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Dissertation on The Prosecution and the Trial of Heads of State under International Law: The case of Slobodan Milosevic and Charles Ghankay Taylor

Julia A. Shilunga
Golden Gate University School of Law

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Dissertation on
The Prosecution and the Trial of Heads of State under International Law:
The case of Slobodan Milosevic and Charles Ghankay Taylor

By

Julia A. Shilunga

Submitted to the Golden Gate University School of Law, Department of
International Legal Studies, in Fulfillment of the Requirement for the
Conferment of the degree of Doctor of Juridical Science (S.J.D)

Prepared Under the Supervision of the Committee of

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Professor Dr. Jiri Toman, Ph. D (Geneva)

San Francisco, California, U.S.A

January 14, 2009
DEDICATION

I am dedicating this doctoral dissertation to my caring and loving mother--

Olivia Ndeutungu Katamba-Shilunga
ACKNOWLEDGEMENT

I could not accomplished my doctoral dissertation without the power and blessing of the almighty god. Thank you for guiding me through all the challenges in completing this thesis.

I would like to express my deepest gratitude to my dissertation committee members Professor Sompong Scharitkul, Distinguished Professor of International and Comparative Law, Professor Sophie Clavier, Distinguished Professor, and Professor Jiri Toman, Professor of Law at Santa Clara University for their sound guidance, constructive comments and encouragement throughout my research. This doctoral paper would not be possible without them.

I sincerely thank Professor Christian Okeke, the Associate Dean and Director of S.J.D and L.L.M. In International Legal Studies for his insights. I am indebted to Professor Siegfried Wissner, Director of International and Inter-cultural Human Rights for his kind advice.

I am indebted to my family, especially my mother, Olivia Ndeutungu Katamba, who is my role model. Thank you for being there for me and believing in me. My thanks also go to my brothers Julius Kalondele Shilunga and George Shilunga and my Sister Hilma Ndemupaenghete (Ndemupa) Shilunga-Dumeni and my daughter Olivia Donna Shilunga for their support and encouragement. I am grateful to my late father Philipus Shilunga, and late uncle Gabriel Katamba for their positive influence on my life. I cannot forget my late uncle Erastus Katamba who was also my role model. My gratitude and appreciation also go to many that I have failed to mention, a list of these names would be endless. I cannot forget Aligouda Gouda, Hazella Bowmani and Dennis Ta for the help and encouragement throughout the process of my dissertation. Thank you for your kindness and support.

Lastly, I wish to extent my love to the people of the world and let us save the world from atrocities. One world one peace.
INTRODUCTION

The decision to submit the doctoral thesis is not a simple task. It is a decision to work for several years on the subject in which you believe and by which you would like to contribute to the community in which you are living. It is not just a professional career or personal promotion. It is a challenge. And it is with this in mind that I was looking for the subject to which I would like to devote my time and energy during these years.

The international community has progressed substantively since the end of the cold war in the field of democratization and mutual understanding. It was not dominated anymore by the fear of confrontation. The democratization and humanization of the society also led to more requirements and more responsibility from those who were assigned the task of leadership.

The leadership in the democratic society is not only a privileged position given to those who are the head of State or Government. Throughout history, privileges and immunities were given to the State leaders not because of their personal qualities, but because of the task which they were called upon to accomplish and to facilitate the accomplishment of these tasks.

In the past, the responsibility of head of State and of Government was national competence. There were no international rules which established their responsibilities in international law. If they committed crimes, this remained exclusively the matter of the State and if there was the responsibility for the wrong behavior, it was the responsibility of the States themselves and not of the leaders as persons.

It was only very slowly that the State leaders started to be called to responsibility. One of the first attempts, which failed was the 1919 Treaty of Versailles which wanted to prosecute the German Emperor. The second attempt, after the end of the World War II, was much more successful and was prepared already during the war itself. The Nuremberg and Tokyo Military Tribunals brought severe
condemnation of the leaders of Germany, Japan and some other countries. This attempt was followed by a long period of silence.

. The end of the cold war changed the environment. The responsibility of the leaders was becoming a requirement. The leaders were not only receiving the gratitude and privileges, but are also asked to present a full account of what they had accomplished during the privileged position which was given to them.

Two major catastrophic situations that followed the fall of the Berlin Wall were the civil war in Yugoslavia and genocide in Rwanda. Both of these major humanitarian disasters led to the creation of the International Tribunals for the former Yugoslavia and for Rwanda. This tendency was followed by an effort to enlarge the international jurisdiction to other regions of the world: Liberia, Sierra Leone, Cambodia and others.

Two former heads of State, Slobodan Milosevic and Charles Ghankay Taylor were held responsible. Examples will be provided for these two leaders, to demonstrate the new responsibility which substantially modifies the position of the heads of States in international law. To demonstrate this new approach to this important chapter of the international law, the following chapter will be included.

I. Principle of international criminal law

II. Jurisdiction in today’s international law

III. The responsibility, accountability, privileges and immunities of Heads of States under international criminal law

IV. Two specific cases:

   A. The Case of Slobodan Milosevic.

   B. The Case of Charles Ghankay Taylor

VI. International Criminal Court

VII. Conclusion, Regional Convention on prosecution of International Crimes
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<tbody>
<tr>
<td>AFL</td>
<td>Armed Forces of Liberia</td>
</tr>
<tr>
<td>CDU</td>
<td>Croatian Democratic Union</td>
</tr>
<tr>
<td>CNN</td>
<td>Cable News Network</td>
</tr>
<tr>
<td>CPPCG</td>
<td>Convention on the Prevention and Punishment of the Crime of Genocide</td>
</tr>
<tr>
<td>DFY</td>
<td>Democratic Federal Yugoslavia</td>
</tr>
<tr>
<td>DRC</td>
<td>Democratic Republic of Congo</td>
</tr>
<tr>
<td>ECOWAS</td>
<td>Economic Community of West Africa</td>
</tr>
<tr>
<td>FPRY</td>
<td>Federal People's Republic of Yugoslavia</td>
</tr>
<tr>
<td>FRY</td>
<td>Federal Republic of Yugoslavia</td>
</tr>
<tr>
<td>ICC</td>
<td>International Criminal Court</td>
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<tr>
<td>ICTY</td>
<td>International Criminal Tribunal for Yugoslavia</td>
</tr>
<tr>
<td>ICTR</td>
<td>International Criminal Tribunal for Rwanda</td>
</tr>
<tr>
<td>IGNU</td>
<td>Interim Government of National Unity (Liberia)</td>
</tr>
<tr>
<td>IHL</td>
<td>International Humanitarian Law</td>
</tr>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
</tr>
<tr>
<td>IMT</td>
<td>International Military Tribunal at Nuremberg in Germany of August 18, 1945, which is also called Nuremberg Charter</td>
</tr>
<tr>
<td>IMTFE</td>
<td>International Military Tribunal for Far East Asia, which is also referred to Tokyo Charter</td>
</tr>
<tr>
<td>INGO</td>
<td>International Non Governmental Organizations</td>
</tr>
<tr>
<td>INPF</td>
<td>Independent National Patriotic Front of Liberia</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>--------------</td>
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<tr>
<td>IRC</td>
<td>International Rescue Committee</td>
</tr>
<tr>
<td>JNA</td>
<td>Yugoslav People’s Army (Yugoslovenska Narodna Armija, JNA)</td>
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<tr>
<td>KFOR</td>
<td>Kosovo Forces</td>
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<tr>
<td>KLA</td>
<td>Kosovo Liberation Army</td>
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<tr>
<td>KVM</td>
<td>Kosovo Verification Mission</td>
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<tr>
<td>LCY</td>
<td>League of Communist of Yugoslavia</td>
</tr>
<tr>
<td>LCS</td>
<td>League of Communist of Serbia</td>
</tr>
<tr>
<td>LURD</td>
<td>Liberian United Reconciliation and Democracy</td>
</tr>
<tr>
<td>LRA</td>
<td>Lord Resistance Army, a rebel group in Uganda</td>
</tr>
<tr>
<td>MODEL</td>
<td>Movement for Democracy in Liberia</td>
</tr>
<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
</tr>
<tr>
<td>NPFL</td>
<td>National Patriotic Front of Liberia</td>
</tr>
<tr>
<td>NPP</td>
<td>National Patriotic Party</td>
</tr>
<tr>
<td>OSCE</td>
<td>Organization for Security and Co-operation in Europe</td>
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<tr>
<td>RUF</td>
<td>Revolutionary United Front (Liberia)</td>
</tr>
<tr>
<td>SDP</td>
<td>Serb Democratic Party</td>
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<tr>
<td>SFRY</td>
<td>Socialist Federal Republic of Yugoslavia</td>
</tr>
<tr>
<td>SPS</td>
<td>Socialist Party of Serbia</td>
</tr>
<tr>
<td>ULA</td>
<td>Union of Liberian association</td>
</tr>
<tr>
<td>ULIMO</td>
<td>United Liberation Movement of Liberia for Democracy</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Program</td>
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<tr>
<td>UNGA</td>
<td>United Nations General Assembly</td>
</tr>
<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
</tr>
<tr>
<td>UNPROFOR</td>
<td>United Nations Protection forces</td>
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<tr>
<td>UPC</td>
<td>Union of Congolese Patriots, was a rebel group in Democrat Republic of Congo</td>
</tr>
<tr>
<td>U. S.</td>
<td>United State of America</td>
</tr>
<tr>
<td>VJ</td>
<td>Yugoslavian Army</td>
</tr>
<tr>
<td>VMK</td>
<td>Verification Mission for Kosovo</td>
</tr>
<tr>
<td>WWI</td>
<td>First World War</td>
</tr>
<tr>
<td>WWII</td>
<td>Second World War</td>
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CHAPTER ONE

1. Principles of International Criminal Law

1.1. Introduction

Looking first at the definition of International Criminal Law, it is defined as a body of international rules designed both to proscribe international crimes and impose upon States the obligation to prosecute and punish at least some of those crimes.1 It also regulates international proceedings for prosecuting and trying persons accused of such crimes.2 International Criminal Law inherits its rules from International Law, Treaties, and National Legal Systems. It is part of International Law. Its existence is dependent on the sources and processes of international law, as it is these sources and processes that create and define it.3

However, in situations in which intentional criminal law is applicable during or following armed conflict, repression, and mass violence there are a multitude of other ways a state or

---

2Id.
international community can respond,\textsuperscript{4} such as the Truth Reconciliation Commission, Amnesty, collective criminal justice, and substitute criminal charges.

Through globalization of communication, international crimes have become a concern to the worldwide community, increasing the importance of the International Law and the punishment necessary for criminal acts. Outcries against acts of crimes came from the international community, that punishment should be imposed on the perpetrators of the crimes. It is seen that the act of crime is an issue of concern to the both national and international society. As such, criminal law issues that arise in the international setting, and international issues that arise in the context of national criminal law, provide the starting point for a discussion about international criminal law.\textsuperscript{5}

International Criminal Law deals with the prosecution of individuals who commit crimes at an international level, while international law was established by states who were the beneficiaries. International Criminal Law has been in existence since before the First World War, but it was not effective. Considerations of violations during armed conflicts, is where international criminal law began to develop for prosecuting the First World War crimes as international crimes. It is well known that the idea of prosecuting those committing war crimes is not a new concept. The war crime was seen in the time of Greece and Rome, which was considered as contrary to civilized warfare and was condemned. The law of Manu\textsuperscript{6} had disapproved the act of war using weapons of

\textsuperscript{5}Ellen S. Podgor, Understanding International Criminal Law 3 (2004).
\textsuperscript{6}Id.
war and declared them as illegal. Likewise the codes of Bushido had also prohibited the execution of prisoners of war. The Old Testament also stated the limitation and guidance of what should be done during war. Churches also agreed which methods and certain weapons could be used during the war. In feudal times, many Kings proclaimed Articles of War condemned acts against non-combatants, often making them subject to the death penalty. Similar codes promulgated in Europe. Hundreds of years later a Code of behavior for war was created and was successfully established and according to the Order of Knighthood as stated in 1370 at the victory of Limoges, the French Knights prisoners who were captured should surrender and appeal to John of Gaunt. They were treated as prisoners of war based on the law of armies in line with the Code of behavior. The legal framework was in practice to implement the Code of behavior. A Court of Chivalry was established with power to hear cases in which it was alleged that this law of armies had been disregarded or blatantly broken, and these courts frequently sentenced accused Knights to dishonor or death. The war crimes trial of Peter of Hagenbach, was the first kind ever recorded by the international tribunal. Peter was tried for crimes against God and crimes against the laws of man, and was prosecuted in 1474 by representatives of the Court of Hanseatic Cities at Breisach. The court pronounced him guilty for dishonor and breach of the law of man and of god. According to

---

7 Id.
8 Id.
9 Id.
10 Id.
11 See Austria v. Peter Hagenbach.
the classical fathers of international law with references only to Alberico Gentili,\textsuperscript{12} they stated that "... it is the manner of the killing which is forbidden."\textsuperscript{13} An enemy or anyone who breached the law of war must face the law, as they failed his or their responsibility before the God and the world. He will render an account to those sovereigns who wish to observe honorable causes for the war and to maintain the common law of nations and nature."\textsuperscript{14} An enemy of mankind and god should not be executed, as execution is prohibited. But Lieber Code had a different approach by including execution.

\textbf{1.2 Lieber Code of 24 April 1863}

The development of international criminal law has been evolving very slowly from the classical fathers to the end of nineteenth century. From the time of the classical fathers until the end of the nineteenth century there is a little to comment upon with regard to the law concerning war crimes until the promulgation of the Lieber Code by the President of United States of America, Abraham Lincoln in 1863.\textsuperscript{15} It is also called Lieber Instruction and it was the first attempt which codified the law of war. Francis Lieber had assisted President Abraham Lincoln

\begin{footnotesize}
\begin{enumerate}
\item Alberico Gentili was Italian Lawyer, who lived from 1552 to 1608. Gentili wrote more on international law. He has written three books on law of war such as De legationibus (1585) helped to improve the modern practice on diplomatic and De jure belli (on the law of war). Because of his Protestantism, Gentili was forced to leave Italy and fled to England in 1580. He taught civil law at Oxford as a regius professor and became a counselor for the king of Spain in the British admiralty court in 1605. Gentili is one of the previously worked on international law, he developed many ideas on the legal conduct of war to which Hugo Grotius later gave wider circulation.
\item See Supra note 6 at 288.
\item Id.
\item Lieber Code of 1863.
\end{enumerate}
\end{footnotesize}
drafting the Lieber Code. The Lieber Code constituted the legal framework which determined whether crimes committed by the United States soldiers during armed conflict were criminal acts for which they could be held accountable. If such crimes were committed then the accused could be sentenced to death without prosecution if the crimes were of a grave nature. It was in this regard that the American Tribunal was given rights by the code to try any U.S. military personnel who would intentionally wound or cause harm to an already wounded or disabled enemy. Anyone who gave an order or encouraged another soldier or personnel to kill a prisoner of war would be sentenced to death. This code was not only applied to the American soldiers but also to other armed forces from other countries who violated the Lieber Code, as prisoners were to be treated well without any maltreatment as stated in Article 49 of Lieber Code. The Lieber Code became reality, when Wirz was the first tried under the Lieber Code. The significance of the Lieber Code became clear after it was adopted, when Wirz, the commandant of the Confederate prisoner of the war camp at Andersonville, was put on trial and sentenced to death for a series of atrocities committed against Union prisoners in his charge, many of which would now be described as crimes against humanity as well as the law of war. Within a very short period of time the Code became the model for a series of codes in Europe and served as an example for the Brussels Project of an International Declaration concerning the Laws and Customs of War and for the

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16 Francis Lieber was a German- American lawyer and the Code was named after him.
17 See supra note 5 at. 289.
Oxford Manual of the Law of War on Land drawn up by the Institute of the International Law. If anyone breaches these rules, he should be tried through the penal of law and a punishment should be imposed to the offender as stated in Article 84. The Lieber Code is seen as one of the foundations of international criminal law.

The Lieber code contributed to the drafting of the Convention of Laws and Customs of War on Land at the conference in The Hague in 1899 and 1907. The Conventions prohibited the violations of the Law and Customs of War on Land, and should any party or individual who is a member of the party violate the Convention, compensation is required to be paid to the injured party. The individual is liable only if he committed hostilities intentionally in the capacity as a private person but his liability was restricted. During this time the states were held responsible for the breaches of the Conventions while the individual who violated the law of conflict bore only limited liability. This changed during the First World War as individuals started to be held responsible for violating the law of war. It started to move slowly after the establishment of the Peace Treaty of Versailles. It brought the First World War to an end and then started the prosecution of the individuals of Germany who committed atrocities as stated in Article 227. In light of this, the Treaty of Versailles arraigned the former Emperor of Germany for a supreme offense against international morality and the sanctity of treaties. Kaiser Wilhelm was the head of state of Germany but fled to Holland which refused to extradite him. The United States was

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18 Id.
19 The Peace Treaty of Versailles of 1919.
20 Id. at art. 227.
opposed to the prosecution of a head of state. Germany was requested by the Associated Power or
Principal Allies to hand over the offenders for prosecution who breached the law and customs of
war to be tried by military tribunal. Germany tried some of the accused at its own national court in
Leipzig instead of handing them over to an international tribunal. While only a few such trials
were held and the sentences were relatively mild, Reichsgericht (the court of German emperor or
was the highest court of German Empire) did lay down principles regarding the defense of
superior orders which have formed the basis for the law as it stands today. Occasionally, national
courts also tried captured enemy personnel for offense committed under the law of war. Earlier,
states were held accountable for the crimes committed by the state officials. States were then
compelled to compensate the victims.

The development of the international criminal law improved after the Second World War, when
the International Military Tribunal at Nuremberg of 1945 and International Military Tribunal for
the Far East, also called Tokyo Trial of 1946, was established. The reasons for establishment of the
Nuremberg Tribunal was for prosecution of Germans for allegedly maltreating or executing
captured prisoners of the Allies, and killing civilians living in Germany such as Jews,
homosexuals, Jehovah Witnesses, and the mentally unfit. Initially, in the late nineteenth century,
and for a long time, only the war crimes were punishable, (Piracy has been also a punishable
crime but did not meet the requirement of an International crime). While new crimes were only
added to the war crimes since the Second World War as international crimes, it is in this regard that

21Leipzig Trial.
crimes against peace and crimes against humanity were developed and added in 1945. In 1945 and 1946, the Statutes of the International Military Tribunals at Nuremberg (IMT) and the International Military Tribunal for the Far East (IMTFE), respectively, were adopted, laying down new classes of International Criminality. As a result the Allies decided to create the tribunal in 1945 to try those individuals who were alleged to have committed major war crimes, crimes against humanity and crimes against peace, and brought those individuals to justice regardless of their status. The principles established by that instrument and the Judgment of the Nuremberg Tribunals are now accepted as declaratory of the law on the subject. The Tokyo Tribunal was established to prosecute the Japan war criminals.

Genocide was added to the list of war crimes on the basis of the Prevention and Punishment of Genocide which was adopted on 9 December 1948 and entered into force in 1951. This shows how the International Criminal Law developed since the Second World War, later additional Conventions were adopted.

1.3 The Four Geneva Conventions of 1949 and Protocol of 1977 for Humanitarian Law

Globalization of communication concerning the atrocities committed in the Second World War brought the development and effectiveness of international criminal law. With the aim of

\[\text{Nuremberg Charter of the International Military Tribunal Article 6.}\]
\[\text{International Military Tribunal for the Far East Article 5.}\]
\[\text{See Supra note 22.}\]
\[\text{Id.}\]
\[\text{Id.}\]
protecting and freeing human beings to enjoy their civil and political freedom which, can only be achieved if conditions are created whereby every one may enjoy his civil and political liberties, as well as his economic, social and cultural rights. Thus, the four Geneva Conventions of 1949 and Protocol I of 1977 were added and adopted to protect civilians, the wounded, sick and prisoners of war and shipwrecker.

1.3.1. Geneva Convention (I) of 12 August 1949

It is the responsibility of the armed forces to protect the sick and wounded in combat. The Convention came into force on 21 October, 1950. This Convention represents the new version of the Geneva Convention on the wounded and sick, after those in 1864, 1906 and 1929. The grave breaches to this Convention are torture or inhuman treatment; willful killing; willfully causing great suffering or serious injury to body or health; biological experiments; wanton destruction (property destruction) not justified by the military necessity and carried out unlawfully and wantonly, according to Article 50 of this Convention.

1.3.2. Geneva Convention (II) of 12 August 1949

It is entrusted to articles of the Geneva Convention to make sure that the condition of sick, wounded, and shipwrecked armed forces members are not violated. It entered into force on 21 October, 1950 in Geneva. The previous Convention was adopted in 1907, which was responsible

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28 See International Covenant on Civil and Political Rights (ICCPR) of 16 December 1966, Article 3.
30 Geneva Convention (I) of 12 August 1949.
31 Id. at art. 50.
only for sick and wounded, and it was limited to maritime warfare. The structure of the 1949 Convention (II) followed closely the provisions of Geneva Convention (I) of 1949. The grave breaches to this Convention are torture or inhuman treatment; willful killing; willfully causing great suffering or serious injury to body or health; biological experiments; wanton destruction (property destruction) not justified by the military necessity and carried out unlawfully and wantonly, as stated in Article 51 of the Convention.

1.3.3 Geneva Convention (III) of 12 August 1949

This Convention was adopted with the purpose to ensure the treatment of prisoners of war. It entered into force on 21 October, 1950. As all four Conventions, it was the result of the Diplomatic conference which was held from 21 April 1949 through 12 August 1949 in Geneva. It was more extensive and adopted 149 Articles, more than the previous Convention on Prisoners of War of 1929, which had 97 Articles. The Convention detailed the law procedures or principles of prisoners of war being released and repatriated to their countries of origin, once the hostilities come to an end without any delay, as stated clearly in Article 118 of this convention. Grave breaches to this Article shall be those involving any of the following acts, if committed against persons or property protected by the Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile power, or willfully

32 Id.
33 Id. at art. 51.
depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention, according to Article 130 of this convention.\textsuperscript{34}

1.3.4 Geneva Convention (IV) of 12 August 1949

It is created to protect civilians during the armed conflict. This Convention was proposed and drafted by the International Committee of the Red Cross and it was accepted and approved by the International Conference of the Red Cross which was held in Tokyo in 1934, also called Tokyo Draft. This Convention was adopted in the meeting of Diplomatic Conference of Geneva of 1949 and entered into force on 21 October 1950. Some provisions concerning the protection of populations against the consequences of war and their protection on occupied territories are contained in the Regulations concerning the laws and customs of war on land, annexed to the Hague Conventions of 1899 and 1907.\textsuperscript{35} The great bulk of the Convention (Part III) puts forth the regulations governing the status and treatment of protected persons; these provisions distinguish between the situation of foreigners on the territory of one of the parties to the conflict and that of civilians in occupied territory.\textsuperscript{36} It was realized the Conventions of 1899 and 1907 were without a provision to protect the civilians but concerned with protections of armed forces only. It is in this regard that this Convention (IV) was created to protect the civilians at the time of war. According to Article 51 of this Convention the violation to civilians during the armed conflict is a crime. Grave breaches to which this Article relates shall be those involving any of the following acts, if

\textsuperscript{34} Id. at art. 130.
\textsuperscript{35} Id.
\textsuperscript{36} Id.
committed against persons or property protected by the Convention: willful killing, torture or
inhuman treatment, including biological experiments, willfully causing great suffering or serious
injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected
person, compelling a protected person to serve in the forces of the hostile power, or willfully
depriving a protected person of the rights of fair and regular trial prescribed in the present
Convention, taking of hostages and extensive destruction and appropriation of property, not
justified by military necessity and carried out unlawfully and wantonly, as stated in Article 147 of
this Convention.

