Prosecutor v. Ante Gotovina *et al.* IT-06-90-T, vol. I. *Supra* note 76. ¶ 1702; Prosecutor v. Momčilo Perišić. IT-04-81-T. *Supra* note 123. ¶ 82; Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 506; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 693; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 24; Prosecutor v. Jovica Stanišić and Franko Simatović. IT-03-69-T, vol. I. *Supra* note 101. ¶ 962; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 473; Prosecutor v. Ratko Mladić. IT-09-92-T, vol. III. *Supra* note 137. ¶ 3024.

¹⁸⁶⁰ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 214; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 77; Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 506.

¹⁸⁶¹ Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 39.

¹⁸⁶² Prosecutor v. Fofana, Kondewa. SCSL-04-14-T. *Supra* note 281. ¶ 111.

¹⁸⁶³ See also: Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 77

¹⁸⁶⁴ Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 542. See also: Prosecutor v. Duško Tadić. IT-94-1-T. *Supra* note 89. ¶¶ 627, 928; Prosecutor v. Duško Tadić. IT-94-1-A. *Supra* note 90. ¶¶ 249, 271; Prosecutor v. Zoran Kupreškić, *et al.* IT-95-16-T. *Supra* note 156. ¶ 545; Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-T. *Supra* note 84. ¶¶ 411, 413; Prosecutor v. Goran Jelisić, IT-95-10-A. *Supra* note 98. ¶ 139; Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶¶ 83-84, 105; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 38; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶¶ 36, 38; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 133; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 704; Prosecutor v. Ante Gotovina

According to the SCSL Trial Chamber, an attack constitutes a “campaign, operation or course of conduct directed against a civilian population and encompasses any mistreatment of the civilian population.”^{1865 1866 1867} An attack can be comprised of a single act or multiple acts.¹⁸⁶⁸ International criminal case-law considers that an attack is not “limited to the use of armed force,” or other acts of *military* nature, and can encompass any mistreatment of the civilian population, including persons taking no active part in hostilities.^{1869 1870 1871} An “armed conflict” is

et al. IT-06-90-T, vol. I. *Supra* note 76. ¶¶ 1699-1700; Prosecutor v. Momčilo Perišić. IT-04-81-T. *Supra* note 123. ¶ 80; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶¶ 690-691; Prosecutor v. Jovica Stanišić and Franko Simatović. IT-03-69-T, vol. I. *Supra* note 101. ¶¶ 959-960; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 471; Prosecutor v. Ratko Mladić. IT-09-92-T, vol. III. *Supra* note 137. ¶¶ 3021-3022.

¹⁸⁶⁵ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶¶ 213-214. See also: Prosecutor v. Fofana, Kondewa. SCSL-04-14-T. *Supra* note 281. ¶ 111; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 77; Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 506.

¹⁸⁶⁶ See also: Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 581; Prosecutor v. Hormisdas Nsengimana, Case No. ICTR-01-69-T, (Nov. 17, 2009). ¶ 843; Prosecutor v. Yussuf Munyakazi. ICTR-97-36A-T. *Supra* note 236. ¶ 503; Prosecutor v. Ildephonse Hategekimana. ICTR-00-55B-T. *Supra* note 197. ¶ 701; Prosecutor v. Augustin Ndindiliyimana *et al.* ICTR-00-56-T. *Supra* note 163. ¶ 2087.

¹⁸⁶⁷ See also: Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-T. *Supra* note 84. ¶ 415; Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 86; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 29; Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 623; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 39; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 131; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 543; Prosecutor v. Mile Mrkšić *et al.* IT-95-13/1. *Supra* note 108. ¶ 436; Prosecutor v. Nikola Šainović *et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 144; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 873; Prosecutor v. Ante Gotovina *et al.* IT-06-90-T, vol. I. *Supra* note 76. ¶ 1702; Prosecutor v. Momčilo Perišić. IT-04-81-T. *Supra* note 123. ¶ 82; Prosecutor v. Jovica Stanišić and Franko Simatović. IT-03-69-T, vol. I. *Supra* note 101. ¶ 962; Prosecutor v. Ratko Mladić. IT-09-92-T, vol. III. *Supra* note 137. ¶ 3024.

¹⁸⁶⁸ Prosecutor v. Zoran Kupreškić, *et al.* IT-95-16-T. *Supra* note 156. ¶ 550; Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 96; Prosecutor v. Nikola Šainović *et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 152; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 698.

¹⁸⁶⁹ Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-T. *Supra* note 84. ¶ 416; Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 86; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 29; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 39; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 131; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note

defined by the ICTY, in *Prosecutor v. Momčilo Krajišnik*, as “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.”¹⁸⁷² The armed conflict requirement is proved by demonstrating that “there was” an armed conflict “at the relevant time and place.”^{1873 1874}

It is a mandatory element of crimes against humanity that the acts of the accused must be part of the *attack* against the civilian population.^{1875 1876} However, the underlying acts of the perpetrator “need not be

147. ¶ 543; *Prosecutor v. Mile Mrkšić et al.* IT-95-13/1. *Supra* note 108. ¶ 436; *Prosecutor v. Nikola Šainović et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 144; *Prosecutor v. Ante Gotovina et al.* IT-06-90-T, vol. I. *Supra* note 76. ¶ 1702; *Prosecutor v. Momčilo Perišić.* IT-04-81-T. *Supra* note 123. ¶ 82; *Prosecutor v. Zdravko Tolimir.* IT-05-88/2-T. *Supra* note 153. ¶ 693; *Prosecutor v. Mičo Stanišić, Stojan Župljanin.* IT-08-91-T, vol. 1. *Supra* note 102. ¶ 24; *Prosecutor v. Radovan Karadžić.* IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 473; *Prosecutor v. Ratko Mladić.* IT-09-92-T, vol. III. *Supra* note 137. ¶ 3024.

¹⁸⁷⁰ *Prosecutor v. Germain Katanga.* ICC-01/04-01/07. *Supra* note 333. ¶ 1101; *Prosecutor v. Jean-Pierre Bemba Gombo.* ICC-01/05-01/08. *Supra* note 335. ¶¶ 149, 151; *Prosecutor v. Bosco Ntaganda.* ICC-01/04-02/06. *Supra* note 328. ¶ 662.

¹⁸⁷¹ *Prosecutor v. Fofana, Kondewa.* SCSL-04-14-T. *Supra* note 281. ¶ 111; *Prosecutor v. Sesay, Kallon and Gbao.* SCSL-04-15-T. *Supra* note 268. ¶ 77; *Prosecutor v. Taylor.* SCSL-03-01-T. *Supra* note 270. ¶ 506.

¹⁸⁷² *Prosecutor v. Momčilo Krajišnik.* IT-00-39-T. *Supra* note 121. ¶ 704.

¹⁸⁷³ *Ibidem.*

¹⁸⁷⁴ See also: *Prosecutor v. Duško Tadić.* IT-94-1-A. *Supra* note 90. ¶¶ 249, 251; *Prosecutor v. Dragoljub Kunarac et al.* IT-96-23/1-A. *Supra* note 85. ¶ 86.

¹⁸⁷⁵ *Prosecutor v. Sesay, Kallon and Gbao.* SCSL-04-15-T. *Supra* note 268. ¶ 89.

¹⁸⁷⁶ For the SCSL Trial Chamber, “the requirement that the acts of the Accused must be part of the attack is satisfied by the commission of an act which, by its nature or consequences, is objectively part of the attack. This is established if the alleged crimes were related to the attack on a civilian population, but need not have been committed in the midst of that attack. A crime which is committed before or after the main attack or away from it could still, if sufficiently connected, be part of that attack. However, it must not be an isolated act. A crime would be regarded as an ‘isolated act’ when it is so far removed from that attack that, having considered the context and circumstances in which it was committed, it cannot reasonably be said to have been part of the attack.” (*Ibidem.*)

committed in the midst of that attack.”^{1877 1878 1879} According to the ICTY Trial Chamber, in *Prosecutor v. Milomir Stakić*, and to the SCSL, in *Brima*¹⁸⁸⁰ and *Sesay*,¹⁸⁸¹ an attack, by its nature, can “precede, outlast, or continue during the armed conflict, but it need not be part of it,” and “is not limited to the use of armed force; it encompasses any mistreatment of the civilian population.”^{1882 1883 1884 1885} Accordingly, an underlying act “that is committed before or after the main attack against the civilian population or away from it could still, if sufficiently connected, be part of that attack.”^{1886 1887}

¹⁸⁷⁷ *Prosecutor v. Dragoljub Kunarac et al.* IT-96-23/1-A. *Supra* note 85. ¶ 100; *Prosecutor v. Blagoje Simić et al.* IT-95-9-T. *Supra* note 78. ¶¶ 39, 41; *Prosecutor v. Mile Mrkšić et al.* IT-95-13/1. *Supra* note 108. ¶ 436; *Prosecutor v. Nikola Šainović et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶¶ 144, 152; *Prosecutor v. Ante Gotovina et al.* IT-06-90-T, vol. I. *Supra* note 76. ¶ 1706; *Prosecutor v. Mićo Stanišić, Stojan Župljanin.* IT-08-91-T, vol. 1. *Supra* note 102. ¶ 29; *Prosecutor v. Jadranko Prlić, et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶ 43; *Prosecutor v. Radovan Karadžić.* IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 478; *Prosecutor v. Ratko Mladić.* IT-09-92-T, vol. III. *Supra* note 137. ¶ 3028.

¹⁸⁷⁸ *Prosecutor v. Sesay, Kallon and Gbao.* SCSL-04-15-T. *Supra* note 268. ¶ 89.

¹⁸⁷⁹ *Prosecutor v. Clément Kayishema and Ruzindana.* ICTR 95-1-T. *Supra* note 209. ¶ 127.

¹⁸⁸⁰ *Prosecutor v. Brima, Kamara, Kanu.* SCSL-04-16-T. *Supra* note 280. ¶ 214.

¹⁸⁸¹ *Prosecutor v. Sesay, Kallon and Gbao.* SCSL-04-15-T. *Supra* note 268. ¶ 77.

¹⁸⁸² *Prosecutor v. Milomir Stakić.* IT-97-24-T. *Supra* note 109. ¶ 623.

¹⁸⁸³ See also: *Prosecutor v. Goran Jelisić.*, IT-95-10-A. *Supra* note 98. ¶ 141; *Prosecutor v. Dragoljub Kunarac et al.* IT-96-23/1-A. *Supra* note 85. ¶ 86; *Prosecutor v. Mitar Vasiljević.* IT-98-32-T. *Supra* note 117. ¶ 30; *Prosecutor v. Vidoje Blagojević, Dragan Jokić.* IT-02-60-T. *Supra* note 147. ¶ 543; *Prosecutor v. Nikola Šainović et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 144; *Prosecutor v. Ante Gotovina et al.* IT-06-90-T, vol. I. *Supra* note 76. ¶ 1702; *Prosecutor v. Momčilo Perišić.* IT-04-81-T. *Supra* note 123. ¶ 82; *Prosecutor v. Zdravko Tolimir.* IT-05-88/2-T. *Supra* note 153. ¶ 693; *Prosecutor v. Mićo Stanišić, Stojan Župljanin.* IT-08-91-T, vol. 1. *Supra* note 102. ¶ 24; *Prosecutor v. Jovica Stanišić and Franko Simatović.* IT-03-69-T, vol. I. *Supra* note 101. ¶ 962; *Prosecutor v. Radovan Karadžić.* IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 473; *Prosecutor v. Ratko Mladić.* IT-09-92-T, vol. III. *Supra* note 137. ¶ 3024.

¹⁸⁸⁴ See also: *Prosecutor v. Brima, Kamara, Kanu.* SCSL-04-16-T. *Supra* note 280. ¶ 214; *Prosecutor v. Fofana, Kondewa.* SCSL-04-14-T. *Supra* note 281. ¶ 111; *Prosecutor v. Sesay, Kallon and Gbao.* SCSL-04-15-T. *Supra* note 268. ¶ 77.

¹⁸⁸⁵ “An armed conflict is understood to continue beyond the cessation of hostilities, until a general conclusion of peace is reached, or, in the case of internal conflicts, a peaceful settlement is achieved.” (*Prosecutor v. Momčilo Krajišnik.* IT-00-39-T. *Supra* note 121. ¶ 704).

¹⁸⁸⁶ *Prosecutor v. Dragoljub Kunarac et al.* IT-96-23/1-A. *Supra* note 85. ¶ 100. See also: *Prosecutor v. Nikola Šainović et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 152; *Prosecutor v. Momčilo Perišić.* IT-04-81-T. *Supra* note 123. ¶ 87; *Prosecutor v. Jadranko Prlić, et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶ 43.

Similarly, it is not necessary that the accused perpetrates numerous acts so that they may bear international criminal responsibility for their conduct.¹⁸⁸⁸ A single act, if committed in a “context of a widespread or systematic attack upon a civilian population,” may trigger “individual criminal liability upon the perpetrator.”¹⁸⁸⁹

In *Prosecutor v. Vidoje Blagojević, Dragan Jokić, and Prosecutor v. Dragoljub Kunarac*, the ICTY stated that the acts of the accused and the attack on the civilian population must be connected by a *nexus* consistent of two elements: (i) “the commission of an act which, by its nature or consequences, is objectively part of the attack”; and (ii) “knowledge on the part of the accused that there is an attack on the civilian population and that his act is part thereof.”^{1890 1891} Such nexus is required “in circumstances where a crime is not entirely temporally and geographically connected to the attack.”¹⁸⁹² It is not necessary, however, proof that “the victims are linked to any particular side of the armed conflict”¹⁸⁹³ or that “the acts were committed in the midst of the attack,” “provided that they are sufficiently connected therewith.”^{1894 1895}

In determining whether the requisite nexus exists, an objective assessment must be conducted on a case-by-case basis.^{1896 1897} Such assessment

¹⁸⁸⁷ *Prosecutor v. Sesay, Kallon and Gbao*. SCSL-04-15-T. *Supra* note 268. ¶ 89.

¹⁸⁸⁸ *Prosecutor v. Brima, Kamara, Kanu*. SCSL-04-16-T. *Supra* note 280. ¶ 215.

¹⁸⁸⁹ *Ibidem*.

¹⁸⁹⁰ *Prosecutor v. Dragoljub Kunarac et al.* IT-96-23/1-A. *Supra* note 85. ¶ 99; *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 547.

¹⁸⁹¹ The SCSL Trial Chamber considered that “although this nexus depends on the factual circumstances of each case, reliable indicia of a nexus include the similarities between the perpetrator’s acts and the acts occurring within the attack; the nature of the events and circumstances surrounding the perpetrator’s acts; the temporal and geographic proximity of the perpetrator’s acts with the attack; and the nature and extent of the perpetrator’s knowledge of the attack when he commits the acts.” (*Prosecutor v. Brima, Kamara, Kanu*. SCSL-04-16-T. *Supra* note 280. ¶ 220).

¹⁸⁹² *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-T. *Supra* note 153. ¶ 699.

¹⁸⁹³ *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 544.

¹⁸⁹⁴ “The acts of the accused must be part of the attack against the civilian population, but they need not be committed in the midst of that attack. A crime which is committed before or after the main attack against the civilian population or away from it could still, if sufficiently connected, be part of that attack.” (*Prosecutor v. Dragoljub Kunarac et al.* IT-96-23/1-A. *Supra* note 85. ¶ 100).

¹⁸⁹⁵ See also: *Prosecutor v. Dragoljub Kunarac et al.* IT-96-23/1-A. *Supra* note 85. ¶ 96; *Prosecutor v. Milan Lukić, Sredoje Lukić*. IT-98-32/1-T. *Supra* note 104. ¶ 876.

¹⁸⁹⁶ *Prosecutor v. Jean-Pierre Bemba Gombo*. ICC-01/05-01/08. *Supra* note 335. ¶ 165.

¹⁸⁹⁷ See also: *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-T. *Supra* note 153. ¶ 699.

might consider the following elements: 1) “the commission of an act which, by its nature or consequences, is objectively part of the attack,”^{1898 1899} and 2) “knowledge on the part of the accused that there is an attack on the civilian population and that his act is part thereof.”^{1900 1901} If an act is committed in a clearly different context “and circumstances from other acts that occur during an attack,” such act is regarded as an *isolated* act and falls outside the scope of application of the law of crimes against humanity.^{1902 1903 1904} An act would be regarded as *isolated* “when it is so far removed from that attack that, having considered the context and circumstances in which it was committed, it cannot reasonably be said to have been part of the attack.”^{1905 1906 1907}

3.2.1.2. Directed against any civilian population

In customary international law, “there is an absolute prohibition against targeting civilians,” irrespective of whether such targeting is committed in an armed conflict of international or internal character.^{1908 1909 1910} A “ci-

¹⁸⁹⁸ Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 547.

¹⁸⁹⁹ See also: Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 99.

¹⁹⁰⁰ Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 32.

¹⁹⁰¹ See also: Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-T. *Supra* note 84. ¶ 418.

¹⁹⁰² Prosecutor v. Jean-Pierre Bemba Gombo. ICC-01/05-01/08. *Supra* note 335. ¶ 165.

¹⁹⁰³ See also: Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 100; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 547; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 699.

¹⁹⁰⁴ See also: Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 89. *Ibidem*.

¹⁹⁰⁶ See also: Prosecutor v. Fofana, Kondewa. SCSL-04-14-T. *Supra* note 281. ¶ 120.

¹⁹⁰⁷ See also: Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 100; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 41; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 547; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 706; Prosecutor v. Nikola Šainović *et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 152; Prosecutor v. Jadranko Prlić, *et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶ 43.

¹⁹⁰⁸ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 216.

¹⁹⁰⁹ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 565.

¹⁹¹⁰ The United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1968), provides, in Article I, that “no statutory limitation shall apply to crimes against humanity, irrespective of the date of their commission, [...] whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations...”

vilian” population, for the purposes of crimes against humanity, is narrowly regarded as such if it is “predominantly civilian in nature” – the *principle of distinction*.^{1911 1912} However, “there is no numerical rule clearly denoting the point at which a population loses its civilian character.”¹⁹¹³

The definition of a civilian, “as opposed to members of armed forces and other legitimate combatants,”^{1914 1915} has been expansively and broadly interpreted. It generally includes “not only civilians in the ordinary and strict sense of the term, but all persons who have taken no active part in the hostilities, or are no longer doing so,”^{1916 1917 1918} “including “members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause.”^{1919 1920 1921} What matters the most in analyzing whether a person stands as a civilian is “the specific situation of the victim at the moment the crimes were committed, rather than his status.”¹⁹²² International criminal courts have continuously stated that “the presence of isolated non-civilians among [the targeted] population does not deprive that population itself of its civilian character,”¹⁹²³ as long as the population is “predominantly civilian.”^{1924 1925 1926 1927 1928}

(G. A. Res. 2391, Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, U.N. Doc. A/RES/2391(XXIII) (Nov. 26, 1968).

¹⁹¹¹ Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 544; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 706.

¹⁹¹² Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶¶ 216, 218–219; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 83.

¹⁹¹³ Prosecutor v. Nikola Šainović *et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 148.

¹⁹¹⁴ Prosecutor v. Jean-Pierre Bemba Gombo. ICC-01/05-01/08. *Supra* note 334. ¶ 78.

¹⁹¹⁵ See also: Prosecutor v. Jovica Stanišić and Franko Simatović. IT-03-69-T, vol. I. *Supra* note 101. ¶ 965.

¹⁹¹⁶ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 216.

¹⁹¹⁷ See also: Prosecutor v. Duško Tadić. IT-94-1-A. *Supra* note 90. ¶ 248; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 706; Prosecutor v. Jovica Stanišić and Franko Simatović. IT-03-69-T, vol. I. *Supra* note 101. ¶ 965.

¹⁹¹⁸ See also: Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 582.

¹⁹¹⁹ Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 544.

¹⁹²⁰ In International Humanitarian Law, a civilian is regarded as a person under the protection of Geneva Convention, Common Article 3, and Additional Protocol II. (Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 218).

¹⁹²¹ See also: Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 582; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 706; Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 216.

¹⁹²² Prosecutor v. Tihomir Blaškić. IT-95-14-T. *Supra* note 143. ¶ 215.

¹⁹²³ Prosecutor v. Jadranko Prlić, *et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶ 38.

The expression “directed against” requires that, in the context of a crime against humanity, the civilian population, which is subjected to the attack, must be the *primary* object of the attack rather than an *incidental* victim of the attack.^{1929 1930 1931 1932 1933 1934} To determine “whether the attack may be said to have been *so directed*,” international criminal case-law has identified a non-exhaustive list of relevant factors, *inter alia* 1) the “means and method used in the course of the attack;” 2) the number of the victims; 3) the status of the victims; 4) the “discriminatory nature of the attack;” 5) the “nature of the crimes committed in its course;” 6) the “resistance to

¹⁹²⁴ Prosecutor v. Goran Jelisić., IT-95-10-A. *Supra* note 98. ¶ 143.

¹⁹²⁵ See also: Prosecutor v. Germain Katanga. ICC-01/04-01/07. *Supra* note 333. ¶ 1105; Prosecutor v. Jean-Pierre Bemba Gombo. ICC-01/05-01/08. *Supra* note 335. ¶ 153; Prosecutor v. Bosco Ntaganda. ICC-01/04-02/06. *Supra* note 328. ¶ 668.

¹⁹²⁶ See also: Prosecutor v. Duško Tadić. IT-94-1-T. *Supra* note 89. ¶ 638; Prosecutor v. Tihomir Blaškić. IT-95-14-T. *Supra* note 143. ¶ 211; Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-T. *Supra* note 84. ¶ 425; Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶ 180; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 42; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 134; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 706; Prosecutor v. Mile Mrkšić *et al.* IT-95-13/1. *Supra* note 108. ¶ 453; Prosecutor v. Momčilo Perišić. IT-04-81-T. *Supra* note 123. ¶ 84; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 696; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 474.

¹⁹²⁷ See also: Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 582; Prosecutor v. Clément Kayishema and Ruzindana. ICTR 95-1-T. *Supra* note 209. ¶ 128; Prosecutor v. Sylvestre Gacumbitsi. ICTR-2001-64-T. *Supra* note 228. ¶ 300; Prosecutor v. Mikaeli Muhimana. ICTR-95-1B-T. *Supra* note 214. ¶ 528.

¹⁹²⁸ See also: Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶¶ 216, 218; Prosecutor v. Fofana, Kondewa. SCSL-04-14-T. *Supra* note 281. ¶ 117; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 83.

¹⁹²⁹ Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-T. *Supra* note 84. ¶ 421; Prosecutor v. Goran Jelisić., IT-95-10-A. *Supra* note 98. ¶ 142; Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶¶ 91-92; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 33; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 42; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 134; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 706; Prosecutor v. Mile Mrkšić *et al.* IT-95-13/1. *Supra* note 108. ¶ 440; Prosecutor v. Nikola Šainović *et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 149; Prosecutor v. Ante Gotovina *et al.* IT-06-90-T, vol. I. *Supra* note 76. ¶ 1704; Prosecutor v. Momčilo Perišić. IT-04-81-T. *Supra* note 123. ¶ 83; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 694; Prosecutor v. Jadranko Prlić, *et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶ 36; Prosecutor v. Jovica Stanišić and Franko Simatović. IT-03-69-T, vol. I. *Supra* note 101. ¶ 964; Prosecutor v. Ratko Mladić. IT-09-92-T, vol. III. *Supra* note 137. ¶ 3026.

¹⁹³⁰ See also: Prosecutor v. Sylvestre Gacumbitsi. ICTR-2001-64-T. *Supra* note 228. ¶ 300; Prosecutor v. Mikaeli Muhimana. ICTR-95-1B-T. *Supra* note 214. ¶ 528.

the assailants at the time;” and 7) the “extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirement of the laws of war.”^{1935 1936 1937}

Consequentially, it is a legal constituent of the criminal conduct proof that the attack was directed against a civilian population even when the attack 1) did not target the entire population of the geographical entity; or is 2) circumscribed only to a specific geographical area, rather than against the whole territory under consideration.^{1938 1939 1940} Therefore, the consideration of whether an attack is widespread or systematic is essentially a “relative exercise” because the civilian population attacked by the perpetrator must always be assessed.¹⁹⁴¹

¹⁹³¹ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 216; Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 507.

¹⁹³² See also: Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 475.

¹⁹³³ See also: Prosecutor v. Germain Katanga. ICC-01/04-01/07. *Supra* note 333. ¶ 1104; Prosecutor v. Jean-Pierre Bemba Gombo. ICC-01/05-01/08. *Supra* note 335. ¶ 154; Prosecutor v. Bosco Ntaganda. ICC-01/04-02/06. *Supra* note 328. ¶ 668.

¹⁹³⁴ See also: Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 80.

¹⁹³⁵ Prosecutor v. Goran Jelisić., IT-95-10-A. *Supra* note 98. ¶ 142.

¹⁹³⁶ See also: Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 91; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 134; Prosecutor v. Mile Mrkšić *et al.* IT-95-13/1. *Supra* note 108. ¶ 440; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 694; Prosecutor v. Jadranko Prlić, *et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶¶ 36, 38; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 475.

¹⁹³⁷ See also: Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 216.

¹⁹³⁸ Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶¶ 91, 98; Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 624; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶¶ 704, 706; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 874.

¹⁹³⁹ “The use of the word *population* does not mean that the entire population of the geographical entity in which the attack is taking place must have been subjected to that attack. It is sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted in such a way as to satisfy the Chamber that the attack was in fact directed against a civilian *population*, rather than against a limited and randomly selected number of individuals.” (Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 90).