1.3.5 Protocol (I) Additional to the Geneva Convention of 12 August 1949 for
Humanitarian Law also known as Law of war or Law of Conflict

Protocol (I) Additional of 8 June 1977, was adopted to protect the victims of
International Armed Conflicts, while Protocol (II) Additional of 8 June 1977, to this Convention
was adopted to protect the victims of non-International Armed Conflicts. Both were proposed and
drafted by the International Committee of the Red Cross. Certain offenses against the provisions of
the Geneva Conventions and Protocol I are specifically mentioned and are described by these
instruments as grave breaches. Even though so described they are still war crimes, but they may

37Id.
40See Supra note 5, at 292.
carry heavier punishment than other breaches of the law of war which it would seem are not regarded as being so serious, though some of these too may be punished by death.41

Any state holding an offender who is alleged to have committed crimes which are regarded as grave breaches, has the right to institute a legal criminal proceeding against the offender. It has been agreed since 1945 that if a state holding an offender is not willing to carry out its own national legal proceedings and not willing to prosecute an accused individual, it can extradite the offender to the state which has requested the extradition, provided there is a cause for the extradition. If the states have no extradition treaty, it is not necessary to comply with an extradition of the accused. States are encouraged to assist each other concerning the criminal proceeding for grave breaches. The Geneva Convention and Protocol has given states the right to prosecute the accused for grave breaches. States are encouraged to enforce grave breaches also called war crimes into their national law as required by the International law, and this can influence their traditional legal system. The accused also has a privilege that he or she can only be tried if the alleged war crime was a crime by the law of the detaining power or International law, when the commission of the crime was committed, according to Article 99 of Geneva Convention (III), which protects the prisoners of war. The accused should be tried accordingly with the right law procedure of international law and the fundamental right of the accused should be respected as stated in Article 75 of Geneva Convention III of 1949.42 A prisoner of war charged with war crimes can only be validly sentenced by the same courts in accordance with the same procedure as apply to members

41Id.
42See Supra note 32 art. 75.
of the detaining power’s forces and in accordance with the relevant provisions of the Prisoners of War Convention and the Protocol. In addition, any military prisoner held by an adverse party and charged with war crimes is considered a prisoner of war and entitled to treatment as such; until it is proved that he is not entitled to such status. Most of the war crimes such as grave breaches in the Geneva Conventions of 1949 and Protocol (I) of 1977, are similar to those of the London Charter. Violation of the law and customs of war are still war crimes which are punishable in addition to those of grave breaches. The rules which apply to these crimes are being recognized as customary laws while predominantly being grave breaches. The Hague Regulations, while not providing for personal liability other than for private breach of an armistice, declare certain acts to be especially forbidden.

1.3.6 Protocol (II) Additional to the Geneva Convention of 12 August 1949

Apart from Article III common to the Convention, the first major attempt to introduce international legal control of non-international conflict by way of a statement of black-letter law is Protocol II, relating to the protection of victims of non-international conflict. Protocol II is not to be discriminatory, but applies to all colors, races, sexes, religions, languages, and national origins regardless of wealth or status. It protects all people who take part in the non-international conflict and states that those who surrender or are injured should receive humane treatment. Also protected
are civilians. Survivors should not be executed as Article IV stated and this prohibition should be respected. Contrary to this, it is alleged that in Bosnia and Kosovo graves were discovered, where the bodies had received brutal treatment and people who had been detained had been massacred, all punishable breaches and contrary to Article IV.

Article IV to the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977 Stated that: 47

All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honor and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors. 48

The following violence should be forbidden such as: health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; collective punishments; taking of hostages; acts of terrorism; outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; slavery and the slave trade in all their forms and pillaging, 49

Protocol II deals with protection of civilians, children, the treatment of wounded and sick, detainees and civilians. During international armed conflict children are often taken away

47Id.
48Id. art. 4 para. 1.
49Id.
from their parents but it is more likely to be done during the non-international armed conflict. They should be protected and receive all benefits including education and health care. These children who were under fifteen should not be enlisted to take part in the hostilities as stated in Article IV.\textsuperscript{50} Military and ICRC are to be allowed to remove these children from war zones if the situation so requires. Meanwhile civilians should not be the object of attack and should be protected from any danger of the war, by evacuating them to safer places. Muslims in Bosnia and Kosovo-Albanian were displaced by attacks of the armed forces of Serbia. Article 17 of the protocol prohibits the displacement of civilians. It is expected that the parties involved in the internal conflict respect the fundamental minimum requirement of the law of armed conflict. By the same token wounded and sick should be cared for, receive medical treatment and be treated humanly as stated in Article V. These victims should also be protected from attack including the corpses. The international criminal law has demonstrated its legal framework and its development from international law to the traditional national law.

1.3.7 New Development after the War of Cold War

The international criminal law developed more strength after the Cold War. It suddenly changed that the international community decided to hold accountable the individual committing the act of international crimes. As a result, the establishment of the International Criminal Tribunal

\textsuperscript{50}Id. at art. 4 para. 3.
for Yugoslavia (ICTY) in 1993,\footnote{See the establishment of International Criminal Tribunal for Yugoslavia.} and International Criminal Tribunal for Rwanda in 1994,\footnote{See the establishment of International Criminal Tribunal for Rwanda.} followed. These tribunals were created by the United Nation Security Council, with the perpetrators of the international crimes being tried in Rwanda and Yugoslavia. This was followed by the Special Court for Sierra Leone also called the hybrid court. It is called a hybrid court as it was established by both United Nations and the government of Sierra Leone.\footnote{Special Court for Sierra Leone. It is a hybrid court created by government of Sierra Leone and the United Nations Security Council.}

The international criminal law has also influenced the Traditional Court System by including international law in the legislature of the domestic law. The non international conflict can be seen in different forms, one of them consists of a group in a country with the goal of the overthrow of the government through armed conflict or Coup d’etat. In accordance with the fundamental principle of customary international law concerning the independence of a sovereign authority, this type of conflict has traditionally been regarded as falling outside the ambit of international law.\footnote{Leslie C. Green, The Contemporary law of armed conflict 317 (2000).} The parties involved in the conflict should recognize and respect the law of conflict or law of war and this law should not be breached during non-international armed conflict, including any third party involved.

Due to atrocities and inhumane treatment to humankind occurring during a non-international armed conflict, it was agreed that an additional provision of minimum standards of humanity should be enacted to the Geneva Convention of 12 August 1949 and its Protocol (II).\footnote{Geneva Conventions of 1949.} This was
considered important in monitoring any internal conflict arising in the future which could escalate into armed conflict. Additional provisions were enacted to all four Geneva Conventions of 12 August 1949. These provisions were added following the end of the Second World War, as a result of internal or non international conflicts which had been taking place for self determination or for independence, where cruelty and human suffering were observed. This additional regulation applied to all parties involved in the conflict regardless of their legal status. As it is stated in Article 3 common to the Convention of 1949: The legal government is still entitled to treat captured opponents in accordance with national law of treason, as was done by, for example, the United Kingdom regarding members of the Indian Army who joined the Japanese after the surrender of Singapore. States are not allowed to intervene in the national affairs of another country; except for humanitarian purposes. This has been seen in Yugoslavia during the alleged suppression of the Kosovo-Albanians, where NATO members used military forces to bring the human suffering to an end, and drove the forces of Yugoslavia out of Kosovo, despite Kosovo being a province of Serbia in Yugoslavia. The presence of NATO in Kosovo was regarded as illegal as it was not authorized by the United Nations. According to Article 3 common of the 1949 Convention, in the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as minimum provisions. 

Persons taking no active part in the hostilities, including members of armed forces who have laid

56 Article 3 Common to the Geneva Convention of 12 August 1945.
57 See NATO air strikes in Yugoslavia.
58 See Supra note 47.
down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.\textsuperscript{59} It is in this regards that prohibition should be in place of all kind of killing; cruel treatment; mutilation; torture; degrading treatment; humiliating; prejudice and taking of hostage. The sick and wounded should be treated humanely.

However the captured military personnel during non international armed conflict are not regarded as prisoners of war but they can be treated as prisoners of war. Even though the Convention is clear how to treat the captured enemy, this has not been the case in countries especially in South America or Latin America. It was discovered that doctors and medical personnel who were treating the sick and wounded captured anti-government personnel were prosecuted contrary to the rules of the (I) Geneva Convention of 1949. Other atrocities occurred in Bosnia in 1992 perpetrated by the Yugoslavian army. Since Bosnia was still under the rule of Yugoslavia, and was not recognized as a sovereign, the international community called for the perpetrators who violated the law of war to be tried for war crimes. This led Yugoslavia to be expelled from the United Nations. As a result an ad hoc court (temporary court) was established by United Nation Security Council based on Chapter VII of the UN Charter.\textsuperscript{60} The ad hoc court is to try those breaches of the international humanitarian law. Article 3 common to the Convention

\textsuperscript{59}Id.

\textsuperscript{60}United Nations Charter, Chapter VII.
stipulated that International Committee for Red Cross, and other organizations should be allowed to offer their assistance in humanitarian crisis during the non international armed conflict. The parties involved in non international armed conflict should reach agreement to end the fighting and consider the convention of the consequences of war, as this would lead to the prosecution of war crimes. Protocol II to Convention deals with protection of non international armed conflict but has not replaced Article 3 of common to the Convention.

1.3.8 International Law in the National Legislature

Regarding the trial and punishment of those charged with criminal offenses related to the conflict, no sentence shall be passed or sentence executed except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality.

The domestic court should not sentence and use the death penalty against pregnant mothers or to mothers who are still caring young children, and the national court should not deprive the young from their mothers. This also applies to the children under eighteen. If they are found guilty by the national court of breaches of the law of war, the death penalty is forbidden no matter how serious the offenses that were committed in the conflict. When hostilities come to an end, as part of the effort to facilitate a return to peaceful conditions, the authority in power, whether the original government or successful rebels, is to endeavor to grant the most extensive

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61Id.
62Protocol II to the Geneva Convention of 12 August 1949 art. 4 para 1 and 2.
63Protocol II Additional to the Geneva Convention of 12 August 1949, art. 6 para. 2.
64Id. at art 6 para. 4.
amnesty to those who have participated in the conflict or been deprived of their liberty for reasons connected with the conflict. This applies only to those charged with treason but not for those who are charged with crimes of breaches of law of armed conflict and assassination during the war. This process is important for rehabilitation and bringing peace in the country after the conflict. This was evidenced in Rwanda, which tried those involved who committed the grave breaches during the conflict. The rights of those charged with grave breaches crimes should be respected.

South Africa and Liberia chose to create Truth National Reconciliation instead of prosecuting and convicting the perpetrators who committed atrocities during the conflict. The Protocol does not include the creation of military tribunal or any other tribunal apart from the normal national legal system. Crimes of grave breaches are part of international crimes as well as crimes against humanity and genocide. The states are encouraged to include the international crimes into their own national law and enforce them.

1.4 International Crimes

The international crimes are crimes that are within the jurisdiction of the international criminal court, or International Criminal Tribunals, and are punishable by these courts. The international crimes are crimes which are enemy of all nations. They are punishable under universal jurisdiction by any states in the world as states are encouraged to enforce them in their domestic law. These crimes are as follow: war crimes, crime against humanity, genocide,

\textsuperscript{65}See The truth Reconciliation Commission in South Africa.
crimes against peace (aggression) and terrorism. Piracy and slavery as crimes will be part of the discussion.

1.4.1 Piracy

Piracy is the oldest international offense. It is punishable as stated in the Geneva Convention on the High Seas of 1958.\textsuperscript{66} It is any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed,\textsuperscript{67} as defined in Article 15 of the Convention. Every State shall take effective measures to prevent and punish the transportation of slaves in ships authorized to fly its flag and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall ipso facto be free. But Piracy is not included in the international crimes as it does not meet the requirement, despite being considered a crime under international law.

1.4.2 Slavery

Slaves are persons controlled and owned by other people, in the sense that they have no right or freedom of movement and they are regarded as the household and property of their master. They are not allowed to leave their employers or any state or country without a passport or the authorization from their owner. The economic and social life of slaves are influenced and controlled by their owner and are considered as properties of the owner. They are held against their will and forced into labor as defined by the International Labor. They are denied their right to

\textsuperscript{67} Id.
refuse the forced labor without compensation, except for basic necessities such as clothing, shelter and food. Slavery was banned as describe in the 1926 Slavery Convention. 68 Article 2 banned the trade of slaves, 69 and Article 6 stated the punishment of anyone found trading or involving in slave activities. 70 Slavery is an international crime which falls under crimes against humanity.

1.4.3 War Crimes

War crimes are international crimes in violation of humanitarian law or accepted laws of war or of assumed norms of human behavior, committed in connection with a war as by a member of a belligerent nation's military forces or government. They are regarded as criminal offenses and in violation of humanitarian law under international law and are punishable crimes. War crimes are committed during international armed conflict or internal armed conflicts which are grave breaches of Four Geneva Convention of 12 August 1949 and its Additional Protocol I and II of 1977. 71

International Tribunals have jurisdiction over war crimes. Prior to the ICC, one found war crimes as a basis for prosecution in the Nuremberg 72 and Tokyo Tribunals, 73 and also in the International Tribunals for the former Yugoslavia and Rwanda and the Special Court for Sierra Leone.

68 Slavery Convention of 1926.
69 Id. at Art. 2.
70 Id. at art. 6.
73 Nuremberg Charter Principle art. VI (b). And Tokyo Charter art. 5 (b).
1.4.4 Crimes against Humanity

A crime against humanity is an act committed as part of a widespread or systematic attack directed against any civilian population. The crimes against humanity can be committed during internal armed conflict or international armed conflict or even in the absence of war. It has no convention. The crimes against humanity are: murder, extermination, enslavement, deportation, and other inhumane acts committed against civilian populations, sexual abuse, rape, torture, enforced disappearance of persons, the crime of apartheid and persecutions on political, racial or religious grounds in execution. It was included on the Charter of Nuremberg and became part of the statutes of international tribunals for Yugoslavia, Rwanda, International Criminal Court and also Special Court for Sierra Leone.

1.4.5 Crime of Genocide

Genocide means any acts committed with intent to destroy, in whole or part, a national, ethnic, racial, or religious group, as such: killing members of ethnic groups; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent birth within the group; forcibly transferring children of the group to another group. Genocide was not part of the statute of Nuremberg Tribunal or Tokyo Tribunal as the Convention

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74 Tokyo Charter art. 5 (b), see Statutes of ICC art. 7.
75 Id.
76 ICC Statute art. 6.
on the Prevention and Punishment of the Crime against Genocide of 9 December 1948.\textsuperscript{77} It was adopted by United Nations General Assembly through Resolution 260.\textsuperscript{78}

1.4.6 Crime of Torture

For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.\textsuperscript{79} It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.\textsuperscript{80}

Earlier before WWI, torture was part of international law, which fell under war crimes. Torture was considered a crime only if committed during hostilities or wartime. During this period any breaches or violations of international law, nation-states were held responsible and not the heads of state or individuals. However, this changed when the Convention against Torture (CAT),\textsuperscript{81} came into force in 1984. The CAT was a U.N. convention in which torture became an intentional

\textsuperscript{77}See Prevention and Punishment of the Crime Against Genocide of 9 December 1949.
\textsuperscript{79}Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, this Convention was Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1)
\textsuperscript{80}Id.
\textsuperscript{81}See also United Nations General Assembly Resolution 39/46 of 10 December 1984.
crime unto its own differentiated from war crimes and crimes against humanity. Torture is typically committed during the conflict or war, but also committed in the absence of war or conflict. Any individual or persons committing the crime of torture after the establishment of the convention; are held individually criminally liable. Additionally, the act of torture through superiors or commanders orders, do not shield individual from prosecution as stated in article 5,62 and 6.63 If the state with jurisdiction does not extradite the offender as stated in article 5 (1), this state should prosecute the offender, and since this crimes is extraditable, if the state is not willing to try the offender, it has to extradite the offender to another country for prosecution through universal jurisdiction.

State parties are expected to prohibit this horrendous act in their country. Torture is a crime which is universally punishable. The Convention against Torture (CAT) authorized its member parties to ensure that this terrible act of torture is prohibited in their states by any means. This convention also permits state parties to legally try and punish the perpetrator of torture through universal jurisdiction. No exception to those circumstances are permissible whatsoever, whether during a state of war, threat or war, internal political instability or any other public emergency. There is no justification for torture.64

The international Bill of Human Rights such as Universal Declaration of Human Rights,65

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62CAT article 5 (1).
63CAT article 6.
64CAT art. 2.
65Universal Declaration of Human Rights art. 5 (10 December 1948) U. N. General Assembly, off. Rec., 3rd Sess., Res. (A/8100), which stated that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
and International Covenant on Civil and Political Rights, have also prohibited the act of torture. If the crime of torture is committed within a territory, that territory has territorial jurisdiction over the offender to try the offender under its national criminal law, regardless whether the accused is a national of that state or not. Additionally, other states who may be linked to the act of torture, have the right to request extradition of the offender, since torture is an offense, which is extraditable as stated in the convention against torture.

In order for the act of torture to be reduced in criminal severity, state parties to the convention have to ensure measures are in place to bring the offender to justice within the territorial jurisdiction or extraterritorial jurisdiction. Torture is an international crime and the offender could be tried through universal jurisdiction by any country as stated in the UN Convention Against Torture and other cruel, inhuman, or degrading treatment or punishment (CAT) all of which prohibit torture. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. The United Nations has also prohibited torture: universal respect for, and observance of, human rights and fundamental freedoms for all without distinction

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86International Covenant on Civil and Political Rights art. 7 (16 December 1966) 999 U.N.T.S.171. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.
87U.N. CAT art. 5.
88U.N. CAT art. 10.
as to race, sex, language or religion.\textsuperscript{89}

Countries are to make sure that the person, who is arrested, whether in detention or imprisonment under their jurisdiction, should not be subject to torture even during interrogation. Interrogation should be done within the scope of the law without any impartiality. If any state uses any form of torture, and the allegations are proved to be true through investigation, the victims and witnesses have to be protected from the consequences of intimidation and ill treatment as referred to in article 13 of the Convention Against Torture. The evidence given by the victims as a result of torture should not be admissible. If the act of torture occurred, the state should rehabilitate and compensate the victim and if the victim of torture died, the compensation should be awarded to the beneficiaries of the deceased victim.\textsuperscript{90}

No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.\textsuperscript{91} Nation-States have right to prosecute the offender of torture, predicated upon the grounds that the offender cannot escape justice.

The Convention Against Torture did not address or mention the issue of immunities of heads of state, or whether their immunities should be affected once they commit act of torture. The fact that a person who committed an act, which constitutes a crime under international law, acted as Head of State or responsible government official does not relieve him from responsibility under

\textsuperscript{89} UN Charter art. 55 (c).
\textsuperscript{90} UN CAT art. 14.
\textsuperscript{91} UN CAT art. 3.
The removal of immunities of those individuals or heads of state which committed international crimes, has been observed in International Tribunal of International Military tribunal of Nuremberg article 7, International Military Tribunal for Yugoslavia article 7 (2), International Tribunal for Rwanda article 6 (2), International Criminal Court article 27, and the Special Court for Sierra Leone article 6 (2). However, since those that commit torture are the enemies of all humanity, any state has been given right to try the offender in their domestic courts through universal jurisdiction. State parties to the convention are encouraged to try this act regardless of whether the offender is head of state or senior public official. This was seen in the case of the former head of state of Chile. Pinochet was charged in the United Kingdom for conspiracy to torture, torture, murder, hostages in Chile while he was the head of state. Some of his victims were foreign nationals of Spain, France, Italy and others. He was arrested in U.K on the request of the Spanish government. At the time of his arrest, he was not entitled to immunity, which could have

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92 Principles of the Nuremberg Tribunal of 1950, principle III. Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal. Adopted by the International Law Commission of the United Nations, 1950. Introductory note: Under General Assembly Resolution 177 (II), paragraph (a), the International Law Commission was directed to "formulate the principles of international law recognized in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal." In the course of the consideration of this subject, the question arose as to whether or not the Commission should ascertain to what extent the principles contained in the Charter and judgment constituted principles of international law. The conclusion was that since the Nuremberg Principles had been affirmed by the General Assembly, the task entrusted to the Commission was not to express any appreciation of these principles as principles of international law but merely to formulate them. The text below was adopted by the Commission at its second session. The Report of the Commission also contains commentaries on the principles (see yearbook of the International Law Commission, 1950, Vol. II, pp. 374-378).

93 Charter of the Nuremberg International Military Tribunal of 1948 article 7.

94 Statute of Intentional Criminal Tribunal for Yugoslavia of 1993 article 7 (2).

95 Statute of Intentional Criminal Tribunal for Rwanda of 1994 article 6 (2).

96 Statute of International Criminal Court article 27.

97 Statute of Special Court for Sierra Leone of 2002 article 6 (2).
covered the alleged crime. Therefore, crimes alleged committed by Pinochet were extraditable and punishable. However, due to his illness, the U.K could not extradite him to Spain for prosecution. Instead, he was allowed to return to the country of his origin Chile. The crime of torture is prosecuted through universal jurisdiction, as happened also to the case of the former head of state of Chad, Habre who was prosecuted for crimes of torture through universal jurisdiction by domestic court of Senegal. Habre is alleged to have committed the crime of torture while he was the head of state of Chad. The crimes of Pinochet and Habre were committed in the absence of war. While the crime committed by Charles Taylor and Slobodan Milosevic were committed during a war or conflict.98

1.5 Individual Responsibility

Earlier, when any government caused any injury through its subordinate to another government, it has been regarded as a breach of international law. The injured state would be held responsible for trying the accused state based on its national law. Ordinarily, the official or other persons committing the act constituting the violation were not held responsible for it under international law.99

However, a growing number of circumstances, however, international law has recognized individual responsibility for conduct labeled as criminal law under international law.100 They are crimes and

98See more in detail in chapter four for Slobodan Milosevic and of Charles Taylor in Chapter five.
100Id.
when committed, they are regarded as crimes by all the nations. Piracy is one of the crimes under customary international law that should it be committed, the accused would be held individually responsible in the domestic court for the act of piracy. The accused would be tried based on the national law of that state where he is being tried as required by the international law. It is in this regard that states are now authorized to prosecute the accused for committing piracy through universal jurisdiction regardless where the act of piracy occurred and regardless the nationality of the accused. Despite piracy being a crime in all the nations, it is not regarded as an international crime as it did not meet the requirements.

In the last half-century, an expanding series of treaties has recognized universal jurisdiction over such serious international crimes as "grave breaches" of the 1949 Geneva Conventions and the 1977 Geneva Protocol I and over certain acts of international terrorism such as hijacking aircraft and torture.\textsuperscript{101} The two 1949 Geneva Conventions regulate the conduct of war by requiring humane treatment of sick, wounded, and shipwrecked persons in the armed forces\textsuperscript{102}, prisoners of war,\textsuperscript{103} and civilians.\textsuperscript{104} The individuals who violate the grave breach which is the breach of law of armed conflict has to be held responsible and tried by any state in the world through universal jurisdiction, even though the accused is not a national of that state and the crime committed was outside of that state.

\textsuperscript{101}Id.
\textsuperscript{102}Two Geneva Convention of 12 August 1949, art.
\textsuperscript{103}Three Geneva Convention of 12 August 1949. art.
\textsuperscript{104}Four Geneva Convention of 12 August 1949, art.
1.5.1 Nuremberg Trial

The first instances in modern times of the trial of an individual by an international tribunal for crimes under international law were the trials of Nazi and Japanese war criminals after World War Two by the multinational military tribunals in Nuremberg and Tokyo.\(^{105}\)

The Nuremberg tribunal was created by the winning allied powers of WWII, France, the United Kingdom, the USSR and the United States. It was agreed to be in force according to the London agreement of 1945. Additional to the agreement was the Charter which stated the jurisdiction, function and the definition of the constitution of the tribunal. The judges of the tribunals each came from the allied countries. The Charter was more concerned with the individual Germans who were held criminally responsible for the atrocities occurring during WWII. These individuals were charged and sentenced for Crimes against Peace, War Crimes, Crimes against Humanity, and conspiracy to commit any of the foregoing crimes,\(^{106}\) based on Article 6 of the Nuremberg Charter.

1.5.2 Tokyo Trial

The Nuremberg International Military Tribunal (IMT) indicted 24 of those accused but three including Hitler, committed suicide, 18 were convicted such as Rudolf Hess (Nazi Party

\(^{105}\)Id.

\(^{106}\)Id.
deputy of Hitler), Karl Dönitz (Chief of Navy), and others, while 11 were sentenced to death by hanging.\textsuperscript{107} Seven were sentenced to prison terms which vary for each individual.\textsuperscript{108}

The International Military Tribunal for the Far East (IMTFE) Tokyo trial convicted 23 accused out of 25, while 16 were sentenced to serve life in prison.\textsuperscript{109} Two were sentenced to death, Prime Minister Tojo and the chief of Navy, Yamashita.\textsuperscript{110} Later, the Convention of Immunity for Heads of State and Diplomats were adopted to protect them from the prosecution.\textsuperscript{111} They are not to be prosecuted even through universal jurisdiction. But once the international crimes are committed, the immunities are waived as stated in Article 32 of the Vienna Convention on Diplomatic Relations and Optional Protocol of 1961.\textsuperscript{112}

In conclusion the International Criminal Law has improved humanity by developing consequences for those who have committed atrocities to humankind. International criminal law to be more effective, states should also develop its legal framework from international criminal law and enacted it into national statute.

\textsuperscript{107}Nuremberg Trials.
\textsuperscript{108}Id.
\textsuperscript{109}Tokyo trial.
\textsuperscript{110}Id.
\textsuperscript{111}Vienna Convention On The Diplomatic Relations And Optional Protocols of 18 April 1961, Article 37.
\textsuperscript{112}Id. article 32.
CHAPTER TWO

2.0 THE JURISDICTION IN TODAY'S INTERNATIONAL LAW

2.1 JURISDICTION

Jurisdiction is the term that describes the limits of the legal competence of a state or other regulatory authority to make, apply, and enforce rules of conduct upon persons.\textsuperscript{113} In international law, the term jurisdiction has as its purpose, the delineation of the ability of the State to exercise its governmental functions. This part introduces the rules governing jurisdiction over international crimes, as well as the various institutions before which an international criminal law claim may be heard or where principles of international criminal law may be applied or interpreted.\textsuperscript{114} The establishment of the various international and quasi-international tribunals has also occasioned the development of rules allocating jurisdictional authority as between international and domestic tribunals.\textsuperscript{115} The exercise of jurisdiction is often subject to certain limitations, whether the jurisdiction concerns the legislative, judicial or executive, enforcement power.

It is therefore possible to make the distinction under international law according to the following:

(a) Jurisdiction to prescribe, i.e., to make its law applicable to the activities, relations or status of persons, or the interests of persons in things, whether by legislation, by executive act or order, by administrative rule or regulation, or by determination of a court;

\textsuperscript{113}Malcolm D. Evans, International Law, 335 – 337 (2\textsuperscript{nd} ed. 1987).
\textsuperscript{115}Id.
(b) Jurisdiction to adjudicate, i.e., to subject persons or things to the process of its courts or administrative tribunals, whether in civil or in criminal proceedings, whether or not the state is a party to the proceedings;

(c) Jurisdiction to enforce, i.e., to induce or compel compliance or to punish noncompliance with its laws or regulations, whether through the courts or by use of executive, administrative, police, or other no judicial action.

International law includes several principles justifying a state’s assertion of jurisdiction. The principle of the territorial jurisdiction is the most important. It originated from the Peace of Westphalia in 1648, in which the principles of territorial sovereignty and the jurisdiction of States were established.

2.2 Territorial Jurisdiction

Territorial jurisdiction means that the persons and things within the territory are in the state’s power of jurisdiction (but not exclusive) and that the State regulates conduct within its own territory. The distinction is some time made between the subjective and objective territorial principle.

2.2.1 Subjective Territorial Principle

Subjective Territorial Principle means that the persons and things are within the territory, but consequences lie elsewhere. Early in the history of the United States, The Supreme Court affirmed in the case The Schooner exchange v. McFaddon116"full and absolute territorial jurisdiction … of every sovereign”.117 Only limitation may be made by the territorial State itself.

116 11 U.S. (7 Cranch) 116, 137 (1812)
117 Id.
This applies offenses begun within the State, but not completed there (consequences are elsewhere).

2.2.2 Objective Territorial Principle

Objective Territorial Principle means that the persons and things reside outside the territory, but with the effects within the territory. Consequences of the offence are taking place within the State, even if the offences started elsewhere. (US v. Aluminum Co. of America)\(^\text{118}\)

Territorial Jurisdiction is the most common basis of criminal jurisdiction, as it is premised upon jurisdiction being the place where the crime is committed.\(^\text{119}\) States have traditionally, because of their sovereignty, exercised a primary right of criminal jurisdiction over offenses perpetrated upon their territory.\(^\text{120}\) The territoriality principle operates well only when all the element of an offense have taken place on the territory of the prosecuting state.\(^\text{121}\) This is because the state has jurisdiction to try crimes committed within its territory or border regardless whether committed by its national or non-nationals. This territorial jurisdiction authorizes the state to enforce its law over the defendant during the proceeding. The Special Court for Sierra Leone had territorial jurisdiction over the former head of state of Liberia, Charles Ghankay Taylor who is alleged to have committed atrocities during the civil war in Sierra Leone, as stated in in article 6 of the statute of Special Court for Sierra Leone. This has been extended beyond its border where

\(^{\text{118}}\) U.S. Court of Appeals, Second Circuit, 1945, 148 F.2d 416
\(^{\text{121}}\) Id.
states try their nationals who committed crimes abroad through extraterritorial Jurisdiction.

2.3 The Nationality Principles – Personal Jurisdiction

The State exercises its jurisdiction on physical persons and corporate entities within its territory. However, the State may exercise its jurisdiction over its nationals and over their conduct even when they are physically outside the state’s territory. It is the most fundamental principle of extraterritorial jurisdiction.

The jurisdiction is exercised on the natural, physical persons due to the citizenship:

1) The national owes allegiance
2) States have certain responsibilities to one another for the conduct of their nationals
3) Each state has the interest in the well-being of its nationals abroad.

The State has also the jurisdiction over legal persons either if such legal persons
a) Is organized under its laws (incorporation), or
b) Its office is registered on its territory (siege social); or
c) In some cases when the company is owned or controlled by nationals

It is also important to distinguish the Passive Personality Principle (according to the nationality of the victim). The authority to exercise jurisdiction over acts committed abroad on the ground that they injure a national of the claiming state (United States v. Fawaz Yunis122): “...a state may punish non nationals for crimes committed against its nationals outside its territory, at least where the state has a particularly strong interest in the crime.”123

The Nationality principle is the most fundamental principle of extraterritorial jurisdiction.

States have an undisputed right to extend the application of their law to their citizens

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123 Id.
wherever they may be. Extraterritorial Jurisdiction authorizes national courts to try their nationals who committed crimes in foreign countries, even if the crimes committed are not unlawful or punishable in the state where it was committed. The prosecution of the defendant will depend on the circumstances involved in the offense. As an example, if the defendant could be returned to the country of origin for prosecution, the state of origin may seek evidence from the state where the crime is committed. In principle, countries are not allowed to apply their national law into another countries jurisdiction without agreement of the hosting countries. Persons may not be arrested, a summons may not be served, police or tax investigations may not be mounted, and orders for production of documents may not be executed, on the territory of another state, except under the terms of treaty or other consent given. On other hand, the state where the crime committed may decide to try the accused based on the right of territorial jurisdiction or another country may also request the extradition of the accused especially if the victim is a national of that country. In the past, if the head of state committed crimes, the state was held responsible and not the head of state, as there were no international rules which established their accountability. However now, if crimes are committed, especially international crimes by individuals, the court has personal jurisdiction over a natural person and not the state. Accordingly, the accused can be prosecuted by any country through universal jurisdiction. When prosecuting those accused of international crimes, countries have to have cooperation when extradition of the accused involves extradition to another country. Countries are obliged to try the accused who committed

international crimes through universal jurisdiction, however, if the host country is not willing to prosecute the perpetrator, that state can always extradite the accused to any state, which has link to the crime.

2.4 Protective Principles

It is also important to mention the protective principle. This principle applies when a State has jurisdiction to apply law with respect to certain conduct outside its territory, by persons not its nationals, that is directed against the security of the State or against a limited class of other State interests. This principle demonstrates that the territorial principle is not exclusive, and that in some cases the jurisdiction is given to the offenses committed by foreigners abroad. In U.S. v. Pizzarusso, the Second Circuit decided that an alien could be indicted and convicted under U.S. and international law for knowingly making in Canada, false statements under oath in a U.S. visa application. The Court held that even though the United States had neither territorial nor nationality jurisdiction, the protective principle could be employed: State jurisdiction could be based on "conduct outside its territory that threatens its security as a state or the operation of its governmental functions, provided the conduct is generally recognized as a crime under the law of states that have reasonably developed legal systems."127

2.5 Universal Jurisdiction

126 388 F.2d 8 (2d Cir. 1968) cert. denied, 392 U.S. 936 (1968)
127 Id.
Universal jurisdiction is the principle of international law that authorizes any nation to try international crimes, regardless of where the crimes are committed, by whom or against whom, or any other unique tie to the prosecuting nation. The rule applies whether an accused is in custody or not. The rule does not recommend the separate topics of universal jurisdiction in the immunities of senior government officials or civil cases before any foreign national courts. Universal jurisdiction is a process whereby States are authorized to prosecute perpetrators alleged to have committed international crimes regardless of where the crime occurred and regardless of the nationality of the accused or the site of the victims. Many authors define universal jurisdiction as including jurisdiction exercised by International Criminal Courts.\textsuperscript{128} For instance, Scharf and Fischer define it as the authority of domestic court and international tribunals to prosecute certain crimes, regardless of where the offenses occurred, the nationality of the perpetrator or the nationality of the victims.\textsuperscript{129} Universal jurisdiction became a part of customary international law in the 17th century, with the crime of piracy. Countries were allowed to prosecute and punish an individual alleged to be involved in piracy regardless of their nationality and the place of the crime. Universal jurisdiction allowed states to expand their reach beyond their territorial jurisdiction and fight the joint common criminality that affected all states.\textsuperscript{130} Eliminating or reducing piracy was the interest of all states, as piracy was treated as enemy of mankind.

\textsuperscript{128}Mitsue Inazumi, Universal Jurisdiction in modern International Law, Expansion of National Jurisdiction for prosecuting Serious Crime under International Law, (2005).
\textsuperscript{129}Ibid.
\textsuperscript{130}Antonio Casses, International Criminal Law, USA, 2003.
Today, the concept of universal jurisdiction has expanded beyond the crime of piracy and encompasses the following international crimes: crimes against humanity, war crimes, genocide, and torture. Prosecuting individuals accused of these crimes allows countries to exercise jurisdiction over crimes not committed within their territory.\textsuperscript{131} Under international law, states are encouraged to include universal jurisdiction into their municipal laws. \textsuperscript{132} It is important for the states to authorize their domestic court to prosecute international crimes against the law of nations committed outside their territory. The 1948 Geneva Convention on Genocide which entered into force on 12 January 1951,\textsuperscript{133} allows anyone committed genocide to be punished. The Convention against Torture adopted on 10 December 1984 and entered into force on 26 June 1987,\textsuperscript{134} allows countries to try and convict persons accused of torture against civilians, military personnel and foreigners. Prosecuting the accused of international crimes, countries have to have cooperation when extradition of the accused involve to be extradited to another country. Countries are obliged to try the accused who committed international crimes through universal jurisdiction. But if the host country is not willing to prosecute the perpetrator, that state can always extradite the accused to any state which has link to the crime.

In absent of extradition treaty, some countries have used abduction or kidnapping accused from another country without permission of the hosting authority. Abduction is unlawful act of removal of accused person from a country without authority or permission of that hosting country.

\textsuperscript{132}Ibid.
\textsuperscript{133}Convention on the Prevention and Punishment of the Crime of Genocide of 1951 Art.3.
\textsuperscript{134}Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1975 Art. 4 and 5
It is a breach of international law which violate another sovereign state. However, the prosecution of abduction person does not matter how the person comes to court at the end abduction becomes legitimate in court. One of the case is Adolf Eichmann who was accused of torturing and murdering people and committing genocide against the Jews during WWII. Adolf Eichmann of Germany was tried in Israel.

In 1962, Israel prosecuted Eichmann for his participation in the Nazi Holocaust.\textsuperscript{135} Eichmann was alleged to be in charge and responsible for the extermination camps and mass deportation of Jews during the Nazi occupation in Europe. After the end of WWII, Eichmann was captured by the United States military in Germany. He did not give his real name and pretended to be Otto Eckmann. Thus, the U. S military did not realize that they had Eichmann in custody. Eichmann managed to escape from the U. S custody and fled with his family to Argentina. On May 11, 1960, Eichmann was abducted by Israel from Argentina without the knowledge of the authority of Argentina. Argentina tried to protest the abduction of Eichmann,\textsuperscript{136} arguing that Israel violated Argentina's sovereignty and requested Israel to return Eichmann. The Argentine government took its case to the United Nations Security Council, but failed to obtain satisfaction. A year later, Eichmann was indicted in Jerusalem on charges of crimes against the Jewish people, crimes against humanity, and membership of an outlawed organization.\textsuperscript{137} He was tried and convicted under Israel Criminal Law Procedure. On June 1, 1962, Eichmann was hanged.

\textsuperscript{135}Israel Prosecutor v. Adolf Eichmann
\textsuperscript{136}Argentine v. Israel
\textsuperscript{137}Israel v. Adolf Eichman, Judgment (1962) 36 ILR 277.
Eichmann was prosecuted, and punished under the universal jurisdiction despite the illegal abduction.

Adolf Eichmann is not the only one prosecuted under universal jurisdiction. Augusto Pinochet of Chile and Hissene Habre of Chad were also tried under universal jurisdiction. Augusto Pinochet, former head of state of Chile from 1973 to 1990, went to the United Kingdom for medical treatment in 1998. He was arrested in the United Kingdom at the request of a Spanish court, which requested the extradition of Pinochet to Spain. The extradition request was based on the European Union law and bilateral treaty of extradition. The Spanish government alleged that Pinochet was responsible for the disappearance and murder of Spanish citizens in Chile, torture and illegal systematic acts while he was president of that country.\textsuperscript{138}

Hissene Habre was a former head of state of Chad since 1985. In 1990, he fled to Senegal after he was deposed. He was prosecuted and indicted for the crimes against humanity, and torture in Senegal in 2000 under universal jurisdiction theory. The court of Senegal placed Habre under house arrest.\textsuperscript{139} In 2001, the highest court of Senegal determined that it did not have jurisdiction to try Habre since the alleged crimes occurred outside Senegal.

However, the former head of state of Chad, Hissene Habre was indicted in absentia by the Court in Belgium also under universal jurisdiction in 2005. He was indicted for international crimes such as torture, war crimes, human violations and crime against humanity and other human


\textsuperscript{139}Human Rights Watch, Senegal Agreed to Try Hissene Habre, July 2, 2006.
rights violations in the Belgian Court. The claim was filed by the victims after the court of Senegal declared that it has no jurisdiction to try Habre as the crimes occurred outside the territory of Senegal.

It should be noted that universal jurisdiction involved by states are different from that employed by international tribunals. Universal jurisdiction of international tribunals is enforced by international agreements among states that formed the United Nations tribunal and not the States. These Tribunals referred to International Military Tribunals of Nuremberg of 1945 until 1949; International Military Tribunal for the Far East or Tokyo trial from 3 May 1946 until 12 November 1948; International Criminal Tribunal for the Former Yugoslavia of 1993; The International Criminal Tribunal for Rwanda of 1994, the Special Court for Sierra Leone of 2002 and the International Criminal Court which was established in 2002. In the case of the Nazi Holocaust, the Allies exercised jurisdiction over the Nuremberg tribunal based on the Charter of Nuremberg. The Allies established the tribunal and at the same time controlled the Western half of Germany after the surrender of Germany during the Second World War.

2.6 Controversial Nature of Universal Jurisdiction

It is argued that universal jurisdiction is to ascribed to the commission of offenses which considered a crime against all mankind or nations in general, and therefore any state is permitted to

\[\text{\textsuperscript{140}}\text{Ibid.}\]
\[\text{\textsuperscript{141}}\text{International Military Tribunal of Nuremberg of 1945.}\]
\[\text{\textsuperscript{142}}\text{See IMT for Far East of 1946.}\]
\[\text{\textsuperscript{143}}\text{See establishment of ICTY.}\]
arrest, try and punish or convict the alleged defendant. However, universal jurisdiction has become a controversial issue in international practice. This international obligation has given rise for a debate of highly controversial issues in some countries such as China, the United States of America and Russia. These countries are opposing the universal jurisdiction, arguing that the exercise of jurisdiction by a state with the offenses is a breach of the sovereign authorizing of the states.\textsuperscript{144} They argued further that countries have no rights to prosecute a crime which occurred outside of their territory, which has no genuine interest in the case. The international crimes discussed here are Crimes against Humanity, War Crime, Torture and Genocide. These crimes have become offenses of Customary International Law. The dispute started when Belgium amended its law of 1993 in 2003 to limit the prosecution of individuals for international crimes committed under the principle of Universal Jurisdiction.\textsuperscript{145} The law of Belgium of 1993, which is also called Universal Jurisdiction, allowed the national court of Belgium to prosecute individuals who committed the international crime of Genocide, War Crimes and Crimes against Humanity outside the territory of Belgium. The Belgian Court has handled cases such as a case against Ariel Sharon who was the Prime Minister of Israel at that time. In 1982 there was a massacre of Sabra Chattily in Lebanon. It was alleged that Sharon was responsible. The alleged military personnel who caused

\textsuperscript{144}Id.

\textsuperscript{145}Belgium enforced universal jurisdiction in its domestic legislation based on number of important international conventions such as Convention on the Repression of Genocide of 1948, the four Geneva Conventions of 1949 and the additional protocols of 1977, and the Torture Convention of 1984. The bill to include these conventions in Belgium's court was drafted on 5 July 1989 and was approved or passed in Belgium's parliament in in 1991 and came into force in 16 June 1993. Due to controversial of universal jurisdiction, Belgium revoke this law on 5 August 2003. As a result Belgium has only jurisdiction over its own nationals and residents committed international crimes beyond its borders or abroad.
the massacre were under his control.

In 2003, there was also a case filed by the victims in the Belgian Court against George W. Bush, Dick Cheney and Colin Powell for the alleged bombing in Bagdad in 1991. There was also another complaint of prisoners of 2006 filed against Donald Rumsfeld, the outgoing US Secretary of State at that time, former Attorney General Alberto Gonzales and other officials for alleged commander responsibility at Abu Ghraib and Guantanamo Bay.146 But these officials are claiming immunity through the United States from prosecution of alleged charges of human rights violations. Due to many suits filed before the Belgian court under universal jurisdiction, the Belgian Court imposed a condition that the alleged accused persons must be Belgian or be present in Belgium.147 And it might be a problem for these officials if they travel to European countries, since most of the European Union countries have extradition treaties among themselves.

Another case was for Democratic Republic of Congo v. Belgium. This case was a universal warrant of arrest against the Minister of Foreign Affairs which was before the International Court of Justice in 2000.148 The arrest warrant in this case charged the then foreign minister of the Democratic Republic of the Congo with crimes against humanity and crimes under the Geneva Conventions of 1949 and the two Additional Protocols.149 The International Court of Justice (ICJ) did not share its view in regard to the question of universal jurisdiction but considered the immunity of the Minister as a high official of the state of Democratic Republic of Congo. The

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146 Ibid.
147 See supra note 11.
opinion of Judges, President Guillaume and Oda concluded that universal jurisdiction is used only in piracy, but Judge Oda further concluded that universal jurisdiction is only used in piracy, hijacking, terrorism, and slave trading as crimes subject to universal jurisdiction. 150

Despite the controversy of universal jurisdiction, countries such as the United Kingdom, Belgium, Senegal, Germany and Spain have been trying the international crimes before their domestic courts.

Universal jurisdiction has been accepted and recognized by customary international law over piracy, slave trading, slavery and, more recently, international crimes. Series treaties have been expanding and recognized universal jurisdiction over core crimes of international crimes as Convention on the Repression of Genocide of 1948, grave breaches of the 1949 Geneva Conventions and its Protocols of 1977 and other acts such as torture and international terrorism of hijacking aircraft. 151 The other treaties, ratified by many states, authorize universal jurisdiction over terrorist bombings and financing of terrorism are International Convention for the Suppression of Terrorist Bombings. 152

2.7 The Trial of Lockerbie Bombing Pan Am 103

Hijacking aircraft was seen at the trial of individuals who were accused of bombing the Pan Am Flight 103 on 21 December 1988, the flight enroute to New York from London. The flight was destroyed by a bomb and 259 passengers including the crew were killed. The incident occurred at Lockerbie in Scotland where 11 residents on the ground were also killed. After the investigations of the incident by the United Kingdom and United States of America, two nationals of Libya, Abdelbasset Ali Mohmed Al-Megrahi and Al-Amin Khalifa Fhimah were charged of a crime under the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, which is also called Aircraft Sabotaging Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970. Libya refused to extradite the accused to the United Kingdom or United States of America as requested. The Libya government took a position that, in the absence of an extradition treaty with either the United States or United Kingdom, its only obligation under the 1971 Montreal Aircraft Sabotage Convention, to which all three States are parties, was to investigate and, if appropriate, prosecute or to extradite. Sanctions were called for the termination of some air traffic of Libya, forbidding of sales of arms and aircraft of Libya, the freezing of the assets of Libya, and the reduction of diplomatic mission of Libya by United Nations Security Council under Chapter VII of the Charter. Libya opposed and challenged the sanctions at the International Court of Justice (ICJ) in 1992, against United Kingdom, and

154 Id.
155 Id.
158 Libya v. United Kingdom 1992 ICJ 3.

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The ICJ had denied the request of Libya. The accused were then extradited and tried under the Scottish Judge in the Netherlands. On January 31, 2001, Abdelbaset Ali Mohmed Al Megrahi was convicted of murder and was sentenced to imprisonment for life. Al Amin Khalifa Fhimah, was acquitted. In conclusion, universal jurisdiction should also be extended to serious domestic crimes.

159 Libya v. United States 1992 ICJ 114.
161 Id.
CHAPTER THREE

3. THE RESPONSIBILITY, ACCOUNTABILITY, PRIVILEGE AND IMMUNITIES OF THE HEADS STATES IN INTERNATIONAL CRIMINAL LAW

3.1. INTRODUCTION

Heads of States in general are the highest political organ of the state, representing it, within and outside its borders, in the totality of its relations.¹⁶² Heads of State carry the full authority of the government. Heads of State are typically titled as President, Emperor, Prime Minister, Premier, Chancellor or Monarch. The position which a head of state has according to international law is derived from international rights and duties belonging to his state, and not from international rights of his own.¹⁶³ When, therefore, it confers the sovereignty upon a certain person it vests in him its understanding and its will; it confers to him its obligations and its rights as far as they relate to the administration of the State and the exercise of the public authority.¹⁶⁴

The Heads of State have obligations to execute national and international matters on behalf of the state. Their international responsibilities are competence, comprised in substance chiefly; reception and dispatch of diplomatic agents and consuls; conclusion of treaties; declaration

¹⁶³ Id.
of war; and conclusion of peace. They transact these official duties on behalf of the state. They have to abide by their national law and their official duties should be predicated upon the rule of the law of their countries, when executing their international affairs or treaties.

3.2 Monarch

Monarchies are countries ruled by the Kings or Queens who are in control of the government and state. One can find a constitutional monarchy, for example the United Kingdom, or an absolute Monarchy, Saudi Arabia. Monarchies are often hereditary, and a successor is always coming from the immediate family of the reigning monarch, by either virtue of a fixed order of birth as in the United Kingdom, or by the successor being chosen by the current monarch from among members of the monarch’s close family as in Saudi Arabia or by election for a fixed period from among several hereditary rulers such as in Malaysia. In every monarchy the monarch appears as the representative of the sovereignty of the State, and thereby becomes a sovereign himself. Monarchs are themselves sovereign which is recognized by the international law despite their different constitutional law in different monarchy countries, while presidents are not sovereign.