¹⁹⁴⁰ “[i]t is sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted in such a way as to satisfy the Chamber that the attack was directed against a civilian ‘population’, rather than against a limited and randomly selected number of individuals.” (Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 624).

¹⁹⁴¹ Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 95.

The term “population” “does not mean that the entire population of the geographical entity in which the attack is taking place must have been subjected to that attack.”^{1942 1943 1944 1945 1946} Customary international law accepts that “it is sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted in such a way as to satisfy (...) that the attack was *in fact* directed against a civilian “population.”^{1947 1948 1949} Such a jurisprudential approach requires evidence that the individuals targeted to be attacked were not *arbitrarily selected*.^{1950 1951 1952} The term “of any sort” expresses the fact that the victims’ nationality is irrelevant to the verification of the occurrence of a crime against humanity.¹⁹⁵³ The word “any” “makes it clear that crimes against humanity can be committed against civilians of the same nationality as the perpetrator or those who are stateless, as well as those of a different nationality.”¹⁹⁵⁴

3.2.1.3. Widespread or systematic

The Rome Statute of the International Criminal Court asserts that a “crime against humanity means any [...] act[.] when committed as a part of a widespread or systematic attack directed against any civilian population, with

¹⁹⁴² Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-T. *Supra* note 84. ¶ 424.

¹⁹⁴³ See also: Prosecutor v. Paul Bisengimana. ICTR-00-60-T. *Supra* note 218. ¶ 51; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 706; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 696.

¹⁹⁴⁴ See also: Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 217; Prosecutor v. Fofana, Kondewa. SCSL-04-14-T. *Supra* note 281. ¶ 119; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 85.

¹⁹⁴⁵ See also: Prosecutor v. Jean-Pierre Bemba Gombo. ICC-01/05-01/08. *Supra* note 334. ¶ 77; Prosecutor v. Germain Katanga. ICC-01/04-01/07. *Supra* note 333. ¶ 1105.

¹⁹⁴⁶ See also: Prosecutor v. Jean de Dieu Kamuhanda. ICTR-95-54A-T. *Supra* note 200. ¶ 670.

¹⁹⁴⁷ Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 34.

¹⁹⁴⁸ See also: Prosecutor v. Jadranko Prlić, *et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶ 37.

¹⁹⁴⁹ See also: Prosecutor v. Ante Gotovina *et al.* IT-06-90-T, vol. I. *Supra* note 76. ¶ 1704.

¹⁹⁵⁰ Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109.

¹⁹⁵¹ See also: Prosecutor v. Goran Jelisić, IT-95-10-A. *Supra* note 98. ¶ 143; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 134; Prosecutor v. Momčilo Perišić. IT-04-81-T. *Supra* note 123. ¶ 83; Prosecutor v. Jovica Stanišić and Franko Simatović. IT-03-69-T, vol. I. *Supra* note 101. ¶ 964; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 475.

¹⁹⁵² See also: Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 507.

¹⁹⁵³ Prosecutor v. Mile Mrkšić *et al.* IT-95-13/1. *Supra* note 108. ¶ 441; Prosecutor v. Jadranko Prlić, *et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶ 39.

¹⁹⁵⁴ Prosecutor v. Duško Tadić. IT-94-1-T. *Supra* note 89. ¶ 635.

knowledge of the attack.”¹⁹⁵⁵ ¹⁹⁵⁶ Such attacks may target civilians on national, political, ethnic, racial, or religious grounds.¹⁹⁵⁷ The ICTR, the ICTY, and the SCSL consider that the legal requirement “widespread” or “systematic” is disjunctive/alternative rather than cumulative.¹⁹⁵⁸ This means that only one prong of the legal requirement suffices for the legal characterization of the crime.¹⁹⁵⁹ ¹⁹⁶⁰ ¹⁹⁶¹ Importantly, international criminal tri-

¹⁹⁵⁵ Rome Statue of the International Criminal Court. Art. 7. This verbatim is quite similar to almost all statutes of international criminal courts, e.g., the Statue of the ICTY, Art. 5; Statue of the ICTR, Art. 3; Regulation No. 2000/15, s.5 East Timor; Statue of the Special Court for Sierra Leone, Art. 2; Statue of the Iraqi Special Tribunal, Art. 12.

¹⁹⁵⁶ Prosecutor v. Emmanuel Rukundo. ICTR-2001-70-T. *Supra* note 179. ¶ 578; Prosecutor v. Hormisdas Nsengimana, Case No. ICTR-01-69-T, (Nov. 17, 2009). ¶¶ 843, 845; Prosecutor v. Jean-Baptiste Gatete. ICTR-2000-61-T. *Supra* note 195. ¶ 631.

¹⁹⁵⁷ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 579; Prosecutor v. Yussuf Munyakazi. ICTR-97-36A-T. *Supra* note 236. ¶ 503; Prosecutor v. Augustin Ndindiliyimana *et al.* ICTR-00-56-T. *Supra* note 163. ¶ 2087.

¹⁹⁵⁸ Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶¶ 93, 97-98; Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶¶ 214-215; Prosecutor v. Emmanuel Rukundo. ICTR-2001-70-T. *Supra* note 179. ¶ 578; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 78; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 875; Prosecutor v. Hormisdas Nsengimana, Case No. ICTR-01-69-T, (Nov. 17, 2009). ¶ 843; Prosecutor v. Yussuf Munyakazi. ICTR-97-36A-T. *Supra* note 236. ¶ 503; Prosecutor v. Gaspard Kanyarukiga. ICTR-2002-78-T. *Supra* note 187. ¶ 657; Prosecutor v. Augustin Ndindiliyimana *et al.* ICTR-00-56-T. *Supra* note 163. ¶ 2087; Prosecutor v. Jean-Baptiste Gatete. ICTR-2000-61-T. *Supra* note 195. ¶ 631.

¹⁹⁵⁹ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 215; Prosecutor v. Fofana, Kondewa. SCSL-04-14-T. *Supra* note 281. ¶ 112; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 78; Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 511; Prosecutor v. Jean-Pierre Bemba Gombo. ICC-01/05-01/08. *Supra* note 335. ¶ 162.

¹⁹⁶⁰ Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶¶ 93, 97; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 43; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 135; Prosecutor v. Dragomir Milošević. IT-98-29/1-T. *Supra* note 86. ¶ 925; Prosecutor v. Nikola Šainović *et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 150; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 698; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 28; Prosecutor v. Jadranko Prlić, *et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶ 41; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 477.

¹⁹⁶¹ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 579; Prosecutor v. Clément Kayishema and Ruzindana. ICTR 95-1-T. *Supra* note 209. ¶ 123; Prosecutor v. Elizaphan and Gérard Ntakirutimana. ICTR-96-10 & ICTR-96-17-T. *Supra* note 175. ¶ 804; Prosecutor v. Laurent Semanza. ICTR-97-20-T. *Supra* note 211. ¶ 328; Prosecutor v. Jean de Dieu Kamuhanda. ICTR-95-54A-T. *Supra* note 200. ¶ 662; Pro-

bunals require that only the attack, “not the individual acts of the accused, must be widespread or systematic.”^{1962 1963 1964}

The term “widespread” refers directly to 1) the massive, “large-scale nature” of the attack (*extraordinary* magnitude); 2) the relative number of the victims, or 3) “the cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude.”^{1965 1966 1967 1968}

secutor v. Paul Bisengimana. ICTR-00-60-T. *Supra* note 218. ¶ 43; Prosecutor v. Théoneste Bagosora *et al.* ICTR-98-41-T. *Supra* note 234. ¶ 2165; Prosecutor v. Tharcisse Renzaho. ICTR-97-31-T. *Supra* note 232. ¶ 782; Prosecutor v. Ephrem Setako. ICTR-04-81-T. *Supra* note 181. ¶ 476; Prosecutor v. Yussuf Munyakazi. ICTR-97-36A-T. *Supra* note 236. ¶ 503; Prosecutor v. Gaspard Kanyarukiga. ICTR-2002-78-T. *Supra* note 187. ¶ 657; Prosecutor v. Ildephonse Hategekimana. ICTR-00-55B-T. *Supra* note 197. ¶ 700; Prosecutor v. Jean-Baptiste Gatete. ICTR-2000-61-T. *Supra* note 195. ¶ 631; Prosecutor v. Grégoire Ndahimana. ICTR-01-68-T. *Supra* note 191. ¶ 835; Prosecutor v. Édouard Karemera *et al.* ICTR-98-44-T. *Supra* note 172. ¶ 1674.

¹⁹⁶² Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-T. *Supra* note 84. ¶ 431.

¹⁹⁶³ See also: Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 96; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 43; Prosecutor v. Tihomir Blaškić. IT-95-14-A. *Supra* note 144. ¶ 101; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 135; Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-A. *Supra* note 80. ¶ 94; Prosecutor v. Nikola Šainović *et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 150; Prosecutor v. Jadranko Prlić, *et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶ 42.

¹⁹⁶⁴ See also: Prosecutor v. Fofana, Kondewa. SCSL-04-14-T. *Supra* note 281. ¶ 120; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 89.

¹⁹⁶⁵ Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶¶ 94–95.

¹⁹⁶⁶ See also: Prosecutor v. Tihomir Blaškić. IT-95-14-T. *Supra* note 143. ¶ 206; Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-T. *Supra* note 84. ¶ 428; Prosecutor v. Goran Jelisić, IT-95-10-A. *Supra* note 98. ¶ 146; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 35; Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 625; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 43; Prosecutor v. Tihomir Blaškić. IT-95-14-A. *Supra* note 144. ¶ 101; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 135; Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-A. *Supra* note 80. ¶ 94; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 545; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 706; Prosecutor v. Dragomir Milošević. IT-98-29/1-T. *Supra* note 86. ¶ 925; Prosecutor v. Nikola Šainović *et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 150; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 875; Prosecutor v. Ante Gotovina *et al.* IT-06-90-T, vol. I. *Supra* note 76. ¶ 1703; Prosecutor v. Momčilo Perišić. IT-04-81-T. *Supra* note 123. ¶ 86; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 698; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 28; Prosecutor v. Jadranko Prlić, *et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶ 41; Prosecutor v. Jovica Stanišić and Franko Simatović. IT-03-69-T, vol. I. *Supra* note 101. ¶ 963; Prosecutor v. Radovan Karadžić.

The term “systematic” has been conceived as encompassing multiple alternative elements, meaning that the act of violence (or the acts) perpetrated against a civilian population is (are) organized/methodical in its nature, follows a similar, regular, and deliberate pattern of criminal conduct, recurs non-accidentally, takes place on a regular basis, results “in continuous acts of commission,” usually perpetrated in the furtherance of a common policy or ideology, and being improbable that such act/acts occur randomly.^{1969 1970 1971 1972} International case-law has also understood that, in many factual circumstances, the term “systematic” implicates that high-

IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 477; Prosecutor v. Ratko Mladić. IT-09-92-T, vol. III. *Supra* note 137. ¶ 3025.

¹⁹⁶⁷ See also: Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 580; Prosecutor v. Clément Kayishema and Ruzindana. ICTR 95-1-T. *Supra* note 209. ¶ 123; Prosecutor v. Elizaphan and Gérard Ntakirutimana. ICTR-96-10 & ICTR-96-17-T. *Supra* note 175. ¶ 804; Prosecutor v. Sylvestre Gacumbitsi. ICTR-2001-64-T. *Supra* note 228. ¶ 299; Prosecutor v. Mikaeli Muhimana. ICTR-95-1B-T. *Supra* note 214. ¶ 527; Prosecutor v. Théoneste Bagosora *et al.* ICTR-98-41-T. *Supra* note 234. ¶ 2165; Prosecutor v. Emmanuel Rukundo. ICTR-2001-70-T. *Supra* note 179. ¶ 578; Prosecutor v. Tharcisse Renzaho. ICTR-97-31-T. *Supra* note 232. ¶ 782; Prosecutor v. Hor-misdas Nsengimana, Case No. ICTR-01-69-T, (Nov. 17, 2009). ¶ 843; Prosecutor v. Ephrem Setako. ICTR-04-81-T. *Supra* note 181. ¶ 476; Prosecutor v. Yussuf Munyakazi. ICTR-97-36A-T. *Supra* note 236. ¶ 503; Prosecutor v. Gaspard Kanyarukiga. ICTR-2002-78-T. *Supra* note 187. ¶ 657; Prosecutor v. Ildephonse Hategekimana. ICTR-00-55B-T. *Supra* note 197. ¶ 700; Prosecutor v. Jean-Baptiste Gatete. ICTR-2000-61-T. *Supra* note 195. ¶ 631; Prosecutor v. Augustin Ndingiyimana *et al.* ICTR-00-56-T. *Supra* note 163. ¶ 2087; Prosecutor v. Pauline Nyiramasuhuko *et al.* ICTR-98-42-T. *Supra* note 219. ¶ 6040; Prosecutor v. Grégoire Ndahimana. ICTR-01-68-T. *Supra* note 191. ¶ 835; Prosecutor v. Callixte Nzabonimana. ICTR-98-44D-T. *Supra* note 168. ¶ 1777; Prosecutor v. Ildéphonse Nizeyimana. ICTR-2000-55C-T. *Supra* note 198. ¶ 1542.

¹⁹⁶⁸ See also: Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 215; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 78.

¹⁹⁶⁹ Prosecutor v. Elizaphan and Gérard Ntakirutimana. ICTR-96-10 & ICTR-96-17-T. *Supra* note 175. ¶ 804; Prosecutor v. Théoneste Bagosora *et al.* ICTR-98-41-T. *Supra* note 234. ¶ 2165; Prosecutor v. Tharcisse Renzaho. ICTR-97-31-T. *Supra* note 232. ¶ 782; Prosecutor v. Ephrem Setako. ICTR-04-81-T. *Supra* note 181. ¶ 476; Prosecutor v. Yussuf Munyakazi. ICTR-97-36A-T. *Supra* note 236. ¶ 503; Prosecutor v. Gaspard Kanyarukiga. ICTR-2002-78-T. *Supra* note 187. ¶ 657; Prosecutor v. Ildephonse Hategekimana. ICTR-00-55B-T. *Supra* note 197. ¶ 700; Prosecutor v. Jean-Baptiste Gatete. ICTR-2000-61-T. *Supra* note 195. ¶ 631; Prosecutor v. Pauline Nyiramasuhuko *et al.* ICTR-98-42-T. *Supra* note 219. ¶ 6040; Prosecutor v. Grégoire Ndahimana. ICTR-01-68-T. *Supra* note 191. ¶ 835; Prosecutor v. Callixte Nzabonimana. ICTR-98-44D-T. *Supra* note 168. ¶ 1777; Prosecutor v. Ildéphonse Nizeyimana. ICTR-2000-55C-T. *Supra* note 198. ¶ 1542.

level political and military authorities are involved in the planning or perpetration of the systematic attack. Or even that significant private or public resources (military or not) have been used in an attack.^{1973 1974} Also, “systematic” might denote the existence of a pre-conceived plan or policy, whether formalized or not. However, proof of the existence of a plan does not constitute an element of the crime against humanity.¹⁹⁷⁵

The assessment of whether the attack is widespread or systematic in practice is, in essence, a relative exercise always conducted on a case-by-case basis,¹⁹⁷⁶ “because it depends upon the civilian population that was attacked.”^{1977 1978} It is “neither exclusively quantitative nor geographical, but must be carried out based on all the relevant facts of the

¹⁹⁷⁰ Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-T. *Supra* note 84. ¶ 429; Prosecutor v. Goran Jelisić., IT-95-10-A. *Supra* note 98. ¶ 146; Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 94; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 35; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 43; Prosecutor v. Tihomir Blaškić. IT-95-14-A. *Supra* note 144. ¶ 101; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 135; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 545; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 706; Prosecutor v. Dragomir Milošević. IT-98-29/1-T. *Supra* note 86. ¶ 925; Prosecutor v. Nikola Šainović *et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 150; Prosecutor v. Ante Gotovina *et al.* IT-06-90-T, vol. I. *Supra* note 76. ¶ 1703; Prosecutor v. Momčilo Perišić. IT-04-81-T. *Supra* note 123. ¶ 86; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 698; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 28; Prosecutor v. Jadranko Prlić, *et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶ 41; Prosecutor v. Jovica Stanišić and Franko Simatović. IT-03-69-T, vol. I. *Supra* note 101. ¶ 963; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 477; Prosecutor v. Ratko Mladić. IT-09-92-T, vol. III. *Supra* note 137. ¶ 3025.

¹⁹⁷¹ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 215; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 78; Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 511.

¹⁹⁷² Prosecutor v. Germain Katanga. ICC-01/04-01/07. *Supra* note 332. ¶ 397; Prosecutor v. Bosco Ntaganda. ICC-01/04-02/06. *Supra* note 328. ¶ 692.

¹⁹⁷³ Prosecutor v. Tihomir Blaškić. IT-95-14-T. *Supra* note 143. ¶ 203.

¹⁹⁷⁴ See also: Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 580.

¹⁹⁷⁵ Prosecutor v. Sylvestre Gacumbitsi. ICTR-2001-64-T. *Supra* note 228. ¶ 299; Prosecutor v. Mikaeli Muhimana. ICTR-95-1B-T. *Supra* note 214. ¶ 527.

¹⁹⁷⁶ Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-T. *Supra* note 84. ¶ 430; Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 95; Prosecutor v. Nikola Šainović *et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 151; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 477.

¹⁹⁷⁷ Prosecutor v. Nikola Šainović *et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 151.

¹⁹⁷⁸ See also: Prosecutor v. Goran Jelisić., IT-95-10-A. *Supra* note 98. ¶ 146; Prosecutor v. Dragomir Milošević. IT-98-29/1-T. *Supra* note 86. ¶ 926.

case.”¹⁹⁷⁹ 1980 Notably, the International Criminal Law jurisprudence provides a non-exhaustive list of factors in considering whether an attack meets both “widespread” or “systematic” requirements of a crime against humanity: (i) “the (discriminatory) nature of the acts committed in its course;” (ii) “the status and the number of victims;” (iii) the means, methods, resources employed in the attacks; (iv) “the consequences of the attack upon the targeted population;” (v) “the possible participation of officials or authorities or any identifiable patterns of crimes.”¹⁹⁸¹ For instance, the ICTY considered that the widespread and systematic attack by Serbian police/military against the Bosnian Muslims and Bosnian Croats clearly targeted a civilian population with specific discriminatory measures on the basis of the victims’ membership in a group.¹⁹⁸²

3.2.2. Prohibited acts

3.2.2.1. *Actus reus*

The Statute of the International Criminal Court defines that, for the jurisdictional purposes of the Court and in respect of the principle of legality, any of the following acts may constitute a crime against humanity, “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”¹⁹⁸³

- “(a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation

¹⁹⁷⁹ Prosecutor v. Bosco Ntaganda. ICC-01/04-02/06. *Supra* note 328. ¶ 691.

¹⁹⁸⁰ See also: Prosecutor v. Jean-Pierre Bemba Gombo. ICC-01/05-01/08. *Supra* note 335. ¶ 163.

¹⁹⁸¹ Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶¶ 91, 95; Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 625; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 546; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 875.

¹⁹⁸² Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶¶ 92, 97, 101; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 552; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 787; Prosecutor v. Radoslav Brđanin. IT-99-36-A. *Supra* note 131. ¶ 257; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 895; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 2517, 2529, 2569.

¹⁹⁸³ United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544. Art. 7.

of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution of any identifiable group, or collectively on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”¹⁹⁸⁴

For the purposes of this book in assessing ISIL/DAESH acts against Christians in Iraq, the author selected and explored only the perpetrators’ *actus reus* that could be proven beyond a reasonable doubt, having considered the evidence and *indicia* demonstrated in a myriad of reports. Some of these acts are of much interest to assist in the assessment of whether ISIL/DAESH’s conducts and omissions towards Christians in Iraq constitute genocide or persecution, as a crime against humanity: extermination (Art. 7, I, c), torture (Art. 7, I, f), persecution (Art. 7, I, h), and “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental or physical health” (Art. 7, I, k).¹⁹⁸⁵

3.2.2.2. *Is there a policy element?*

A significant jurisprudential and academic debate refers to the necessity – or not – of a policy element in crimes against humanity.¹⁹⁸⁶ In other words, the controversy resides in whether the existence of a pre-conceived plan is a *sine qua non* element for establishing the required *dolus specialis* of crimes against humanity.¹⁹⁸⁷ While the Rome Statute and the ICTR Statute seek an organizational policy behind a State attack,¹⁹⁸⁸ the jurisprudence of both the SCSL and ICTY sustains that the existence of a plan or policy behind the attack “is not a distinct legal element [of a crime against hu-

¹⁹⁸⁴ *Ibidem*.

¹⁹⁸⁵ *Ibidem*.

¹⁹⁸⁶ M. Cherif Bassiouni. *Supra* note 316, p. 26.

¹⁹⁸⁷ Prosecutor v. Georges Anderson Nderubumwe Rutaganda. ICTR-96-3-A. *Supra* note 189, ¶ 525.

¹⁹⁸⁸ United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544. Article 7.2.a.

manity]” and need not be proven.^{1989 1990 1991} Customary international law sustains that if such a plan exists, it “need not necessarily be declared expressly or even stated clearly and precisely.”^{1992 1993} However, proving the existence of such a plan may be “evidentially relevant, in that it may be useful in establishing that the attack was directed against a civilian population and that it was widespread or systematic.”^{1994 1995 1996 1997}

In *Musema*, the ICTR Appeals Chamber approached the issue, considering that “there must exist some form of preconceived plan or policy [prior to any attack].” The Court had a similar approach in *Akayesu*¹⁹⁹⁸ and in *Rutaganda*.¹⁹⁹⁹ In 1996, the International Law Commission considered that the definition of crimes against humanity “established the two general conditions which must be met for one of the prohibited acts to qualify as a crime against humanity.” For the ILC, the first condition “required that the act [be] ‘committed in a systematic manner or on a large scale.’”. The ILC explained that this first condition “consisted of two alternative require-

¹⁹⁸⁹ Prosecutor v. Ratko Mladić. IT-09-92-T, vol. III. *Supra* note 137. ¶ 3025.

¹⁹⁹⁰ See also: Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 98; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 36; Prosecutor v. Tihomir Blaškić. IT-95-14-A. *Supra* note 144. ¶ 126; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 137; Prosecutor v. Ante Gotovina *et al.* IT-06-90-T, vol. I. *Supra* note 76. ¶ 1703; Prosecutor v. Jovica Stanišić and Franko Simatović. IT-03-69-T, vol. I. *Supra* note 101. ¶ 963; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 477.

¹⁹⁹¹ See also: Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 580; Prosecutor v. Sylvestre Gacumbitsi. ICTR-2001-64-T. *Supra* note 228. ¶ 299.

¹⁹⁹² Prosecutor v. Tihomir Blaškić. IT-95-14-T. *Supra* note 143. ¶ 204.

¹⁹⁹³ See also: Prosecutor v. Duško Tadić. IT-94-1-T. *Supra* note 89. ¶ 653.

¹⁹⁹⁴ Prosecutor v. Sylvestre Gacumbitsi. ICTR-2001-64-T. *Supra* note 228. ¶ 299.

¹⁹⁹⁵ See also: Prosecutor v. Mikaeli Muhimana. ICTR-95-1B-T. *Supra* note 214. ¶ 527.

¹⁹⁹⁶ See also: Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 215; Prosecutor v. Fofana, Kondewa. SCSL-04-14-T. *Supra* note 281. ¶ 113; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 79.

¹⁹⁹⁷ See also: Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 44; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 706; Prosecutor v. Nikola Šainović *et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 151; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 698; Prosecutor v. Jadranko Prlić, *et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶ 44.

¹⁹⁹⁸ The ICTR Trial Chamber established in *Akayesu* that “there is no requirement that this policy must be adopted formally as the policy of a state. There must however be some kind of preconceived plan or policy.” (Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 580.

¹⁹⁹⁹ Prosecutor v. Georges Anderson Nderubumwe Rutaganda. ICTR-96-3-A. *Supra* note 189. ¶¶ 521-531.

ments.” The first alternative for the ILC, “required that the inhumane acts be ‘committed in a systematic manner’ meaning pursuant of a preconceived plan or policy.”²⁰⁰⁰

The ICTY and the SCSL jurisprudence have an understanding that the definition of crimes against humanity in customary international law had no explicit requirement of a plan or policy.²⁰⁰¹ For instance, in *Kunarac*, the ICTY Appeals Chamber stated that:

“Contrary to the Appellants’ submissions, neither the attack nor the acts of the accused needs to be supported by any form of ‘policy’ or ‘plan.’ There was nothing in the Statute or in customary international law at the time of the alleged acts which required proof of the existence of a plan or policy to commit these crimes.”²⁰⁰²

Under this *rationale*, the Appeals Chamber considered that to prove these elements – *widespread* or *systematic* – it is not necessary

“to show that they were the result of the existence of a policy or plan. It may be useful in establishing that the attack was directed against a civilian population and that it was widespread or systematic (especially the latter) to show that there was, in fact, a policy or plan, but it may be possible to prove these things by reference to other matters.”²⁰⁰³

Thus, the ICTY Appeals Chamber concluded that “the existence of a policy or plan may be evidentially relevant, but it is not a legal element of the crime.”²⁰⁰⁴ In *Sesay, Kallon and Gbao*, the SCSL explicitly acknowledged that the existence of a policy or plan “is not a separate legal requirement of crimes against humanity.”²⁰⁰⁵ The SCSL had the same approach in *Prosecutor v. Brima, Kamara, Kanu*.²⁰⁰⁶

²⁰⁰⁰ U.N. Doc. A/51/10 (May 6, 1996 – July 26, 1996). p. 47. ¶ 3.