3.3 Presidents

Presidents are elected to power for a certain time period by the citizens. The elected president should be recognized by other foreign countries. They are representing the state or

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165 See Supra note 155.
executing their national and international duties on behalf of the state. The president is however, not a sovereign, but a citizen of the state which elected him.\textsuperscript{167} Presidents are heads of state, and in some cases presidents are also heads of the government as in Namibia, South Africa, France and the United States of America. In some countries, presidents are only heads of states and not head of the government as in Germany where Chancellor (equivalent to Prime Minister) heads the government, India and Kenya where Prime Ministers head the government.

Kenya has just recently created a post of Prime Minister through negotiation to balance the political situation and bring conflict to an end. More than 1,000 people died in fighting and 300,000 were displaced following the elections in the previous December 2007 which both Odinga and President Kibaki claimed to have won.\textsuperscript{168} Mwai Kibaki was then sworn in as President of Kenya, while opposition leader Raila Odinga was sworn in as prime minister in April 2008, fulfilling a key step in a power-sharing deal aimed at ending a violent political crisis.\textsuperscript{169}

But both Monarchs and Presidents as heads of states are granted similar privileges and honors by other states or countries despite their distinction. In a matter of ceremony it is increasingly the case, that a visiting president of a republic is accorded such ceremonial honors as are accorded to a monarch.\textsuperscript{170} The persons or families accompanying the head of state are also treated similarly to the head of state though these privileges are denied in some cases. A head of

\textsuperscript{167}Ibid.
\textsuperscript{169}Id.
\textsuperscript{170}Id.
state, whether a hereditary ruler or an elected president, does not enter the territory of another state in his official capacity without the clearest assurance being expressed or implied that full immunity and full ceremonial honors will be accorded.\textsuperscript{171}

Previously a head of state was in charge of the authority of the state and government and represented the state internationally. But this has later changed and now heads of state execute their political obligations based on the constitution of the state. In some cases a position of the Prime Minister was created to head the government, while in other countries a Chancellor instead of Prime Minister. The Prime Minister executes the administration of the government as head of state. In executing his official duties for the government, however, the function of the Prime Minister falls under the head of state and his functions are limited compared to the ones of Chancellor. The Prime Minister is only the head of the government but not the head of State. The Prime Minister does not represent the state internationally unless he or she is directed by the head of state. Thus, the head of the government may from time to time conduct international affairs on behalf of the state.\textsuperscript{172} The head of the government (Prime Minister) does not have to furnish any evidence of authority to negotiate, draw up, authenticate or sign a treaty on behalf of the state.\textsuperscript{173}

Both the President and the Monarch have the responsibilities to take care of matters concerning national and international issues for the state that they are heading. Heads of State should be recognized by governments of other countries when executing their official duties for the

\textsuperscript{172}Ibid.
\textsuperscript{173}Ibid.
state they are representing. Heads of State are responsible for any treaties or negotiation with other foreign states. While heads of state may sometimes negotiate directly and in person with representatives of foreign states, the principal organ for the regular conduct of intercourse between states is the Ministry of foreign affairs. The Ministry of Foreign Affairs carries the international duties on behalf of and on the directives of the heads of states. Heads of states have immunity according to international law while they are in office. This includes prime ministers and foreign ministers. It has been established for several centuries in customary international law that a sovereign, or head of state, whom comes within the territory of another sovereign, is entitled to wide privileges and to ceremonial honors appropriate to his position and dignity, and to full immunity from the criminal, civil and administrative jurisdiction of the state which he is visiting.

From this immunity, the head enjoys, at least in part, the privileges and immunities accorded to diplomats and consuls who represented the state. This Immunity is based on the 1961 Vienna Convention on Diplomatic Relations and Vienna Convention on Consular Relations of 1963.

3.4 Evolution of the Individual Criminal Responsibility of Heads of State

The idea of the prosecution of heads of state started after WWI, when the 1919 Peace Treaty of Versailles was drawn up. In Article 227 of Peace Treaty of Versailles provided for the prosecution of Germany’s head of state, Emperor William II. It was believed that WWI was

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174Ibid.
176Ibid.
caused by the German Empire under William II, which caused thousands of deaths. During WWI, the German Army committed atrocities to the refugees who tried to flee those countries which were occupied by the German regime under the leadership of William II. The German Army destroyed the cities and used poison gas, to these fleeing refugees. During the war William II was believed to have little influence in his military but he had confidence in his military generals. Since Germany lost the war William II was advised by his military commanders to give up his throne by publicly abdicating. William II did not act on the advice of his generals, hoping to be able to keep his throne despite the uprising against him in Berlin. William II was very shocked to learn that Max von Baden announced the abdication of William II on 18 November 1918. William was even more shocked when he became aware that one of his own, General Ludendorf had replaced him. William II knew that he was no longer the German Emperor nor the King of Prussia. He fled by train to The Netherlands into exile where he was granted political asylum.

The Allies requested The Netherlands extradite William II to be tried and punished for a supreme offenses against international morality and the sanctity of treaties. But Queen Wilhelmina refused to extradite him, despite appeals from the allies. The Netherlands did not agree to hand over William II as a war criminal to the allies following the Armistice (negotiation). The former head of state of Germany, William II remained in exile in The Netherlands until his death on 04 June, 1941.

180 Available at http://www.spartacus.schoolnet.co.uk/FWWkaiser.htm (last visited on March 19, 2007).
The government of The Netherlands did not agree to hand over the Kaiser to his enemy for the trial. The British failed in their attempt to have the Kaiser prosecuted.\textsuperscript{181} After the First World War, the judiciary process failed effectively to bring the war criminals to justice for their international core crimes they had committed. But this scenario completely changed after the Second World War, when the Treaties and International agreements were codified by nations of the world. The atrocities which took place during the Second World War were no longer accepted by the nations of the world for the government officials who committed the atrocities to continue to enjoy immunity from prosecution of international core crimes and human rights violations.\textsuperscript{182} It was after the Second World War that these core crimes were considered as very serious crimes. The allied power were United State of America, the Soviet Union, the United Kingdom and France, they agreed to established a tribunal to prosecute those individual responsible for atrocities during the WWII.

As a result, the allied powers established IMT in Nuremberg and Tokyo to try the war criminals from Germany and Japanese forces respectively, The reason was to to prosecute the prominent figures of military, political and economic leadership of Germany and the Japan perpetrators. A

\textsuperscript{181} Kaiser Wilhelm II became German emperor in 1888 following the death of Frederick II. Wilhelm was a son of Victoria who was a daughter of Queen Victoria and the father of Wilhelm was Frederick III. Wilhelm was forced to give up his throne which he Proclaimed on 28 November 1918, as follow: I herewith renounce for all time claims to the throne of Prussia and to the German Imperial throne connected therewith. At the same time I release all officials of the German Empire and of Prussia, as well as all officers, non-commissioned officers and men of the navy and of the Prussian army, as well as the troops of the federated states of Germany, from the oath of fidelity which they tendered to me as their Emperor, King and Commander-in-Chief. I expect of them that until the re-establishment of order in the German Empire they shall render assistance to those in actual power in Germany, in protecting the German people from the threatening dangers of anarchy, famine, and foreign rule.

\textsuperscript{182} Nuremberg Charter Article 7.
change had occurred and a new development had arisen. Countries were no longer held accountable for international crimes as happened in WWI. This time, it was individuals who were held responsible for the crimes regardless of their position, including the heads of state. The head of state immunity was decided on the Charter of International Military Tribunal of Nuremberg to be removed for prosecution of any leader who committed war crimes, crimes against peace and crimes against humanity. These crimes were regarded as violations of International law. This was seen at the time of the IMT where Article 7 was added to Nuremberg Charter of 1945, stating that individuals who held immunity and committed such atrocities directly as well as indirectly, the immunity should be waived in order for the perpetrators to face justice.

This led to the prosecution of Erich Rader. Erich Rader was appointed by Adolf Hitler as his successor to be German Chancellor or the head of state of Germany prior to Hitler committing suicide. Adolf Hitler admired Rader. The prosecution extended to the German Vice Chancellor, Fritz Von Pappen who was also German Foreign Minister. Von Pappen was also a former Chancellor of Germany. The Deputy Chancellor of Germany, George Goering was also prosecuted. The immunity of Rader, Von Pappen and Goering were removed. They were tried as referred to Nuremberg Charter. Article 7, of Nuremberg Charter of 8 August 1945: The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment. The removal of

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183 Nuremberg Charter Article 6.
184 Nuremberg Charter of 8 August 1945 Article 7.
immunities of heads of state of Article 7 of Nuremberg Charter was also applied to Article 6 of International Military Tribunal for the Far East Charter (IMTFE) of 1946.\textsuperscript{185}

The Allies in this case were the government of Republic of China, France, Australia, Canada and the United States held a Conference in Potsdam, Germany in July 29, 1945. The outcome of the Conference was for Japan to agree to bring the war to an end. This agreement was reached by Japan in August 9, 1945, after the Hiroshima and Nagasaki bombing. This brought the war with Japan to an end.

It was after this war, when the tribunal for IMTFE,\textsuperscript{186} was established to prosecute the Perpetrators of Japan who committed crimes against humanity, crimes against peace and war crimes, during the war. This was followed by the prosecution of the defendants of the previous Prime Minister, the previous head of Government, diplomats and the cabinet officials who were tried and punished. Among the defendants was General Yamashita who was charged for command responsibility for the massacre of Manila and war crimes in October 29, 1945. General Yamashita was prosecuted and was sentenced to death.

The Nuremberg Principles were also applied to the Tokyo Trial and part of these Principles continues to be used today in other International Criminal Tribunals such as ICTY,\textsuperscript{187} ICTR,\textsuperscript{188} Sierra Leone and others.\textsuperscript{189} In 1950 the Nuremberg Principles were affirmed by the United Nations General Assembly and became part of International law. The Principles stated that

\textsuperscript{185}IMTFE Charter Article 6.
\textsuperscript{186}Id.
\textsuperscript{187}ICTY Statute Article 7.
\textsuperscript{188}ICTR Statute Article 6 (2).
\textsuperscript{189}Special Court for Sierra Leone Statute art. 6 (2).
individuals who committed international crimes should not be excluded from the prosecution.\textsuperscript{190} The Principles of Nuremberg have become customary international law after its creation. Since the prosecution of International Military Tribunal in Nuremberg these Principles have been applied to most of Tribunals.\textsuperscript{191} There is no immunities for individual or head of state who committed in international crimes.

3.5 IMMUNITY OF THE HEADS OF STATE

Historically, sovereign heads of state used immunities as a shield from prosecution or criminal liability for their actions.\textsuperscript{192} A person enjoys immunity for all acts committed in his official capacity.\textsuperscript{193} Both case studies involve persons who committed war crimes in the position of the heads of state. It is therefore appropriate to deal with the immunities of the heads of state and to see how much these immunities compare with the position of Mr. Milosevic and Mr. Taylor. Consideration will be also limited to the criminal law immunity.

As it is generally known, the heads of state are not submitted to the jurisdiction of the foreign States. It is the old and well-established principles of the customary international law. This principle is recognized in the practice of States as well as in the doctrine of international law.

The basis of this immunity resides in the official position of the Heads of State and such immunity

\textsuperscript{190}Principles of International Law Recognized in the Charter of the Nüremberg Tribunal and in the Judgment of the Tribunal, 1950. See Principle III.

\textsuperscript{191}U.N.G.Res. 95 (1) of 11 December 1946. Also see Annex 1.

\textsuperscript{192}Michael J. Kelly, Nowhere to hide, Defeat o the Sovereign Immunity Defense for Crime of Genocide and the Trials of Slobodan Milosevic and Saddam Hussein.

\textsuperscript{193}Jan Arno Hessbruegge, An Attempt to have Secretary Rumsfeld and others indicted for war Crimes under the German Volkerstrafgesetzbuch, (Dec. 2004).
was upheld by many decisions of the criminal courts. The recent decision of the International Court of Justice in Republic democratic of Congo v. Belgium, was abundantly dealing with the basis of the immunity of the Minister of Foreign Affairs and it is quite obvious, that in “mutatis mutandis”, this search for the basis of the immunity may be applied to the situation of the Heads of States or governments.

After deliberation, the court deliver the Judgment in the case of Democratic Republic of Congo v. Belgium, the Court stated in respect of the Minister of Foreign Affairs of Congo as follow:

51. The Court would observe at the outset that in international law it is firmly established that, as also diplomatic and consular agents, certain holders of high-ranking office in a State, such as title Head of State, Head of Government and Minister for Foreign Affairs, enjoy immunities from jurisdiction in other States, both civil and criminal. For the purposes of the present case, it is only the immunity from criminal jurisdiction and the inviolability of an incumbent Minister for Foreign Affairs that fail for the Court to consider.

52. A certain number of treaty instruments were cited by the Parties in this regard. These included, first, the Vienna Convention on Diplomatic Relations of 18 April 1961, which states in its preamble that the purpose of diplomatic privileges and immunities is "to ensure the efficient performance of the functions of diplomatic missions as representing States". It provides in Article 32 that only the sending State may waive such immunity. On these points, the Vienna Convention on Diplomatic Relations, to which both the Congo and Belgium are parties, reflects customary international law. The same applies to the corresponding provisions of the Vienna Convention on Consular Relations of 24 April 1963. To which the Congo and Belgium are also parties.

53. In customary international law, the immunities accorded to Ministers for Foreign Affairs are not granted for their personal benefit, but to ensure the effective performance

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195 After deliberation, the court deliver this Judgment in the case of Democratic Republic of Congo v. Belgium, the Court stated in respect of the Minister of Foreign Affairs of Congo, Abdulaye Yerodia Ndombasi.
196 Id.
of their functions on behalf of their respective States. In order to determine the extent of these immunities, the Court must therefore first consider the nature of the functions exercised by a Minister for Foreign Affairs. He or she is in charge of his or her Government's diplomatic activities and generally acts as its representative in international negotiations and intergovernmental meetings.

Ambassadors and other diplomatic agents carry out their duties under his or her authority. His or her acts may bind the State represented, and there is a presumption that a Minister for Foreign Affairs, simply by virtue of that office, has full powers to act on behalf of the State (see, for example, Article 7, paragraph 2 (a), of the 1969 Vienna Convention on the Law of Treaties). In the performance of these functions, he or she is frequently required to travel internationally, and thus must be in a position freely to do so whenever the need should arise. He or she must also be in constant communication with the Government, and with its diplomatic missions around the world, and be capable at any time of communicating with representatives of other States. The Court further observes that a Minister for Foreign Affairs, responsible for the conduct of his or her State's relations with all other States, occupies a position such that, like the Head of State or the Head of Government he or she is recognized under international law as representative of the State solely by virtue of his or her office. He or she does not have to present letters of credence: to the contrary, it is generally the Minister who determines the authority to be conferred upon diplomatic agents and countersigns their letters of credence. Finally, it is to the Minister for Foreign Affairs that chargés d'affaires are accredited. 197

54. The Court accordingly concludes that the functions of a Minister for Foreign Affairs are such that, throughout the duration of his or her office, he or she when abroad enjoys full immunities from criminal jurisdiction and inviolability. That immunity and that inviolability protect the individual concerned against any act of authority of another State which would hinder him or her in the performance of his or her duties. 198

55. In this respect, no distinction can be drawn between acts performed by a Minister for Foreign Affairs in an "official" capacity, and those claimed to have been performed in a "private capacity", or, for that matter, between acts performed before the person concerned assumed office as Minister for Foreign Affairs and acts committed during the period of office. Thus, if a Minister for Foreign Affairs is arrested in another State on a criminal charge, he or she is clearly thereby prevented from exercising the functions of his or her office. The consequences of such impediment to the exercise of those official functions are equally serious, regardless of whether the Minister for Foreign Affairs was,

197 Id.
198 Id.
at the time of arrest, present in the territory of the arresting State on an "official" visit or a "private" visit, regardless of whether the arrest relates to acts allegedly performed before the person became the Minister for Foreign Affairs or to acts performed while in office, and regardless of whether the arrest relates to alleged acts performed in an "official" capacity or a "private" capacity. Furthermore, even the mere risk that, by travelling to or transiting another State a Minister for Foreign Affairs might be exposing himself or herself to legal proceedings could deter the Minister from travelling internationally when required to do so for the purposes of the performance of his or her official functions.\(^{199}\)

Immunity does not mean impunity or the lack of responsibility. Each State may in its internal legislation, fix the position and responsibility of the Head of State or other leading figures of its administration. The principle of immunity only means that no foreign State can proceed to the prosecution of the foreign head of state unless this State renounced to such immunity. This simply means that in principle, the Head of States cannot be prosecuted by the foreign jurisdiction.

When deciding whether the internal jurisdiction of any state can proceed to the prosecution of the Head of State or any other person having the benefit of the immunity (Head of Government, Minister of Foreign Affairs, diplomatic representative) such jurisdiction must first examine the application of the national criminal law ratione loci and ratione personae. Ratione loci meaning than the persons is within the territorial competence of the courts, ratione personae, meaning whether the jurisdiction can be exercised in relation to the person if such person is in the benefit of immunities.

It is only very recently that a certain number of doubts were expressed about the content of this principle, its limits and exceptions. "At his stage of development of international criminal law

\(^{199}\)Id.
one must conclude that functional immunity cannot be granted to state officials that have committed crimes under international customary law. This exception to the principle of functional immunity must equally apply to Heads of State." 200 This was done in particular in relation with the specific case concerning the position of General Pinochet.

Application of the immunities must be examined according to the following conditions:

3.5.1 **Immunity Ratione Personae:**

There is no doubt that immunity is given by the customary international law to the heads of State. The international law makes no distinction between the heads of States who exercise executive power appropriately, arguably as in the case of the President of the United States, or whether the head of state is from a rogue regime. They have the same immunities and privileges. International law does not examine the way in which the heads of States came to power except in the situation of non-recognition of the head of State who came to power by force. The constitutional law determines the position of the head of State without taking into consideration the de facto exercise of power like heads of the political parties. In the Arrest Warrant case of (DRC v. Belgium) the ICJ was concerned with the immunity ratione personae of a serving Foreign Minister, and concluded that under customary law no exception to that immunity exist in respect of war crimes or crimes against humanity.201

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3.5.2 Immunity Ratione Temporis:

There is no doubt that the immunity from criminal acts is fully covered in the case of the heads of State exercising their executive duties. The beginning or the ends of the immunities have to be examined according to the internal law of each state. In case of the termination of the function by means contrary to law, it is up to the third State to determine its attitude to the new regime by way of the recognition or non-recognition of it.

The authors continue to affirm that the immunity is not totally terminated with the end of the function of the head of State, and that the immunity subsisted for all acts accomplished during the exercise of the function of the head of State. The question remains what kind of functions continue to be respected even after the function of the head of state was terminated.

3.5.3 Immunity Ratione Materiae:

The fundamental distinction has to be made between the heads of state exercising the function and those who terminated these functions. In respect of private acts the immunity is contingent and supplementary and it ceases when the individual concerned leaves his post.\textsuperscript{202} The heads of state in the exercise of the powers are fully covered by the immunity for all their acts whether public or private. Is the immunity so absolute that it covers also criminal acts contrary to international law? On the other hand, is the customary international law excluding certain crimes from the immunity? This is the prevailing tendency today, but not much confirmation is provided.

\textsuperscript{202} Ian Brownlie, Principles of Public International Law, 532 (6th ed. 2003).
by the courts decision and is still waiting for the confirmation by practice of courts and tribunals.

The decision of the Paris Court of Appeals in the case of Kadafi (Decision of 20.10.2000)\textsuperscript{203} was nullified by the Cour de cassation by the decision of 13 March 2001, which reaffirmed the principle of customary international law that the heads of state in exercise cannot be prosecuted by foreign criminal jurisdictions of a foreign state.\textsuperscript{204}

The House of Lords in Pinochet case refused the immunity of General Pinochet as he was only former Head of State, but also because Chili is party to the 1984 Convention against torture, and for that reason the immunity was excluded.\textsuperscript{205}

It shows that the former heads of State keep the immunity for the acts they accomplished during the time they exercised the official functions of State duties, but not for the acts they engaged in before they took office or after they left their official duties. The problem of distinction between the private and public acts remains, but the crimes committed in purely private domain for personal reasons are excluded from any immunity.

Because of the lack of clarification on the position of the heads of State, the private institution with great scientific reputation, like the Institute of International law, wanted to bring more scrutiny to these problems and accordingly adopted at its Vancouver session on 26 August 2001, the non-binding resolution on the position of the heads of States acting in official capacity as well as the former heads of State. This resolution resumes, in this author’s point of view, the


attitude of the doctrine of international law as it applies to this issue.\textsuperscript{206} The resolution refers to the uncertainties in the contemporary practice. It also reaffirms in its preamble the fundamental principles that the special treatment provided to the Head of State or a Head of Government is given to them because of their position as representatives of the State and not in their personal interest. The purpose of this special treatment is given to them with the aim to facilitate the exercise of their functions and the fulfillment of the responsibilities and to be sure that they can exercise them in an independent and effective manner in the interest of both the State, the Government and the international community. The Heads of State and Governments are obliged to respect the law of the State they represent. The Heads of State or Government exercising their functions which the resolution calls “Serving Heads of State” have in particular the following position.\textsuperscript{207}

\textbf{Article 1} \\
When in the territory of a foreign State, the person of the Head of State is inviolable. While there, he or she may not be placed under any form or arrest or detention. The Head of State shall be treated by the authorities with due respect and all reasonable steps shall be taken to prevent any infringement of his or her person, liberty, or dignity.\textsuperscript{208}

\textbf{Article 2} \\
In criminal matters, the Head of State shall enjoy immunity from jurisdiction before the courts of a foreign State for any crime he or she may have committed, regardless of its gravity.\textsuperscript{209}

\textbf{Article 6} \\
The authorities of the State shall afford to a foreign Head of State, the inviolability, immunity from jurisdiction and immunity from measures of execution to which he or she is

\begin{footnotesize}
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\item \textsuperscript{206}Justitia Et Pace, Institut De Droit International, Session of Vancouver – 2001, Immunities from Jurisdiction and Execution of Heads of State and of Government in International Law (Thirteenth Commission, Rapporteur : Mr Joe Verhoeven)(The French text is authoritative. The English text is a translation.).
\item \textsuperscript{207}Justitia et Pace, Institut de Droit International, Session of Vancouver – 2001, immunities from jurisdiction and execution of Heads of State and of Government in International Law (Thirteenth Commission, Rapporteur : Mr Joe Verhoeven)(The French text is authoritative. The English text is a translation.)
\item \textsuperscript{208}Vancouver session on 26 August 2001 resolution article 1.
\item \textsuperscript{209}Vancouver session on 26 August 2001 resolution article 2.
\end{itemize}
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entitled, as soon as that status is known to them.\cite{210}

The resolution is also dealing with the waiver of the immunity and the domestic law of the State concerned, which determines which organ of that State, is competent to affect such a waiver. The waiver is taking place when the Head of State is suspected of having committed crimes of a particularly serious nature, or when the exercise of his or her functions is not likely to be impeded by the measures that the authorities of the forum may be called upon to take (Article 7).\cite{211} Article 8 of the resolution is also mentioning the derogation made by agreement from the inviolability, immunity from jurisdiction and immunity from measures of execution accorded to their own Heads of State.\cite{212} The States are also free to grant unilaterally and in conformity with international law, larger immunities. They are also free to grant or refuse to the Head of a foreign State access to, or sojourn on, its territory.

It is important to mention the article 11 of the resolution which states that

"1. Nothing in this Resolution may be understood to detract from:\cite{213}
   a. obligations under the Charter of the United Nations;
   b. the obligations under the statutes of the international criminal tribunals as well as the obligations, for those States that have become parties thereto, under the Rome Statute for an International Criminal Court.

2. This Resolution is without prejudice to:
   a. the rules which determine the jurisdiction of a tribunal before which immunity may be raised;
   b. the rules which relate to the definition of crimes under international law;
   c. the obligations of cooperation incumbent upon States in these matters.

3. Nothing in this Resolution implies nor can be taken to mean that a Head of State enjoys an immunity before an international tribunal with universal or regional jurisdiction.

The part of the resolution is also dealing with the former Heads of State: According to the article 13:\cite{214}"

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\begin{itemize}
  \item \cite{210} Vancouver session on 26 August 2001 resolution article 6.
  \item \cite{211} Vancouver session on 26 August 2001 resolution article 7.
  \item \cite{212} Vancouver session on 26 August 2001 resolution article 8.
  \item \cite{213} Vancouver session on 26 August 2001 resolution article 11.
  \item \cite{214} Vancouver session on 26 August 2001 resolution article 13.
\end{itemize}
“1. A former Head of State enjoys no inviolability in the territory of a foreign State.
2. Nor does he or she enjoy immunity from jurisdiction, in criminal, civil or administrative proceedings, except in respect of acts which are performed in the exercise of official functions and relate to the exercise thereof. Nevertheless, he or she may be prosecuted and tried when the acts alleged constitute a crime under international law, or when they are performed exclusively to satisfy a personal interest, or when they constitute a misappropriation of the State’s assets and resources.
3. Neither does he or she enjoy immunity from execution.”

In its 2002 ruling in the arrest warrant case of foreign affairs of Democratic Republic of Congo (DRC v. Belgium), the International Court of Justice considered the immunity of the minister of foreign affairs before ICJ. While international tribunals recognized that an incumbent or former minister of foreign affairs accused of committed international crimes would not have immunity before an international tribunal like the Intentional Criminal Court, also the ICTY, ICTR, the Special Court for Sierra Leone, and Cambodia tribunal, where they have jurisdiction.

As we have seen, the Heads of State have been long granted immunity for their protection from prosecution of civil and criminal cases as their immunity as Heads of State are accepted and recognized under customary international law. Thus, Heads of State immunity is regarded as universal and most of the countries have accepted it.

The Heads of State who have violated the international law are subject to universal jurisdiction and their immunities are waived. Most of the states in the world have ratified the Geneva Conventions of 1949 which require each state party to search for persons suspected of committing Crime, or bring them to justice in their own domestic courts or to extradite them to the

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215 DRC v. Belgium, Case No. 121, ICJ 1 (14 February 2002).
216 William A. Schabas, an Introduction to the International Criminal Court, 80 - 82 (2nd ed. 2004).
States that has made a case against them. Countries have an obligation to prosecute, under universal jurisdiction, a person who violates the international law which should not be violated by any country or any individual or by the head of state. Observation of retaining and removal of immunity was seen in many cases of sitting heads of state immunity and former heads of state immunity.

3.6. The Current Heads of State Immunity

The current heads of state in function are officials who are still occupying specific duty in the office. These officials are immune from criminal and civil prosecution due to their special position in the office. But according to customary international law, the immunities of the incumbent heads of state can be waived once they have committed international crimes. The waiving of immunity will permit any court of law to prosecute them though it is not always the case. In the case of Congo v. Belgium, Belgium filed a suit against Abdulaye Yerodia Ndombasi, who was the Minister of Foreign Affairs to be arrested under universal jurisdiction. This Minister is alleged to have committed crimes against humanity, genocide, war crime and crime against the Tutsi of Rwanda. The Democratic Republic of Congo opposed the arrest of the Minister by taking the case to the International Court of Justice. Congo complaint that Belgium was in breach of the Vienna Convention which protect the immunity of diplomatic and that Belgium was also

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218 Democratic Republic of Congo v. Belgium, Case No. 121, ICJ 1 (14 February 2002).
219 M. Cherif Bassiouni, INTRODUCTION TO INTERNATIONAL CRIMINAL LAW (2003).
violating the customary international law. The International Court of Justice (ICJ) did not share the
view of Belgium. The ICJ passed a judgment in the favor of Congo in 2000. The ICJ decided that
the incumbent Minister of Foreign Affairs was still a government official and therefore his
immunity will carry on his domestic duty including travel abroad with the official duty. At the
same time of the case of Congo v. Belgium, Belgium had a case against Ariel Sharon. The case of
Sharon was filed by the victims in Belgium court in 2001. Sharon was alleged responsible for the
massacre in Sabra and Shartila a refugee camp of Palestinians in Lebanon. Ariel Sharon was a
Prime Minister of Israel by that time of his court proceeding in Belgium. The case of Ariel Sharon
was decided that the current prime minister enjoy the immunity from the jurisdiction in a foreign
court, no matter what crimes were involved.220

This immunity has shield many incumbent heads of state from prosecution. Robert
Mugabe, the President of Zimbabwe, was faced with a case was filed against him by the
Zimbabwe citizens while he was attending the Millennium Summit in the United States of America
in 2000. He was accused of alleged torture, killing, rape, terrorism and destruction of properties.221
This was filed under the Alien Torts Claims Act of 1789.222 The United State Court of Appeals
decided in this case that Mugabe, the incumbent president of Zimbabwe, enjoyed the immunity as
a head of state. If this international crimes allegation against the head of state of Zimbabwe, Robert

221 Sara Andrew, U.S. Courts Rule on Absolute Immunity and Inviolability of Head of State: The Cases against. Robert
Mugabe and Jiang Zemin, Nov. 2004.
222 The Alien Tort Claim Act (ATCA) of 1789 authorizes foreign individuals or nationals to file tort suits in the federal
courts of the United States of America.
Mugabe, is substantive, then he will be facing legal challenges once he leaves the office. Age is no longer an issue or excuse when it comes to the breach of international law. Ta Mok, the former head of state of Cambodia, also called the former Khmer Rouge Military Leader, died at the age of eighty (80 years old) in military prison while awaiting his prosecution. The former head of state, Augusto Pinochet, died at age of ninety two (92 years old) while legal proceedings were still on his way despite his health problem. If allegations against Robert Mugabe of Zimbabwe prove not to be true after he leaves the office, then he will be a free man. The Alien Tort Claims Act (ATCA) of 1789 grants jurisdiction to Federal Courts over any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.\textsuperscript{223} In 1980 a Paraguayan man successfully used ATCA to sue the policeman who had tortured his son to death in Paraguay.\textsuperscript{224} On the rare occasion that a suit is successful, however, the defendant rarely has sufficient assets in the U.S. to satisfy the final judgment.\textsuperscript{225} Despite the United States support of the ATCA, the U.S. Still opposes prosecution under universal jurisdiction.

The current Head of State of Sudan, Omar al-Bashir is charged by International Criminal Court (ICC) with crimes against humanity, war crimes and genocide committed since 2003 in Darfur.\textsuperscript{226} Al-Bashir is the first head of state to be charged by the International Criminal Court. He as charged as referred to in Article 28 of ICC.\textsuperscript{227} There is much controversy regarding the charges

\begin{itemize}
    \item \textsuperscript{224}Ibid.
    \item \textsuperscript{225}Ibid.
    \item \textsuperscript{226}Crimes against Humanity, War Crimes and Genocide are within the jurisdiction of the court of ICC as stated in Article 5 of the Statute of International Criminal Court.
    \item \textsuperscript{227}ICC Statute Art. 28.
\end{itemize}
against Mr. Al-Bashir, and these charges are said to be undermining the peace process in Sudan. Prosecutor Luis Moreno-Ocampo asked the court to issue an arrest warrant before 2.5 million more displaced people died a slow death.\textsuperscript{228}

According to customary international law, any head of state who committed an international crime, is in violation of international law and their immunity is waived in order for them to be prosecuted. It is probable that since countries are not obligated to prosecute the international crimes, they are just encouraged to enforce the Universal Jurisdiction in their domestic courts.\textsuperscript{229} Once the current heads of state time in office comes to an end or they leave office through election or coup d’etat, they are no longer immune.

### 3.7 Former Heads of State Immunity

The heads of state are immune from the prosecutions of civil, criminal and any violations they have committed while they are in the office as stated in the Vienna Convention on Diplomatic Relations and Optional Protocol of 18 April 1961,\textsuperscript{230} and Convention on Privileges and Immunities of the United Nations of 13 February 1946.\textsuperscript{231} These conventions allow the diplomatic agent to enjoy their immunity while in the office. But the immunity of head of state is affected in terms of crimes against humanity, genocide, war crimes or grave breaches of international law. The heads of


\textsuperscript{229}See Prosecutor vs. Adolf Eichmann in Israel under Universal Jurisdiction.

\textsuperscript{230}Vienna Convention on Diplomatic Relations and Optional Protocol of 18 April 1961.

\textsuperscript{231}Convention on Privileges and Immunities of the United Nations of 13 February 1946.
state will not be protected with immunity once he leaves office. The waiving of the immunities started long time ago from Versailles Treaty,\textsuperscript{232} Nuremberg Principle or Nuremberg Charter,\textsuperscript{233} and, Genocide Convention and Convention against Torture.\textsuperscript{234} The removal of the immunities was also seen in the case of the former president of Chile Augusto Pinochet, who had senator for life immunity, after he ceased to be head of State.

3.7.1 Augusto Pinochet

Mr. Augusto Pinochet was the former Head of State of Chile who ruled the South American country from 1973 to March 11, 1990 when he resigned as the President of Chile.\textsuperscript{235} Pinochet had been senator for life immunity, after he ceased to be head of State. This was granted to him by the government of Chile. It was waived by the British House of Lords for alleged human rights violations Pinochet committed during his reign as the President of Chile, even though the Supreme Court of Chile held that the Geneva Convention did not apply to Pinochet. Augusto Pinochet, the former head of State of Chile, was arrested and brought to justice during his medical treatment in the United Kingdom. He was arrested on an extradition request of the Spanish Government. The House of Lords found that he did not benefit from the head of state immunity for

\textsuperscript{232} Peace Treaty of Versailles Article 227.
\textsuperscript{233} Nuremberg Charter Article 7.
\textsuperscript{234} Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, Article 4.
\textsuperscript{235} House of Lord- Regina v. Bartle and the Commissioner of Police for the Metropolis and others (Appellants) Ex Parte Pinochet (Respondent).
the crime of torture.\textsuperscript{236} The House of Lords allowed him to be extradited to Spain, but due to his health, he was allowed to return to his country Chile.

Mr. Pinochet came to power through the coup d'état led by his military junta, which deposed the government of Allende, who was the President of Chile at that time. During the regime of Mr. Pinochet, barbarism was alleged to have been committed in Chile and elsewhere in the world. Those crimes include unexplained disappearance of individuals, murder, and torture which all in a large systematic scale. Though Mr. Pinochet did not commit the alleged crimes himself, it is believed that the alleged crimes committed by Mr. Pinochet during his reign had been attributed to conspiracy.

General Pinochet went to United Kingdom in September 1998.\textsuperscript{237} He went for a medical treatment and was arrested in the hospital pursuant to two provisional arrest warrants issued by the magistrate at the request of Spanish courts, based on the European Convention on Extradition. The defense lawyer for Pinochet immediately moved to set aside the two arrest warrants. The Division Court of the Bench of the Queen Division entered a ruling on October 28 that the arrest warrant was not in a good faith, because the alleged crimes were not extradition crimes under the Act of Extradition in the United Kingdom. As for the second arrest warrant, the Lord Chief Justice held that Pinochet was immune from jurisdiction since the alleged crimes were committed as official acts during the performance of his duty as head of state. The decision was considered as a legal basis of Section 20, a State Immune Act of the United Kingdom, which gives the heads of States

\textsuperscript{236} M. Cherif Bassiouni. Introduction to International Law.
\textsuperscript{237} Id.

74
the same immunities and privileges under the 1961 Vienna Convention, heads of diplomatic missions, incorporated by reference into the Act and applicable with the needed modifications of the heads of states. Pursuant to article 39(2) of the Vienna Convention,\textsuperscript{238} heads of state were immune from criminal prosecution in foreign countries for any acts performed while they exercised their duties as head of state. Lord Bingham dismissed the argument that a distinction could be made based on the gravity of the offense and upheld the immunity claim. The Lord Justice, in his opinion, relied on the decision of the English Court of Appeal in Adsani v. Government of Kuwait.\textsuperscript{239} This opinion which held that if the state granted immunity for the acts of torture, the same immunity is enjoyed by the head of state after they cease their term as president. The Justice Collins agreed and noted that if there is a policy of the state to oppress certain categories, he could not see any justification for the reading any limitation based on the nature of the crimes committed during the immunity. The setting a side of the second warrant was stayed when the Court granted a leave to appeal to the House of Lord, a matter of public importance for the right of interpretation: what is the scope of immunity enjoyed by the head of the state from extradition proceedings and arrest in the United Kingdom if the crimes were committed during his position as a head of state.\textsuperscript{240} This case is consistent with the aims of International Criminal Law.\textsuperscript{241}

\textsuperscript{238}Vienna Convention on Diplomatic Relations and Optional Protocols on 18 April 1961, Article 39 (2).

\textsuperscript{239}Adsani v. Government of Kuwait.

\textsuperscript{240}This Article for prosecuting Pinochet in Spain is written by, Richard J. Wilson is Professor of Law at the Washington College of Law, Co-Director of the Center for Human Rights and Humanitarian Law, and Director of the International Human Rights Clinic.

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The Pinochet case might develop the law of jurisdiction and the jurisdictional immunities in the future based upon the way in which the House of Lords interpreted international law. The decision of the House of the Lords turned only on the application of the United Kingdom law, while the law of the House of the Lords relied extensively on international law in construing domestic law. The interpretation of a domestic law by the international law is the first important noticeable feature of this case. The reasoning of some of the opinions of each individual Lords are frequently not clear given enough the important issues of law presented, which should not be overshadow the willingness of the Law of the Lord to make a decision in this case consistently with the standards of international law.

The other issue is that all perpetrators should be held responsible for their international crimes. If the individual is responsible for the acts, it might be enforced before the foreign courts and it depends on the nature of the crime as well as on the importance of the international and domestic law provisions which concerning the enforcement and it proves that the outcome of the case may occur. The importance of the discovered decision from the House of the Lords is contrary to what the High Court had held, which a distinction can be drawn at the international law which is between the wrongful acts of state organs and their crimes which can be regarded as a crimes of international law. The different consequences should be attached to the latter which fall under the international law and is regarded as permissibility of the exercise of the extraterritorial

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\[^{342}\] Prosecutor v. Pnochet
jurisdiction over the case and the immunity before the international tribunal and under the a certain circumstances before the foreign municipal courts.

The majority of the Law Lords have agreed that since current heads of state enjoy immune from jurisdiction of foreign courts, both civil and criminal, a plea of immunity in criminal proceedings is not applicable to former heads of state depending on the nature of the crime. The majority of the first Appellate Committee held that the acts which amount to international crimes do not qualify as official acts performed by the head of state during the exercise of his official duties. The majority of the Law Lords who are in the second committee confined their analysis to acts of torture. Most of them regard immunity to be simply incompatible with the provisions of 9 December 1975 of the United Nations Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment\textsuperscript{243} which indicate that the official or governmental character of the torture as a constituent element of the crime. The House of the Lords found that Pinochet could be extradited to Spain but due to his health, he was allowed to return to his country Chile.

3.7.2 Other Former Heads of State, Ta Mok, Jean Kambanda and Hissene Habre

The removal of the immunities was seen also in the statute of the ICTY,\textsuperscript{244} when the immunity of Milosevic was removed to stand trial. In another case, the immunity of the Prime Minister Jean Kambanda of Rwanda was stripped off and today he stands convicted for life. The

\textsuperscript{243}The United Nations has created this Convention Against Torture and other cruel inhuman or Degrading Treatment or punishment of 1975 prohibit any person to act against this Convention. And any one violate the said convention, should face justice even to prosecute the defendant through universal jurisdiction.

\textsuperscript{244} ICTY Statute Article 7.
ICC has also included removal of the immunity if the head of State or any individuals with immunities commit the international crimes which are in violations of international law. These three documents are considered to be the codification of customary international law. Heads of State can enjoy the national law immunity but sometimes they may benefit the immunity from prosecution by other nations for international crimes committed during office duty as long as they were not committed in a private context. International Tribunals or International Criminal courts do not recognize the immunity of heads of state when they committed the crimes against humanity, genocide, war crimes or grave breach of international law. After the heads of state leave the office they are no longer immune. This has been seen in many cases of heads of state, whose immunities were waived after they left the office.

The case of former Prime Minister of Rwanda, Jean Kambanda was prosecuted based on the Article 6 (2) of ICTR of 1994. This Article 6 (2) of ICTR removes the immunity for heads of state in breach of international law by committed international crime. International crime is not an act of state immunity.

Hissene Habre, the former head of state of Chad was also prosecuted in Senegal in 1999 where he was exiled. But the highest court made a decision not to prosecute him based on the jurisdiction that the crimes were not committed in Senegal. The victims brought their case before

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245 ICC Statute 27.
248 ICTR Statute art. 6 (2).
the Belgian court. Belgium is considered this case of Habre based on the law of 1999 which allow Belgium to prosecute under universal jurisdiction certain international crimes such as genocide, crime against humanity and war crime.249

Ta Mok, the former Khmer Military Leader of Cambodia was also in military prison since 1999. He was waiting for his prosecution before the United Nations backed War Crime Tribunal for genocide in the 1970s. But he died a year earlier before the time of his prosecution.250 While Saddam Hussein the head of state of Iraq was captured during the invasion of the coalition forces in Iraq in 2003.251 Saddam was charged for the genocide of the Kurds and Marsh Arab civilians. He was convicted and hanged in Iraq on December 30, 2006.252 It is encouraging to see the world joining hand in hand to combat international crimes. Death penalty should be reviewed.

Charles Ghankay Taylor, the former head of state of Liberia who is accused of aiding the civil war in Sierra Leone. He is on the trial in The Hague.253

Alberto Fujimori, the former head of state of Peru was prosecuted for human rights abuse and corruption committed during his presidency. He was sentenced to six years in Peru. Fujimori fled to Japan and later decided to go to Chile. He arrived in Chile in November 2005 hoping to launch a new bid for the Peruvian presidency in the 2006 elections, only to be arrested at the

250Kate Woodsome, Former Khmer Rouge Military Leader Ta Mok Dies, Hong Kong, 21 July 2006.
251Prosecutor v. Saddam Hussein
253For more details, see page chapter five.

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request of the Peruvian authorities. The government of Chile extradited him to Peru on the request of the government of Peru. Chile had no extradition treaty with Peru and Chile was not obliged to extradite Fujimori. Chile had right to keep him or to extradite him. The leaders are held criminally responsible based on superior and commander responsibility, as they would not stop or control their subordinates from committing the crimes.

3.8 Superior or respondent Responsibility

The doctrine of superior responsibility has only recently resurfaced as an effective legal theory for addressing violations of international humanitarian law applicable in times of modern armed conflict. The doctrine of superior responsibility has as its backbone the duty of responsible commander. It was developed in response to a legal need to address those cases lacking any evidence that a superior had in fact ordered, participated, or shared the intent of his or her soldiers or other subordinates who committed crimes. Heads of State are responsible for the serious crimes committed by their subordinates. This development of commanding officers responsibility came after the Second World War. The nations of the World especially the Allied powers decided that individuals who committed atrocities should be responsible for their crimes, along with their Superiors.

Superior responsibility in criminal liability is divided into different categories of individuals who are in leadership position, yet not directly involved in the acts of massacre or battlefield. But these individuals are held accountable for the serious crimes which their subordinates committed. These international crimes or core crimes are crimes against humanity, war crimes and genocide. The Superiors are held accountable for these crimes if these leaders knew that the subordinates committed the crimes or had knowledge that subordinates were going to commit the core crimes. If the superiors then fail to stop the acts or fail to put measures in place to prevent the commission of these crimes, or also fail completely to bring those subordinates to justice or to punish them, then they made be held liable.

It is in this regard that the doctrine of superior responsibility is a very effective on placing accountability on those who committed a gross crime. These superior responsibility individuals are the superior leaders, commanders and medium level commanders. It should be noticed that the superior responsibility or command responsibility is indirect criminal responsibility for civilians. This is the reason why the international humanitarian law punishes not only the military commanders but it also imposes the criminal punishment to superiors. The punishment of superior and commander responsibility including subordinates was seen during the Nuremberg,\textsuperscript{257} and Tokyo military tribunal.\textsuperscript{258} Article six of the Nuremberg Charter established the principles of individual criminal responsibility.\textsuperscript{259} They were held responsible for violation of the law of war,

\textsuperscript{257}Nuremberg Charter of the International Military Tribunal Charter Article 7.
\textsuperscript{258} International Military Tribunal for Far East Charter Article 5.
war crime and crime against humanity, which have been committed during the Second World War. Since the concept of superior accountability occurred after the WWII, it has become a customary international law and the superiors continue to be held responsible.

After the genocide in Rwanda, the interim government of Prime Minister, Jean Kambanda, including his ministers and his senior civil servants, were indicted for the genocide in Rwanda. The same situation also happened in Yugoslavia. The former President of Yugoslavia, Slobodan Milosevic was charged with his subordinates, Mr. Milan Milutinovis the president of Serbia, Nikola Sainovic the Deputy Prime Minister, and Dragoliub Ojdanic, the chief of staff of the Yugoslavia Army. These indictments have been based on accusation of direct and indirect individual responsibility and commander responsibility or civilian superiors. Mr. Slobodan Milosevic was allegedly behind the war in Kosovo, Bosnia and Croatia. His lack of effective control of the civil war in Kosovo resulted in atrocities. Thus, Mr. Milosevic was charged through superior responsibility. Mr. Milosevic was brought to justice as he failed to execute his duty for not punishing his subordinates. It should be also known that the doctrine of superior responsibility does not only apply to superiors and commanders but also applies to civilians who posses the power of the authority.

The superior responsibility indictment has been also observed in East Timor. General Wiranto was the former Minister of Defense and security and Commander in Chief of the Indonesia Armed forces. He was the highest ranking officer in charge of the entire police forces

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261 Id.
and military forces in East Timor. Atrocities took place in East Timor while General Wiranto was in charge. He was indicted by the East Timor's Special Panel for serious crimes through special responsibility, as it was alleged that he failed to control his subordinates in order to prevent the atrocities and failed to bring the perpetrators to justice and punish them. The international warrant of arrest was issued by the prosecutors in East Timor for General Wiranto upon evidence that he failed to control the militia atrocities in the territory of East Timor when he was a military chief in 1999.\textsuperscript{262}

The former President of Liberia, Charles Ghankay Taylor is also charged through superior responsibility by the Special Court for Sierra-Leone for aiding the war and failing to control his soldiers from committing thousands of deaths during the civil war in Sierra-Leone. These atrocities led to establishment of the International Criminal Tribunals. The creation of tribunals came after the silence of Cold war.

3.9 Cold War

International law changed meaningfully after the Second World War. The Second World War including the Nuremberg trial, were followed by the period of Cold War.\textsuperscript{263} The war led to the split of Germany into two sectors, East Germany became the ally of Soviet Union while West Germany fell under United States.\textsuperscript{264} The allies broke up in 1947 and this brought up the division in


\textsuperscript{263}See Supra note note 105 at 934 - 936.

\textsuperscript{264}Id.
the international matters. Due to veto in the United Nations (UN) Security Council, Germany could not be a member of the United Nations. China, as a communist country was prevented from joining the United Nations or in any organs of the United Nations. For its first 40 years under the UN Charter, the international system suffered ideological conflict between two superpowers and their respective allies, armed with increasingly destructive nuclear weapons, and the Cold War, punctuated by only brief periods of detente, put into serious question whether there was any common bona fide commitment to United Nations purpose.\textsuperscript{265} The superpowers were so dominant in the international affairs, that it frustrated the UN efforts to carry out its international functions of maintaining peace and security because of veto decisions by the permanent members. Even though the operation of the UN was affected by the Cold War, it could still assist in the role of peace keeper to promote peace and discourage hostilities. In the 1960s and 1970s more countries became independent from their colonizers and became members of the United Nations.\textsuperscript{266} During this development China was also allowed to become a member of the UN.