²⁰⁰¹ M. Cherif Bassiouni. *Supra* note 316. p. 26.

²⁰⁰² *Prosecutor v. Dragoljub Kunarac et al.* IT-96-23/1-A. *Supra* note 85. ¶ 98.

²⁰⁰³ *Ibidem*.

²⁰⁰⁴ *Ibidem*.

²⁰⁰⁵ “The existence of a policy or plan, or that the crimes were supported by a policy or plan to carry them out, may be evidentially relevant to establish the widespread or systematic nature of the attack and that it was directed against a civilian population, but it is not a separate legal requirement of crimes against humanity. Furthermore, the Chamber is of the view that customary international law does not presuppose a discriminatory or persecutory intent for all crimes against humanity.” (*Prosecutor v. Sesay, Kallon and Gbao*. SCSL-04-15-T. *Supra* note 268. ¶ 79).

²⁰⁰⁶ *Prosecutor v. Brima, Kamara, Kanu*. SCSL-04-16-T. *Supra* note 280. ¶ 215.

In *Bemba Gombo*, the ICC Pre-Trial Chamber further considered that such an organized *plan* might be conceived by a myriad of entities and organizations and not only state actors. Consequentially, according to this *rationale*, private organizations, such as terrorist organizations, may commit *directed* and *organized* attacks against a civilian population.²⁰⁰⁷ In the same vein, Customary International Criminal Law conceives that “crimes against humanity can be committed on behalf of entities exercising *de facto* control over a particular territory but without international recognition or formal status of a *de jure* state, or by a terrorist group or organization.”²⁰⁰⁸

Given that the present book deals with conducts perpetrated by an armed terrorist group rather than a State, both the Rome Statute and customary international law assert the crucial importance of a demonstration of a plan or policy behind the unlawful acts committed by the organization (non-state actor) in the course of an attack.²⁰⁰⁹ The *plan* from a non-state actor can be deduced from the occurrence of a series of events, *inter alia*:

- 1) the “general historical circumstances and the overall political background against which the criminal acts are set;”²⁰¹⁰
- 2) the “establishment and implementation of autonomous political structures at any level of authority in a given territory;”²⁰¹¹
- 3) the “general content of a political programme [*sic*], as it appears in the writings and speeches of its authors;”²⁰¹²
- 4) the existence of media propaganda:²⁰¹³ “statements, instructions or documentation attributable to [...] the organization condoning or encouraging the commission of crimes;”²⁰¹⁴
- 5) indications that the attack against the civilian population was “planned, directed or organized;”²⁰¹⁵
- 6) the “appointment of commanders and divisional commanders responsible for the operations on the field;”²⁰¹⁶

²⁰⁰⁷ Prosecutor v. Jean-Pierre Bemba Gombo. ICC-01/05-01/08. *Supra* note 334. ¶ 81.

²⁰⁰⁸ Prosecutor v. Duško Tadić. IT-94-1-T. *Supra* note 89. ¶ 654.

²⁰⁰⁹ Prosecutor v. Bosco Ntaganda. ICC-01/04-02/06. *Supra* note 328. ¶ 675.

²⁰¹⁰ Prosecutor v. Tihomir Blaškić. IT-95-14-T. *Supra* note 143. ¶ 204.

²⁰¹¹ *Ibidem*.

²⁰¹² *Ibidem*.

²⁰¹³ *Ibidem*.

²⁰¹⁴ Prosecutor v. Jean-Pierre Bemba Gombo. ICC-01/05-01/08. *Supra* note 335. ¶ 160.

²⁰¹⁵ *Ibidem*.

²⁰¹⁶ Prosecutor v. William Samoei Ruto *et al.* ICC-01/09-01/11. *Supra* note 344. ¶ 219.

- 7) the “production of maps marking areas;”²⁰¹⁷
- 8) the “purchase of weapons as well as of material to produce crude weapons and their storage before the attack;”²⁰¹⁸
- 9) the “transportation of the perpetrators to and from the target locations;”²⁰¹⁹
- 10) the “use of public or private resources to further the policy;”²⁰²⁰
- 11) the “use of various means of communication, including radio networks, with trained radio operators, and satellite communication;”²⁰²¹
- 12) the existence of “discriminatory measures, whether administrative or other (banking restrictions, laissez-passer);”²⁰²²
- 13) the “scale of the acts of violence perpetrated – in particular, murders and other physical acts of violence, rape, arbitrary imprisonment, deportations, and expulsions or the destruction of non-military property, in particular, sacral sites;”²⁰²³
- 14) the “establishment of a stipendiary scheme and a rewarding mechanism to motivate the perpetrators to kill and displace the largest number of persons belonging to the target communities as well as to destroy their properties;”²⁰²⁴
- 15) the existence of an underlying motivation for the attack;²⁰²⁵
- 16) the recurrence of a pattern of violence²⁰²⁶ temporally and geographically repeated;²⁰²⁷ and
- 17) “alterations to the composition of populations as a result of the attack.”²⁰²⁸

3.2.2.3. Extermination

The crime of extermination is the intentional – *mens rea* – act of killing on a massive/large scale or indirectly subjecting “a large number of people to

²⁰¹⁷ *Ibidem.*

²⁰¹⁸ *Ibidem.*

²⁰¹⁹ *Ibidem.*

²⁰²⁰ Prosecutor v. Jean-Pierre Bemba Gombo. ICC-01/05-01/08. *Supra* note 335. ¶ 160.

²⁰²¹ Prosecutor v. Bosco Ntaganda. ICC-01/04-02/06. *Supra* note 328. ¶ 679.

²⁰²² Prosecutor v. Tihomir Blaškić. IT-95-14-T. *Supra* note 143. ¶ 204.

²⁰²³ *Ibidem.*

²⁰²⁴ Prosecutor v. William Samoei Ruto *et al.* ICC-01/09-01/11. *Supra* note 344. ¶ 219.

²⁰²⁵ Prosecutor v. Jean-Pierre Bemba Gombo. ICC-01/05-01/08. *Supra* note 335. ¶ 160.

²⁰²⁶ *Ibidem.*

²⁰²⁷ Prosecutor v. Tihomir Blaškić. IT-95-14-T. *Supra* note 143. ¶ 204.

²⁰²⁸ *Ibidem.*

conditions of living that would lead to their death in a widespread or systematic manner.”^{2029 2030} Although such a legal typification does not imply or require that a numerical minimum must be reached (no numerical threshold), “extermination differs from murder in that it requires an element of mass destruction.”^{2031 2032} It is a crime “which by its very nature is directed against a group of individuals.”^{2033 2034} According to ICTY’s cases of *Prosecutor v. Momčilo Krajišnik* and *Prosecutor v. Vidoje Blagojević*, the assessment of whether a certain number of victims is considered “large” – scale/numerical minimum – is made on a case-by-case basis, in light of the proven facts and considering “all the relevant factors.”²⁰³⁵ Notably, in *Prosecutor v. Emmanuel Rukundo*, the ICTR Trial Chamber considered that “the Prosecution is not required to name the victims.”²⁰³⁶

The *mens rea* of extermination, through act or omission, consists of 1) the *intent* to kill persons or to cause serious bodily injury on a large scale or 2) the *intent* to systematically create conditions of life for a widespread number of people that would cause their deaths.²⁰³⁷ The *actus reus* of exter-

²⁰²⁹ *Prosecutor v. François Karera*. ICTR-01-74-T. *Supra* note 184. ¶ 552. See also: *Prosecutor v. Emmanuel Rukundo*. ICTR-2001-70-T. *Supra* note 179. ¶ 586; *Prosecutor v. Ephrem Setako*. ICTR-04-81-T. *Supra* note 181. ¶ 480; *Prosecutor v. Yussuf Munyakazi*. ICTR-97-36A-T. *Supra* note 236. ¶ 506; *Prosecutor v. Gaspard Kanyarukiga*. ICTR-2002-78-T. *Supra* note 187. ¶¶ 658, 665; *Prosecutor v. Jean-Baptiste Gatete*. ICTR-2000-61-T. *Supra* note 195. ¶¶ 642–643, Count IV, Disposition); *Prosecutor v. Pauline Nyiramasuhuko et al.* ICTR-98-42-A. *Supra* note 220. ¶ 2123.

²⁰³⁰ See also: *Prosecutor v. Brima, Kamara, Kanu*. SCSL-04-16-T. *Supra* note 280. ¶ 685.

²⁰³¹ *Prosecutor v. Milomir Stakić*. IT-97-24-A. *Supra* note 110. ¶ 260.

²⁰³² See also: *Prosecutor v. Jean-Paul Akayesu*. ICTR-96-4-T. *Supra* note 203. ¶ 591; *Prosecutor v. Musema*. ICTR-96-13-A. *Supra* note 216. ¶ 217; *Prosecutor v. François Karera*. ICTR-01-74-T. *Supra* note 184. ¶ 552; *Prosecutor v. Emmanuel Rukundo*. ICTR-2001-70-T. *Supra* note 179. ¶ 586; *Prosecutor v. Milan Lukić, Sredoje Lukić*. IT-98-32/1-T. *Supra* note 104. ¶ 938; *Prosecutor v. Gaspard Kanyarukiga*. ICTR-2002-78-T. *Supra* note 187. ¶ 658; *Prosecutor v. Pauline Nyiramasuhuko et al.* ICTR-98-42-A. *Supra* note 220. ¶ 2123.

²⁰³³ *Prosecutor v. Jean-Paul Akayesu*. ICTR-96-4-T. *Supra* note 203. ¶ 591.

²⁰³⁴ See also: *Prosecutor v. Musema*. ICTR-96-13-A. *Supra* note 216. ¶ 217; *Prosecutor v. Ephrem Setako*. ICTR-04-81-T. *Supra* note 181. ¶ 480; *Prosecutor v. Yussuf Munyakazi*. ICTR-97-36A-T. *Supra* note 236. ¶ 506.

²⁰³⁵ *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 573; *Prosecutor v. Momčilo Krajišnik*. IT-00-39-T. *Supra* note 121. ¶ 716; *Prosecutor v. Milan Lukić, Sredoje Lukić*. IT-98-32/1-T. *Supra* note 104. ¶ 938.

²⁰³⁶ *Prosecutor v. Emmanuel Rukundo*. ICTR-2001-70-T. *Supra* note 179. ¶ 586

²⁰³⁷ *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶¶ 572, 574; *Prosecutor v. Milomir Stakić*. IT-97-24-A. *Supra* note 110. ¶¶ 259–260; *Prosecutor v. Milan Lukić, Sredoje Lukić*. IT-98-32/1-T. *Supra* note 104. ¶ 939.

mination consists of any *act* or *omission* that, directly or indirectly, leads to the death of a large number of persons – massive scale.^{2038 2039}

The ICTR Chamber defined the essential elements/requirements of extermination as constituting a crime against humanity: 1) “the accused or his subordinate participated in the (widespread or systematic) killing of certain (...) described persons” or “in subjecting a widespread number of people or systematically subjecting a number of people to conditions of living that would inevitably lead to death”; 2) “the act or omission was unlawful and intentional”; 3) “the unlawful act or omission must be part of a widespread or systematic attack”; 4) “the attack must be against the civilian population”; 5) “the attack must be on discriminatory grounds, namely: national, political, ethnic, racial, or religious grounds.”^{2040 2041}

It is also a requirement of the crime of extermination that the perpetrators “must (...) know of the vast scheme of collective murder” and manifested their will “to take part therein.”²⁰⁴² The existence of a *plan* or a *policy* does not constitute a formal requirement of the crime of persecution as a crime against humanity. However, when such a plan or policy exists, it may provide evidence to verify the occurrence of the extermination crime.²⁰⁴³ In contrast, in *Prosecutor v. Vidoje Blagojević, Dragan Jokić*, the ICTY Trial Chamber did not consider “the existence of a “vast scheme of collective murder” or “vast murderous enterprise” as a separate element of the crime nor as an additional layer of the *mens rea* required for the commission of the crime.”²⁰⁴⁴

²⁰³⁸ In this regard, the ICTY concluded that “the offender must intend to kill, to inflict grievous bodily harm, or to inflict serious injury, in the reasonable knowledge that such act or omission is likely to cause death, or otherwise intends to participate in the elimination of a number of individuals, in the knowledge that his action is part of a vast murderous enterprise in which a large number of individuals are systematically marked for killing or killed.” (*Prosecutor v. Mitar Vasiljević*. IT-98-32-T. *Supra* note 117. ¶ 229).

²⁰³⁹ See also: *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶¶ 572–573; *Prosecutor v. Momčilo Krajišnik*. IT-00-39-T. *Supra* note 121. ¶ 716; *Prosecutor v. Milan Lukić, Sredoje Lukić*. IT-98-32/1-T. *Supra* note 104. ¶ 937.

²⁰⁴⁰ *Prosecutor v. Jean-Paul Akayesu*. ICTR-96-4-T. *Supra* note 203. ¶¶ 591–592. See also: *Prosecutor v. Musema*. ICTR-96-13-A. *Supra* note 216. ¶ 217; *Prosecutor v. François Karera*. ICTR-01-74-T. *Supra* note 184. ¶ 552; *Prosecutor v. Emmanuel Rukundo*. ICTR-2001-70-T. *Supra* note 179. ¶ 586.

²⁰⁴¹ The SCSL has a similar set of requirements. See, for example: *Prosecutor v. Brima, Kamara, Kanu*. SCSL-04-16-T. *Supra* note 280. ¶¶ 684–685.

²⁰⁴² *Prosecutor v. Mitar Vasiljević*. IT-98-32-T. *Supra* note 117. ¶¶ 228–229; *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 575.

²⁰⁴³ *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 576.

²⁰⁴⁴ *Ibidem*.

3.2.2.4. Torture

For the purposes and requirements of International Criminal Law, the essential elements of torture, prohibited at all times under customary international law,²⁰⁴⁵ may be defined as: (i) “The perpetrator must intentionally inflict severe physical or mental pain or suffering upon the victim for one or more of the following purposes”: (a) “to obtain information or a confession from the victim or a third person”; (b) “to punish the victim or a third person for an act committed or suspected of having been committed by either of them”; (c) “for the purpose of intimidating or coercing the victim or the third person”; (d) “for any reason based on discrimination of any kind.”^{2046 2047} (ii) “The perpetrator was himself an official, or acted at the instigation of, or with the consent or acquiescence of, an official or person acting in an official capacity.”^{2048 2049}

If, in addition to these essential elements, the following further elements are satisfied, torture may be considered as a crime against humanity: (a) “torture must be perpetrated as part of a widespread or systematic attack”; (b) “the attack must be against the civilian population”; (c) “the attack must be launched on discriminatory grounds, namely: national, ethnic, racial, religious and political grounds.”²⁰⁵⁰

Three critical aspects must be observed concerning the essential elements/requirements of torture under International Criminal Law: Firstly) The *underlying prohibited purpose* behind the mistreating offense of torture need not be the *exclusive*, the *predominant*, or the *sole purpose* of the perpetrators in committing the crime; Secondly) There is no jurisprudential requirement that the underlying purpose of torturing the victim bears an illegitimate purpose; Thirdly) By definition, reflected by customary international law, torture cannot be committed by individuals acting in a private capacity, that is, the conduct must be committed by individuals acting in an official capacity – public official requirement.²⁰⁵¹

Inflicting severe pain or suffering is a constitutive element of the crime of torture – implicit *substantial gravity* requirement/threshold –, although there is no dispositive list in customary international law – “exhaustive

²⁰⁴⁵ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 594.

²⁰⁴⁶ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶¶ 184–185, 241.

²⁰⁴⁷ Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶¶ 593, 594.

²⁰⁴⁸ *Idem*. ¶ 594.

²⁰⁴⁹ See also: *Idem*. ¶ 593.

²⁰⁵⁰ *Idem*. ¶¶ 593, 595.

²⁰⁵¹ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶¶ 184, 186, 241; Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 146.

classification” – of which underlying acts suffice the “severity test.”²⁰⁵² The assessment of the degree of severity of the *visible* physical or mental pain/suffering charged as torture must follow a holistic approach considering all the circumstances of the case as a whole.^{2053 2054} These circumstances include: 1) the nature of the pain inflicted on the victims; 2) the general context in which the torture was perpetrated; 3) the severity of the inflicted pain; 4) the premeditation of torture; 5) the authorities’ institutionalization of torture; 6) the victim’s physical/organic condition; 7) the nature of the torturing methods; 8) the prolonged period of time to which a victim was subjected to torture; 9) whether the victim was subjected to the same form/manner of torture or to different torturing methods; and 10) the superiority position of the perpetrator.²⁰⁵⁵ Particular forms of violence, such as rape, imply/establish *per se* severe pain or suffering, whether physical or mental, as required by the definition/characterization of the crime of torture, even when absent a medical certificate.^{2056 2057}

3.2.2.5. Persecution

The Rome Statute defines persecution as the “intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.”²⁰⁵⁸ The crime of persecution, as a

²⁰⁵² Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 149. See also: Prosecutor v. Radoslav Brđanin. IT-99-36-A. *Supra* note 131. ¶¶ 240, 251.

²⁰⁵³ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶¶ 181–182, 219, 241; Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 149.

²⁰⁵⁴ The Convention against Torture’s drafting history makes clear that “severe pain or suffering is not synonymous with extreme pain or suffering, and that the latter is a more intense level of pain and suffering – one that might come closer to pain ... equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death – not required by the Convention against Torture.” (Prosecutor v. Radoslav Brđanin. IT-99-36-A. *Supra* note 131. ¶ 240, 251).

²⁰⁵⁵ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 182.

²⁰⁵⁶ Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶¶ 150–151.

²⁰⁵⁷ It is important to mention that, for the purposes of International Criminal Law, “solitary confinement is not, in and of itself, a form of torture. However, in view of its strictness, its duration, and the object pursued, solitary confinement could cause great physical or mental suffering of the sort envisaged by this offence. To the extent that the confinement of the victim can be shown to pursue one of the prohibited purposes of torture and to have caused the victim severe pain or suffering, the act of putting or keeping someone in solitary confinement may amount to torture.” (Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 183).

²⁰⁵⁸ United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544. Article 7.2.g.

crime against humanity, consists of an act or omission which 1) “discriminates in fact and denies or infringes upon a fundamental right laid down in international customary or treaty law (the actus reus);” and 2) is “carried out deliberately with the intention to discriminate on one of the listed grounds,” specifically race, religion, ethnicity or politics (the *mens rea*).^{2059 2060 2061}

In *Tadic*, the ICTY Trial Chamber established the three basic requirements for the crime of persecution: (1) “the occurrence of a discriminatory act or omission”; (2) “a discriminatory basis for that act or omission on one of the listed grounds, specifically race, religion or politics”; and (3) “the intent to cause, and a resulting infringement of an individual’s enjoyment of a basic or fundamental right.”^{2062 2063} Although the occurrence of such discriminatory acts or omissions is generally part of discriminatory policies or governmental practices – or are supported by them –, the existence of such policies does not constitute a requirement for the crime of perse-

²⁰⁵⁹ Prosecutor v. Zoran Kupreškić, *et al.* IT-95-16-T. *Supra* note 156. ¶ 627. See also: Prosecutor v. Miroslav Kvočka *et al.* IT-98-30/1-T. *Supra* note 114. ¶ 184; Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 431; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 244; Prosecutor v. Mladen Naletilić, *et al.* IT-98-34-T. *Supra* note 119. ¶ 634; Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 732; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 47; Prosecutor v. Tihomir Blaškić. IT-95-14-A. *Supra* note 144. ¶¶ 130-131; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 992; Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-A. *Supra* note 80. ¶ 101; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 579; Prosecutor v. Miroslav Kvočka *et al.* IT-98-30/1-A. *Supra* note 115. ¶¶ 320, 323; Prosecutor v. Miroslav Deronjić. IT-02-61-A. *Supra* note 113. ¶ 109; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 734; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 964; Prosecutor v. Ante Gotovina *et al.* IT-06-90-T, vol. I. *Supra* note 76. ¶ 1802; Prosecutor v. Momčilo Perišić. IT-04-81-T. *Supra* note 123. ¶ 118; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 846; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 66; Prosecutor v. Jadranko Prlić, *et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶ 72; Prosecutor v. Jovica Stanišić and Franko Simatović. IT-03-69-T, vol. I. *Supra* note 101. ¶ 1238; Prosecutor v. Vlastimir Đorđević. IT-05-87/1-A. *Supra* note 149. ¶¶ 557-558; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 497.

²⁰⁶⁰ Prosecutor v. Simon Bikindi. ICTR-01-72-T. *Supra* note 226. ¶ 435; Prosecutor v. Théoneste Bagosora *et al.* ICTR-98-41-T. *Supra* note 234. ¶ 2208; Prosecutor v. Pauline Nyiramasuhuko *et al.* ICTR-98-42-A. *Supra* note 220. ¶ 2138.

²⁰⁶¹ Prosecutor v. Bosco Ntaganda. ICC-01/04-02/06. *Supra* note 328. ¶ 988.

²⁰⁶² Prosecutor v. Duško Tadic. IT-94-1-T. *Supra* note 89. ¶ 715.

²⁰⁶³ See also: Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-T. *Supra* note 203. ¶ 583; Prosecutor v. Jean-Paul Akayesu. ICTR-96-4-A. *Supra* note 204. ¶ 464; Prosecutor v. Pauline Nyiramasuhuko *et al.* ICTR-98-42-A. *Supra* note 220. ¶ 2138.

cution.²⁰⁶⁴ Ultimately, what matters in the course of the persecutory acts/omissions is the “intent to discriminate.”²⁰⁶⁵

The Elements of Crimes of the International Criminal Court establishes six constitutive bases for the crime against humanity of persecution as follows:

1. The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.
2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.
3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.²⁰⁶⁶
4. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.²⁰⁶⁷
5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.²⁰⁶⁸

The crime of persecution is a unique type of crime against humanity because it requires a specific discriminatory intent with a cumulative effect.²⁰⁶⁹ This

²⁰⁶⁴ Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶ 211; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 582; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 994; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 967.

²⁰⁶⁵ Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶¶ 211, 213.

²⁰⁶⁶ “For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society [...]” United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544. Article 7.3.

²⁰⁶⁷ “For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” *Idem.* Article 7.1.

²⁰⁶⁸ International Criminal Court (ICC), Elements of Crimes, 2013. Reproduced from the Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3–10 September 2002, part II.B. The Elements of Crimes adopted at the 2010 Review Conference. Article 7.1.h.

²⁰⁶⁹ Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶¶ 189, 199, 212; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 248.

means that, in addition to fulfilling the general requirements of a crime against humanity, the perpetrator's acts must be carried on discriminatory grounds – the victim of the widespread or systematic attack is targeted by virtue of their membership to a political, racial, or religious group. Such a cumulative effect makes the definition of the crime of persecution *mens rea* a “complex task.”²⁰⁷⁰ Although the term “persecution” is frequently used to describe a series of acts, a single act may constitute persecution 1) If it discriminates in fact; 2) If “committed within the appropriate context,” with the requisite knowledge; and 3) if it is “carried out deliberately with the intent to discriminate on a prohibited ground.”^{2071 2072}

When prosecuting persecution as a crime against humanity, observance of the principle of legality – *nullum crimen sine lege* – must be strictly respected. This requires that, in factual cases, the underlying acts committed by the perpetrator bear a *specific* discriminatory intent – *in fact* persecutory – rather than a general/broad intent to discriminate – persecution *in general*.²⁰⁷³ The verification of such discriminatory intent may be directly assessed or inferred from the surrounding political, racial, or religious circumstances and discriminatory acts of the accused.²⁰⁷⁴

International criminal case-law has already extensively stressed that neither international treaty law nor customary international law provides

²⁰⁷⁰ Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶ 211; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 747.

²⁰⁷¹ Prosecutor v. Jadranko Prlić, *et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶ 74.

²⁰⁷² See also: Prosecutor v. Zoran Kupreškić, *et al.* IT-95-16-T. *Supra* note 156. ¶ 624; Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 433; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 246; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 50; Prosecutor v. Tihomir Blaškić. IT-95-14-A. *Supra* note 144. ¶¶ 135, 162; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 994; Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-A. *Supra* note 80. ¶ 102; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 582; Prosecutor v. Miroslav Deronjić. IT-02-61-A. *Supra* note 113. ¶ 108; Prosecutor v. Nikola Šainović *et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 179; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 965; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 847; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 68.

²⁰⁷³ Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶¶ 192, 195, 202, 211; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶¶ 246, 249; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 994.

²⁰⁷⁴ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 997; Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-A. *Supra* note 80. ¶ 674; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 584; Prosecutor v. Mladen Naletilić *et al.* IT-98-34-T. *Supra* note 120. ¶ 146; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 969.

a “comprehensive list of illegal acts encompassed by the charge of persecution.”^{2075 2076} The grounds listed in various international criminal statutes consist of a *numerus apertus* list.²⁰⁷⁷ Thus, persecution as a crime against humanity may assume “different inhumane forms” and encompass a variety of acts of physical and mental harm that are not explicitly mentioned in treaty law as long as such acts are committed on discriminatory grounds.²⁰⁷⁸ Therefore, the crime of persecution is regarded by customary International Criminal Law as an “umbrella crime.”^{2079 2080}

However, in observance of the commands of strict legality – *nullum crimen, nulla poena sine lege* –, not every persecutory “act or omission denying a fundamental human right is serious enough to constitute a crime against humanity.”^{2081 2082 2083} It is settled jurisprudence that the underlying

²⁰⁷⁵ Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶ 192.

²⁰⁷⁶ See also: Prosecutor v. Duško Tadić. IT-94-1-T. *Supra* note 89. ¶ 712; Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 433; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 994; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 965.

²⁰⁷⁷ Prosecutor v. Duško Tadić. IT-94-1-T. *Supra* note 89. ¶ 712.

²⁰⁷⁸ Prosecutor v. Duško Tadić. IT-94-1-T. *Supra* note 89. ¶¶ 703, 707–708, 710–711; Prosecutor v. Zoran Kupreškić, *et al.* IT-95-16-T. *Supra* note 156. ¶ 608; Prosecutor v. Tihomir Blaškić. IT-95-14-T. *Supra* note 143. ¶ 218; Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶¶ 193–194, 208; Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 433; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 246; Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 735; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 994; Prosecutor v. Momčilo Perišić. IT-04-81-T. *Supra* note 123. ¶ 119; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 847.

²⁰⁷⁹ Prosecutor v. Predrag Banović. IT-02-65/1-S. *Supra* note 127. ¶ 38.

²⁰⁸⁰ See also: Prosecutor v. Zoran Kupreškić, *et al.* IT-95-16-T. *Supra* note 156. ¶ 8; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 581; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 965; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 67.

²⁰⁸¹ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 434.

²⁰⁸² See also: Prosecutor v. Jean-Pierre Bemba Gombo. ICC-01/05-01/08. *Supra* note 335. ¶ 83.

²⁰⁸³ See also: Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 246; Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 735; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶¶ 48, 50; Prosecutor v. Tihomir Blaškić. IT-95-14-A. *Supra* note 144. ¶ 140; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 995; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 580; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 735; Prosecutor v. Nikola Šainović *et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 178; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 966; Prosecutor v. Ante Gotovina *et al.* IT-06-90-T, vol. I. *Supra* note 76. ¶ 1803; Prosecutor v. Zdravko Tolimir. IT-05-

persecutory act(s) or omission(s), considered in isolation or in conjunction with other acts, must satisfy a severity test/requirement by demonstrating that they have “the same level of gravity as the other crimes against humanity” enumerated in the *caput* of the article that defines these crimes.²⁰⁸⁴ The test of equal gravity requires that the underlying persecutory act or omission comprises a “gross or blatant denial of a fundamental right” “laid down in international customary or treaty law.”²⁰⁸⁵ The determination of whether such act(s) or omission(s) meets the *test* must always be analyzed on a case-by-case basis, taking into consideration their cumulative effect in context.²⁰⁸⁶

In customary International Criminal Law, several underlying acts have already been charged as persecution as a crime against humanity. For instance, murder; physical abuse and torture; psychological abuse and harassment; rape and other acts of sexual violence; terrorizing the civilian population with acts or threats of violence; forcing victims to live under inhumane conditions; the removal of civilians from their homes or the for-

88/2-T. *Supra* note 153. ¶ 848; Prosecutor v. Jovica Stanišić and Franko Simatović. IT-03-69-T, vol. I. *Supra* note 101. ¶ 1239.

²⁰⁸⁴ Prosecutor v. Zoran Kupreškić, *et al.* IT-95-16-T. *Supra* note 156. ¶¶ 619, 621. See also: Prosecutor v. Miroslav Kvočka *et al.* IT-98-30/1-T. *Supra* note 114. ¶ 185; Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 434; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶¶ 247, 251; Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 736; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 48; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 995; Prosecutor v. Miroslav Kvočka *et al.* IT-98-30/1-A. *Supra* note 115. ¶ 321; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 735; Prosecutor v. Radoslav Brđanin. IT-99-36-A. *Supra* note 131. ¶ 296; Prosecutor v. Nikola Šainović *et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶¶ 178–179, 193; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 966; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 70; Prosecutor v. Jadranko Prlić, *et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶ 75; Prosecutor v. Jovica Stanišić and Franko Simatović. IT-03-69-T, vol. I. *Supra* note 101. ¶ 1239; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 499.

²⁰⁸⁵ Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 848.

²⁰⁸⁶ Prosecutor v. Zoran Kupreškić, *et al.* IT-95-16-T. *Supra* note 156. ¶ 622; Prosecutor v. Miroslav Kvočka *et al.* IT-98-30/1-T. *Supra* note 114. ¶ 185; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶¶ 247, 250; Prosecutor v. Laurent Semanza. ICTR-97-20-T. *Supra* note 211. ¶ 344; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 48; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 995; Prosecutor v. Miroslav Kvočka *et al.* IT-98-30/1-A. *Supra* note 115. ¶ 321; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 965; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 70; Prosecutor v. Jadranko Prlić, *et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶ 75.

cible transfer/deportation of victims; separation of the men from the women and children; enforced disappearance; unlawful detention or cruel or inhumane treatment in custody facilities; forced labor; use of victims as human shields; the destruction, appropriation, plunder, confiscation, or destruction of personal property with discriminatory intent; the intentional destruction of places of worship; the establishment of restraining and discriminatory policies in disrespect of international human rights norms, such as restrictions on freedom of movement, use of economic measures against the civilian population, denial of employment, dismissal *en masse*, the arbitrary searches of homes in violation of the right to privacy, the denial of the right to a fair trial, and restrictions on the equal access to public services.^{2087 2088 2089 2090}

²⁰⁸⁷ Prosecutor v. Duško Tadić. IT-94-1-T. *Supra* note 89. ¶ 708; Prosecutor v. Zoran Kupreškić, *et al.* IT-95-16-T. *Supra* note 156. ¶¶ 628–631; Prosecutor v. Tihomir Blaškić. IT-95-14-T. *Supra* note 143. ¶ 218; Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶¶ 203–207; Prosecutor v. Miroslav Kvočka *et al.* IT-98-30/1-T. *Supra* note 114. ¶¶ 190–192; Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶¶ 182–183, 440–443, 466–485, 748–749, 807–809; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 250; Prosecutor v. Mladen Nalčević, *et al.* IT-98-34-T. *Supra* note 119. ¶ 632; Prosecutor v. Tihomir Blaškić. IT-95-14-A. *Supra* note 144. ¶¶ 143–145, 149–153, 159; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 1001–1020, 1023, 1025, 1029, 1031–1041; Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-A. *Supra* note 80. ¶¶ 104, 106–108; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶¶ 585–591, 594–602, 606–608, 611, 614, 616–621; Prosecutor v. Miroslav Kvočka *et al.* IT-98-30/1-A. *Supra* note 115. ¶¶ 190, 323, 326–327, 329–334; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶¶ 736, 742–747, 751–752, 754, 758, 760–761, 763–764, 768–772, 778, 780–783, 792–794, 796, 805–806, 812–814, 816–819, 821–828, 834–840; Prosecutor v. Nikola Šainović *et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶¶ 182–192, 205–206, 210; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶¶ 963, 971–975, 978–980, 988–989, 990–991, 994–999, 1002–1003; Prosecutor v. Ante Gotovina *et al.* IT-06-90-T, vol. I. *Supra* note 76. ¶¶ 1804–1808, 1811–1812, 1814–1815, 1817, 1821, 1823, 1826–1829, 1836–1839, 1842, 1846–1855, 1860–1863, 1876, 1881, 1890; Prosecutor v. Momčilo Perišić. IT-04-81-T. *Supra* note 123. ¶¶ 117, 120; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶¶ 845, 851, 856–857, 859–860, 861–863, 869, 878–881; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶¶ 71–72, 76–82, 85–86, 91–92; Prosecutor v. Jovica Stanišić and Franko Simatović. IT-03-69-T, vol. I. *Supra* note 101. ¶¶ 1240–1241, 1243–1248; Prosecutor v. Vlastimir Đorđević. IT-05-87/1-A. *Supra* note 149. ¶¶ 553, 559; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶¶ 496, 501–502, 503–504, 521–526, 529, 531, 535–536, 1042, 1097, 2063, 2117.

²⁰⁸⁸ Prosecutor v. Simon Bikindi. ICTR-01-72-T. *Supra* note 226. ¶ 392.

²⁰⁸⁹ Prosecutor v. Francis Kirimi Muthaura *et al.* ICC-01/09-02/11. *Supra* note 331. ¶¶ 281, 283.

It is important to note that some appropriation/destruction of private property can be regarded as lawful – as a general exception to the rules of the International Humanitarian Law – when it is “rendered absolutely necessary by military operations.”^{2091 2092} However, confiscation, plunder or comprehensive destruction of private houses may constitute persecution if committed on discriminatory grounds against a legally protected group.²⁰⁹³ In *Prosecutor v. Momčilo Krajišnik*, the ICTY Trial Chamber considered that an act of plunder/destruction of property, “carried out on discriminatory grounds,” may constitute the crime of persecution, as a crime against humanity, even when it does not cause a *severe impact* on the victim, when considered in conjunction with the “nature and extent of the (acts of) destruction,” and with the “general constituent elements of crimes against humanity.”^{2094 2095} The “economic and emotional value of the property” and the impact on the victims of the wanton appropriation and destruction of their indispensable and vital property – whether “severe enough” – constitutes a decisive factor for the determination of a crime against humanity.²⁰⁹⁶

For an attack to constitute persecution as a crime against humanity, the underlying act or omission “must have been carried out deliberately,”

²⁰⁹⁰ “It is not necessary that the victim of the crime of persecution be a member of the group against whom the perpetrator of the crime intended to discriminate.” (*Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶ 993).

²⁰⁹¹ *Prosecutor v. Momčilo Krajišnik*. IT-00-39-T. *Supra* note 121. ¶¶ 769, 776; *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 2550.

²⁰⁹² See also: *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 593.

²⁰⁹³ *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 594; *Prosecutor v. Momčilo Krajišnik*. IT-00-39-T. *Supra* note 121. ¶¶ 773, 823–824, 827, 829; *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 2555.

²⁰⁹⁴ Plunder encompasses “all forms of unlawful appropriation of property in armed conflict for which individual responsibility attaches under international law, including those acts traditionally described as ‘pillage’”. (...) Plunder acts of appropriation include “both widespread and systematized acts of dispossession and acquisition of property in violation of the rights of the owners and isolated acts of theft or plunder by individuals for their private gain.” (*Prosecutor v. Milomir Stakić*. IT-97-24-T. *Supra* note 109. ¶ 762).

²⁰⁹⁵ *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 594; *Prosecutor v. Momčilo Krajišnik*. IT-00-39-T. *Supra* note 121. ¶¶ 768, 771–772, 774–775, 778–779, 824, 828; *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 2547.

²⁰⁹⁶ *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 594; *Prosecutor v. Momčilo Krajišnik*. IT-00-39-T. *Supra* note 121. ¶¶ 774, 824; *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 2557.

with the *intent* to discriminate on political, racial, ethnic, or religious grounds – *dolus specialis*.^{2097 2098} Relevantly, international criminal case-law has already stressed on numerous occasions that “there is no requirement in law that the actor possesses a “persecutory intent” over and above a discriminatory intent.”^{2099 2100} What ultimately matters is that the perpetrator “must consciously intend to discriminate.”^{2101 2102}

Therefore, the *mens rea* for persecution requires proof beyond a reasonable doubt of the “specific intent to cause injury to a human being because he belongs to a particular community or group.”^{2103 2104} The context, objective facts, and surrounding circumstances in which the persecutory acts or omissions of the accused took place may corroborate the existence of discriminatory intent by *inference*. However, such intent cannot be inferred *directly* and *solely* “from the overall discriminatory nature of an attack characterized as a crime against humanity.”^{2105 2106}

²⁰⁹⁷ Prosecutor v. Nikola Šainović *et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 180.

²⁰⁹⁸ See also: Prosecutor v. Zoran Kupreškić, *et al.* IT-95-16-T. *Supra* note 156. ¶ 607; Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶¶ 211–213; Prosecutor v. Miroslav Kvočka *et al.* IT-98-30/1-T. *Supra* note 114. ¶ 194; Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 435; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 248; Prosecutor v. Miladen Naletilić, *et al.* IT-98-34-T. *Supra* note 119. ¶ 638; Prosecutor v. Laurent Semanza. ICTR-97-20-T. *Supra* note 211. ¶ 350; Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶¶ 737–738; Prosecutor v. Tihomir Blaškić. IT-95-14-A. *Supra* note 144. ¶ 164; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 1050; Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-A. *Supra* note 80. ¶¶ 110, 674; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 583; Prosecutor v. Miroslav Kvočka *et al.* IT-98-30/1-A. *Supra* note 115. ¶¶ 343, 346; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶¶ 967–969; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 849; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 68; Prosecutor v. Jadranko Prlić, *et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶ 76; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶¶ 498, 500; Prosecutor v. Vojislav Šešelj. IT-03-67-T, vol. 1. *Supra* note 145. p. 188/62399 BISA -187/62399 BISA.

²⁰⁹⁹ Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-A. *Supra* note 80. ¶ 111.

²¹⁰⁰ See also: Prosecutor v. Tihomir Blaškić. IT-95-14-A. *Supra* note 144. ¶ 165; Prosecutor v. Momčilo Perišić. IT-04-81-T. *Supra* note 123. ¶ 121.

²¹⁰¹ Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 51.

²¹⁰² See also: Prosecutor v. Tihomir Blaškić. IT-95-14-T. *Supra* note 143. ¶ 244; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 996; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 850.

²¹⁰³ Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-A. *Supra* note 80. ¶ 111.

²¹⁰⁴ See also: Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 500.

²¹⁰⁵ Prosecutor v. Jadranko Prlić, *et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶ 76.

In *Prosecutor v. Dario Kordić and Mario Čerkez*, the ICTY Trial Chamber attested that the requirement of a mental element – *mens rea* – of the crime of persecution is higher than for other types of ordinary crimes against humanity.²¹⁰⁷ It requires evidence that the perpetrator deliberately/consciously (*dolus specialis*) acted with the specific intent to “discriminate on political, racial or religious grounds,” denying or infringing fundamental rights safeguarded by international customary or treaty law, with the “knowledge of the context of a widespread or systematic attack directed against a civilian population,” through the perpetration of the underlying acts – *actus reus*.²¹⁰⁸

The “discriminatory intent” (*dolus specialis*) – on political, racial, or religious grounds – in the conduct/attack of the perpetrators of persecution, as a crime against humanity, constitutes a particular *materially distinct/distinguishable element* – rather than *general intent*.²¹⁰⁹ Evidence of this element is not by itself sufficient.²¹¹⁰ The specific charges of persecution must be related to the conscious discriminatory intent of the accused.²¹¹¹

²¹⁰⁶ See also: *Prosecutor v. Tihomir Blaškić*. IT-95-14-A. *Supra* note 144. ¶ 164; *Prosecutor v. Dario Kordić and Mario Čerkez*. IT-95-14/2-A. *Supra* note 80. ¶¶ 110, 674; *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 584; *Prosecutor v. Miroslav Kvočka et al.* IT-98-30/1-A. *Supra* note 115. ¶ 366; *Prosecutor v. Théoneste Bagosora et al.* ICTR-98-41-T. *Supra* note 234. ¶ 2208; *Prosecutor v. Nikola Šainović et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 180; *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 969; *Prosecutor v. Momčilo Perišić*. IT-04-81-T. *Supra* note 123. ¶ 122; *Prosecutor v. Zdravko Tolimir*. IT-05-88/2-T. *Supra* note 153. ¶ 850; *Prosecutor v. Mićo Stanišić, Stojan Župljanin*. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 69.

²¹⁰⁷ *Prosecutor v. Dario Kordić and Mario Čerkez*. IT-95-14/2-T. *Supra* note 80. ¶ 213.

²¹⁰⁸ *Prosecutor v. Dario Kordić and Mario Čerkez*. IT-95-14/2-T. *Supra* note 80. ¶¶ 195, 203, 211. See also: *Prosecutor v. Mitar Vasiljević*. IT-98-32-T. *Supra* note 117. ¶ 244; *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶¶ 992–993; *Prosecutor v. Dario Kordić and Mario Čerkez*. IT-95-14/2-A. *Supra* note 80. ¶ 674; *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 579; *Prosecutor v. Momčilo Krajišnik*. IT-00-39-T. *Supra* note 121. ¶ 734; *Prosecutor v. Milan Lukić, Sredoje Lukić*. IT-98-32/1-T. *Supra* note 104. ¶ 994; *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 967; *Prosecutor v. Vujadin Popović et al.* IT-05-88-A. *Supra* note 151. ¶ 761.

²¹⁰⁹ *Prosecutor v. Dario Kordić and Mario Čerkez*. IT-95-14/2-T. *Supra* note 80. ¶ 212; *Prosecutor v. Mitar Vasiljević*. IT-98-32-T. *Supra* note 117. ¶ 267; *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 583; *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 968.

²¹¹⁰ *Prosecutor v. Mitar Vasiljević*. IT-98-32-T. *Supra* note 117. ¶¶ 245, 248–249.

²¹¹¹ *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 584.

Although there is no comprehensive cataloged list of physical and mental harm perpetrated in persecution, “not every persecutory act or omission is serious enough to constitute a crime against humanity.”²¹¹² The underlying commissive or omissive acts of physical and mental harm that may constitute persecution, as a crime against humanity, may assume diversified forms and encompass acts not listed in the statutory norms of International Criminal Law.²¹¹³ The crucial point of identifying an act of persecution resides in the fact that, under customary International Criminal Law, “the act or omission must, in fact, have discriminatory consequences rather than merely be done with discriminatory intent.”²¹¹⁴

In *Prosecutor v. Momčilo Krajišnik*, for example, the ICTY Trial Chamber concluded that “acts imposing restrictive and discriminatory measures against Muslims and Croats constitute persecution as a crime against humanity.”²¹¹⁵ In *Prosecutor v. Radovan Karadžić*, the Chamber asserted that the use of persons as human shields, “carried out on discriminatory grounds,” constitutes the crime of persecution as a crime against humanity.²¹¹⁶ It also concluded that the “destruction of sacred sites carried out on discriminatory grounds [- not justified by military necessity -], and for which the general elements of crimes against humanity are fulfilled” “amounts to an attack on the very religious identity of a people,” and, as such, “constitutes the crime of persecution.”²¹¹⁷

²¹¹² *Prosecutor v. Dario Kordić and Mario Čerkez*. IT-95-14/2-T. *Supra* note 80. ¶¶ 192, 196. See also: *Prosecutor v. Mitar Vasiljević*. IT-98-32-T. *Supra* note 117. ¶ 246; *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶ 994-995; *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 580; *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 965; *Prosecutor v. Vujadin Popović et al.* IT-05-88-A. *Supra* note 151. ¶ 761.

²¹¹³ *Prosecutor v. Dario Kordić and Mario Čerkez*. IT-95-14/2-T. *Supra* note 80. ¶ 192; *Prosecutor v. Mitar Vasiljević*. IT-98-32-T. *Supra* note 117. ¶ 246; *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶ 994; *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 965.

²¹¹⁴ *Prosecutor v. Dario Kordić and Mario Čerkez*. IT-95-14/2-T. *Supra* note 80. ¶ 204. See also: *Prosecutor v. Mitar Vasiljević*. IT-98-32-T. *Supra* note 117. ¶ 245; *Prosecutor v. Vidoje Blagojević, Dragan Jokić*. IT-02-60-T. *Supra* note 147. ¶ 583; *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 969.

²¹¹⁵ *Prosecutor v. Momčilo Krajišnik*. IT-00-39-T. *Supra* note 121. ¶ 790; *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 2570.

²¹¹⁶ *Prosecutor v. Momčilo Krajišnik*. IT-00-39-T. *Supra* note 121. ¶ 764; *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶¶ 2535, 2538.

²¹¹⁷ *Prosecutor v. Milomir Stakić*. IT-97-24-T. *Supra* note 109. ¶¶ 768, 813. See also: *Prosecutor v. Momčilo Krajišnik*. IT-00-39-T. *Supra* note 121. ¶¶ 781, 783, 840; *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 2554.

Throughout its jurisprudence, the ICTY considered that some practices of the Serbian forces “repeated time and time again against the Muslim population” could constitute persecution as a crime against humanity.²¹¹⁸ For instance, the shelling of Bosnian Muslim neighborhoods, restrictions on Muslims’ freedom of movement, the searching of Muslim households, the appropriation/plunder of property, money, and other items, the setting on fire of Bosnian Muslim houses, and multiple accounts of Muslim women being raped.²¹¹⁹ Therefore, the consideration as to whether a certain underlying discriminatory act or omission – or a series of acts/omissions – may amount to persecution is assessed “not in isolation,” but rather upon a case-by-case basis, examining their context and considering their cumulative effect.²¹²⁰

Numerous international legal instruments, as well as Customary International Criminal Law, assert that cruel and inhumane treatment may also constitute an act of persecution as a crime against humanity.²¹²¹ Considering them all together, “cruel and inhumane treatment” is defined as “an intentional act or omission, which causes serious mental harm, physical suffering or injury, or which constitutes a serious attack on human dignity.”²¹²² The seriousness of such harm must present “more than a short-term or temporary effect on the victim,” although it “does not need to be permanent and irremediable.”²¹²³ The seriousness of such harm is comprehended by considering different factors, acts, or omissions of “equal”/“sufficient gravity,”²¹²⁴ including: “the nature of the act or omission, the context in which it occurs, its duration and repetition, its physical and

²¹¹⁸ Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶¶ 789, 814; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 892.

²¹¹⁹ Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶¶ 784, 787, 789; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 892; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 967-968, 970.

²¹²⁰ Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶ 199; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶¶ 247, 249; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶¶ 582, 584; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶¶ 965, 969.

²¹²¹ Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 267; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 587; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. 1. *Supra* note 134. ¶ 2518.

²¹²² Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 586.

²¹²³ *Ibidem*.

²¹²⁴ Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶¶ 196, 201; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 247; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶¶ 580, 587; Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 966.

mental effects on the victim and, in some instances, the personal circumstances of the victim, including age, gender, and health.”²¹²⁵

Although persecutory acts or omissions are, in practice, commonly backed by a discriminatory policy, or at least supported by “a patterned discriminatory practice,” the existence of such a policy does not constitute a legal requirement of the crime of persecution as a crime against humanity.²¹²⁶ Therefore, “it is not necessary that the accused have participated in the formulation of such policy or such practice by the governing authority.”^{2127 2128} On the contrary, the Rome Statute in Article 7.2.a expressly asserts that an attack “directed against any civilian population” can only take place “pursuant to or in furtherance of a State or organizational policy [non-state actor] to commit such attack.”

The discriminatory mens rea “must relate to the specific act or omission underlying the charge of persecution as opposed to the attack in general, notwithstanding the fact that the attack may also in practice have a discriminatory aspect.”²¹²⁹ The final aim of the perpetrator must be removing from society – or “even from humanity itself”^{–2130} persons “defined by the perpetrator,” or subjectively perceived by the victims themselves, as belonging to legally protected groups, by “singling out and attacking certain individuals on discriminatory grounds.”^{2131 2132 2133}

While formulating the course of attack, only the perpetrator possesses the subjective perception of whether the victims are affiliated – or not – to a group that they want to discriminate against, through the commission of

²¹²⁵ Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 586.

²¹²⁶ Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 248. See also: Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 739; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 996; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 582; Prosecutor v. Vujadin Popović et al. IT-05-88-T. *Supra* note 150. ¶ 967; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 69; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 500

²¹²⁷ Prosecutor v. Jadranko Prlić, et al. IT-04-74-T, vol. I. *Supra* note 99. ¶ 76.

²¹²⁸ See also: Prosecutor v. Zoran Kupreškić, et al. IT-95-16-T. *Supra* note 156. ¶ 625; Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 435; Prosecutor v. Blagoje Simić et al. IT-95-9-T. *Supra* note 78. ¶ 51.

²¹²⁹ Prosecutor v. Blagoje Simić et al. IT-95-9-T. *Supra* note 78. ¶ 51.

²¹³⁰ Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶ 214.

²¹³¹ Prosecutor v. Bosco Ntaganda. ICC-01/04-02/06. *Supra* note 328. ¶¶ 1009–1010.

²¹³² Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶ 214; Prosecutor v. Mladen Naletilić, et al. IT-98-34-T. *Supra* note 119. ¶ 636; Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 734.

²¹³³ Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶ 214.

impermissible acts under International Law. This means that “the targeted victims have no influence on the [perpetrators’] definition of their status.”²¹³⁴ Therefore, the sole perpetrator’s awareness of the existence of an attack is not sufficient to prove that “he is, in fact, acting in a way that is discriminatory.”²¹³⁵

Importantly, however, international criminal case-law considers that discriminatory intent by itself does not suffice all the legal requirements of the crime of persecution as a crime against humanity.²¹³⁶ The perpetrator’s act(s) or omission(s) must, *in fact*, have discriminatory – *in fact* persecutory – consequences.²¹³⁷ Therefore, “the *mens rea* requirement for persecution is higher than for ordinary crimes against humanity [although lower than for genocide].”^{2138 2139} The prosecutorial judicial proceedings must prove the “accused’s [distinguishable] intent to harm the victim on the basis of his or her affiliation with a particular group (*proof of intent*),”²¹⁴⁰ rather than proving the means employed by the perpetrator to achieve the attack against the victims – proof of *specificity*.²¹⁴¹

In this particular, taking the *mens rea* into consideration, persecution and genocide belong to a specific group of crimes – same *genus* – in which what matters is the intent to discriminate persons on account of their ethnic, racial, or religious characteristics (“as well as, in the case of persecution, their political affiliation”),²¹⁴² being genocide considered as “an extreme and most inhuman form of persecution.”^{2143 2144} However, while in

²¹³⁴ Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 734.

²¹³⁵ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶ 435.

²¹³⁶ Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 245; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 583; Prosecutor v. Jadranko Prlić, *et al.* IT-04-74-T, vol. I. *Supra* note 99. ¶ 73.