When the Cold War ended the international affairs changed suddenly. The end of the Cold War led to the collapse of Soviet empire, the splintering of the USSR, the demise of international communism, and a spreading commitment to democracy and to the market economy have relaxed largely international tensions and recorded political and economic alignment.\textsuperscript{267} It was from this time that the United Nations Security Council could carry its international responsibility

\textsuperscript{265} See Supra note 105.
\textsuperscript{266} Id. at 10 - 11.
\textsuperscript{267} Id.
effectively in the 1980s and 1990s to maintain peace and security as was seen in the Gulf War in 1990 to 1991, which intervention was authorized by the Security Council. 268 This was followed by the conflicts in Yugoslavia, Rwanda, Sierra Leone and elsewhere. The United Nations had shown its concern in these conflicts and permitted the military action to maintain peace in Yugoslavia, Rwanda, Sierra Leone and elsewhere. Unfortunately, United Nations did not authorized NATO to take military action in Kosovo, Yugoslavia. During these conflicts more atrocities and humanitarian law had been horribly violated which amounted to international crimes. After the end of the cold war more tribunals were established to hold the individuals who allegedly committed the international crimes during the armed conflict.

3.10 Tribunals

The Ad Hoc Tribunals are temporary courts that cease to exist after the judgments are pronounced. The heads of state are not the only ones prosecuted for the international serious crimes by the International Criminal Tribunals. But other non-heads of state who are the commanders and other superiors have been also prosecuted for core war crimes in the International Criminal Tribunals, based on Article 7 of the Nuremberg Charter, 269 which in ICTY, 270 ICTR, 271

268 During the Cold war the United Nations was unable to make decisions of Peace and Security, this was due to the dominant of super powers in the Security Council.
269 See Nuremberg Charter art. 7 and 8.
270 ICTY Statute Article 7.
271 ICTR Statute Article 6 (2)
Special Court for Sierra Leone,\textsuperscript{272} were also enacted to Rome Statute of the International Criminal Court.\textsuperscript{273} The Tribunals for the former Yugoslavia and Rwanda were established, each Tribunal has its own Statute. The United Nations established tribunals to prosecute the perpetrators who committed atrocities, such as genocide, war crimes and crimes against humanity during the war conflict in Rwanda and in the former Yugoslavia. These tribunals targeted former political and the military leaders, who were responsible for genocide and other serious violation of international humanitarian and international law. This was important to bring those accused to justice to discourage others from committing these crimes in the future and to bring peace to the international community.

The tribunal for the Rwanda was created to prosecute not only the former leaders but the commanders and others superiors who committed the serious violation of human rights and international crimes which was committed between January 01, 1994 and December 31, 1994,\textsuperscript{274} during the civil war in Rwanda. The civil war in Rwanda began in 1994. Shortly after the assassination of Hutu President Juvenal Habyarimana of Rwanda, Hutu extremist troops, militia and mobs launched a genocidal wave of murder and rape against members of the Tutsi minority and Hutu moderates.\textsuperscript{275} An estimated one million people were killed\textsuperscript{276}. This was seen as genocide,

\begin{itemize}
\item Special Court for Sierra Leone Statute Article 6 (2).
\item ICC Statute Article 27.
\item Statute of the international Criminal Tribunals for the Prosecution of Persons Responsible for Genocide and other serious violation of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizen. Responsible for Genocide other Violation Committed in the Territory of Neighboring States, between 1 January 1994 and 31 December 1994, art.6 (2).
\item See Supra note 105 at 413.
\item Global Security Organization, Rwanda Civil War.
\end{itemize}
and a threat to peace, the United Nations Security Council decided to create a tribunal. On November 8, 1994, the U.N. Security Council, again finding a threat to the peace, exercised its power under Chapter VII of the U.N. Charter by establishing another ad hoc tribunal to prosecute individuals responsible for genocide and other serious violations of international humanitarian law in the territory of Rwanda during 1994.\(^{277}\) Individuals would be held liable if he/she committed the following crimes: Article 2: Genocide; Article 3: Crimes against Humanity and Article 4: Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II 6. These crimes were in violation of the Statute of ICTY. Individuals were to be held criminally responsible and decisions were to be based on Articles 5 and 6 of the statutes of the Rwanda Tribunal. The tribunal prosecuted the Prime Minister of Rwanda, Jean Kambanda for genocide.\(^{278}\) Kambanda was convicted and sentenced to life in prison,\(^{279}\) while Jean-Paul Akayesu, who was a major in the military, was held criminal responsible for crimes against humanity, genocide and was indicted for genocide.\(^{280}\) Mr. Akayesu was prosecuted and sentenced to imprisonment for life.\(^{281}\)

To conclude, leadership seminars should be conducted for presidents and other leaders in the government to know their responsibility and accountability during their presidency. This seminar can be done during their meeting of head of state where all leaders gather such as the summit of millenium.

\(^{278}\) ICTR Statute Article 6 (2).
CHAPTER FOUR

4.0 THE CASE OF SLOBODAN MILOSEVIC

4.1 INTRODUCTION

This topic will briefly discuss the historical background of Yugoslavia. And will discuss more of Slobodan Milosevic and the role he played during the civil war in Yugoslavia. Milosevic was born on 20 August 1941.\textsuperscript{282} He was a President of Serbia and of Yugoslavia.\textsuperscript{283} He was the President of Serbia from 1989 to 1997. He came to power through a multi-party election. Serbia was one of the States within the Federal Republic of Yugoslavia. After the term of Milosevic came to an end, he was then elected the President of Federal Republic of Yugoslavia from 1997 to 2000.

On April 01, 2001, the government of Serbia arrested and imprisoned the former President Slobodan Milosevic. Milosevic's arrest came a few days after the people of Serbia commemorated the end of NATO's war on their country.\textsuperscript{284} He was arrested due to the allegations of misuse of power, corruption, money laundering and exporting billions of gold secretly in violation of the Serbian law.\textsuperscript{285}

\textsuperscript{282}Louis Sell, Slobodan Milosevic and The Destruction of Yugoslavia, (2002).
\textsuperscript{283}Available at http://en.wikipedia.org/wiki/Slobodan_Milo (last visited on December 12, 2007).
\textsuperscript{285}Indictment of Slobodan Milosevic by ICTY.
He was also charged with the killing of some prominent politicians in Serbia. Milosevic was held responsible for the acts committed while he was the president of Serbia and President of Federal Republic of Yugoslavia. Yugoslavia's new president, Vojislav Kostunica, insisted that Milosevic be tried at home, not in The Hague, and on charges of domestic corruption.286

On 28 June 2001, the anniversary of the 1389 battle at Kosovo Polje, he was extradited to The Hague to face the UN Criminal Tribunal for his role in the atrocities committed by Serbian forces and Yugoslavia during the Kosovo conflict.287 He was being prosecuted for the alleged international core crimes before the International Criminal Tribunal for Yugoslavia (ICTY).288 He was later indicted for the crimes of violation of grave breaches of the Geneva Conventions (Article 2); 289 war crime (violation of laws or customs of war (Article 3 of ICTY Statute);290 Genocide (Article 4 of the Statute of ICTY)291 and crimes against humanity (Article 5 of the ICTY Statute)292 committed in Kosovo, Bosnia-Herzegovina, Croatia and the Srebrenica massacre while he was the head of State of Serbia and Yugoslavia. Slobodan Milosevic was found dead in his cell at The Hague on March 11, 2006.293 He died before his Conviction. The death of Mr. Milosevic brought his trial to an end.

286 Online NewsHour, Trying Milosevic, (May 8, 2001).
288 See Prosecutor v. Slobodan Milosevic, Indictment of Milosevic as stated in Article 1 of the International Criminal Tribunal for Yugoslavia in The HAGUE.
289 ICTY Statute art. 2.
290 Id. at art. 3.
291 Id. at art. 4.
292 Id. at art. 5.
293 Milosevic Trial Public Archive.
4.2 Historical Background of Yugoslavia

4.2.1 The Ottoman Empire

The Ottoman Empire began in 13th Century. It came to an end in 20th Century. It was seen as the largest empire and lasted for a long period of time. It became even more popular in 1520 to 1566 under the leadership of Suleiman. The empire was sustained and inspired by Islamic institutions and Islam and it was considered to belong to Greek-Speaking and Roman Empire. As such, the Ottomans regarded themselves as the heirs to both Roman and Islamic traditions, and hence rulers of a “Universal Empire through this unification of cultures”. Ottoman Empire expanded to Hungary, the Balkans and Austria. The empire started its decline in the battle of Lepanto of 1571 where it was defeated. It declined further during the next centuries, and was effectively finished by the First World War and the Balkan Wars.

It was then followed by establishment of the Kingdom of Yugoslavia. The struggle of unification of Yugoslavia as one state started in the 17th century during the Ottoman Empire, and was regarded as a struggle with much bloodshed.

4.2.2 The Kingdom of Yugoslavia

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295 Id.
296 Available at http://www.bbc.co.uk/religion/religions/islam/history/ottomanempire_1.shtml (last visited on Dec. 13, 2007).
The Yugoslav kingdom bordered Italy and Austria to the northwest, Hungary and Romania to the north, Bulgaria to the east, Greece and Albanian to the south, and the Adriatic Sea to the west.

After the collapse of the Ottoman Empire, Yugoslavia was named the Kingdom of Yugoslavia at the end of the First World War, under the rule of King Alexander I.297 On 1 December 1918, the new kingdom was proclaimed by Alexander,298 and it was called the Kingdom of Yugoslavia for Croats, Serbs and Slovenes until April 17, 1941. At the time of the First World War, many high ranking politicians of South Slavic land and Habsburg Astro-Hungarian Empire fled to London. They formed a committee of Yugoslavs upon their arrival on behalf of Croats, Serbs and Slovenes. The aim was to unify the Kingdom of Serbia and Habsburg South Slav Land to a single state of Yugoslavia. The Kingdom of Serbia consisted of Serbia and Montenegro while Austria-Hungary consisted of Croats, Serbs, and Slovenes. The kingdom of Serbia and Montenegro which was independent by that time also became part of the Kingdom of Croats, Serbs and Slovenes. But King Alexander abolished the political parties in 1929 and named the country Yugoslavia. He also banned the new boundaries and its historical regions. King Alexander began arresting the prominent politicians and put other politicians under surveillance. Due to an assassination in the National Assembly and the chaotic situation in the country, King Alexander I suspended the

297 Serbia Info History of Serbia, The Kingdom of Yugoslavia, 1918-1941.
Constitution in 1929, changed the name of the state, from the Kingdom of the Serbs, Croats and Slovenes to the Kingdom of Yugoslavia.\textsuperscript{299}

But other European countries such as Germany, Italy, and the Soviet Union (under Stalin) opposed the policy of the King Alexander. Alexander was assassinated together with the Princes of Balkan in Marseilles during his visit to France in 1934. He was assassinated in a conspiracy of the Ustase coalition in Marseilles. He was succeeded by his son Pavle (Paul), who served as Prince-Regent.\textsuperscript{300}

A riot arose in Yugoslavia after the death of the King, it was when Prince Paul, signed a Tripartite Treaty with Nazi Germany in Vienna on March 25, 1941. The purpose of the Treaty was to keep Yugoslavia out of the war. But this treaty was opposed by the people of Yugoslavia and this weakened the popularity of the King. And it led to a coup d'etat against the King by the senior military officers of Yugoslavia. The King was deposed. After the coup d'etat Nazi Germany, under the leadership of Hitler together with Hungary, Italy and Bulgaria attacked Yugoslavia. On April 6, 1941, without declaring war, the fascist countries launched a surprise attack on Yugoslavia with 51 divisions (24 were German, 22 Italian and 5 Hungarian) with support from approximately 1,500 airplanes.\textsuperscript{301} The invading countries (Axis powers) occupied Yugoslavia and distributed the land among themselves. German forces took over Slovenia, Serbia, Bosnia and Herzegovina. While Hungary, Italy, and Bulgaria occupied the other parts of Yugoslavia. At this time concentration

\textsuperscript{299} His Majesty Alexander I. Also available at http://www.royalfamily.org/album/portraits/port6.htm (last visited on Dec. 6, 2008)

\textsuperscript{300} Indopedia, Kingdom of Yugoslavia.

\textsuperscript{301} Colonel Fabijan Trgo, Survey of the People's Liberation War.
camps were established for Communists, Serbs, Gypsies and Jews by Nazi Germany. It was alleged that women, men and children were held and executed in the concentration camps. The Jasenovac Memorial Area keeps a list of 69,842 names of Jasenovac victims: 39,580 Serbs, 14,599 Roma, 10,700 Jews, 3,462 Croats as well as people of some other ethnicities, with other lists showing a number of other victims. The Belgrade Museum of the Holocaust keeps a list of 80,022 names of the victims (mostly from Jasenovac): around 52,000 Serbs, 16,000 Jews, 12,000 Croats and nearly 10,000 Roma.

Women, children and men vanished in this concentration camp of Jasenovac under the supervision of Ustase. The majority of the victims were Serbs and that could be the reason for Milosevic’s revenge and for calling for the unification of the Great Serbs. This situation led to a formation of Yugoslavia’s Army which was a multi-ethnic movements against the King and Hitler’s rule. The multi-ethnic movement consisted mainly of Serbs under the leadership of Dragoljub Draza Mihailovic, who opted to join Yugoslavia’s National Liberation Army under the leadership of Josip Broz Tito. Tito’s Army was seen as a national Coalition. As a result of two Anti-fascist Councils held in 1942 and 1943 under the most difficult conditions, Tito provided the country with a system of provisional revolutionary government, the Committee for the National Liberation of Yugoslavia.

303 Ibid.
During the war, there was much resistance from the guerrillas of Yugoslavia under Tito toward the Nazi Germans. Hitler ordered that the rebellion be quelled "by the most rigorous methods". Pursuant to these instructions, Wilhelm Keitel ordered that for every German occupation soldier killed in Serbia, a hundred Serbian civilians would be executed, while fifty Serbian civilians would be killed for every wounded German soldier. During the fight of resistance the Serbs in Croatia and Bosnia suffered high loses including the minorities of Roma and Jews at the hand of Nazi Germany.

In 1944, the guerrillas under the leadership of Mr. Tito, managed to drive away the Axis forces from Yugoslavia. In 1945, the forces of Mr. Tito were on the offensive and drove all the Axis forces from the entirety of Yugoslavia. Tito was supported by the resistance movement in Yugoslavia. The Western countries then tried to bring peace between Mr. Tito, the Partisan, the King and the Kingdom of Croatia and an agreement was signed in 1944. Tito was respected and seen the national leader of by the population of Yugoslavia. After elections in November 1945, Tito became the Prime Minister and Minister of Foreign Affairs. This resulted in the amendment in the Constitution of Yugoslavia in which changes of the formation of Yugoslavia was adopted. The 1945 constitution of Yugoslavia has provided a limited formal autonomy to Kosovo, due to ethnic conflict which had occurred in Kosovo since the First Balkan War, the First World War, and the Second World War. The communist government under president, Tito, introduced manifestation

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305 Carl Savich, The Kragujevac Massacre, Serbianna.
306 Ibid.
of the nationalist for the entire Yugoslavia which prohibited the nationality dominant. The manifestation stated that no one should oppress another person based on nationality.

But there was an underground of Albanians trying to unite together, who later formed a Revolutionary Movement led by Adem Dumaci, for the reason of completely separating Kosovo from the Federal Republic of Yugoslavia. Adem Dumaci and other Albanians decided to establish a political party for the Kosovo Liberation Army. But Tito's secret police cracked down hard on the nationalists. Dumaci and his co-founder of the KLA were arrested and imprisoned by the government of Yugoslavia in 1964. This political tension between Albanians and the government of Yugoslavia in Kosovo led to the arrest of more Kosovo-Albanians. These Kosovo-Albanians were prosecuted and convicted of Subversion and Espionage, as the nationalists were seen as the cause of conflict in Yugoslavia. The country was formed in 1945 from the remains of the pre-war Kingdom of Yugoslavia under the name of the Democratic Federal Yugoslavia. In 1946 it changed its name to Federal People's Republic of Yugoslavia and again in 1963 to Socialist Federal Republic of Yugoslavia. The Federal People's Republic of Yugoslavia consisted of the Republic of Croatia, Macedonia, Slovenia, Serbia, Montenegro, Bosnia and Herzegovina, and including the provinces of Vojvodina and Kosovo. The name of the Federal People's Republic of Yugoslavia was then changed to the Socialist Federal Republic of Yugoslavia on 7 April 1963. Tito was then appointed the president of the Socialist Federal Republic of Yugoslavia for life. All Republics and Provinces of the Federal Republic of Yugoslavia had their own President, Prime Minister, Supreme

\[308\] Latest news on socialist federal republic of yugoslavia.

\[309\] Id.
Court and their own constitution. There were a lot of great difficult changes of politics and economics in Yugoslavia in 1968. The economic changes brought a big gap between the poor in the south and rich in the north. People, including students demonstrated against the economic reforms in Belgrade. This demonstrations spread also to Kosovo. But the Security forces of Yugoslavia brought the demonstrations under control. Some demonstrators, including the students, called for Albanians to have their language recognized and also to be represented by their own people, Albanian Muslim in Serbia and in the Federal government of Yugoslavia.

This demand was agreed to and permitted by the President of Yugoslavia, Tito. The Federal government of Yugoslavia reached an agreement that the University of Pristina which was a distant branch of Belgrade University was made an independent University. It was also agreed that the Kosovo Albanians provide all the needed materials for education in Kosovo. The education system for Albanians in Kosovo was deficient in Albanian language materials in all of Yugoslavia. And this led to the political improvement in Kosovo.

In 1970 Yugoslavia was in a serious economic crisis when it borrowed a lot of money from the western countries, for the reasons of funding its economic growth through export. The exports were blocked by the western countries and Yugoslavia suffered a high debt problem. This led to a bankruptcy of many national and private companies. The Yugoslav government then accepted the International Monitory Fund’s (IMF) conditions which shifted the burden of the crisis onto the Yugoslav working class. This led to political instability in the entire Yugoslavia.

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310Ethnic Tensions and Economic Crisis, Extracted from the Wikipedia article on Yugoslavia in 2006.
Students demonstrated demanding the autonomy of Croatia, while Kosovar Albanians demanded that Kosovo be annexed to Albania. The constitution of the Federal Republic of Yugoslavia was again changed by the Federal government in 1974 to accommodate the autonomy and to decentralize Kosovo, Vojvodina, Serbia, Croatia and Bosnia-Herzegovina and for them to have political rights from the central government of Yugoslavia. Kosovo, Vojvodina and Serbia had been given a green light to manage and control their judicial, police force, national bank and education system. These provinces were also given their own provincial assembly, and were represented in the Assembly, the Constitutional Court, and the Presidency of the Socialist Federal Republic of Yugoslavia (SFRY). The government still had power over the autonomous provinces but it delegated the power from the central government to those believed to be in the communist party under the reign of Tito.

There was a minority of Serbs who lived in Vojvodina, Kosovo, Bosnia-Herzegovina and Croatia while the majority was Albanian Muslims. According to the survey or census which was conducted in Kosovo in 1981, it recorded that Kosovo had a population of 1,585,000. Of that total, 1,227,000 or 77% were Kosovo Albanians while 210,000 or 13% were Serbs. But the Kosovo Albanians rejected the census of 1981. Thus, the census of 1991 is the only one recognized and recorded with the result of an estimated population between 1,800,000 and 2,100,000, which stated that the Serbs are 5-10% while the Albanian are 85-95%. The minority Serbs in Kosovo voiced disapproval of autonomy fearing deprival of their national rights, and isolation without protection

311 Mollie Dickenson, Wag the Dog in Reverse, February 24, 2008 (Originally published May 4, 1999)
312 Ibid.
leading to discrimination by the majority Kosovo Albanian government. The Albanians also made a counter-claim by calling for the economic growth and the self-determination for Kosovo. It was at this stage that the Kosovo Albanians joined together and demonstrated, demanding independence for Kosovo. The Albanian Muslims in Kosovo had continued making demonstrations since 1981. But the police and military forces of the Socialist Federal Republic of Yugoslavia (SFRY) put the demonstrations to an end. This was seen as the beginning of the conflict in Yugoslavia. Unfortunately, Mr. Tito died in May 4, 1980. Tito's death from cancer was a profound shock and provoked mourning throughout Yugoslavia. Many feared that without his presence unity could not be maintained. Tito was replaced by Stambolic as head of State of Serbia. Stambolic had assisted Slobodan Milosevic to rise high in politics. The death of Mr. Tito was followed by political uprising, the worst nationalism and economic crisis in all of Yugoslavia. He was replaced by Stambolic, who helped Milosevic rise to power.

4.3 Slobodan Milosevic

Slobodan Milosevic was born on 20 August 1941, in the central Serbian town of Pozarevac, about seventy five miles south of Belgrade, where his family had fled at the beginning of the Second World War. Which is today known as Serbia. Both the parents of Mr. Milosevic

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314 Ibid.

committed suicide. Slobodan Milosevic served as the President of Serbia from 1989 to 1997 and then as President of the Federal Republic of Yugoslavia from 1997 to 2000.

A longtime Communist, having joined the Communist Party when he was 18, Milosevic became a member of Communist Party of Yugoslavia in 1959, which was later changed to the League of Communist of Yugoslavia (LCY) in 1963. He became increasingly politically active while studying for a law degree at the University of Belgrade, earning the nickname 'Little Lenin' during his time as the head of the ideology section of the Communist Party branch at the university.316 During his studies Mr. Milosevic came to know Mr. Stambolic through Eva Stambolic a niece of Mr. Stambolic. He graduated from the University of Belgrade with a degree in law and began a career in business administration, becoming head of Technogas, the state-owned gas company, in 1968.317 This led to a successful career for Mr. Milosevic in business. In 1978 he was elected to head Beobanka which was known as the United Bank of Belgrade which was one of the biggest Banks in the Socialist Federal Republic of Yugoslavia. Milosevic was the president of the Beobanka from 1978 to 1983. During his presidency of the Bank, he was able to learn both English and French through his trips to New York and Paris. These languages were important in his political achievement. Mr. Milosevic became more active politically and fully involved in politics in 1984. He was elected as head of the local Belgrade Communist Party. In the same year 1984, he was elected chairman of the City Committee of the League of Communists of Belgrade, replacing Stambolic. Milosevic began advocating Serbian nationalism which caused

317 Ibid.
him to be regarded as stubborn and became a concern to the Republic of Yugoslavia. Milosevic came to be sympathetic with the Serb minority in Kosovo. Mr. Stambolic was a leader of the League of Communist of Serbia (LCS). When Mr. Stambolic was elected as president of Serbia, he campaigned for Milosevic to replace him as a leader of LCS party. But the senior members of the (LCS) party did not agree with the opinion that Mr. Stambolic be replaced by Mr. Milosevic. Stambolic continued to advocate Milosevic to take over the presidency of the LCS party, causing the dismay of the senior party members who were against his action. Eventually, Milosevic was appointed the head of LCS. Publicly, Ivan Stambolic was the strongest man in Serbia, Milosevic was at that moment nothing more than Stambolic's favorite protégé.318 After the appointment of Mr. Milosevic as the leader of LCS, he changed the constitution, and behind closed doors also selected his supporters including those in the media to fill the key position within the LCS. Due to his ideology of Serb nationalism, Milosevic was now in the position to exercise his power in the interest of all Serbs within and outside of Serbia. He demanded the restoration of Vojvodina and Kosovo to be under control of the Serbian state. With the nationalist rallies throughout Serbia and the press caught up in the nationalistic hysteria, the only value accepted was the strength of Serb nationalist sentiment.319

In September 1987, Milosevic and his supporters gained control of the Central Committee of the League of the Communist of Serbia. Mr. Milosevic was elected as a Chairman of the Presidium of Central Committee of the League of Communist of Serbia. In 1988, he was re-elected

318 Stanko Cerovic, Slobodan Milosevic, President of Serbia, FAMA International, Paris (Dossier 1997).
319 Laura Silber and Allan Little, Yugoslavia, Death of Nation, (3rd ed. 1997).
to the same position as a chairman of the Presidium of the Central Committee of the League of Communist of Serbia. This helped Mr. Milosevic to become stronger in politics and he gained more support, including that of Mr. Stambolic.

In 1987, Mr. Milosevic was sent to Polje a small town in Kosovo by Stambolic to listen to the grievances of the Serb minorities in Kosovo. While he was addressing minority Serb leadership inside the local government building in Kosovo, there was a riot outside between the Serb people and the Kosovo Police. The Kosovo Police were composed of the Kosovo-Albanians. It was alleged that the Kosovo Serbs started stoning the Kosovo-Albanians and the police came between them to stop the riots. It was reported that the Police reacted with excessive force and beat the minority Serbs. When Mr. Milosevic came to be aware of the chaos outside, he intervened to calm the situation. The Serbs complained to Milosevic of being beaten by the Kosovo Police. Mr. Milosevic responded strongly to the crowd of Serbs, siding with the Serbs. Milosevic strode out and shouted to the crowd: "No one has the right to beat you!" Mr. Stambolic, who was the President of Serbia at that time and the one who sent Milosevic to Kosovo, had considered the speech of Mr. Milosevic as destructive to the Federal Republic of Yugoslavia. This nationalist speech given by Milosevic to the Serb population in Kosovo was not in the line of the League of Communists of Serbia (LCS) Party policy and the government of Yugoslavia. The nationalist expression of Milosevic was also prohibited by the Socialist Federal Republic of Yugoslavia.

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320 Id.
322 Ibid.
(SFRY), which stated that no ethnic group should take any action against another. This prohibited policy of ethnic activity had been in place since the foundation of SFRY 1945 under the leadership of Marshal Josip Broz Tito after the Second World War. The nationalist speech of Mr. Milosevic attracted more supporters especially from the Serb communities throughout the Serbian republic and the all of Yugoslavia. Mr. Milosevic continued making rallies to send his aggressive nationalist agenda in favor of Serbs across the republics of Yugoslavia. In his speech Mr. Milosevic stated “At home and abroad, Serbia’s enemies are massing against us.323 We say to them ‘We are not afraid.’324 This event of chaos between the Serbs and the Kosovo-Albanians was broadcast that evening by loyalists of Mr. Milosevic, but the throwing of stones by the minority Serbs at the Kosovo-Albanians was not included during the Television reporting. The supporters of Mr. Milosevic made many public demonstrations in supporting Mr. Milosevic and his policies. These demonstrations had been going on in Montenegro and Vojvodine since July 1988 until March 1989. The demonstrations led to the removal of the entire leadership of Vojvodina in October 6, 1988 by Mr. Milosevic.

The leadership of Montenegro resigned in January 10, 1989. At the same time, the leader of the League of Communists of Kosovo, Mr. Azem Vllasi was arrested for organizing a demonstration of the Kosovo-Albanians including the miners union against the government. The leaders in Vojvodina, and Montenegro were deposed and replaced by others in support of Mr.

323 See supra note 310.
324 Ibid.
Milosevic. If, as one commentator put it, “the hatred that astounded the world in Yugoslavia was engineered, not innate,” it was Milosevic who was the chief engineered.\textsuperscript{326}

The media coverage had strengthened the popularity of Mr. Milosevic in politics. He was regarded as a powerful nationalist politician who was fighting for the rights of the Serb population in Yugoslavia. But his political speeches were regarded as a threat to the Federal Republic of Yugoslavia. Milosevic had been concentrating his political speeches on the problem of Serbs, siding with the Serbs in Kosovo and other Serbs in Yugoslavia. Mr. Milosevic demanded that Kosovo should be ruled by the republic of Serbia. The call of Mr. Milosevic was supported by large numbers of people and his followers made demonstrations and rallies advocating that Kosovo fall under Serbian rule. This led to the dismissal of the Kosovo leaders. In 1988, Mr. Milosevic made a decision to discharge all high ranking Kosovo Albanian political figures in Kosovo. They were dismissed as provincial leaders of Kosovo and Milosevic replaced them with his loyal supporters despite the demonstration of Kosovo Albanians against the dismissal of their leaders. Milosevic was warned and advised by Stambolic about the new policy in Kosovo. But Milosevic instead of listening to his ally Stambolic, went ahead with the removal of Kosovo Albanian leaders in Kosovo and broadcast it alive on the State owned Television in Serbia.

Dragisa Pavlovic, a Stambolic ally and Milosevic’s fairly liberal successor as the head of the Belgrade Committee of the Party, opposed Milosevic’s policies towards Kosovo Serbs.\textsuperscript{327}

\textsuperscript{325}Paul R. Williams and Michael P. Scharf, Peace and Justice, War Crimes and Accountability in the Former Yugoslavia (2002).
\textsuperscript{326}Id.
\textsuperscript{327}Slobodan Milosevic, Political Biography.
Contrary to advice from Stambolic, Milosevic denounced Pavlovic as being soft on Albanian radicals.\textsuperscript{328}

After the changing of the Party constitution by Mr. Milosevic, Mr. Stambolic was blamed for the mistake, as he had strongly supported Mr. Milosevic to be the leader of the LCS Party. However Mr. Stambolic also regretted his action of siding with Mr. Milosevic during the election campaign. He also regretted supporting Mr. Milosevic to take over the presidency of the LCS Party. Mr. Stambolic who was the president of Serbia at that time, concluded that the nationalist speech of Milosevic in Kosovo brought the destruction of Yugoslavia. Milosevic was the first communist leader seen to support and side with one ethnic group in public in the Federal Republic of Yugoslavia. Milosevic then decided to remove all the supporters of Mr. Stambolic and replace them with his own supporters who were loyal to him. On the 8th Session of the League of Communists of Serbia, Mr. Stambolic was overthrown by Mr. Milosevic. Due to the action and changes made by Mr. Milosevic, this led to resignation of Mr. Stambolic as president of Serbia, due to embarrassment and pressure from the supporters of Mr. Milosevic. In February 1988, Stambolic’s resignation was formalized, allowing Milosevic to take his place as President.\textsuperscript{329} Twelve years later, in the summer of 2000, Stambolic was kidnapped:\textsuperscript{330} his body was found in 2003 and Milosevic was charged with ordering his murder.\textsuperscript{331}

\textsuperscript{328} Ibid.
\textsuperscript{329} Ibid.
\textsuperscript{330} Ibid.
\textsuperscript{331} Ibid.
Earlier in 1989, the Assembly of Serbia decided to propose a change in the constitution of Serbia, where Mr. Milosevic opposed the autonomy of Kosovo. The power of Kosovo leadership was reduced and limited. It was agreed that Kosovo should fall under the control of Serbian rule. The choice of the language, education, economic policy, and the police in Kosovo should be from Serbian rule. The Kosovo-Albanians including the miners protested against the change of the constitution. This led to heightened political tension between Serbs and Albanians in Kosovo. On 3 March 1989, it was declared that the situation in the province was deteriorating and a threat to the constitution, integrity, and sovereignty of Yugoslavia. This resulted in the federal government of Yugoslavia putting a special measure in place for the national security in Kosovo. At this stage, the economic crises worsened in the Federal Republic of Yugoslavia. The Federal Cabinet called for the autonomy of the Republics including the provinces, as the Federal government of Yugoslavia could no longer cope with the economic and political crisis. This led to the resignation of the whole Federal Cabinet in October 1988. The LCY made a decision in January 1989 to call for a multi-party election for entire Yugoslavia and to bring the political monopoly to an end. The LCY had given up its Federal political power and many political parties were formed in Yugoslavia.

Milosevic had shown little interest in the situation in Kosovo, or for that matter, in move to change the 1974 constitution. He then realized that, by seizing this agenda, he could become the Serbian leader.

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333 Id.
4.4 Mr. Milosevic the President of Serbia and of Yugoslavia

In May 8, 1989, a multi-party election was held in Serbia. Milosevic was elected the president of Serbia on 8 May 1989, remaining in the position until 1997. And his presidency became formal in December 1989. He immediately acted to oppose the movement for autonomy and to subvert the multi party system. Mr. Milosevic also decided to change the constitution of Serbia to terminate the autonomy of Kosovo and Vojvodina Provinces and re-annexed them into the republic of Serbia. The leadership style of Mr. Milosevic was condemned by both national and international communities such as European community, foreign governments, International human rights and transnational bodies. The action of changing the constitution to revoke the autonomy of Kosovo and Vojvodina, brought concerns to the republics of Yugoslavia. The 14th Congress of the League of communist of Yugoslavia was held in 1990. At the 14th Congress of the League of Communists of Yugoslavia in January 1990, Milošević’s Serbian delegation campaigned for major constitutional changes based on the democratic principle of "one man - one vote". The delegation from Croatia and Slovenia opposed the constitutional amendment very seriously, as they considered that their own autonomy could also be affected. This led to disunity and the end of the League of communist of Yugoslavia party. The Yugoslav Communist Party collapsed following a party congress in Belgrade in January 1990. The congress voted for an end to the one-party

335 Ibid.
337 BBC News, Milosevic’s Yugoslavia, Communism Crumbles.

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system, but Milosevic refused to agree to the reforms. As a result, the delegations of Croatia and Slovenia protested the refusal of Milosevic and decided to walk out of the Congress. This damaged the communist party. The name of the communist party was changed to a Socialist Party of Serbia (SPS) under the leadership of Mr. Slobodan Milosevic in 1990. This new SPS party adopted the Serbian constitution, which gave the power for the President to be elected directly. The change of the constitution was followed by the multi-party election in Serbia. On the 9 and 26 December 1990, the multi-party presidential election was held in Serbia. The Socialist Party of Serbia won 80.5% of the vote under the leadership of Mr. Milosevic, and he was re-elected head of state of Serbia. The outcome of this election was rejected by the Kosovo Albanians, as they considered the election to be unfair and undemocratic. During this time, the election system and the media were under control of Mr. Milosevic and there were mixed feelings as to whether Mr. Milosevic really won the election fairly. Despite the election doubts, Milosevic continued to gain political power at a time when communist governments in Eastern Europe were falling.

The one party system angered the republics in Yugoslavia. This led the republics of Slovenia and Croatia to elect its nationalist government. In 1990, Slovenians elected a nationalist government under Milan Kučan, and the Croatians did the same with Franjo Tudman. Communist single-party rule in Bosnia and Herzegovina was replaced by an unstable coalition of three ethnically-based parties.

338 Ibid.
339 Id.
During this time the political situation in Kosovo became tenser after the revocation of autonomy of Kosovo by the leadership of Mr. Milosevic. From 1990 to 1991, the government of Serbia had also revoked the power of the Kosovo National Courts, and the Judges were dismissed. At the same time professors, doctors, police, civil servants and the teachers were also dismissed. Judges removed from their posts for political reasons during the Milosevic period would be promptly reinstated by the Serbian parliament to be elected in the December 23 elections. 340 During 1991, the political tension spread to other republics in Yugoslavia. This resulted in the beginning of the civil war in the republic of Croatia, republic of Slovenia, the republic of Bosnia and Herzegovina and Kosovo. This conflict brought independence to some republics within the Federal Republic of Yugoslavia. The republic of Slovenia and Croatia seceded and announced their independence from the Federal Republic of Yugoslavia on 25 June 1991, which was followed by the eruption of war.

A presidential election of Yugoslavia was conducted in 1997, and Mr. Milosevic was elected the president of the Federal Republic of Yugoslavia the same year. He became president of the Federal Republic of Yugoslavia, including Serbia and Montenegro, in 1997. 341 Since Milosevic had been an ally of the president of Serbia, he could still use his influence in the Government of Serbia through his connection to Milutinovic to fight for the Serb population.

During this time the Kosovans were angered and formed a rebellion organization called the Kosovo Liberation Army, because Milosevic had annexed Kosovo to Serbia and refused the

341 Info please, Slobodan Milosevic. Serbian Political leader.
independence of Kosovo. The KLA attacked the forces of Serbia and Yugoslavia. Serbian response was brutal, by mid-1999 several thousand of Kosovo-Albanians were killed by Serbs forces and several thousand had died in escalating retaliations and 150,000 Kosovo Albanians were reported to have been made homeless.342

The Rambouillet conference was held in France to discuss the peace process, the autonomy of Kosovo and the cease fire in Kosovo, but the negotiation failed. After the conference collapsed, NATO threatened Milosevic with air strikes to force him to withdraw his forces from Kosovo. Milosevic did not comply with the threat. As a result, NATO started air strikes against the targets in Yugoslavia and Serbia on the 24 March 1999. The Russian and Finnish governments advised Mr. Milosevic to step down as the President. He agreed to step down as he realized that NATO forces were serious and strong. Mr. Milosevic also agreed for international forces including NATO forces to come into Kosovo under the leadership of the United Nations. In June, Milosevic accepted a peace framework incorporating these demands, eventually leading to an end to the bombing campaign. U.S. and allied officials proclaimed victory for the operation and moved quickly toward a peacekeeping and peace implementation phase in Kosovo.343

A presidential election for Yugoslavia was held on September 2000. Milosevic did not win the presidential election and refused to accept the result, but he was forced to accept the result by his army commanders and demonstrators. On March 2001, he was arrested at his house and was held in a Belgrade jail until he was extradited to The Hague on June 28, 2001 for alleged crimes

342 See Supra note 327.
against humanity, war crimes and genocide. During his trial, Milosevic was found dead in his cell at The Hague on March 11, 2006. 344

4.5 The Civil War in Yugoslavia

4.5.1 Slovenia war

The Slovene electorate voted for a sovereign, independent state in the December 1990 referendum. 345 The people of Slovenia voted 88% in favor of the referendum. Shortly after the election in Slovenia, the Federal Republic of Yugoslavia announced that the doctrine of general people’s defense would be replaced by the federal government. All the republics would be defended by the federal government in Belgrade. The republic of Slovenia refused to comply with the decision of the headquarters in Belgrade. On 25 June 1991, a constitutional law on independence was adopted by the Slovenian Assembly. 346 Slovenia declared its independence on June 25, 1991. Despite the opposition to the independence, the central government in Belgrade was in doubt of what to do next. The Slovenians expected the federal force to act on the day of the Slovenian independence. Slovenia changed its constitution that the defense of Slovenia would be under the control of the commander of Slovenia. The central government becomes aware of the

344 Slobodan Milosevic died in prison while awaiting the verdict in the Hague in the Netherlands in 2006.
346 Ibid.
plan of Slovenia. Federal troops moved in, but after some fighting, the federal troops withdrew by July 1991.\textsuperscript{347}

Despite numerous negotiations, Slovenia sought assistance to break away from Yugoslavia, but the western countries refused to assist, as they preferred to engage in negotiation with the Federal Republic of Yugoslavia. On the diplomatic front, neither the European Community nor the United States were willing to recognize the independence of Slovenia and strongly advocated the continuation of a unified Yugoslavia.\textsuperscript{348}

The JNA Chief of Staff, Colonel-General Blagoje Ad, advocated a large-scale military operation to remove the Slovenian government and bring "healthy forces" to power in the republic.\textsuperscript{349} The aim of JNA in Slovenia was to have the federal army force to control the defense of Slovenia. The minister of the defense, colonel- General of Serbia had advised his force to take caution in convincing the government of Slovenia to withdraw its declaration of independence. After the discussion of the situation of Slovenia, the Army of Yugoslavia left their army camp in Rijeka in Croatia and entered Slovenia on 26 June 1991. The Slovenian airports were closed and the Ljubljana airport came under JNA air strikes.\textsuperscript{350} On 27 June 1991 the control of the airport and other facilities of Slovenia came under JNA control this was followed by strong demonstration and negative reaction from national Slovenes.

\textsuperscript{348} Ljubljana Ten-Day war in Slovenia.
\textsuperscript{349} Id.
\textsuperscript{350} John Masters, Troubles in Yugoslavia.
The Federal forces dropped warning messages in Slovenia that "We invite you to peace and cooperation!" and "All resistance will be crushed." The President of Slovenia was informed by his subordinates and resisted the warning. The war started and the European community engaged in mediation between the Federal Government of Yugoslavia and the republic of Slovenia to bring the war to an end. The negotiation of a cease fire took place in Zagreb from 28 June to 29 June 1991 and the agreement of cease fire was named the Brioni Accord signed in the Brioni Islands. The victory in the war for Slovenia was a military one. Slovenia's independence was defended with arms by the Slovenian army and police forces, who ensured the success of the political and international diplomacy needed to conclude the war.

It was in the favor of Slovenia as its independence was recognized including its armed forces and police force. It was also agreed that all the Yugoslavia forces should withdraw from Slovenia, which was completed on 26 October 1991. With a cease fire now in force, the two sides disengaged. The Slovenian forces controlled all the border crossings of the country and JNA forces peacefully withdrew from the barracks and crossed the border to Croatia. The ten days war in Slovenia had low casualties. The federal government forces suffered wounded of 146 while the death toll was estimated at 44. On the side of Slovenia 182 were wounded while 18 were left dead. The idea of preserving a unitary Yugoslavia had to be abandoned after the defeat in Slovenia and was replaced by Milošević's conception of "all Serbs in one state" (widely characterized as

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31 Id.  
33 Ibid.  

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“Greater Serbia” The armed forces of Yugoslavia performed poorly in Slovenia and later in Croatia, discrediting its leadership which led to the resignation of the minister of defense Mr. Kadijevic in January 1992 while Adzic ended up in medical retirement. The JNA which was the unitary armed force of Yugoslavia was abandoned after its defeat in Slovenia and Mr. Milosevic took over the reign later. Milosevic had the ideology that all Serbs should be in one state, as a Greater Serbia. The independence of Slovenia was recognized by the European Community on 15 January 1992. It became a member of the United Nations on 22 May 1992 and joined the European Union on 01 May 2004. Slovenia was stable after its independence among those republics that broke away from Yugoslavia. The Slovenian war and the breakaway from Yugoslavia had weakened the JNA or armed forces and the political situation in Yugoslavia. After the break away of Slovenia and Croatia from the Federal Republic of Yugoslavia, Yugoslavia had been shaken and lost some of its population. Croatia had not engaged in the war but declared its independence on the same day as Slovenia on 25 June 1991. Slovenia did not have a good relationship with Croatia since the JNA launched its offensive on Slovenia from Croatia.

4.5.2 Croatia War


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354 See supra note 339.
355 John Masters, Trouble in Yugoslavia.
instability within the Federal Republic of Yugoslavia, especially in Croatia. As a result, the war broke out and spread all over Yugoslavia and most of the Republics were affected as the non-Serbs had been against the call of the Greater Serbs. The non-Serbs became anti-Serbs. The Croatia war was a result of the rise of the Serb nationalism which led to the break of Croatia from the Federal Republic of Yugoslavia. Milosevic went further to call for a one party system under the Federal Republic of Yugoslavia. Milosevic also called for the termination of the autonomy of Kosovo and Vojvodina. This angered the Croatians that their autonomy maybe also affected. He took the Yugoslavia People’s Army (JNA) under Serb rule including the Army commanders in the region. The new army was dominant throughout the Federal Republic of Yugoslavia. The change enabled the Serbs to control and be ready for any future warfare facing the Federal Republic of Yugoslavia. Milosevic’s rhetoric favored the continued unity of all Serbs in a single state. As the Greater Serbs grew, Croatia demanded autonomy and its independence from the federal government of Yugoslavia. But it was rejected by the Federal Government of Yugoslavia. On May 30, 1990 the authority of Croatia changed its constitution affecting economic, political and social matters. Franjo Tudjman, president of the CDU waved the old Croatian flag, changed names of streets, gave unbelievable interviews to the press, fired a few Serbs from police and media, and did all sorts of things Milosevic and the army expected him to do.\footnote{Ivo Skoric, A Story about the War in Croatia, Feb. 19, 2008 (2001) http://balkansnet.org/yugoslavery.html (last visited on Jan. 19, 2008).} Milosevic sent agents to regions in Croatia that had a Serbian population to prop up a rebellion.\footnote{Ibid.}
The Serbs in Croatia were considered a national minority, and as a result, many Serbs lost their jobs in Croatia. The change was rejected by the Serb politicians in Croatia, as the change was seen as a threat to the Serbs. The Croatian Serbs held a referendum in 1990 demanding autonomy of Krajina in Croatia. The authority of Croatia opposed the referendum and attempted to stop it. The Croatian government deployed its police forces to the Serb populated area and seized the weapons of the Croatian Serbs but the road was blocked by the Serbs. On September 30, 1990 the Croatian Serbs declared autonomy from Croatia. This resulted in a war between Croatian Serbs and the government of Croatia. Serbian Croatians were expelled from Krajina by Croatian forces. The Croatian Serbs demanded the secession of Krajina from the Croatian republic in 1991. The authority of Croatia regarded the secession as a rebellion. This was the beginning of the war of Independence in Croatia. The war was now between the government of Croatia and Serb Croatians. The war began in the area where the Serb minority lived and they were assisted by the local Territorial defense forces and the JNA under Milosevic against the Croatian forces. During the war, the Croatian forces who were serving in JNA deserted. During the war a battle took place in Vukova. Some Croatians living in Vukova fled while others sought shelter within Croatia. It was estimated that 220,000 Croatian and 300,000 Serbs Croatians had been displaced internally during this war. The civilians who became refugees were estimated at 550,000 on the Croatian side. On November 18, 1991, there was a Vukovar massacre and the survivors were transported to prison camps, and the majority was taken to Sremska Mitrovica prison camp. The town of Vukovar was

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The Serb Croatian war with the government of Croatia was a result of the Nationalism call for Serbs by Milosevic.
totally destroyed and the survivors surrendered to the Croatian forces. The surrender was important to avoid the devastation of Dubrovnik and other cities. On the other hand the Croatian forces fought successfully and recaptured its 300 km. This fight left 10,000 people dead, while thousands fled and thousands of homes were destroyed. The cease fire for this war was signed by the foreign diplomatic mediators on January 1992, but the agreement was broken. The United Nations sent United Nations Protection forces to maintain peace and agreement. In January 1992, the United Nations was able to negotiate a truce between the two sides and sent in a peacekeeping force, UNPROFOR. This followed the recognition of Croatia by the European Community on 15thJanuary 1992. The Croatia government became a member of the United Nations on the May 22, 1992, on condition that Croatia amends its constitution to protect minority group and respect human rights.

The Federal forces of Yugoslavia withdrew from Croatia as part of the peace Agreement. As tensions continued to smolder in Croatia in mid-1992, an all-out war broke out in neighboring Bosnia between the republic's ethnic Serbs, Muslims and Croats. The Yugoslavian Army retreated into Bosnia and Herzegovina. Due to the successful battle of Croatia, Krajina was reincorporated into Croatia in 1998.

4.5.3 Bosnia and Herzegovina war

360Ibid.
The Bosnian war was also called the Bosnia and Herzegovina war. The war was fought between March 1992 and November 1995. Beginning several months later than the fighting in the republics of Slovenia and Croatia, the Bosnian civil war was the most brutal chapter in the breakup of Yugoslavia. The Republic of Bosnia and Herzegovina held the first multi-party elections in November 1990. And the three parties won the election and decided to share the power by forming a coalition regime. The three ethnic parties appointed a Bosnian to be the President of the Socialist Republic of Bosnia and Herzegovina, while a Bosnia Serb was the President of Parliament and a Croat was Prime Minister. The Serb Democratic Party and other members of Parliament from other ethnic Parties withdrew from the Coalition Parliament. And on October 24, 1992, they created the Assembly of the Serb People of Bosnia and Herzegovina, which was transformed to the Serbian Republic of Bosnia and Herzegovina. This war had caused Bosnia and Herzegovina to break away from Yugoslavia due to the constitution change of Serbia under the leadership of Milosevic. Bosnia has the most complex mix of religious traditions among the former Yugoslav republics: 44% Bosniaks (Muslims), 31% Bosnian Serb (Eastern Orthodox), and 17% Bosnian Croat (Roman Catholics). Each ethnic group had its political party based on their ethnicity: Croatian Democratic Union, Serbia Democratic Party and Bosniak for the Party of Democratic Action. The Croatian government shared the anti - Greater Serb or nationalist ideology with the Croats in Bosnia and Herzegovina. Both controlled the party, including organizing the Party of the Croat in Bosnia and Herzegovina. This followed the establishment of the Croatian Community of Herzeg-

362 History of the War in Bosnia (May 1996).
Bosnia which had its own separate economy, culture, politics and territory within the republic of Bosnia and Herzegovina. The Serbian government wanted to have the entire land of Bosnia and Herzegovina, while the Croatia government wanted to rule part of Bosnia and Herzegovina. The President of Croatia, Tudjman had a secret meeting with the President of Serbia, Slobodan Milosevic on March 1991 regarding the issue of distribution of Bosnia and Herzegovina. The meeting was held in Karadordevo, Vojvdina a province in Serbia and reached an agreement termed the Karadordevo Agreement. Both parties agreed to divide Bosnia and Herzegovina between the two countries. The Muslims were to be thrown out. The agreement was abandoned when Milosevic double-crossed Tudjman by supporting the ethnic cleansing of Croats by Serb forces from Eastern Slavonia and the Republic of Serbian Krajina. Before Milosevic invaded, Tudjman had schemed with him to divide Bosnia between them and throw out the Muslims. But after Milosevic double-crossed him, Tudjman brought Croatia into the Bosnian war on the side of the Muslims. This followed the eruption of the war in Bosnia. The Croatian government sided with the Croats while the Serbian Republic assisted the Serbs in Bosnia and Herzegovina. In 1994 and 1995 Bosnian Serbs massacred residents in Sarajevo, Srebenica, and other cities. The war was regarded as ethnic cleansing or genocide caused by the political leadership which resulted in then formation of an ethnic Republic of Srpska and Herzeg- Bosnia. The conflict included "ethnic cleansing" of Muslims in Bosnia by Serb military and police. This genocide was characterized by

363 Id.
concentration camps, mass murders (especially of men), and a Serb policy of raping Muslim women.\textsuperscript{365} The war broke out during the rule of Milosevic.