²¹³⁷ Prosecutor v. Milorad Krnojelac. IT-97-25-T. *Supra* note 111. ¶¶ 432, 436; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶¶ 245, 249; Prosecutor v. Milomir Stakić. IT-97-24-T. *Supra* note 109. ¶ 733; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 993, 1050; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 583; Prosecutor v. Nikola Šainović *et al.* IT-05-87-T, vol. 1. *Supra* note 125. ¶ 177; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 498.

²¹³⁸ Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶ 213.

²¹³⁹ See also: Prosecutor v. Zoran Kupreškić, *et al.* IT-95-16-T. *Supra* note 156. ¶ 636.

²¹⁴⁰ Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 849.

²¹⁴¹ Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶ 212.

²¹⁴² Prosecutor v. Zoran Kupreškić, *et al.* IT-95-16-T. *Supra* note 156. ¶ 636. See also: Prosecutor v. Vojislav Šešelj. IT-03-67-T, vol. 1. *Supra* note 145. p. 188/62399 BISa - 187/62399 BISa.

²¹⁴³ Prosecutor v. Zoran Kupreškić, *et al.* IT-95-16-T. *Supra* note 156. ¶ 636.

persecution cases the “discriminatory intent can take multifarious forms and manifest itself in a plurality of inhumane acts, including murder,” in genocide cases, “intent must be accompanied by the intention to destroy, in whole or in part, the group [as such].”^{2145 2146}

3.2.2.6. Other inhumane acts of a similar character

The *mens rea* of the crime of inhumane treatment requires either evidence of *commissive* conduct, meaning that “the perpetrators either had the intention to inflict *serious* mental and physical harm,” or evidence of *omissive* conduct, meaning that the perpetrators “knew that their acts or omissions [were] likely to cause serious mental or physical suffering or injury, or a serious attack on human dignity, and was reckless as to that result.”^{2147 2148} Once there is evidence of the plausibility and seriousness of the inhumane acts suffered by the victims, there is no requirement that the mental or physical suffering has long-lasting effects, although this may be relevant to assess the seriousness of the inhumane act.²¹⁴⁹

To assess the *seriousness* of inhumane treatment, it is necessary to consider the circumstances on a case-by-case basis, such as: 1) the systematic manner as well as the large scale of the acts; 2) the nature of the act or omission; 3) the general context in which the violation occurred; 4) the duration and repetition of the act/omission; 5) the particular circumstances of the victim, such as age, gender and general conditions of health; 6) the physical and mental consequences on the victim, as well as 7) whether the victims suffered from *inhuman living conditions*.²¹⁵⁰

In *Prosecutor v. Momčilo Krajišnik*, the ICTY Trial chamber considered the concept of “inhuman living conditions” as a subcategory of the crime of

²¹⁴⁴ See also: *Prosecutor v. Vojislav Šešelj*. IT-03-67-T, vol. 1. *Supra* note 145. p. 188/62399 BISA -187/62399 BISA.

²¹⁴⁵ *Prosecutor v. Vojislav Šešelj*. IT-03-67-T, vol. 1. *Supra* note 145. p. 188/62399 BISA -187/62399 BISA.

²¹⁴⁶ See also: *Prosecutor v. Zoran Kupreškić, et al.* IT-95-16-T. *Supra* note 156. ¶ 636; *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 968; *Prosecutor v. Momčilo Perišić*. IT-04-81-T. *Supra* note 123. ¶ 121.

²¹⁴⁷ *Prosecutor v. Mitar Vasiljević*. IT-98-32-T. *Supra* note 117. ¶ 236. See also: *Prosecutor v. Momčilo Krajišnik*. IT-00-39-T. *Supra* note 121. ¶¶ 746, 803; *Prosecutor v. Milan Lukić, Sredoje Lukić*. IT-98-32/1-T. *Supra* note 104. ¶¶ 957, 961–962.

²¹⁴⁸ See also: *Prosecutor v. Brima, Kamara, Kanu*. SCSL-04-16-T. *Supra* note 280. ¶ 698; *Prosecutor v. Brima, Kamara, Kanu*. SCSL-04-16-A. *Supra* note 284. ¶ 198.

²¹⁴⁹ *Prosecutor v. Milorad Krnojelac*. IT-97-25-T. *Supra* note 111. ¶ 144; *Prosecutor v. Mitar Vasiljević*. IT-98-32-T. *Supra* note 117. ¶ 235; *Prosecutor v. Milan Lukić, Sredoje Lukić*. IT-98-32/1-T. *Supra* note 104. ¶¶ 957, 961.

cruel or inhumane treatment.”²¹⁵¹ International Criminal Law jurisprudence recognizes that the subcategory of “inhumane living conditions” can be manifested in numerous ways, such as submitting persons to: starvation rations, extreme weight loss, lack of drinkable water, lack of hygienic sanitation facilities, lack of adequate accommodation or shelter, lack of medical care, heatstroke, mutilations, severe beatings on a regular basis, serious mental injuries, evacuations, preventing persons from receiving visits in detention centers, subjecting victims to electric shocks, exposing them to an “intimidating atmosphere marked by panic, fear, and despair,” as well as burning babies, women and elderly persons to death.²¹⁵²

3.2.3. Mental element – Mens rea

The *mens rea* for crimes against humanity requires a specific mental state in the perpetrator. The perpetrator of the attack(s) must have knowledge – awareness – that 1) there is an attack against a civilian population and that 1) their act(s) “constitute part of a widespread or systematic attack directed against this civilian population.”^{2153 2154 2155} The concept of knowledge in this context means that “the perpetrator understands the overall context and characteristics in which their acts took place.” However, “this stipulation does not entail or require precise or detailed knowledge of the attack.”^{2156 2157 2158}

²¹⁵⁰ Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶ 269; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶¶ 957, 960–961.

²¹⁵¹ Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 756.

²¹⁵² Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶ 270; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶¶ 720, 755, 795–796, 798; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶¶ 392, 667; Prosecutor v. Vujadin Popović *et al.* IT-05-88-A. *Supra* note 151. ¶ 752.

²¹⁵³ Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 102. See also: Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 548; Prosecutor v. Emmanuel Rukundo. ICTR-2001-70-T. *Supra* note 179. ¶ 578; Prosecutor v. Tharcisse Renzaho. ICTR-97-31-T. *Supra* note 232. ¶ 783; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 877.

²¹⁵⁴ Prosecutor v. Hormisdas Nsengimana, Case No. ICTR-01-69-T, (Nov. 17, 2009). ¶ 844. See also: Prosecutor v. Gaspard Kanyarukiga. ICTR-2002-78-T. *Supra* note 187. ¶¶ 645, 651, 657; Prosecutor v. Jean-Baptiste Gatete. ICTR-2000-61-T. *Supra* note 195. ¶ 632; Prosecutor v. Augustin Ndingiyimana *et al.* ICTR-00-56-T. *Supra* note 163. ¶ 2088.

²¹⁵⁵ See also: Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶¶ 220–221.

Although the offender need not know the details or the full context of the attack(s),²¹⁵⁹ the Prosecution is required to “show that the accused either knew or had reason to know that his acts comprised part of the attack” and that the accused “understand[s] the overall context in which his acts took place.”²¹⁶⁰ For the international criminal case-law, “knowledge of certain events, not necessarily every individual attack, is sufficient to warrant the conclusion that the perpetrator had notice of the wider context and nature of the crimes.”²¹⁶¹ The jurisprudence has sustained that evidence of knowledge is determined on a case-by-case basis.²¹⁶²

In other words, the perpetrator must know that their acts are part of or fit into such a pattern of widespread or systematic attack(s) directed against a civilian population.^{2163 2164} The prosecutor must demonstrate that

²¹⁵⁶ Prosecutor v. Jean-Pierre Bemba Gombo. ICC-01/05-01/08. *Supra* note 334. ¶ 88. See also: Prosecutor v. Germain Katanga. ICC-01/04-01/07. *Supra* note 333. ¶ 1125; Prosecutor v. Jean-Pierre Bemba Gombo. ICC-01/05-01/08. *Supra* note 335. ¶ 167.

²¹⁵⁷ See also: Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 221; Prosecutor v. Fofana, Kondewa. SCSL-04-14-T. *Supra* note 281. ¶ 121; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 90; Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶¶ 513, 515.

²¹⁵⁸ Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-T. *Supra* note 84. ¶ 434; Prosecutor v. Goran Jelisić, IT-95-10-A. *Supra* note 98. ¶ 148; Prosecutor v. Blagoje Simić *et al.* IT-95-9-T. *Supra* note 78. ¶ 45; Prosecutor v. Vidoje Blagojević, Dragan Jokić. IT-02-60-T. *Supra* note 147. ¶ 548; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 706; Prosecutor v. Mile Mrkšić *et al.* IT-95-13/1. *Supra* note 108. ¶ 439; Prosecutor v. Dragomir Milošević. IT-98-29/1-T. *Supra* note 86. ¶ 929; Prosecutor v. Ante Gotovina *et al.* IT-06-90-T, vol. I. *Supra* note 76. ¶ 1707; Prosecutor v. Momčilo Perišić. IT-04-81-T. *Supra* note 123. ¶ 88; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 30; Prosecutor v. Jovica Stanišić and Franko Simatović. IT-03-69-T, vol. I. *Supra* note 101. ¶ 966; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 479; Prosecutor v. Ratko Mladić. IT-09-92-T, vol. III. *Supra* note 137. ¶ 3029.

²¹⁵⁹ In *Brima, Kamara, Kanu*, the SCSL established that “the accused need not know the details of the attack or approve of the context in which his or her acts occur; the accused merely needs to understand the overall context in which his or her acts took place.³⁹⁰ The motives for the accused’s participation in the attack are irrelevant; the accused need only know that his or her acts are parts thereof.” (Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 222).

²¹⁶⁰ Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 90.

²¹⁶¹ Prosecutor v. Dragomir Milošević. IT-98-29/1-T. *Supra* note 86. ¶ 929.

²¹⁶² Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 221; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 90; Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 515.

²¹⁶³ Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 706; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 877.

the perpetrator acted with such knowledge – *awareness* – or, at least, show that the accused knew the risks of his actions and took the risks.”²¹⁶⁵ However, it is not necessary that the accused possesses detailed knowledge of the attack or that they have approved “the context in which his acts occurred.”²¹⁶⁶ ²¹⁶⁷ When absent proof of detailed knowledge of the attack, the perpetrator’s *mens rea* “may be inferred from the circumstances.”²¹⁶⁸

Importantly, Customary International Law does not require “that the accused shares the purpose or goal behind the attack.”²¹⁶⁹ “It is sufficient that through [their] acts or function the accused knowingly participated in the attack.”²¹⁷⁰ The reasons/motives/purpose/goal of the accused of taking part in the attack against a civilian population are not relevant,²¹⁷¹ ²¹⁷² that is, an attacker may “commit a crime against humanity for purely personal reasons”²¹⁷³ ²¹⁷⁴ In *Prosecutor v. Milan Lukić, Sredoje Lukić*, the ICTY concluded that when the perpetrator *understands* “the overall context in which his acts took place,” this is sufficient to meet the legal requirements of the crime against humanity.²¹⁷⁵

²¹⁶⁴ With respect to the *mens rea*, the ICTR considers that “the perpetrator must have acted with knowledge of the broader context and knowledge that his acts formed part of the attack...” (Prosecutor v. Yussuf Munyakazi. ICTR-97-36A-T. *Supra* note 236. ¶ 504).

²¹⁶⁵ Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 102.

²¹⁶⁶ Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 706; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 877.

²¹⁶⁷ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 222.

²¹⁶⁸ Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 900.

²¹⁶⁹ Prosecutor v. Goran Jelisić., IT-95-10-A. *Supra* note 98. ¶ 148.

²¹⁷⁰ *Ibidem*.

²¹⁷¹ Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-T. *Supra* note 84. ¶ 433; Prosecutor v. Dragoljub Kunarac *et al.* IT-96-23/1-A. *Supra* note 85. ¶ 103; Prosecutor v. Mitar Vasiljević. IT-98-32-T. *Supra* note 117. ¶ 37; Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 138; Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 706; Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶ 700; Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 30; Prosecutor v. Radovan Karadžić. IT-95-5/18-T, vol. I. *Supra* note 134. ¶ 479.

²¹⁷² Prosecutor v. Fofana, Kondewa. SCSL-04-14-T. *Supra* note 281. ¶ 121; Prosecutor v. Sesay, Kallon and Gbao. SCSL-04-15-T. *Supra* note 268. ¶ 90; Prosecutor v. Taylor. SCSL-03-01-T. *Supra* note 270. ¶ 513.

²¹⁷³ Prosecutor v. Momčilo Krajišnik. IT-00-39-T. *Supra* note 121. ¶ 706.

²¹⁷⁴ See also: Prosecutor v. Mićo Stanišić, Stojan Župljanin. IT-08-91-T, vol. 1. *Supra* note 102. ¶ 30.

²¹⁷⁵ Prosecutor v. Brima, Kamara, Kanu. SCSL-04-16-T. *Supra* note 280. ¶ 222; Prosecutor v. Milan Lukić, Sredoje Lukić. IT-98-32/1-T. *Supra* note 104. ¶ 877.

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2005

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2015

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2017

U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017).

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2018

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Rep. of the Special Adviser and Head of the U. N. Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant submitted to the S.C, First report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant.

2019

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Rep. of the Special Adviser and Head of the U. N. Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant submitted to the S.C, Second report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant.

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4. Legal assessment of ISIL/DAESH violations of International Human Rights Law, International Humanitarian Law, and International Criminal Law against Christians in Iraq

In areas under its control in Iraq, ISIL/DAESH engaged in multiple criminal acts and omissions against Christians. This chapter assesses whether the perpetrators' *actus reus* and *mens rea* fall under the definition of genocide, as prescribed by the Rome Statute,²¹⁷⁶ or fall under the crime of persecution, as a crime against humanity, as defined in the Rome Statute – the *test of equal gravity*.²¹⁷⁷ To perform this assessment, ISIL/DAESH violations of international human rights, humanitarian and criminal law will be grouped in seven different categories in this chapter, as follows:

1) Physical and mental harm – ISIL/DAESH fighters intentionally and deliberately committed the following crimes and violations against Christians in Iraq: targeted killings; mass summary killings, and other unlawful killings, through the extensive recourse to beheadings, burning victims alive in caskets, crucifixions, shootings, slaughtering, and burnings; causing serious bodily or mental harm, through the expedient of torture, violent beatings, extreme physical abuse, and other inhuman and degrading treatments; rape and other forms of sexual violence; sexual enslavement, and sex trafficking committed against hundreds of Christian women and girls; forced marriage and the resulting pregnancies and abortions; persecution, imposition of measures intended to prevent births.^{2178 2179 2180}

²¹⁷⁶ United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544. Article 6.

²¹⁷⁷ *Idem*. Article 7.1.a-k.

²¹⁷⁸ UNAMI (Nov. 6, 2018). p. 4.

²¹⁷⁹ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 46; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 76; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 9; U.N. Doc. S/2016/897 (Oct. 25, 2016). ¶ 52; U.N. Doc. CCPR/C/IRQ/CO/5/Add.1 (Aug. 18, 2017). ¶¶ 2–4; U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017). ¶¶ 15–16; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶¶ 9–10; U.N. Doc. A/HRC/39/NGO/X (Aug. 23, 2018). p. 3; U.N. Doc. CED/C/IRQ/AI/1 (Aug. 1, 2019). ¶¶ 43–45; U.N. Doc. CAT/C/IRQ/2 (Aug. 20, 2019). ¶¶ 52–53; U.N. Doc. A/HRC/44/41/Add.1 (May 13, 2020). ¶ 54.

²¹⁸⁰ S.C. Res. 2379 (Sept. 21, 2017). Preamble.

^{2181 2182 2183} In addition, there is conclusive evidence that ISIL/DAESH deployed members of Christian minorities as human shields and separated Christian children from their families, forcibly transferring them to other groups.^{2184 2185}

2) Use of economic measures against the civilian population – ISIL/DAESH systematically and extensively committed economic-related violations against Christians in Iraq and barred them from working at public sector jobs and receiving wage stipends.^{2186 2187}

3) Attacks against property of sacred religious relevance – In hundreds of instances, ISIL/DAESH deliberately destroyed – partially or entirely – Christian churches, shrines, monasteries, places of Christian worship, and

²¹⁸¹ Eur. Parl., Situation in Iraq and Syria and the IS Offensive Including the Persecution of Minorities, Resolution, P8_TA(2014)0027 (Sept. 18, 2014). ¶ C; Eur. Parl., Humanitarian Crisis in Iraq and Syria, in Particular in the IS Context, Resolution, P8_TA(2015)0040 (Feb. 12, 2015). ¶ G; Eur. Parl. Plenary sitting, Joint Motion for a Resolution Pursuant to Rule 123(2) and (4), of the Rules of Procedure. Systematic Mass Murder of Religious Minorities by The So-called ISIS/Daesh 2014–2019. (Feb. 3, 2016). ¶ B; Eur. Parl., Systematic mass murder of religious minorities by ISIS, Resolution, P8_TA(2016)0051 (Feb. 4, 2016). ¶ B; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Report, Doc. No. 14402 (Sept. 22, 2017). ¶¶ 3, 3.2, 16, 21; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Resolution 2190 (2017). ¶ 3.2; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Compendium of Amendments, Doc. No. 14402 (Oct. 11, 2017). ¶ 3.2.

²¹⁸² H.R.Con.Res. 75, 114th Cong. (Sept. 9, 2015). p. 2; 163 Cong. Rec. H5368 (daily ed. June 29, 2017) (statement of Rep. Ted Poe). p. H5369.

²¹⁸³ UK Parliament, Genocide in Syria and Iraq, Early Day Motion, Sponsored by Robert Ffello (Jan. 26, 2016).

²¹⁸⁴ Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Resolution 2190 (2017). ¶ 3.2. Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Report, Doc. No. 14402 (Sept. 22, 2017). ¶ 3.2, 16, 21; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Compendium of Amendments, Doc. No. 14402 (Oct. 11, 2017). ¶ 3.2.

²¹⁸⁵ U.N. Doc. CAT/C/IRQ/2 (Aug. 20, 2019). ¶ 53.

²¹⁸⁶ U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 10. See also: U.N. Doc. CED/C/IRQ/AI/1 (Aug. 1, 2019). ¶ 44; U.N. Doc. CAT/C/IRQ/2 (Aug. 20, 2019). ¶ 53.

²¹⁸⁷ H. Res. House Foreign Affairs Subcommittees on Africa, Global Health, Global Human Rights and International Organizations and the Middle East and North Africa. Testimony of Assistant Secretary Tom Malinowski (Sept. 10, 2014).

religious monuments in Iraq.^{2188 2189 2190 2191 2192 2193} Areas of immense religious importance for Christians were burned, exploded, targeted with rocket-propelled grenades, or demolished with bulldozers, particularly in Mosul, Qaraqosh, Baqofa, Al-Nimrod, Karemlash, Bartella, Telkeppe, Bashiqa, Bahzani, Batnaya, and Teleskof.^{2194 2195 2196} ISIL/DAESH mainly targeted ancient/historic churches and cathedrals,²¹⁹⁷ “eradicating all physical traces of the 2,000-year-old history of Christianity from the [Iraqi] towns

²¹⁸⁸ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 9.

²¹⁸⁹ U.N. Doc. A/HRC/RES/S-22/1 (Sept. 3, 2014). p. 2; U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 46; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 22; U.N. Doc. CCPR/C/IRQ/CO/5/Add.1 (Aug. 18, 2017). ¶ 3; U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017). ¶ 15; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 10; U.N. Doc. A/HRC/39/NGO/X (Aug. 23, 2018). p. 3; U.N. Doc. CED/C/IRQ/AI/1 (Aug. 1, 2019). ¶ 44; U.N. Doc. CAT/C/IRQ/2 (Aug. 20, 2019). ¶ 53.

²¹⁹⁰ S.C. Res. 2367 (July 14, 2017). preamble.

²¹⁹¹ Eur. Parl., Situation in Iraq, Resolution, P8_TA(2014)0011 (Jul. 17, 2014). ¶ B; Eur. Parl., Situation in Iraq and Syria and the IS Offensive Including the Persecution of Minorities, Resolution, P8_TA(2014)0027 (Sept. 18, 2014). ¶ C; Eur. Parl., Humanitarian Crisis in Iraq and Syria, in Particular in the IS Context, Resolution, P8_TA(2015)0040 (Feb. 12, 2015). ¶ D; Eur. Parl. Plenary sitting, Joint Motion for a Resolution Pursuant to Rule 123(2) and (4), of the Rules of Procedure. Systematic Mass Murder of Religious Minorities by The So-called ISIS/Daesh 2014–2019. (Feb. 3, 2016). ¶ B.

²¹⁹² U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2017). p. 164.

²¹⁹³ Iraq: ISIS Abducting, Killing, Expelling Minorities. Armed Group Targeting Christian Nuns, Turkmen, Shabaks, Yazidis, HUMAN RIGHTS WATCH (Jul. 19, 2014); *No Way Home: Iraq’s Minorities on the Verge of Disappearance*, CEASEFIRE CENTRE FOR CIVILIAN RIGHTS, Jul. 2016. pp. 13, 43; AMNESTY INTERNATIONAL. *Supra* note 495. p. 15; Life after ISIS: New challenges to Christianity in Iraq. Results from ACN’s survey of Christians in the liberated Nineveh Plains, AID TO THE CHURCH IN NEED – ACN INTERNATIONAL, June 2020. p. 29.

²¹⁹⁴ UNAMI (May 1, 2015 – Oct. 31, 2015). p. 16.

²¹⁹⁵ U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2017). p. 164.

²¹⁹⁶ HUMAN RIGHTS WATCH (Jul. 19, 2014). *Supra* note 2193; Nina Shea, *Falling For ISIS Propaganda About Christians*, THE HUDSON INSTITUTE, July 21, 2016; CEASEFIRE CENTRE FOR CIVILIAN RIGHTS (Jul. 2016). *Supra* note 2193. p. 43; SHLOMO ORGANIZATION FOR DOCUMENTATION, Gregory Stanton, Elisa Yuden von Furkin, Irina Victoria Massimino & Jan Vermon (2017). pp. 69–83).

²¹⁹⁷ 163 Cong. Rec. H5368 (daily ed. June 29, 2017) (statement of Rep. Ted Poe). p. H5369; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Report, Doc. No. 14402 (Sept. 22, 2017). ¶ 21.

the faithful left behind,”²¹⁹⁸ for example, the destruction of the tomb of the eighth century BC Old Testament Prophet Jonah, the destruction of the 1,400-year-old Iraq’s oldest Christian monastery – St Elijah’s monastery, in Mosul –, and the destruction of the 1,000-year-old church of the Mother of Perpetual Help, also in Mosul.^{2199 2200 2201}

As a common practice, ISIL/DAESH used to remove church crosses and replace them with ISIL/DAESH black flags.²²⁰² Also, ISIL/DAESH generally looted these sacred sites before destroying them. The fighters used to sell priceless artifacts, ancient manuscripts, books, and texts through illegal markets.²²⁰³ ISIL/DAESH also destroyed Christian cemeteries, demolished graves and burial sites,²²⁰⁴ and played with the corpses therein, particularly in Bartella, Qaraqosh, Telkeppe, and Bashiqa.²²⁰⁵ Assuming that gold had been buried alongside the bodies of their victims, ISIL/DAESH militants inspected corpses to search for valuable items.²²⁰⁶ After inspections, the militants used to leave the bodies exposed to the open air.²²⁰⁷ In some instances, ISIL/DAESH fighters decided not to destroy the religious sites and use them for other purposes, such as converting churches into mosques or turning them into military bases or administrative buildings.^{2208 2209 2210 2211}

²¹⁹⁸ Ronald Rychlak & Jane Adolphe eds., *Supra* note 429. pp. 43–44.

²¹⁹⁹ U.N. Doc. A/HRC/39/NGO/X (Aug. 23, 2018). p. 3.

²²⁰⁰ 163 Cong. Rec. H5368 (daily ed. June 29, 2017) (statement of Rep. Ted Poe). p. H5369.

²²⁰¹ Ronald Rychlak & Jane Adolphe eds. *Supra* note 429. pp. 43–44.

²²⁰² UNAMI (Dec. 11, 2014 – Apr. 30, 2015). p. 19.

²²⁰³ H. Res. House Foreign Affairs Subcommittees on Africa, Global Health, Global Human Rights and International Organizations and the Middle East and North Africa. Testimony of Assistant Secretary Tom Malinowski (Sept. 10, 2014); CEASEFIRE CENTRE FOR CIVILIAN RIGHTS (Jul. 2016). *Supra* note 2193. p. 43; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Report, Doc. No. 14402 (Sept. 22, 2017). ¶ 21.

²²⁰⁴ U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2017). p. 164

²²⁰⁵ Ronald Rychlak & Jane Adolphe eds. *Supra* note 429. p. 43.

²²⁰⁶ ACN INTERNATIONAL (June 2020). *Supra* note 2193. p. 28.

²²⁰⁷ *Ibidem*.

²²⁰⁸ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 12.

²²⁰⁹ H. Res. House Foreign Affairs Subcommittees on Africa, Global Health, Global Human Rights and International Organizations and the Middle East and North Africa. Testimony of Assistant Secretary Tom Malinowski (Sept. 10, 2014).

²²¹⁰ U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2017). p. 164.

²²¹¹ Ronald Rychlak & Jane Adolphe eds. *Supra* note 429. p. 43.

4) Infringements upon the right to physical liberty and security– Several documents indicate that ISIL/DAESH sold (slave trading), enslaved (enslavement), trafficked (human trafficking), and smuggled (smuggling) several Christian women and girls on the basis of their professing Christianity. ISIL/DAESH committed hundreds of abductions, kidnappings, and hostage-takings of members of the Christian community in Iraq, including the deliberate kidnappings of priests and nuns.^{2212 2213 2214 2215 2216} ISIL/DAESH caused the forced migration and displacement of thousands of Christians in Iraq on the basis of religious persecution.^{2217 2218 2219 2220} ISIL/DAESH unlawfully detained, imprisoned, or committed enforced disappearances of Christians.^{2221 2222 2223} Also, on the basis of religious dis-

²²¹² UNAMI (July 6, 2014 – Sept. 10, 2014). p. 12; UNAMI (Nov. 6, 2018). p. 4.

²²¹³ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 46; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 76; U.N. Doc. S/2016/897 (Oct. 25, 2016). ¶ 52; U.N. Doc. CCPR/C/IRQ/CO/5/Add.1 (Aug. 18, 2017). ¶ 2; U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017). ¶ 15; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶¶ 9–10; U.N. Doc. A/HRC/39/NGO/X (Aug. 23, 2018). p. 3; U.N. Doc. CED/C/IRQ/AI/1 (Aug. 1, 2019). ¶¶ 43–44; U.N. Doc. CAT/C/IRQ/2 (Aug. 20, 2019). ¶¶ 52–53.

²²¹⁴ Eur. Parl., Situation in Iraq and Syria and the IS Offensive Including the Persecution of Minorities, Resolution, P8_TA(2014)0027 (Sept. 18, 2014). ¶ C; Eur. Parl., Humanitarian Crisis in Iraq and Syria, in Particular in the IS Context, Resolution, P8_TA(2015)0040 (Feb. 12, 2015). ¶ G; Eur. Parl. Plenary sitting. Joint Motion for a Resolution Pursuant to Rule 123(2) and (4), of the Rules of Procedure. Systematic Mass Murder of Religious Minorities by The So-called ISIS/Daesh 2014–2019. (Feb. 3, 2016). ¶¶ B, H; Eur. Parl., Systematic mass murder of religious minorities by ISIS, Resolution, P8_TA(2016)0051 (Feb. 4, 2016). ¶¶ B, I; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Report, Doc. No. 14402 (Sept. 22, 2017). ¶¶ 16, 21.

²²¹⁵ S.C. Res. 2379 (Sept. 21, 2017). Preamble.

²²¹⁶ HUMAN RIGHTS WATCH (Jul. 19, 2014). *Supra* note 2193; “Our Generation is Gone”: The Islamic State’s Targeting of Iraqi Minorities in Ninewa. Bearing Witness Trip Report, Naomi Kikoler, UNITED STATES HOLOCAUST MEMORIAL MUSEUM (2015). p. 18; AMNESTY INTERNATIONAL. *Supra* note 495. p. 15; ACN INTERNATIONAL (June 2020). *Supra* note 2193. p. 26.

²²¹⁷ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 76; U.N. Doc. CCPR/C/IRQ/CO/5/Add.1 (Aug. 18, 2017). ¶ 3; U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017). ¶ 15; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 10; U.N. Doc. CED/C/IRQ/AI/1 (Aug. 1, 2019). ¶ 44; U.N. Doc. CAT/C/IRQ/2 (Aug. 20, 2019). ¶¶ 21, 53; U.N. Doc. A/HRC/44/41/Add.1 (May 13, 2020). ¶ 30.

²²¹⁸ H.R.Con.Res. 75, 114th Cong. (Sept. 9, 2015). p. 2.

²²¹⁹ Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Report, Doc. No. 14402 (Sept. 22, 2017). ¶ 16.

²²²⁰ UNITED STATES HOLOCAUST MEMORIAL MUSEUM (2015). *Supra* note 2216. p. 18.

²²²¹ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 12; UNAMI (Nov. 6, 2018). p. 4.

crimination, ISIL/DAESH recruited and used children, including for purposes of suicide bombings.^{2224 2225 2226 2227}

5) Infringements upon the right to privacy, and deprivation, destruction, and plunder of private property – ISIL/DAESH fighters, on the basis of religious persecution, deliberately invaded the privacy of Christians in Iraq through unlawful searches, lootings, destructions, extorsions, confiscations, appropriations and selling/trading of their homes, personal property, valuables, belongings, civilian infrastructure, and businesses.^{2228 2229 2230 2231 2232}

6) The imposition and maintenance of other restrictive and discriminatory measures involving denial of fundamental rights – Based on reli-

²²²² U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 76; U.N. Doc. CAT/C/IRQ/2 (Aug. 20, 2019). ¶ 53.

²²²³ Eur. Parl., Systematic mass murder of religious minorities by ISIS, Resolution, P8_TA(2016)0051 (Feb. 4, 2016). ¶ I.

²²²⁴ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 46; U.N. Doc. CCPR/C/IRQ/CO/5/Add.1 (Aug. 18, 2017). ¶ 2; U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017). ¶ 15; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 9; U.N. Doc. CED/C/IRQ/AI/1 (Aug. 1, 2019). ¶ 43; U.N. Doc. CAT/C/IRQ/2 (Aug. 20, 2019). ¶ 52.

²²²⁵ S.C. Res. 2379 (Sept. 21, 2017). Preamble.

²²²⁶ Eur. Parl., Situation in Iraq and Syria and the IS Offensive Including the Persecution of Minorities, Resolution, P8_TA(2014)0027 (Sept. 18, 2014). ¶ C; Eur. Parl., Humanitarian Crisis in Iraq and Syria, in Particular in the IS Context, Resolution, P8_TA(2015)0040 (Feb. 12, 2015). ¶ G; Eur. Parl. Plenary sitting, Joint Motion for a Resolution Pursuant to Rule 123(2) and (4), of the Rules of Procedure. Systematic Mass Murder of Religious Minorities by The So-called ISIS/Daesh 2014–2019. (Feb. 3, 2016). ¶ B; Eur. Parl., Systematic mass murder of religious minorities by ISIS, Resolution, P8_TA(2016)0051 (Feb. 4, 2016). ¶ B.

²²²⁷ AMNESTY INTERNATIONAL. *Supra* note 495. p. 15.

²²²⁸ UNAMI (July 6, 2014 – Sept. 10, 2014). pp. 11–12; UNAMI (Dec. 11, 2014 – Apr. 30, 2015). p. 21; UNAMI (May 1, 2015 – Oct. 31, 2015). p. 15.

²²²⁹ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 21; U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶ 32.

²²³⁰ Eur. Parl. Plenary sitting, Joint Motion for a Resolution Pursuant to Rule 123(2) and (4), of the Rules of Procedure. Systematic Mass Murder of Religious Minorities by The So-called ISIS/Daesh 2014–2019. (Feb. 3, 2016). ¶¶ B, H; Eur. Parl., Systematic mass murder of religious minorities by ISIS, Resolution, P8_TA(2016)0051 (Feb. 4, 2016). ¶ H; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Report, Doc. No. 14402 (Sept. 22, 2017). ¶¶ 4, 21.

²²³¹ U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2017). p. 164.

²²³² HUMAN RIGHTS WATCH (Jul. 19, 2014). *Supra* note 2193; THE HUDSON INSTITUTE (July 21, 2016). *Supra* note 2196.; AMNESTY INTERNATIONAL. *Supra* note 495. p. 15.

gious discrimination, ISIL/DAESH fighters compelled members of the Christian community to either 1) convert to Islam; 2) “pay a tax historically levied on non-Muslims known as the *jizya* (*jiziye*; *jezyah*) [toleration tax];” 3) leave their home cities/villages or 4) or face summary killings – *death by sword*.^{2233 2234 2235 2236} Besides, through the establishment of self-appointed *sharia* courts, ISIL/DAESH denied Christians in Iraq the right to judicial process by sentencing them to death without any formal accusation, right to proper defense, right to equality of arms, or respect to legality.²²³⁷

7) Other violations of International Humanitarian Law – ISIL/DAESH fighters intentionally and deliberately committed the following crimes and violations against Christians in Iraq: ISIL/DAESH deprived Christians of humanitarian assistance through the closing of humanitarian corridors for international missions or through the reported confiscation of identification cards, passports, and financial records of those attempting to flee, which jeopardized the resettlement and access to health treatment of Christian families.^{2238 2239} ISIL/DAESH fighters also killed or attempted to kill Christians trying to escape from Iraq.²²⁴⁰ ISIL/DAESH deprived Christians of their right to housing through the expropriation, looting, seizing, and destruction of homes owned by members of the Christian group in Iraq.²²⁴¹ ISIL/DAESH fighters systematically looted personal and indispensable food items from Christians and deliberately denied them the right to

²²³³ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 12.

²²³⁴ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 47; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 48; U.N. Doc. CCPR/C/IRQ/CO/5/Add.1 (Aug. 18, 2017). ¶ 2; U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017). ¶ 15; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 9; U.N. Doc. A/HRC/39/NGO/X (Aug. 23, 2018). p. 3; U.N. Doc. CED/C/IRQ/AI/1 (Aug. 1, 2019). ¶ 43; U.N. Doc. CAT/C/IRQ/2 (Aug. 20, 2019). ¶ 52.

²²³⁵ Eur. Parl., Systematic mass murder of religious minorities by ISIS, Resolution, P8_TA(2016)0051 (Feb. 4, 2016). ¶ B.

²²³⁶ AMNESTY INTERNATIONAL. *Supra* note 495. p. 15; HUMAN RIGHTS WATCH. (December 2017). p. 16.

²²³⁷ UNAMI (Dec. 11, 2014 – Apr. 30, 2015). p. 21.

²²³⁸ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 22; U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2017). p. 164.

²²³⁹ ACN INTERNATIONAL (June 2020). *Supra* note 2193. p. 28.

²²⁴⁰ U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2017). p. 164

²²⁴¹ UNAMI (Dec. 11, 2014 – Apr. 30, 2015). p. 21; U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2017). p. 164; ACN INTERNATIONAL (June 2020). *Supra* note 2193. p. 28.

proper medical care.^{2242 2243} Some Christians who remained in their villages and towns reported that ISIL/DAESH had interrupted the electricity and water supply to their areas.²²⁴⁴ Others claimed that ISIL/DAESH demanded “the payment of protection money, while others faced forced conversion or execution if they failed to comply with [ISIL/DAESH] demands.”²²⁴⁵

4.1. Legal assessment of whether ISIL/DAESH acts and omissions against Christians in Iraq fall under the classification of the crime of genocide

It is incontrovertible that the group of individuals that profess the Christian faith in Iraq is a group protected from genocide by international law, as prescribed in the Genocide Convention and the Rome Statute. It is also indisputable that ISIL/DAESH perpetrated some objective elements of the crime of genocide against this group in Iraq – material acts/actus reus. For instance, “killing members of the group,” “causing serious bodily harm to the members of the group,” and “forcibly transferring children of the group to another group.”²²⁴⁶

Besides, it is unquestionable that the suffering that ISIL/DAESH fighters inflicted on Christians in Iraq was horrific and caused a long-lasting physical and psychological impact on the victims. ISIL/DAESH actions also led to the Christians’ displacement in IDP (Internally Displaced Persons) and refugee camps locally and across borders, and, ultimately, contributed to the partial destruction of the group in Iraq, particularly in the Ninewa Plains. Many of the survivors could not have a normal and constructive life. The totality of the available evidence is sufficient to sustain that ISIL/DAESH targeted Christians in Iraq based on religious discrimination. However, the question to be discussed in this section is whether, taking together the circumstantial evidence, one can legitimately and sufficiently draw a reasonable inference that these discriminatory acts suffice to prove intent – mens rea – to destroy a group as a separate, distinct entity.

²²⁴² UNAMI (July 6, 2014 – Sept. 10, 2014). p. 11; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 10; U.N. Doc. CED/C/IRQ/AI/1 (Aug. 1, 2019). ¶ 44; U.N. Doc. CAT/C/IRQ/2 (Aug. 20, 2019). ¶ 53.

²²⁴³ ACN INTERNATIONAL (June 2020). *Supra* note 2193. p. 28.

²²⁴⁴ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 12

²²⁴⁵ U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶ 32.

²²⁴⁶ United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544. Article 6.

4.1.1. Destroy as such: Was there a genocidal intent?

Some elements could be indicative of ISIL/DAESH fighters' genocidal intent. Among these elements, ISIL/DAESH public declarations against Christians; the several ultimatums that Christians should leave the Ninewa plains – or to be else killed –; the material nature of the violations of international human rights; the egregious acts of physical and mental torture; the extensive perpetration of rape and other forms of sexual abuse against Christian women and children; the deportations; and the separation of children from their parents.

Nevertheless, other aspects of ISIL/DAESH fighters' conduct indicate a lack of genocidal intent. The existing circumstantial evidence demonstrates that ISIL/DAESH fighters intended to religiously persecute, disperse, submit, weaken – and eventually destroy – all those who disagreed with the group's own interpretation of Islam and harsh interpretation of Sharia law,²²⁴⁷ all those who did not conform to its *takfiri* doctrine,²²⁴⁸ including Christians, but also Yazidis, Shias, and Sunnis, Shabak, Sabean, Kaka'es, and Turkmen.^{2249 2250 2251 2252 2253} The existing evidence shows that ISIL/DAESH systematically targeted religious and ethnic minority groups who refused to subscribe and pledge allegiance to its extremist and triumphalist ideology, those who the terrorist group considered "infidels" or "heretics," those who refused to "repent" from not being Muslims.^{2254 2255 2256 2257} Several documents from the European Parliament, for

²²⁴⁷ Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Compendium of Amendments, Doc. No. 14402 (Oct. 11, 2017). ¶ 4.

²²⁴⁸ U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 48.

²²⁴⁹ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 16; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 9; U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). p. 1, ¶ 61.

²²⁵⁰ UNAMI (Dec. 11, 2014 – Apr. 30, 2015). pp. 19–20.

²²⁵¹ H.R.Con.Res. 75, 114th Cong. (Sept. 9, 2015). pp. 1–2; S. 2377, 114th Cong. (Dec. 9, 2015). p. 9; U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2017). p. 162; H.R.Con.Res. 75, 114th Cong. (Mar. 15, 2016). p. 2; H. Res. 1117, 115th Cong. (Oct. 5, 2018). p. 2.

²²⁵² Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Report, Doc. No. 14402 (Sept. 22, 2017). ¶¶ 4, 16.

²²⁵³ AMNESTY INTERNATIONAL. *Supra* note 495. p. 15.

²²⁵⁴ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 29; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 9; U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶ 7.

²²⁵⁵ U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2017). p. 162.

example, account for ISIL/DAESH's attempts to "complete a religious cleansing in the region"²²⁵⁸ by exterminating "any religious minorities from the areas under its control."²²⁵⁹

Thus, ISIL/DAESH did target and persecute Christians because of their affiliation or perceived affiliation to a religious group,²²⁶⁰ but not with the exclusive genocidal intent to destroy this group *exclusively* because they were Christians – destroy them as a separate, distinct entity *as such*. Importantly, in *Prosecutor v. Radoslav Brđanin*, the ICTY, making considerations about genocidal acts committed against both Bosnian Muslims as well as Bosnian Croats in the Former Yugoslavia, concluded that a perpetrator might target *at the same time* more than one protected group, provided that the elements of the crime of genocide are considered in relation to each group separately.²²⁶¹

The crucial point of consideration here is not whether ISIL/DAESH could target Christians and other religious and ethnic groups for genocide *simultaneously* in Iraq. Instead, the *crux* is whether the terrorist group fighters harbored a distinct, unique, separate, and, importantly, *positive* genocidal intent for each group. Customary International Law "has a long-standing rule that groups, in genocide offenses, must be defined by their *positive* characteristics" – as belonging to/or as possessing the characteristics of a national, ethnical, racial, or religious group – rather than by their *negative* characteristics (by exclusion) – that is, not possessing a specific *distinct* identity.²²⁶²

In *Goran Jelisić*, the ICTY defined that "a *positive* approach would consist of the perpetrators of the crime distinguishing a group by the characteristics which they deem to be particular to a national, ethnical, racial or religious group."²²⁶³ In contrast, a *negative* approach "would consist of identifying individuals as not being part of the group to which the perpetrators

²²⁵⁶ Robert Manne. *Supra* note 437. p. 76.

²²⁵⁷ AMNESTY INTERNATIONAL. *Supra* note 495. p. 15.

²²⁵⁸ Eur. Parl., Situation in Iraq and Syria and the IS Offensive Including the Persecution of Minorities, Resolution, P8_TA(2014)0027 (Sept. 18, 2014). ¶ 4; Eur. Parl., Humanitarian Crisis in Iraq and Syria, in Particular in the IS Context, Resolution, P8_TA(2015)0040 (Feb. 12, 2015). ¶ G.

²²⁵⁹ Eur. Parl., Recent Attacks and Abductions by ISIS/Da'esh in the Middle East, Notably of Assyrians, Resolution, P8_TA(2015)0071 (Mar. 12, 2015). ¶ 2.

²²⁶⁰ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 16.

²²⁶¹ *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶ 735.

²²⁶² *Prosecutor v. Radoslav Brđanin*. IT-99-36-T. *Supra* note 130. ¶ 685; *Prosecutor v. Vujadin Popović et al.* IT-05-88-T. *Supra* note 150. ¶ 809.

²²⁶³ *Prosecutor v. Goran Jelisić*. IT-95-10-T. *Supra* note 97. ¶ 71.

of the crime consider that they themselves belong and which to them displays specific national, ethnical, racial or religious characteristics.”²²⁶⁴ In *Popović*, the ICTY characterized a *negatively defined group* as, for example, “all *non-Serbs* in a particular region.”²²⁶⁵

In *Stakić*, the ICTY Appeals Chamber considered that “the drafting history of the Genocide Convention (...) was meant to incorporate an understanding [that is] incompatible with the negative definition of target groups.”^{2266 2267 2268} In *Bosnia and Herzegovina v. Serbia and Montenegro*, the ICJ recalled that “the essence of the intent is to destroy the protected group, in whole or in part, as such. It is a group which must have particular positive characteristics – national, ethnical, racial or religious – and not the lack of them.”²²⁶⁹

Accordingly, the ICJ concluded that it should “deal with the matter on the basis that the targeted group must in law be defined positively, and thus not negatively as the “non-Serb” population.”²²⁷⁰ Importantly, in *Prosecutor v. Radoslav Brđanin*, the ICTY considered that when more than one group is targeted at the same time, a *positive* genocidal intent “must be considered in relation to each group separately.”²²⁷¹

Bearing that in mind, there is no evidence to date that ISIL *positively* wanted to destroy, in whole or in part, the group of Christians, the group of Yazidis, the group of Shias, the group of Sunnis, the group of Shabaks, the group of Sabeans, the group of Kaka’es, and the group of Turkmens in Iraq as *distinct* entities (*as such*), *solely* and *exclusively* for their belonging/affiliation to these groups – genocidal *mens rea*. Rather, the existing evidence to date only supports the hypothesis that ISIL wanted to destroy in Iraq every group that *did not belong* to their own concept of an Islamic religious group (*negative* approach).

²²⁶⁴ *Ibidem*.

²²⁶⁵ “A negatively defined group – for example all “non-Serbs” in a particular region – thus does not meet the definition.” (Prosecutor v. Vujadin Popović *et al.* IT-05-88-T. *Supra* note 150. ¶ 809).

²²⁶⁶ Prosecutor v. Milomir Stakić. IT-97-24-A. *Supra* note 110. ¶ 22.

²²⁶⁷ For the ICTY, “given that negatively defined groups lack specific characteristics, defining groups by reference to a negative would run counter to the intent of the Genocide Convention’s drafters.” (Prosecutor v. Milomir Stakić. IT-97-24-A. *Supra* note 110. ¶ 22).

²²⁶⁸ See also: Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶¶ 686, 735.

²²⁶⁹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgement, 2007, I.C.J. 43 (Feb. 26). ¶ 193

²²⁷⁰ *Idem*. ¶ 196

²²⁷¹ Prosecutor v. Radoslav Brđanin. IT-99-36-T. *Supra* note 130. ¶ 686.

In one significant instance, the European Parliament concluded that “Daesh commit[ted] crimes against the population at large.”²²⁷² The Parliament, however, stated that there was “no evidence that this [was] done with the specific intent necessary to classify these [...] crimes as genocide [against Christians].”²²⁷³ Thus, the existing evidence concerning ISIL/DAESH atrocities against Christians in Iraq, however, is not, at least to this date, sufficient to prove, beyond a reasonable doubt, that the only possible inference about the perpetrators’ mens rea may lead to individual criminal responsibility for genocide.

4.1.2. Jizya protection tax

Another element that tends to show ISIL/DAESH’s lack of genocidal intent can be seen in the controversial payment of *Jizya* (toleration/protection tax) that Christians paid to ISIL/DAESH fighters. In Mosul, ISIL/DAESH threatened Christians with “death by sword” or expulsion from their houses unless they converted to Islam or paid a fine – *Jizya*.^{2274 2275 2276} *Jizya* constituted a tax granted to the “People of the Book” – how Christians are regarded in the *Quran* – in Islam’s early origins.²²⁷⁷ Those who paid the tax could save their lives and be set free. Nevertheless, ISIL/DAESH did not offer such a “merciful” tax to other minority groups in Iraq.

The controversy related to the payment of *Jizya* lies on two grounds: Firstly, according to ISIL/DAESH itself, through the wording of their Caliph Abu Omar al-Baghdadi, “Christians no longer qualify for the historical protection offered by Islamic law;”²²⁷⁸ Secondly, it is argued that the term “*jizya*,” as used by ISIL/DAESH fighters, has no comparison with the his-

²²⁷² Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Report, Doc. No. 14402 (Sept. 22, 2017). ¶ 16.

²²⁷³ *Ibidem*. Later in 2018, the Parliament issued several statements considering that the crimes perpetrated by ISIL/DAESH against Christians could be classified as genocide, without, however, presenting any new factual circumstances and evidence.

²²⁷⁴ UNAMI (Dec. 11, 2014 – April 30, 2015). p. 20.

²²⁷⁵ U.N. Doc. A/HRC/S-22/NGO/8 (Aug. 29, 2014). p.3; U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 47; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 21; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 48; U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶ 8.

²²⁷⁶ Hamdi Alkhshali & Joshua Berlinger, *Facing Fines, Conversion or Death, Christian Families Flee Mosul*, CNN, July 20, 2014; AMNESTY INTERNATIONAL. *Supra* note 495. p. 15; HUMAN RIGHTS WATCH. (December 2017). p. 16.

²²⁷⁷ KNIGHTS OF COLUMBUS. *Supra* note 409. p. 12; THE HUDSON INSTITUTE (July 21, 2016). *Supra* note 2196.. p. 19.

²²⁷⁸ KNIGHTS OF COLUMBUS. *Supra* note 409. pp. 12–13.

toric tax granted to the “People of the Book.”²²⁷⁹ Some evidence shows that even when Christians paid the amounts, ISIL/DAESH murdered, kidnapped, enslaved, and raped them. Fighters destroyed properties belonging to Christians and punished those who gathered for worship meetings.²²⁸⁰ Allegedly, for ISIL/DAESH, “*Jizya*” taxes constituted “simply extortion and ransom payments that at most provided temporary protection from attacks.”²²⁸¹

However, the pieces of evidence that show that *Jizya* turned to *extortion* only – and no longer *protection* – are scarce. Most of the existing evidence indicates that ISIL/DAESH did not attack those who made payments to ISIL/DAESH fighters during 2014-2015. Obviously, the concession of such payment does not mean that ISIL/DAESH fighters recognized Christians’ right to exist as a group. At the root of the interpretation of what *Jizya* constituted in Iraq lies the assumption that the brutal acts of violence against Christians were not directed against them *exclusively*. Therefore, the existing evidence on *Jizya* does not support the assumption that ISIL/DAESH had the *mens rea* to destroy Christians in Iraq as a group – *as such*.²²⁸²

4.1.3. Beyond a reasonable doubt

Both the ICTY and the ICTR concur that the existing evidence presented in a criminal case must demonstrate beyond a reasonable doubt that the only possible inference about the perpetrators’ *mens rea* is one that leads to individual criminal responsibility for genocide.^{2283 2284} Nevertheless, comprehensive documentation of the crimes committed by ISIL/DAESH against Christians is still lacking.²²⁸⁵ Lack of access to conflict-affected areas, the fear of the Christian families in reporting crimes, and other security and administrative concerns seriously impeded the documentation of cases leading to a conclusion that genocide was committed against Christians.^{2286 2287} Thus, the exact figures and the clarifi-

²²⁷⁹ THE HUDSON INSTITUTE (July 21, 2016). *Supra* note 2196. p. 19.

²²⁸⁰ *Idem*. p. 4.

²²⁸¹ *Idem*. pp. 3–4.

²²⁸² KNIGHTS OF COLUMBUS. *Supra* note 409. p. 11.

²²⁸³ Prosecutor v. Zdravko Tolimir. IT-05-88/2-T. *Supra* note 153. ¶¶ 750–759.

²²⁸⁴ Prosecutor v. Callixte Nzabonimana. ICTR-98-44D-T. *Supra* note 168. ¶ 1715.

²²⁸⁵ THE HUDSON INSTITUTE (August 2016). *Supra* note 410. p. 1; UNITED STATES HOL-OCAUST MEMORIAL MUSEUM (2015). *Supra* note 2216. p. 3.

²²⁸⁶ U.N. Doc. A/69/926-S/2015/409 (June 5, 2015). ¶ 77; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶ 5.

cation of the atrocities committed on the basis of religious discrimination remain unclear.²²⁸⁸

To this date, the Investigative Team²²⁸⁹ produced five reports with updates on the investigation measures and findings on the crimes committed by ISIL/DAESH in Iraq against religious minorities.²²⁹⁰ They all mention the “efforts” to “uncover the truth.” Some of them point to conduct that leads to the conclusion of the perpetration of the crime of persecution, as the reader can see in section 6.3. However, none of them brought a detailed account of facts or disclosed evidence descriptively and conclusively to permit a conclusive legal finding that ISIL/DAESH members perpetrated genocide against Christians in Iraq. Therefore, the existing evidence to this date does not meet the necessary legal standards of admissibility of a genocide conviction for ISIL/DAESH fighters in Iraq.

4.2. Legal assessment of whether the definition of persecution, as a crime against humanity, is satisfied in ISIL/DAESH conduct in Iraq

The Elements of Crimes of the International Criminal Court establishes six constitutive bases for the crime against humanity of persecution.²²⁹¹ Five of them concern the *actus reus* of the crime of persecution, as follows:

“1. The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.

2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.

3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.

²²⁸⁷ Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Report, Doc. No. 14402 (Sept. 22, 2017). ¶ 42.

²²⁸⁸ U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶ 63.

²²⁸⁹ The “Investigative Team to support Iraqi efforts to prosecute ISIL/DAESH fighters.” Please, refer to section: 1.1.5. International efforts to hold ISIL/DAESH terrorist fighters accountable.

²²⁹⁰ U.N. Docs. S/2018/1031 (Nov. 16, 2018), S/2019/407 (May 17, 2019), S/2019/878 (Nov. 13, 2019), S/2020/386 (May 11, 2020), and S/2020/1107 (Nov. 11, 2020).

²²⁹¹ International Criminal Court (ICC), Elements of Crimes, 2013. *Supra* note 2068. Article 7.1.h.

4. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.

5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.²²⁹²

As it will be argued in the next sections, ISIL/DAESH acts and omissions against Christians in Iraq meet all these five constitutive bases. One of these Elements of Crimes exclusively concerns the assessment of whether an *intent* to discriminate on the grounds of religion (*mens rea*) falls within the definition established in Article 7.1.h of the Rome Statute:²²⁹³ “6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.”²²⁹⁴

4.2.1. Widespread attacks

Numerous factual circumstances sustain the conclusion that ISIL/DAESH's acts and omissions perpetrated against Christians in Iraq were widespread, as follows: 1) the fact that ISIL/DAESH took administrative and military control of many parts of Iraq, ruling an area larger than the United Kingdom, including the complete seizing and/or storming and attacking of areas, cities and villages predominantly inhabited by Christians, in particular Mosul, Ninewa, Bashiqa, Bartella, Tel Keif, Shirkhan, districts around Makhmour, the region of Zummar, Mount Sinjar, parts of Salah al-Din Governorate, Al-Hamdaniya (Qaraqosh), and numerous villages in Kirkuk and Diyala Governorates; 2) the explicit targeted killing of tens of thousands of Christians; 3) the fact that an estimated “200,000 Christians and members of other ethnic and religious groups” were displaced by force from areas taken over by ISIL/DAESH, “in fear of ISIL/DAESH threats when they were given the choice to pay a tax, convert or leave;”²²⁹⁵ 4) the sweeping scale of the cruel acts by ISIL/DAESH fighters, financially extorting members of the Christian community trying to flee from Iraq; 5) the widespread seizing, appropriation, looting of houses, belongings, and properties owned by Christians in Iraq; 6) the large-scale sexual abuse of Christian children; and 7) the abduction, and/or recruitment and use of Christian children in large

²²⁹² *Idem.* Article 7.1.h.

²²⁹³ United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544. Article 7.1.h.

²²⁹⁴ International Criminal Court (ICC), Elements of Crimes, 2013. *Supra* note 2068. Article 7.1.h.

²²⁹⁵ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 21.

numbers, particularly in areas of Sinjar, and Zummar in Ninewa Governorate.^{2296 2297 2298 2299 2300}

It is also documented that ISIL/DAESH also committed other atrocious acts against Christians in Iraq in a *widespread* manner: mass murder; beatings; torture; assault; imprisonment; crucifixions; beheadings; and other inhuman and degrading treatment; extermination, and systematic ‘cleansing;’ abduction/kidnappings; deprivation of liberty; enslavement; human trafficking; hostage-taking; use of persons as human shields or for suicide bombing; forced marriage; the kidnapping of children; separation of Christian children from their mothers; forcibly transferring them to another group; and other violent acts seeking to destroy/eradicate/exterminate their entire community of Christians in Iraq.^{2301 2302}

²²⁹⁶ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 46; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶¶ 21–22, 76; U.N. Doc. A/69/926–S/2015/409 (June 5, 2015). ¶ 77; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶¶ 37, 48; U.N. Doc. S/2015/852 (Nov. 9, 2015). ¶¶ 5, 10; U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶ 8; U.N. Doc. CCPR/C/IRQ/CO/5/Add.1 (Aug. 18, 2017). ¶ 4; S.C. Res. 2379 (Sept. 21, 2017). preamble; U.N. Doc. CERD/C/IRQ/22–25 (Nov. 22, 2017). ¶ 16; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 8; U.N. Doc. A/HRC/39/NGO/X (Aug. 23, 2018). p. 3; U.N. Doc. CED/C/IRQ/AI/1 (Aug. 1, 2019). ¶¶ 42, 45; U.N. Doc. CAT/C/IRQ/2 (Aug. 20, 2019). ¶ 52; S.C. Res. 2490 (Sept. 20, 2019). preamble; U.N. Doc. S/2019/761 (Sept. 20, 2019). Preamble; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 60; U.N. Doc. CAT/C/IRQ/FCO/1 (June 15, 2020). ¶ 2.

²²⁹⁷ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 12; UNAMI (Dec. 11, 2014 – Apr. 30, 2015). pp. 19–20.

²²⁹⁸ Eur. Parl., Report, Funding of the Terrorist Group Daesh: Lessons Learned, Doc. No. 14510 (Mar. 12, 2018). ¶ 4.

²²⁹⁹ 164 Cong. Rec. H9600 (daily ed. Nov. 27, 2018) (statement of Rep. Christopher H. Smith). p. H9603.

²³⁰⁰ UNITED STATES HOLOCAUST MEMORIAL MUSEUM (2015). *Supra* note 2216. pp. 3, 12, 18; *What ISIS Really Wants*, THE ATLANTIC, March 2015; CEASEFIRE CENTRE FOR CIVILIAN RIGHTS (Jul. 2016). *Supra* note 2193. p. 13.

²³⁰¹ Eur. Parl., Threats Against Humanity Posed by the Terrorist Group Known as “IS”: Violence Against Christians and Other Religious or Ethnic Communities (Final version), Doc. No. 13618 (Sept. 30, 2014). ¶ 7; Eur. Parl., Systematic Mass Murder of Religious Minorities by the so-called ‘ISIS/Daesh’ (2016/2529(RSP)), Resolution (Feb. 4, 2016). b, ¶ 1; Eur. Parl., Situation in Northern Iraq/Mosul (TA(2016)0422), Resolution (Oct. 27, 2016). d; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Resolution 2190 (2017). ¶ 3.2; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Report, Doc. No. 14402 (Sept. 22, 2017). ¶ 3; 3.2; 21; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Compendium of Amendments, Doc. No. 14402 (Oct. 11, 2017). ¶¶ 3, 3.2; Eur. Parl., Annual Report

4.2.2. Systematic attacks

Beyond any reasonable doubt, the human rights and humanitarian violations perpetrated by ISIL/DAESH against Christians in Iraq were systematic and displayed an unequivocal organizational policy of brutal, violent, murderous, radical, and extremist ideology.^{2303 2304} Information provided by multiple sources demonstrates that ISIL/DAESH furthered a *calculated* pattern of widespread murder, barbarism, domination, massive deportations, humiliation, recruitment, and use of children, countless rapes and acts of sexual abuse, systematic abduction and enslavement of Christian women and girls, and administrative, infrastructural, exploitive, and fiscal control of vast areas of the Iraqi territory (taxes, oil extraction, security, and education). These acts were perpetrated through a gradual weakening of the Christian population in a process construed to “suppress, permanently expel or destroy th[is] communit[y] within areas under the control of ISIL/DAESH.”^{2305 2306 2307}

ISIL/DAESH systematically persecuted Christians in Iraq for opposing the terrorist group’s extreme ideology and *Takfiri* doctrines: ISIL/DAESH fighters systematically sentenced Christians to death, accusing them of blasphemy, apostasy, and “infidelity.” In addition, different reports indi-

on Human Rights and Democracy in the World 2016 and the European Union’s Policy on the Matter (2017/2122(INI)), Resolution (Dec. 13, 2017). ¶ 36; Eur. Parl., Systematic Mass Murder of Religious Minorities by the so-called ‘ISIS/Daesh’ (2016/2529(RSP)), Resolution (Feb. 4, 2016).

²³⁰² H.R.Con.Res. 75, 114th Cong. (Mar. 15, 2016). p. 2; 163 Cong. Rec. H4632 (daily ed. June 6, 2017) (statement of Rep. Edward Royce). p. H4633; 163 Cong. Rec. H5368 (daily ed. June 29, 2017) (statement of Rep. Ted Poe). p. H5369; H.R. 407, 115th Cong. (Dec. 12, 2017). Preamble; H.R. 390, 115th Cong. (Nov. 29, 2018). Drafting. Sec. 2. Findings. ¶ 3; 165 Cong. Rec. H349 (daily ed. Jan. 9, 2019) (statement of Rep. Jeff Fortenberry). p. H351; 165 Cong. Rec. H2350 (daily ed. Mar. 5, 2019) (statement of Rep. Jeff Fortenberry). p. H2350; H. Res. 259, 116th Cong. (Mar. 27, 2019). p. 2.

²³⁰³ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 46; U.N. Doc. S/PV.7316 (Nov. 19, 2014). p. 26; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 9; S.C. Res. 2379 (Sept. 21, 2017). preamble; S.C. Res. 2490 (Sept. 20, 2019). Preamble; U.N. Doc. S/2019/761 (Sept. 20, 2019). Preamble; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 60.

²³⁰⁴ UNITED STATES HOLOCAUST MEMORIAL MUSEUM (2015). *Supra* note 2216. p. 18.

²³⁰⁵ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 76. See also: U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶¶ 37, 48; U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶ 8; S.C. Res. 2367 (July 14, 2017). Preamble; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 13; U.N. Doc. A/HRC/39/NGO/X (Aug. 23, 2018). p. 3.

²³⁰⁶ Eur. Parl., Report, Funding of the Terrorist Group Daesh: Lessons Learned, Doc. No. 14510 (Mar. 12, 2018). ¶ 4.

²³⁰⁷ H.R.Con.Res. 75, 114th Cong. (Sept. 9, 2015). p. 2.

cated that, in pursuing their campaign to destroy Christians in Iraq, ISIL/DAESH fighters systematically chose both extremely efficient methods of direct physical destruction of lives, as well as *slow death* methods.^{2308 2309 2310}

Some of these efficient methods included: mass and individual killings, executions by, *inter alia*, hanging, stoning, drowning, throwing persons off buildings, beheadings, crucifixions, shootings, burnings, and other forms of murder. While *slow death* methods included: taking of hostages, use of persons as human shields, torture, beatings, mutilation, amputation, rape, extensive violence, inhuman and degrading treatment causing serious bodily or mental harm, sexual slavery, and abuse of women and girls, abductions, enforced disappearances, intentional displacement of the Christian population, separation of children from their mothers, systematic destruction of Christian places of worship, and forced conversions.^{2311 2312 2313 2314 2315}

4.2.3. In fact discriminatory

ISIL/DAESH persecutory acts and omissions not only displayed a discriminatory policy. Importantly, these acts resulted in multiple discriminatory consequences for the Christian community in Iraq. According to reliable sources, the population of Christians in Iraq is thought to have

²³⁰⁸ IRQ 4/2014 (July 24, 2014). p. 2; U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 49; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶¶ 19, 48; U.N. Doc. S/2016/77 (Jan. 26, 2016). ¶ 49; U.N. Doc. S/2016/897 (Oct. 25, 2016). ¶ 45; U.N. Doc. S/2016/92 (Jan. 29, 2016). ¶ 9; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶ 26.

²³⁰⁹ UNAMI (June 5 – July 5, 2014). p. 13; UNAMI (May 1, 2015 – Oct. 31, 2015). pp. 8, 11.
²³¹⁰ AMNESTY INTERNATIONAL. *Supra* note 495.

²³¹¹ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 78; U.N. Doc. A/69/926-S/2015/409 (June 5, 2015). ¶ 71; S.C. Res. 2379 (Sept. 21, 2017). ¶ 1; U.N. Doc. A/HRC/38/44/Add.1 (June 20, 2018). ¶¶ 23, 25, 28, 73; U.N. Doc. S/2018/677 (July 9, 2018). p.3; U.N. Doc. S/PV.8324 (Aug. 8, 2018). p.3; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 9; U.N. Doc. A/73/347 (Aug. 28, 2018). ¶ 9.

²³¹² Eur. Parl., Systematic Mass Murder of Religious Minorities by the so-called 'ISIS/Daesh' (2016/2529(RSP)), Resolution (Feb. 4, 2016). p. 35/79. H; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Resolution 2190 (2017). ¶¶ 3; 3.1; 4.

²³¹³ U.S. Dep't of State, Department Press, Remarks by Secretary of State John Kerry (Mar. 17, 2016).

²³¹⁴ UK Parliament, Genocide in Syria and Iraq, Early Day Motion, Sponsored by Robert Ffello (Jan. 26, 2016).

²³¹⁵ Michelle Nichols, Iraq Tells United Nations That Islamic State Committed Genocide, REUTERS, Feb. 17, 2015; Anugrah Kumar, ISIS Burns Christians Alive in Locked Caskets, Escaped Prisoner Reveals, CHRISTIAN POST, Jan. 6, 2016.

severely declined through forced displacement since the rise of ISIL/DAESH in locations highly inhabited by this religious group, particularly in the Ninewa plains. With the advancement of ISIL/DAESH warfare and the terrorist group's deliberate intent to persecute on religious grounds, thousands of Christians fled from Al-Hamdaniya, Bashiqa, Bartella, Tel Keif to other towns and villages in Iraq or other countries, "in fear of ISIL/DAESH threats when they were given the choice to pay a tax, convert or leave."^{2316 2317 2318 2319} In Mosul, on the night of 6 August 2014 alone, almost 150,000 (one hundred fifty thousand) persons who professed the Christian faith fled the advance of ISIL/DAESH.²³²⁰ The disabled, the elderly, or the impoverished victims could not leave to seek "shelter with relatives and community members" in other locations.²³²¹

It is documented through multiple sources that ISIL/DAESH has seized the houses and properties of Christians in Mosul. At the checkpoints, many Christians who were fleeing their villages "reported having their possessions stripped from them" or that ISIL/DAESH fighters physically or sexually assaulted them." Countless families have not been able to return. The suffering deliberately caused by ISIL/DAESH fighters took a tremendous toll on the physical and mental health of Christians in the Iraqi territory.^{2322 2323 2324} Therefore, ISIL/DAESH fighters' acts and omissions were *in fact* persecutory and fall under the classification of the crime of persecution, as a crime against humanity, under Article 7.1.h of the Rome Statute.²³²⁵

²³¹⁶ U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 21; U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶ 32.

²³¹⁷ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 12.

²³¹⁸ U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2017). p. 164; 163 Cong. Rec. H5368 (daily ed. June 29, 2017) (statement of Rep. Ted Poe). p. H5369.

²³¹⁹ THE HUDSON INSTITUTE (July 21, 2016). *Supra* note 2196..

²³²⁰ U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2017). p. 164.

²³²¹ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 12.

²³²² U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 21; U.N. Doc. CAT/C/IRQ/2 (Aug. 20, 2019). ¶ 53.

²³²³ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 12.

²³²⁴ U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2017). p. 164.

²³²⁵ United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544.

4.2.4. Mens rea

ISIL/DAESH carried out all the underlying persecutory acts and omissions against Christians in Iraq in a deliberate/not incidental manner. ISIL/DAESH clearly displayed the particular intent to discriminate and target Christians on religious grounds – religious persecution *dolus specialis*, subjecting them to a systematic and widespread policy of multiple and egregious violations of international human rights, humanitarian and criminal law (discriminatory policy – Article 7.1.h.5, Elements of Crimes²³²⁶).^{2327 2328 2329 2330 2331 2332} In other words, from mid-2014 until December 2017, ISIL/DAESH intentionally persecuted individuals on the basis of their religious – Christian – identity within ISIL/DAESH areas of control in Iraq (Article 7.1.h.6, Elements of Crimes²³³³), with the knowledge that such “conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population” (Article 7.1.h.6, Elements of Crimes²³³⁴).^{2335 2336}

²³²⁶ International Criminal Court (ICC), Elements of Crimes, 2013. *Supra* note 2068. Article 7.1.h.5.

²³²⁷ U.N. Doc. A/HRC/RES/S-22/1 (Sept. 3, 2014). pp. 1–2; U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 47; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 48; U.N. Doc. S/2016/897 (Oct. 25, 2016). ¶ 52; S.C. Res. 2367 (July 14, 2017). Preamble; U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 10; U.N. Doc. CED/C/IRQ/AI/1 (Aug. 1, 2019). ¶ 44; U.N. Doc. CAT/C/IRQ/2 (Aug. 20, 2019). ¶ 53.

²³²⁸ UNAMI (Nov. 6, 2018). p. 4.

²³²⁹ Eur. Parl., Situation in Iraq and Syria and the IS Offensive Including the Persecution of Minorities, Resolution, P8_TA(2014)0027 (Sept. 18, 2014). ¶ C; Eur. Parl., Iraq: Kidnapping and Mistreatment of Women, Resolution, P8_TA(2014)0066 (Nov. 27, 2014). ¶ C; Eur. Parl., Humanitarian Crisis in Iraq and Syria, in Particular in the IS Context, Resolution, P8_TA(2015)0040 (Feb. 12, 2015). ¶ G; Eur. Parl. Plenary sitting. Joint Motion for a Resolution Pursuant to Rule 123(2) and (4), of the Rules of Procedure. Systematic Mass Murder of Religious Minorities by The So-called ISIS/Daesh 2014–2019. (Feb. 3, 2016). ¶¶ 1, B.

²³³⁰ H. Res. House Foreign Affairs Subcommittees on Africa, Global Health, Global Human Rights and International Organizations and the Middle East and North Africa. Testimony of Assistant Secretary Tom Malinowski (Sept. 10, 2014).

²³³¹ UK Parliament, Genocide in Syria and Iraq, Early Day Motion, Sponsored by Robert Flelo (Jan. 26, 2016).

²³³² CEASEFIRE CENTRE FOR CIVILIAN RIGHTS (Jul. 2016). *Supra* note 2193. p. 43; AMNESTY INTERNATIONAL. *Supra* note 495. p. 15; HUMAN RIGHTS WATCH. (December 2017). p. 16; ACN INTERNATIONAL (June 2020). *Supra* note 2193. p. 26.

²³³³ International Criminal Court (ICC), Elements of Crimes, 2013. *Supra* note 2068. Article 7.1.h.6.

²³³⁴ *Ibidem*.

ISIL/DAESH aimed to severely deprive the Christian community of their fundamental rights and to finally suppress, permanently expel or exterminate from the Iraqi society – and from humanity itself – persons defined by the terrorist group as Christians, which shows that such conducts were committed in connection with the acts referred to in Article 7.1.h of the Rome Statute.^{2337 2338 2339 2340} Several instances of the United Nations protective umbrella of human rights explicitly recognized that such aim was perpetrated in a deliberate/intentional manner, for instance, the U.N. Secretary-General,²³⁴¹ the Office of the United Nations High Commissioner for Human Rights,²³⁴² the Human Rights Council,²³⁴³ the Committee on the Elimination of Racial Discrimination,²³⁴⁴ the Committee on the Elimination of Discrimination against Women,²³⁴⁵ the Human Rights Committee,²³⁴⁶ the Committee on Enforced Disappearances,²³⁴⁷ and the Special Rapporteur on Minority Issues.²³⁴⁸

It is demonstrated that ISIL/DAESH issued several declarations, statements of doctrine and policies encompassing the destruction of Christians.²³⁴⁹ In these public statements, ISIL/DAESH fighters deliberately

²³³⁵ U.N. Doc. A/HRC/RES/S-22/1 (Sept. 3, 2014). pp. 1–2.

²³³⁶ UNAMI (Dec. 11, 2014 – Apr. 30, 2015). p. i.

²³³⁷ United Nations. Rome Statute (July 17, 1998) 2187 UNTS 38544. Article 7.1.h.

²³³⁸ Eur. Parl. Plenary sitting. Joint Motion for a Resolution Pursuant to Rule 123(2) and (4), of the Rules of Procedure. Systematic Mass Murder of Religious Minorities by The So-called ISIS/Daesh 2014–2019. (Feb. 3, 2016). ¶ 1.

²³³⁹ UNAMI (July 6, 2014 – Sept. 10, 2014). p. 11; UNAMI (Dec. 11, 2014 – Apr. 30, 2015). p. i; UNAMI (May 1, 2015 – Oct. 31, 2015). p. 19; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 48; UNAMI (Nov. 6, 2018). p. 4.

²³⁴⁰ Comparatively: Prosecutor v. Dario Kordić and Mario Čerkez. IT-95-14/2-T. *Supra* note 80. ¶ 214.

²³⁴¹ U.N. Doc. S/2014/774 (Oct. 31, 2014). ¶ 46; U.N. Doc. S/2019/984 (Dec. 23, 2019). ¶ 60.

²³⁴² U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 16; U.N. Doc. A/HRC/30/66 (July 27, 2015). ¶ 48.

²³⁴³ U.N. Doc. A/HRC/RES/S-22/1 (Sept. 3, 2014). pp. 1–2.

²³⁴⁴ U.N. Doc. CERD/C/IRQ/22-25 (Nov. 22, 2017). ¶¶ 15–16.

²³⁴⁵ U.N. Doc. CEDAW/C/IRQ/7 (Aug. 15, 2018). ¶ 11.

²³⁴⁶ U.N. Doc. CCPR/C/IRQ/CO/5/Add.1 (Aug. 18, 2017). ¶¶ 1, 3–4.

²³⁴⁷ U.N. Doc. CED/C/IRQ/AI/1 (Aug. 1, 2019). ¶ 45.

²³⁴⁸ U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶ 61.

²³⁴⁹ Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Resolution 2190 (2017). ¶ 4; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Genocide Committed by Daesh, Report, Doc. No. 14402 (Sept. 22, 2017). ¶¶ 4, 21; Eur. Parl., Prosecuting and Punishing the Crimes Against Humanity or Even Possible Geno-

compelled members of Christian communities, including young children, to either 1) convert to Islam, 2) pay a fine – in accordance with Sharia Law – *jizyah* –, 3) face expulsion, or 4) face summary killings – “death by the sword.”^{2350 2351 2352 2353} Children were reportedly being beheaded by ISIL/DAESH members for refusing to convert to Islam.²³⁵⁴ These orders were announced publicly in leaflets and in all the mosques’ loudspeakers during Friday’s prayers, which demonstrates again that ISIL/DAESH fighters were fully aware of the atrocities deliberately committed against Christians.²³⁵⁵

Therefore, it is incontrovertible that ISIL/DAESH targeted Christians in Iraq on the basis of religious discrimination. It is also incontrovertible that the available evidence contains some objective elements (material acts/*actus reus*) that could be indicative of ISIL/DAESH fighters’ genocidal intent against Christians. Nevertheless, there is not enough evidence to date that ISIL/DAESH harbored a distinct, unique, separate, and positive genocidal intent to destroy, in whole or in part, the group of Christians in Iraq solely and exclusively for their belonging/affiliation to this group – genocidal *mens rea* (as such). In this case, genocidal intent is not the only possible

cide Committed by Daesh, Compendium of Amendments, Doc. No. 14402 (Oct. 11, 2017). ¶ 4.

²³⁵⁰ U.N. Doc. A/HRC/S-22/NGO/8 (Aug. 29, 2014). p.3; U.N. Doc. A/HRC/RES/S-22/1 (Sept. 3, 2014). p.1; U.N. Doc. A/HRC/28/18 (March 27, 2015). ¶ 21; U.N. Doc. A/HRC/34/53/Add.1 (Jan. 9, 2017). ¶ 32.

²³⁵¹ UNAMI (July 6, 2014 – Sept. 10, 2014). p.11; UNAMI (Dec. 11, 2014 – Apr. 30, 2015). p.21.

²³⁵² AMNESTY INTERNATIONAL. *Supra* note 495. p. 15; HUMAN RIGHTS WATCH. (December 2017). p. 16.

²³⁵³ Hamdi Alkhshali & Joshua Berlinger, *Facing Fines, Conversion or Death, Christian Families Flee Mosul*, CNN, July 20, 2014; Eleftheriou-Smith, Loulla-Mae. The Independent: British ‘Vicar of Baghdad’ claims Isis beheaded four children for refusing to convert to Islam. December 8, 2014; Jane Corbin, *Could Christianity Be Driven From Middle East?* BBC, April 15, 2015; Moni Basu, *Being Christian in Iraq after ISIS: In Biblical Lands of Iraq, Christianity in Peril After ISIS*, CNN, Nov. 21, 2016; Perry Chiaramonte & Hollie McKay, *Iraqi Christians Forced to Flee Homes Again After Skirmishes Between Kurds and Central Government*, FOX NEWS, Oct. 24, 2017; Myers, Russell. The Mirror: ISIS behead four children in Iraq after they refuse to convert to Islam. December 8, 2017; Hollie McKay, *Life After ISIS: Christians Say They Can’t Go Home Without International Protection*, FOX NEWS, Dec. 14, 2017.

²³⁵⁴ Loulla-Mae Eleftheriou-Smith, *British ‘Vicar of Baghdad’ Claims Isis Beheaded Four Children For Refusing to Convert to Islam*, THE INDEPENDENT, Dec. 8, 2014; Russell Myers, *ISIS Behead Four Children in Iraq After They Refuse to Convert to Islam*, THE MIRROR, Dec. 8, 2017.

²³⁵⁵ UNAMI (July 6, 2014 – Sept. 10, 2014). p.11.

inference about the perpetrators' *mens rea* (positive approach). This means that the existing evidence does not meet the necessary legal standards of admissibility of a genocide conviction for ISIL/DAESH – beyond a reasonable doubt requirement.

On the other hand, the existing evidence shows that ISIL/DAESH aimed to severely *deprive* the Christian community of their *fundamental rights* in Iraq in a persecutory fashion. Unquestionably, such deprivation of rights was horrific and caused a long-lasting physical and psychological impact on the victims. Moreover, numerous factual circumstances indicate that the underlying persecutory acts and omissions perpetrated by ISIL/DAESH against Christians in Iraq were *systematic* and *widespread*. Importantly, these acts resulted in multiple *discriminatory consequences*, inflicting horrific and long-lasting physical and psychological impacts on the victims. Consequently, these acts and omissions fall under the crime of persecution, as a crime against humanity, as defined in the Rome Statute – the test of *equal gravity*.

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Conclusion

The main goal of this book was to determine the legal nature, typification, and criminal responsibility of the acts perpetrated against Christians in Iraq by the terrorist group ISIL/DAESH. The first hypothesis and tentative main research question considered by the author back in February 2019 was “whether the reported actions of ISIL/DAESH fighters against Christians in Iraq, during the ISIL/DAESH regime, might amount to the crime of genocide, under the categorization of Article II of the 1948 Genocide Convention.” Four tentative sub-research questions were also assessed: 1) “Do ISIL/DAESH actions amount to genocide? In particular, can genocidal *mens rea* be proved?” 2) “Can genocide be perpetrated by members of terrorist groups?” 3) “Does the labeling of an armed group as a “terrorist group” modify the activities of such group under the International Criminal Law regime?” 4) What happened to the *jus cogens* obligation to prevent genocide in Iraq?”

Later, the author abandoned sub-question number 4 because he understood that it would excessively broaden the scope of the book and shift the legal focus to issues related to the field of international relations and international politics. The theoretical answer to question 2 was easily in the affirmative. In addition, the author understood that the definition of ISIL/DAESH members as terrorists or not was not decisive in the legal qualification of their crimes. As a result, the final focus was devoted to 1) the legal elements of the crime of genocide and crimes against humanity; 2) the factual findings respective to the crimes committed by ISIL/DAESH, and 3) the subsumption of those acts under the existing law.

In an academic attempt to address the main research question, the author explored a vast body of literature in the introductory chapter (Introduction, section D), employing triangulation methods described in Introduction, section E, both quantitatively and qualitatively. One hundred and thirty books and seventy-five papers gave substratum for the discussion of the material law of genocide, crimes against humanity, and persecution as a crime against humanity. Although the literature on the general aspects of genocide and crimes against humanity encountered was substantial, the literature of the International Criminal Law scholarship was very deficient in works that analyzed the specific issue of whether the ISIL/DAESH persecution of Christians in Iraq, from 2014 to early 2017, constituted genocide, within the meaning and scope of the 1948 Genocide Convention, or persecution, within the meaning of the 1998 Rome Statute. The author

found that many pieces of work addressed the issue, but only incidentally. However, these works explored the general aspects and the machinery of ISIL/DAESH and its threat to global security rather than the risks that ISIL/DAESH directly posed for Christians in Iraq.

In chapter 1, the author provided the reader with a detailed, methodical, and scrutinized account of the major criminal acts that ISIL/DAESH perpetrated against civilians in Iraq, focusing on the violations against Christians. The overall consideration and analysis of the circumstantial evidence pertaining to the violations perpetrated by ISIL/DAESH against Christians in Iraq were supported by one hundred and seventy-five documents from the United Nations umbrella, fifty-five newspaper articles, forty-six documents from the U.S. (U.S. Congress, U.S. Federal Government, U.S. Department of State and the White House), twenty-two documents from the European Parliament/Council of Europe, and several documents from states and state organizations such as the North Atlantic Treaty Organization (NATO).

Here, the author demonstrated that ISIL/DAESH violations of international law against Christians were multidimensional and multifaceted: 1) Physical and mental harm; 2) Violation of rights of International Humanitarian Law; 3) Use of economic measures against the civilian population; 4) Attacks against property of sacred religious relevance; 5) Infringements of individual freedom; 6) Infringements of the right to privacy, and deprivation, destruction, and plunder of private property; and 7) The imposition and maintenance of other restrictive and discriminatory measures involving denial of fundamental rights.

In chapters 2 and 3, the author explored, appraised, and legally assessed the factual matrix of human rights and humanitarian law violations contained in the case-law from the Nuremberg, the ICTR, the ICTY, the SCSL, and the ICC tribunals. Over three hundred decisions concerning more than two hundred cases from these criminal courts were thoroughly read in three stages of reading: on the writing of the Literature Review (Introduction, section D), through the writing of the factual matrix (Chapter 2), and finally, during the preparation of Chapters 3 and 4. In this process, two hundred and six decisions concerning one hundred and thirty-six cases were meticulously scrutinized, divided and separated into different topics, and grouped following the themes of each chapter.

In chapter 4, the author attempted to find, dissect, interpret, demonstrate, and legally assess ISIL/DAESH fighters' intent behind the underlying criminal acts against Christians. Thus, in this chapter, the author attempted to determine whether the *actus reus* and the perpetrators' *mens rea* behind these conducts fall under the definition of genocide, as prescribed by the

Rome Statute, or fall under the crime of persecution, as a crime against humanity, as defined in the Rome Statute – the test of equal gravity.

The author of this book encountered many limitations when trying to assess ISIL/DAESH's intent behind their acts/omissions. The most important limitation lies in the extreme risk of collecting data, evidence, and interviewing surviving victims or the families of deceased victims. The main challenges were:

- 1) Due to security concerns, access to different parts of Iraq was restricted until ISIL/DAESH's defeat in December 2017. Despite ISIL/DAESH's defeat, the terrorist group reportedly continued to attempt isolated attacks against civilians and security forces, particularly in the Baghdad region. There were several reports of active foreign terrorist fighters searching for children for the purpose of trafficking and sexual slavery;
- 2) Most of the humanitarian advocacy agencies placed in the Autonomous Administration in Northern Iraq lack official access permits to the areas affected by the conflict in the northern areas of Mosul. This compromised the reporting and documentation of possible cases of genocide/persecution, as it limited the analysis and sampling in several ways;
- 3) Owing to the fear of police involvement with armed groups, several families of victims were reluctant to report violations of rights to the Iraqi national police authorities.

Another challenge lies in the fact that many local NGOs presented their reports to the public with an already established presumption that the conduct of ISIL/DAESH against Christians in Iraq constituted genocide instead of simply presenting the facts and considering that different legal interpretations were possible. The *Knights of Columbus* Report, for example, made no attempt to differentiate between genocide or persecution as a crime against humanity. Considering the limited size of this sample, the author considered the need to exercise caution in legally interpreting the facts revealed in the reports that were the object of the literature review for this book.

Christians in Iraq are a group of individuals who share the “same religion, denomination or mode of worship,” as defined in *Akayesu* (ICTR-96-4-T, judgement, (Sept. 2, 1998). ¶ 515). For this reason, the author considered it incontrovertible that the group of individuals who profess the Christian faith in Iraq is protected from genocide by international law, as prescribed in the Genocide Convention and the Rome Statute.

With the amount of evidence found, it was also indisputable that ISIL/DAESH perpetrated some objective elements of the crime of genocide against this group in Iraq – material acts/*actus reus*. For instance, “killing members of the group,” “causing serious bodily harm to the members of the group,” and “forcibly transferring children of the group to another group.” (Rome Statute, Article 6).

Returning to the hypothesis/question posed at the beginning of this study, the author needed to assess whether, considering all the circumstantial evidence, one could legitimately and sufficiently draw a reasonable inference that these discriminatory acts suffice to prove intent – *mens rea* – to destroy a group, as a separate, distinct entity. The evidence showed that some elements could be indicative of ISIL/DAESH fighters’ genocidal intent, *e.g.*, the several ultimatums that Christians should leave the Ninewa plains – or to be else killed – and the material nature of the violations of international human rights. Nevertheless, other important aspects of ISIL/DAESH fighters’ conduct indicated a lack of genocidal intent, such as the possibility of Christians in Iraq paying a tax to ISIL/DAESH members so they could be protected from being killed.

The threshold to prove genocidal intent in International Criminal Law is extremely high. The existing evidence showed that ISIL/DAESH systematically targeted and persecuted Christians because of their affiliation or perceived affiliation to a religious group, but not with the exclusive genocidal intent to destroy this group exclusively because they were Christians – thus destroying them as a *separate, distinct entity as such*. Therefore, the existing circumstantial evidence concerning ISIL/DAESH atrocities against Christians in Iraq was not, at least to this date, sufficient to prove, beyond a reasonable doubt, that the only possible inference about the perpetrators’ *mens rea* may lead to individual criminal responsibility for genocide.

In addition, the existing circumstantial evidence demonstrated that ISIL/DAESH fighters intended to persecute, disperse, submit, weaken – and eventually destroy for religious reasons – all of those who disagreed with the group’s own interpretation of Islam and harsh interpretation of Sharia law, all of those who did not conform to its *takfiri* doctrine (*negative approach*), including Christians, but also Yazidis, Shias, and Sunnis, Shabak, Sabeans, Kaka’es, and Turkmen. The existing evidence shows that ISIL/DAESH systematically targeted religious and ethnic minority groups who refused to subscribe and pledge allegiance to its extremist and triumphalist ideology, those who the terrorist group considered “infidels” or “heretics,” those who refused to “repent” for not being Muslims.

Whilst this study did not confirm genocidal intent, it did satisfactorily substantiate the threshold for other egregious international crimes.

Therefore, almost eighteen months after the author set the tentative hypothesis and research questions of this present book, he elaborated a second and final research question for the concluding writings of this extensive work: “Whether the existing evidence of crimes against Christians in Iraq, by members of the ISIL/DAESH (2014-2017) may amount to the crime of genocide, or if not, to crimes against humanity.”

Although the evidence did not substantiate ISIL/DAESH’s intent to destroy Christians as such in Iraq beyond a reasonable doubt, it satisfactorily demonstrated that ISIL/DAESH intended to persecute the group as one of the modalities of crimes against humanity. In *Radovan Karadžić* and *Pauline Nyiramasuhuko et al*, the ICTY and the ICTR, respectively, defined that the crime of persecution, as a crime against humanity, consisted of an act or omission which 1) “discriminates in fact and denies or infringes upon a fundamental right laid down in international customary or treaty law (the *actus reus*);” and 2) is “carried out deliberately with the intention to discriminate on one of the listed grounds,” specifically race, religion, ethnicity or politics (the *mens rea*) (Respectively: IT-95-5/18-T, judgement, vol. I, (March 24, 2016). ¶ 497; ICTR-98-42-A, judgement, (Dec. 14, 2015). ¶ 2138).

ISIL/DAESH carried out all the underlying persecutory acts and omissions against Christians in Iraq in a deliberate/not incidental manner. Even with limited evidence, it was apparent that ISIL/DAESH displayed the particular intent to discriminate and target Christians on religious grounds – religious persecution *dolus specialis*, subjecting them to a systematic and widespread policy of multiple and egregious violations of international human rights, humanitarian and criminal law (discriminatory policy – Article 7.1.h.5, Elements of Crimes). This book could satisfactorily demonstrate that, from mid-2014 until December of 2017, ISIL/DAESH intentionally persecuted individuals on the basis of their religious identity – Christians – within ISIL/DAESH areas of control in Iraq (Article 7.1.h.6, ICC Elements of Crimes), with the knowledge that such “conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population” (Article 7.1.h.6, ICC Elements of Crimes).

ISIL/DAESH aimed to severely deprive the Christian community of their fundamental rights and to finally suppress, permanently expel or exterminate from the Iraqi society – and from humanity itself – persons defined by the terrorist group as Christians. This shows that such conduct was committed in connection with the acts referred to in Article 7.1.h of the Rome Statute. ISIL/DAESH’s persecutory acts and omissions not only displayed a discriminatory policy but, importantly, they caused multiple discriminatory consequences on the Christian community in Iraq. These

acts were in fact persecutory. Therefore, this book concludes that ISIL/DAESH fighters' acts and omissions against Christians in Iraq fall under the classification of persecution, as a crime against humanity, under Article 7.1.h of the Rome Statute.

Although from a material standpoint, the general public perceives nuances and gradations between genocide and crimes against humanity – *material seriousness* –, the author firmly believes that both forms of crimes are on an equal footing – they possess the same gravity. It is true that from a *juridical seriousness* standpoint, the legal consequences might be different depending on the penalties that each juridical system or each society determines. But this is different from presuming that genocide is legally more serious than persecution, as a crime against humanity. After all, the Rome Statute, which guided the writing of this book, establishes no juridical ranking between these two crimes. Article 77 subjects perpetrators of genocide and crimes against humanity to the same penalties.

Prosecuting the ISIL/DAESH members has the potential of establishing retribution and deterrence, meaning that the whole international community clearly condemns the atrocities perpetrated by the group and believes that, through criminal responsabilization, others will be discouraged and dissuaded from committing similar crimes in the future. Besides, assuring that ISIL/DAESH terrorist fighters are held responsible for their crimes against Christians in Iraq has the power to secure that all the peripheral aspects of the criminal responsabilization will be safeguarded, for instance: mitigating the circumstances and consequences of the criminal acts; promoting the rule of law through the eradication of the culture of impunity and the realization that wrongdoings are not tolerated; restoring and maintaining peace; promoting national reconciliation; and, ultimately, protecting the society as a whole from crimes that threaten humanity.

Nevertheless, the path that leads to the criminal identification and responsabilization of ISIL/DAESH fighters and the identification of all their victims is complex, time-consuming, intricate, multiphasic, and dependent on the cooperation and partnership of several local and international actors. Alternatives to holding the perpetrators responsible exist, but they are extremely challenging in many aspects. Critically, Iraq is not signatory to the Rome Statute of the International Criminal Court, whose material jurisdiction comprises genocide and crimes against humanity. Consequently, the Court has no automatic jurisdiction over situations that take place on Iraqi territory.

Here, the author demonstrates three possible solutions to overcome the legal obstacles for the ICC to exercise its jurisdiction in relation to situations in Iraq:

Firstly, although unrealistic, Iraq could ratify the Rome Statute in 2021 and grant the ICC retroactive *ratione temporis* jurisdiction over the crimes that took place on Iraqi territory before 2021 and after July 1, 2002 (when the Statute entered into power), through an explicit declaration lodged with the ICC Registrar, following Articles 11.2 and 12.3. After that, the Prosecutor could trigger the proceedings *proprio motu* – Article 13.c and 15.1 – or Iraq itself could refer the situation to the Prosecutor, following Articles 13.a and 14.1.

Secondly, following Article 13.b of the Rome Statute, the Security Council could pass a resolution, under the authority of Chapter VII of the U.N. Charter, referring the situation in Iraq to the ICC Prosecutor, granting him/her the power to investigate crimes of genocide and crimes against humanity that took place on Iraqi territory. Considering that China and Russia exercised their veto power four times in the Security Council to prevent the ICC Prosecutor from exercising jurisdiction over the crimes on Syrian territory – where ISIL/DAESH also committed atrocious violations of International Criminal Law in the same period as in Iraq – it is very unlikely that China and Russia would act differently now regarding the situation in Iraq.

Thirdly, following Article 12.2.b of the Rome Statute, the ICC Prosecutor, using the powers granted by Articles 13.c and 15.1, could decide to investigate and prosecute the ISIL/DAESH foreign terrorist fighters in Iraq, who are nationals of states that have ratified/acceded (to) the Rome Statute and have granted jurisdictional powers to the ICC. This solution would bring important practical contributions, namely: 1) It would help in the collecting and preservation of forensic materials and documentary evidence according to international standards; 2) It would help in the identification, hearing, and protection of witnesses; 3) It would promote domestic and international accountability of wrongdoings; and, ultimately, 4) It would serve the interests of justice and promote peace.

As an alternative path to hold ISIL/DAESH fighters accountable for their violations of International Criminal Law, the author presents here three possible solutions that are not dependent on the ICC:

Firstly, the U.N. Security Council could establish an *ad hoc* tribunal to investigate and prosecute the crimes perpetrated by ISIL/DAESH fighters in Iraq. This solution would require two former special courts such as: 1) the Special Court for Sierra Leone, created upon request of the president of the country, through S.C. Resolution 1315, on August 14, 2000, and established on January 16, 2002, through a special agreement between the local Government and the U.N. Secretary-General; and 2) the Special Tribunal for Lebanon, which resulted from the agreement between the

United Nations and the Lebanese Republic, through S.C. Resolution 1757, from May 30, 2007. Alternatively, the United Nations, through an agreement with the local Iraqi Government, could establish a special hybrid judicial mechanism, composed of Iraqi and international judges/experts, like the Extraordinary Chambers in the Courts of Cambodia, which resulted from an agreement between the United Nations and the Government of Cambodia on May 13, 2003 (U.N. General Assembly Resolution 57/228B). Regarding legality and typicity, either model would bring charges only if materially based on *jus cogens* norms or Customary International Criminal Law.

These models would strengthen the capacity of Iraqi authorities and would be more assertive concerning the factual circumstances of the violations perpetrated by ISIL/DAESH in Iraq. Nevertheless, aspects like the (im)partiality of national prosecutors and judges and the extremely high financial costs of such models pose serious challenges in their availability.

Secondly, Iraqi domestic judicial authorities have been unable to prosecute most of ISIL/DAESH's atrocious acts due to its courts' lack of material jurisdiction, once genocide and crimes against humanity are not typified as such under Iraqi law. Nevertheless, the primary responsibility to investigate and prosecute such violations rests, in the first place, on the state where these violations occurred. Therefore, the international community should, at the same time, press and assist local judicial authorities to investigate and prosecute the individual underlying acts behind the ISIL/DAESH fighters' genocidal or persecutory acts against religious minorities in Iraq, for example, murder and torture.

Thirdly, *In ultima ratio*, universal jurisdiction in relation to returnees from Iraq should be exercised. In virtue of the atrocious nature of some crimes, e.g., genocide and crimes against humanity, states are called to exercise their obligation, under international law, to investigate, prosecute, and bring to justice the perpetrators of such crimes irrespective of where they have been committed, on the basis of the principle of *aut dedere, aut judicare*, when appropriate. In relation specifically to ISIL/DAESH returnees, states should work on the operational level to 1) deny them safe havens; and 2) investigate, prosecute, and apprehend them, if convicted, following the dictates of the rule of law and due process. In this case, the international community should encourage Iraq's judicial authorities to cooperate to disclose and share the relevant evidence for the specific cases.

Holding ISIL/DAESH's fighters accountable for their crimes is crucial, but this consists of only a segmented part towards national reconciliation. The **road** that leads to justice and peace in Iraq is long and challenging but

possible. It starts with the recognition that ISIL/DAESH created an environment of deleterious effect on the enjoyment of fundamental freedoms and human dignity and imposed severe threats to the full enjoyment and exercise of human rights in Iraq. ISIL/DAESH's violations of International Humanitarian Law and International Criminal Law have had a devastating humanitarian impact on the civilian population, particularly on religious and ethnic groups. The crimes perpetrated by the terrorist group constituted a violation of the very human right of freedom from fear and the right to enjoy peace. Ultimately, these crimes represented an attack against all of humanity. Multifold actions are necessary for Iraqi society to cope with such atrocious violations of rights.

The **road** must lead to the victims. The international community should partner with Iraq's public authorities to provide the ISIL/DAESH's surviving victims and victims' families with support, assistance, and coping mechanisms – judicial, psychological, financial, or of other nature. This would help them to rebuild their lives, lessening the conditions conducive to anger and revenge. Iraq's authorities should: 1) provide ISIL/DAESH victims with the necessary conditions for compensation, protection, humanization, remembrance, international solidarity, dignity, truth, and respect, in accordance with Public International Law, International Human Rights Law, and International Refugee Law; and 2) recognize that victims have a substantial role in countering extremist ideologies, prejudice, discrimination, thus ultimately avoiding future atrocities.

The **road** to preventing ISIL/DAESH from perpetrating genocide and crimes against humanity in Iraq also depends on national authorities, academicians, politicians, the civil society, religious leaders, and leaders of ethnical groups creating, promoting, and maintaining a culture of: 1) interfaith tolerance, and combat of all sorts of religious discrimination, religious exclusion, and religious persecution; and 2) intercultural, inter-civilizational, and inter-ethnic tolerance, dialogue and understanding; and 3) education for peace and justice, nationally, regionally and globally.

The international community should partner with Iraq's authorities to take national, bilateral, regional, and international measures to prevent and combat the transboundary recruitment of foreign terrorist fighters to the region. In this partnership, states should: 1) take cooperative and collaborative actions to impede ISIL/DAESH from making use of technologies, communications, social media, and other virtual sources to recruit their fighters, including the recruitment of lone terrorists in several parts of the world; 2) share their border control information and profile databases concerning persons with proven links with the ISIL/DAESH network; 3) expand the inclusion of new ISIL/DAESH terrorist foreign fighters in the In-

ternational Criminal Police Organization (INTERPOL)'s Special Notices; and 4) take full consideration of the United Nations' mechanisms and instruments on the prevention and combat of international recruitment of terrorist fighters. In cooperation with Iraq, states should pay special attention to returning ISIL/DAESH terrorist fighters – “*blowback effect*” – to prevent them from spreading terrorist propaganda and promoting extreme violence upon return to their home countries.

With the cooperation of states and international organisms, such as the U.N. Security Council, Iraq's law enforcement authorities should work together in taking urgent, forceful, effective, and decisive joint actions to prevent active and passive financial support to the ISIL/DAESH network in Iraq. Among main measures that should be put into practice, the author indicates: 1) freezing all ISIL/DAESH network funds and financial assets; 2) working to prevent ISIL/DAESH from collecting external donations internationally; 3) preventing ISIL/DAESH from performing, directly or indirectly, any commercial or financial transaction in Iraq; and 4) denying safe haven to all of those engaged in the financing of ISIL/DAESH and prosecuting the perpetrators or extraditing them, in accordance with the principle of *aut dedere, aut judicare*. The international community should also encourage the Security Council to enact or maintain other specific target sanctions on individuals with proven criminal links with the ISIL/DAESH network in Iraq, namely travel ban, arms embargo, listing criteria, and reporting measures.

Iraq, in cooperation with the international community, must also address other critical underlying conditions that contributed to ISIL/DAESH's actions in the region: 1) structural causes: rule of law deficiencies, lack of an effective criminal justice system, weak governance, political instability, government corruption, police collusion, general violations of human rights while combating terrorism, prolonged unresolved territorial and international military conflicts that create domestic and external political tensions, arms trafficking in the region, and porous state borders with neighbors; 2) socio-economic: extreme poverty of more than thirty percent of the population, socio-economic marginalization, lack of sustained economic growth, inefficient sustainable development, and high rates of youth unemployment; 3) civil-political: political exclusion, lack of pluralism, and religious discrimination.

The **road** that leads to justice and peace in Iraq has no end. The Latin-American filmmaker Fernando Birri once said: “Utopia lies at the horizon. When I draw nearer by two steps, it retreats two steps. If I proceed ten steps forward, it swiftly slips ten steps ahead. No matter how far I go, I can never reach it.” If one desires to achieve justice and peace in Iraq, one must

focus on justice on the horizon. The more Iraq walks towards justice, the more peace can be found along the way. There will always be more justice to be established on the horizon. There will always be more peace to be found along the way.

The author believes that the clear picture of what happened to Christians in Iraq during the ISIL/DAESH regime is still incomplete. Future fieldwork from international agencies, NGOs, states, international organizations, and academicians should concentrate on Iraq's areas where ISIL/DAESH's conduct was not investigated due to security and administrative concerns. More research is needed to better understand the character and the legal nature behind ISIL/DAESH's intent in persecuting Christians. The author hopes that, as more families of victims and surviving victims themselves are identified, heard, and offered protection, more legal elements could substantiate allegations of genocide. The overall process of reading and scrutinizing hundreds of books, papers, reports, case-law, and other types of documents and writing this book took more than four thousand hours. Notwithstanding the limitations of this study, its findings make several contributions to the current literature on genocide and persecution as a crime against humanity. The author sincerely hopes that this research will extend the public knowledge on the atrocities suffered by Christians in Iraq and serve as a base for future studies, documentation, investigation, prosecution, and punishment of ISIL/DAESH terrorist fighters.

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3.6.1. International Criminal Tribunal for Rwanda – ICTR – Chronological order

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- Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, judgement, (June 1, 2001).
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- Prosecutor v. Jean de Dieu Kamuhanda, Case No. ICTR-95-54A-T, judgement, (Jan. 22, 2004).
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