4.5.4 Kosovo war

Since Milosevic has been an ally of the President of Serbia, Milosevic could still use his influence in the Government of Serbia through his connection to Milutinovic to fight for the Serbian population. At this time the Kosovans were angered and formed a rebel organization called the Kosovo Liberation Army, when Milosevic annexed Kosovo to Serbia and refused the independence of Kosovo.

The KLA attacked the forces of Serbia and Yugoslavia. Serbian response was brutal, by mid-1999 several thousand Kosovo-Albanians were killed by Serb forces and several thousand died in escalating retaliations and Kosovo Albanians were reported to have been made homeless.\textsuperscript{366} In the meantime the war between the forces of Serbia and Yugoslavia against the KLA continued in Kosovo. And the war was very intense. A lot of Kosovo Albanians were killed and many were wounded. The forces of Serbia and Yugoslavia were campaigning to target and destroy the villages and towns of Kosovo Albanians. The armed forces of Serbia and Yugoslavia forced the Kosovo-Albanians civilian population to leave the area, where the KLA was more active. As a result many civilians fled and many were displaced within Yugoslavia while many others became refugees in other countries as a result of war. During the war in Kosovo, the United Nations realized that

\textsuperscript{365}Ibid.
\textsuperscript{366}Julie A. Mertus, Kosovo, How and Truths Started a War, (1999).

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298,000 Kosovan people had been displaced within Kosovo while others decided to flee Kosovo for safety. Due to this worsening of the armed conflict in Kosovo, the United Nations Security Council passed resolution 1160. The resolution condemned the Serbian and Yugoslavian armed forces under the leadership of Milosevic for atrocities against the Kosovo Albanian people in Kosovo. The solution also called for the two forces to stop fighting and withdraw their forces from Kosovo. The Serbia and Yugoslavia military forces continued fighting in Kosovo, despite the UN Resolution warning. The violation of human rights and breach of humanitarian law were taking place on a daily basis in Kosovo. As the situation was getting worse in Kosovo, six months later the United Nations passed another resolution 1199 in 1998, which placed a sanction against the Federal Republic of Yugoslavia. The situation in the Federal Republic of Yugoslavia was seen as a threat to the security of the region. Based on this background, the United Nations Security Council demanded that all parties involved in the armed conflict in Kosovo bring the war to the end. The United Nations Security Council called for the withdrawal of Serbian and Yugoslavian armed forces from Kosovo immediately. This plea was ignored.

It was realized that for the war to come to the end in Kosovo, negotiation was required. The negotiation was among the President of the Federal Republic of Yugoslavia, Slobodan Milosevic, Kosovar and the North Atlantic Treaty Organization (NATO) including the Organization for Security and Co-operation in Europe (OSCE). These negotiations took place in

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France in 1998. The parties who were participating in the negotiation agreed that the Serbian and Yugoslavian forces withdraw from Kosovo, and then the OSCE and NATO bring the international Peace keeping forces into Kosovo. It was also concluded that these forces and supplies be limited in Kosovo. The Proposals of the conference during the negotiation were adopted and signed on the 16 October 1998. This conclusion of the negotiations was named the Agreement on the OSCE Kosovo Verification Mission. The purpose of the KVM was to verify the cease-fire, monitor movement of forces, and promote human rights and democracy-building. After the deployment of the OSCE in Kosovo, the hostilities were worsening between the KLA and forces of Serbia along with the forces of FRY. During the war in Kosovo, many Kosovo Albanians were killed, especially the armed Kosovo Albanian forces in the villages of Raccak in the municipality of Stimlje/ Shtime. These victims were photographed and the pictures were shown and brought attention and anger to the both national and international communities.

This war resulted in the calling of the International Conference which took place in Rambouillet in France in February 1999 to discus peace for Kosovo. The Rambouillet conference came about as a result of military threats. NATO threatened the fighting parties with air attacks if they did not attend the negotiations starting February 6, and reach a settlement by February 20. While the Conference in France was discussing the peace process and the cease fire in Kosovo, the fighting was still going on and worsening. The parties who were involved in the Peace negotiation

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369 OSCE Mission in Kosovo.
371 Ibid.
process in France were International Communities, Deputy Prime Minister Nicola Sainovic of the Federal Republic of Yugoslavia, and the Serbia delegation, including the President of Serbia, Milan Milutinovic. The KLA and Kosovo Albanian political and civil leaders were also part of the delegation to the Conference. The organizers of the conference were international communities. Unfortunately, after many weeks of negotiations an agreement was not reached resulting in the collapsed of the conference in March 1999. Despite massive pressure from the United States, Britain, France, Germany, Italy and Russia, neither of the two parties to the conflict agreed to the demands of the "Contact Group". 372 The Rambouillet Conference discussed the autonomy of Kosovo, and if the International communities would provide the Protection.

However, the Kosovo authorities had committed themselves to outright independence while the Federal Republic of Yugoslavia consistently rejected any international interest in the affairs of Kosovo, which it considered an entirely domestic matter. 373

The war was still going on regardless of the negotiations which were taking place in France. During this time, the forces of Serbia and Yugoslavia launched a new offensive which destroyed the strongest Kosovo Albanians KLA camps, villages and towns. Colonel General Dragoljub Ojdanic was the Commander responsible for the 3rd Army, Chief of the General of Staff of the VJ and was also in charge of the Pristina Corps. The Supreme Commander of the VJ was Slobodan Milosevic. 374 The military and police forces, who acted in a serious offensive in Kosovo,

374 Slobodan Milosevic, Indictment.
were members of the Ministry of Internal Affairs of the Federal Republic of Yugoslavia, and the Ministry of Internal Affairs of Serbia. These police forces fell under the Ministry of Internal Affairs of Serbia headed by Minister Vlajko Stojiljkovic.

During the peace process for Kosovo which had been taking place both nationally and internationally, Slobodan Milosevic appointed Nikola Sainovic to be a mediator on behalf of the FRY, concerning the Kosovo war. He had been a mediator since the peace negotiation for Kosovo began. He was one of the founders of the OSCE Verification Mission for Kosovo. All the queries posed to the government of Yugoslavia or Serbia were referred to Mr. Nikola Sainovic. He was also a mediator between Mr. Slobodan Milosevic and the Kosovo political leaders and other traditional leaders in Kosovo.

Nikola Sainovic had been the mediator on behalf of Mr. Milosevic until his indictment by the International Criminal Tribunal for Yugoslavia in 1999. He would be Mr. Milosevic's chief negotiator in Bosnia and was his special envoy in Kosovo. Nikola Sainovic was Deputy Prime Minister of the Federal Republic of Yugoslavia. He was re-elected the Deputy Prime Minister of Yugoslavia three times; 1996, 1997 and 1998. Mr. Sainovic was entrusted with the execution of foreign and domestic policies including coordinating the administration of the Federal Ministries, organizing the defense preparations and enforcement of Federal law.

It is alleged that when the Federal Republic of Yugoslavia and Serbian forces launched the offensive attack in Kosovo, it was well coordinated and planned. These forces of Serbia and

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Yugoslavia bombarded the villages, towns, farms, homes and burned the businesses which were owned by the Kosovo - Albanians. The situation in Kosovo was very tense during the offensive, the Kosovo - Albanians were allegedly ill-treated, harassed, humiliated, insulted, suffered racial discrimination and were beaten, and physically and psychological abused based on their religion and ethnicity. The Kosovo - Albanians were deported, and forced to leave their homes. The war strategy which was used in Kosovo, was the same tactic used in the war of Croatia, Bosnia and Herzegovina between 1991 and 1995. It is also alleged that during the war in Croatia, Bosnia and Herzegovina, people who were not Serbs were expelled forcefully by the Serbian Military, police forces and paramilitary. The Kosovo - Albanians found themselves in the same situation in 1999: heavy shelling, and armed attacks on the villages; widespread killing; destruction of non-Serbian residential areas and cultural and religious sites; forced transfer and deportation of non-Serbian population in Kosovo. After the collapse of negotiation between NATO and other parties who were involved in the Kosovo peace process talks which included the Yugoslavia delegation, a warning was given to the government of Serbia and Federal Republic of Yugoslavia by NATO to withdraw their forces from Kosovo or to face serious consequences. NATO established five key conditions for Milosevic to meet or air strikes would began: an end to all military action in Kosovo; the withdrawal of Serb forces from Kosovo; agreement to the stationing of a NATO-led military presence in Kosovo; agreement to the return of all refugees; and, willingness to negotiate a political framework agreement for Kosovo. 376

On 23 March 1999, the Federal Republic of Yugoslavia warned the people of the Federal Republic of Yugoslavia of the imminent war threat from NATO forces. On 24 March 1999, NATO started air strikes against the targets of Yugoslavia and Serbia. During the air strikes by NATO, the forces of the FRY and Serbia were engaged in a Systematic Campaign of killing and expelling hundreds of thousands of Kosovo - Albanians. The killings occurred at numerous locations, including but not limited to, Bela Crkva, Mali Krusa/Kruse Vogel -- Velika Krusa/Krushe e Mahde, Dakovoca/Gjakove, Crkovez/Padalishste, and Izbica.\(^{377}\) It is alleged that the former head of State of the Federal Republic of Yugoslavia, Slobodan Milosevic was responsible for planning the killings and forced expulsion of the Kosovo - Albanians in Kosovo. He is also allegedly responsible for planning, preparing, abetting, committing, ordering, aiding and instigating through the forces of Serbia and FRY the atrocities in Kosovo. It has been estimated that more than 740,000, Kosovo - Albanians, one third of the population, were expelled from Kosovo. Due to faction fighting many Kosovo - Albanian were internally displaced and some fled the fighting, human rights were threatened and people feared kidnapping and other abuses. Thousands of people were killed but the exact number is not known. During the long years of war in Slovenia, Croatia, and Bosnia, Kosovo remained under the tight control of Milosevic.\(^{378}\)

4.6 NATO bombardment on Yugoslavia

\(^{377}\) Id

\(^{378}\) Glen Rug, with help by Julie Mertus, History of the War in Kosovo (April 1999).
NATO's bombing campaign lasted from March 24 to June 11, 1999, involving up to 1,000 aircraft operating mainly from bases in Italy and aircraft carriers stationed in the Adriatic.\textsuperscript{379} The conflict was between the forces of Yugoslavia against KLA in Kosovo. After Yugoslavia under the leadership of the President Milosevic refused to sign the Rambouillet agreement in Paris, The Federal Republic of Yugoslavia was warned by NATO of the possibility of air strikes by NATO. The goal of the bombardment was to force the Yugoslavian forces out of Kosovo. For NATO to be successful with its mission in Yugoslavia, it had to attack and destroy the most important military targets and other essential targets benefiting the Yugoslavia forces. After the Kosovo peace talks in Paris collapsed, NATO officials began to negotiate with the Turkish and Hungarian governments of the possibilities of NATO using military bases and military airfields located in their countries. The goal of the negotiation was for NATO to launch air strikes against the Federal Republic of Yugoslavia and to ensure that the humanitarian situation would be under control. NATO further said during the talks that the refugee problem would not last for a long time, as the bombardment would be done quickly. The refugees could return safely home for good and their life would be back to normal once again. It was a belief of NATO that the air strikes would create political stability in Kosovo and the rest of the Balkan forever. The Balkans is the region in southeastern Europe, which includes the Federal Republic of Yugoslavia. The Government of Turkey appointed the General Staff of Turkey to engage in the negotiation with the NATO officials the possibility of using military air bases in of Turkey. The president of Russia, Boris Yeltsin at that time disagreed \textsuperscript{379}Id.
with the invasion by NATO in Kosovo. He warned NATO not to push Russia. "They (NATO) want to bring in ground troops, they are preparing for that, they want simply to seize Yugoslavia to make it their protectorate ... we cannot let that happen to Yugoslavia," Yeltsin said.380

Since Turkey is a member of NATO, Turkey decided to accept the decisions of the alliance. The Prime Minister of Turkey also confirmed that the decision of NATO is binding and as a member, Turkey should comply. According to the Prime Minister, Turkey did not need the approval of the Turkish parliament for aircraft of NATO to be deployed from Turkey. There were several military bases and airfields in Turkey that could be employed for a NATO bombardment, one in Corlu in Turkish Thrace, another in Balikesir in western Anatolia and a third outside Ankara. All three bases did meet the requirements for NATO standards.381 Bulgaria and Italy agreed to participate in NATO bombardment which was seen as a strong campaign against Yugoslavia. Greece did not allow its territory to be used by the NATO military, during the launch of air strikes on the Federal Republic of Yugoslavia. In a separate development, the Russian government did substitute a warship that was scheduled to sail to the Adriatic Sea with an intelligence vessel in order to follow the Kosovo situation.

After years of hollow threats against Milosevic and years of Milosevic destroying much of Bosnia and part of Croatia, killing hundreds of thousands of people, and being responsible for escalating human rights abuses in Kosovo, NATO was finally determined to move ahead.382 The

380Yeltsin warns of Possible World War over Kosovo, but he said no missiles re-aimed at NATO Nations (April 9, 1999).
381NATO negotiate with other NATO Members, who are neighbors of Yugoslavia, regarding air strike on Yugoslavia.
382Glen Rugs, with help by Julie Mertus, History of the War in Kosovo (April 1999).
NATO air strikes against Yugoslavia began on March 24, 1999 and did not occur in a vacuum but rather followed ten years of regional conflict and aggression inspired and orchestrated by Yugoslav President Slobodan Milosevic. Almost all the NATO members participated in the air strikes, including Germany. This was the first time Germany was involved in war since being defeated in the Second World War. Due to the weather conditions the bombing did not go well at first. It was estimated that the air strikes would last only few days, but this was not the case. NATO also used ships, submarines and aircraft. The air strikes attacked and destroyed bridges, Telecommunication facilities, Power stations, Television broadcasting towers in Serbia, water and electricity and the headquarters of a political organization headed by the wife of Milosevic. During the bombardment by NATO forces in Yugoslavia, the cleansing of Albanians by Serbs forces was getting worse. As a result 300,000 Kosovans fled into neighboring countries such as Macedonia and Albania, while some were displaced within Kosovo. Since the effectiveness of the air strikes was overestimated by the NATO allies, NATO decided to use maximum force by doubling the use of available technology.

The Embassy of China in Belgrade was mistakenly bombed, by NATO on May 7, 1999. It killed three Chinese Journalists and brought the outrage of Chinese public opinion. This soured the relationship between the government of China and the members of NATO. Demonstrations regarding the Chinese Embassy were staged outside the western embassies in Beijing. NATO and the U.S apologized by claiming that the embassy of China was bombed by mistake because of the

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383 Ibid.
outdated map, which was provided to NATO. Anger: Demonstrations took place in China after the embassy attack.\textsuperscript{384} NATO has been coming under increasingly fierce criticism amid a mounting toll of innocent people killed or injured in its bombing campaign against Yugoslavia.\textsuperscript{385}

In another development NATO was accused by the government of Yugoslavia of killing 85 prisoners. The killing of the prisoners was confirmed by the Human Rights Watch but after their research it was learned that only eighteen (18) prisoners were killed. Killing of prisoners is in violation of the Geneva Convention of 1949. Later on NATO member countries decided to assist their air strikes by placing their forces on the ground for the purpose of invading Kosovo. While NATO was planning the ground offensive, the government of Russia and Finland were negotiating a peace with the President of the Federal Republic of Yugoslavia, Slobodan Milosevic concerning Kosovo. The Russian and Finnish governments advised Mr. Milosevic to step down as the President. He agreed to step down as he realized that NATO forces were serious and strong. Mr. Milosevic also agreed for the international forces including NATO forces to come into Kosovo under the leadership of the United Nations. In June, Milosevic accepted a peace framework incorporating these demands, eventually leading to an end to the bombing campaign. U.S. and allied officials proclaimed victory for the operation and moved quickly toward a peacekeeping and peace implementation phase in Kosovo.\textsuperscript{386}

\textsuperscript{384}World, Europe NATO's Bombing Blunders, BBC News (June 1, 1999).
\textsuperscript{385}Ibid.

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After Mr. Milosevic accepted the conditions, Kosovo forces (KFOR) began going to the war zone of Kosovo. The UN Security Council, on 10 June 1999 adopted a detailed resolution outlining the civil administration and peacekeeping responsibilities in Kosovo and paving the way for peaceful settlement of the conflict and the safe return home of hundreds of thousands of Kosovo Albanian refugees and displaced persons. KFOR force is a NATO led international force responsible for establishing a safe environment in Kosovo, a province of Serbia. Kosovo has been under the United Nations administration since 1999. The United Nations Security Council adopted resolution 1244 for KFOR to go to Kosovo under the supervision of the U. N. The operation of KFOR became a peace keeping mission though the aim was to conduct a ground offensive. The KFOR consisted of a German brigade, French army brigade, United States of America army, and British forces. The KFOR stayed in Kosovo and their presence was to ensure that stability and security were maintained in Kosovo. The United Nations was still engaged in the process of determining the future of Kosovo diplomatically.

4.6.1 The Legality of Bombardment by NATO

The NATO air strikes campaign in Yugoslavia was regarded as illegal and not justified. It was not authorized and neither was it backed by the United Nations Security council. NATO was accused of violating Article 2 (4) of the United Nations Charter. Article 2 (4) of United Nations

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Charter states, that the use of force against another sovereign state is prohibited, if the other state did not attack another country. 388

On the other hand, if NATO had submitted its request to the United Nations Security Council to use force in the Federal Republic of Yugoslavia, countries such as China and Russia would have vetoed it. Thus, NATO bypassed the U.N Security Council and went ahead to attack on Yugoslavia. This attack was also a breach to the Charter of NATO, as referred in Article 5 of its Charter. NATO is an organization which is responsible to defend by military means its member states, once they are attacked by another state. It was therefore illegal for NATO to use force on the Federal Republic of Yugoslavia. Kosovo was not an independent country and could not invite military assistance outside of Yugoslavia borders. Kosovo was not a member of NATO, it was a province of Serbia within the Federal Republic of Yugoslavia. It was seen that the refusal of Serbia to sign the Rambouillet “Agreement” was the reason for the air strikes in Yugoslavia. In actual fact, the Rambouillet Agreement was not an agreement, as the Serbian delegation refused to sign it. In this regard, there was no legal basis for an air strike simply because Serbia did not sign. The agreement was not part of international law and Serbia could not be compelled to sign the agreement. This would be a violation of Article 52 of the Vienna Convention of 1980. 389 It is a law of treaties that prohibits any state to be forced to sign an agreement. However, intervention of NATO in Kosovo was urgently needed to bring the human suffering to an end.

388 The United Nations Charter Article 2 paragraph 4 Prohibits Aggression on any state, unless there is imminent threat.
389 Vienna Convention of 1980 Article 52.
The argument of NATO was that, the conflict in Kosovo was a threat to the Balkan region. And it had to be stopped before spreading and bringing instability to the entire region. NATO further stated that, it was also conducting air strikes in the interest of the community in the region to maintain peace in Kosovo. NATO was justified in acting to maintain regional stability under Article 2 and 4 of the NATO Charter.\(^{390}\)

\(^{390}\)Argument of NATO for bombing Yugoslavia.
But, the action of NATO violated Article 5 of its Charter which stated as follows:

The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area. Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.  

NATO did not only violate its Charter but also breached the United Nations Charter Article 51:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.  

4.6.2 Kosovo Independence

Kosovo is a province of Serbia. After the end of the war in Kosovo, Kosovo came under the supervision of UN Interim Administration Mission in Kosovo (UNMIK) through Resolution 1244 of United Nations Security Council in 1999. The Serb and Yugoslavian forces were ordered

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391 NATO Charter Article 5.  
392 U.N. Charter Article 51.  
to withdraw from Kosovo, while the Kosovar–Albanian force had to dismantle as stated in the Military Technical Agreement between the International Security Force (KFOR) and the government Federal Republic of Yugoslavia and the Republic of Serbia.\textsuperscript{394} The NATO led forces in Kosovo became International security forces of Kosovo (KFOR) to maintain peace and stability in Kosovo. It was also responsible for the security of (UNMIK) during the interim period in Kosovo.\textsuperscript{395} The United Nations interim administration was to remain in Kosovo until the status of Kosovo is determined.

On 14 November 2005, Mr. Martti Ahtisaari was appointed the Special Envoy by the Secretary-General of the United Nations for the future status process for Kosovo.\textsuperscript{396} His office was situated in Vienna, Austria.\textsuperscript{397} He is the former head of state of Finland from 1994 to 2000. On 2007, Ahtisaari addressed the leadership of Serbia and Kosovo regarding the independence proposal of Kosovo, which was drafted by the United Nations Security Council to determine the status of Kosovo, this was supported by some United Nations Security Council members such as European Union and U.S., but this resolution or proposal was opposed by the Russian Federation who also have veto power in the Security Council. Russia stated their opposition was that they could only support the plan if both Serbia and Kosovo agreed to the proposal. Russia stressed that

\textsuperscript{394}The Parties to this Agreement reaffirm the document presented by President Ahtisaari to President Milosevic and approved by the Serb Parliament and the Federal Government on June 3, 1999, to include deployment in Kosovo under UN auspices of effective international civil and security presences. The Parties further note that the UN Security Council is prepared to adopt a resolution, which has been introduced, regarding these presences.


\textsuperscript{397}Id.
should this be implemented absent this agreement, this would be a breach of law to a sovereign state of Serbia. Despite the opposition of Russia, other countries continue to discuss the independence proposal of Kosovo and speculation has been rife about the proclamation of independence of Kosovo. At this time, Serbia was preparing its presidential election early 2008 and Kosovo was part of the election since it was part of Serbia. The other interesting aspect during this time was, two countries namely Slovenia and Croatia, who seceded from Yugoslavia, were also involved. Slovenia was presiding over European Union, while Croatia became a member of the United Nations Security Council. Due to the presidential election in Serbia, the proclamation of the Kosovo independence was deferred until the election in Serbia was over.

Convened in an extraordinary meeting on 17 February 2008 in Pristina, the capital of Kosovo, the Kosovan Assembly meeting was held to declare the independence of Kosovo. Kosovo declared its independence on February 17, 2008, which was rejected by Russia. It was feared that the declaration could bring conflict in the region. The UN Security Council went into emergency session Sunday evening on February 17, 2008 after Russia called for the United Nations to declare the Kosovo independence illegal.

The Serbian national assembly did not agree with the declaration and pronounced it illegal and not constitutional. Serbia further regarded the independence declaration in violation of the constitution of Serbia, Helsinki Final Act, United Nations Charter and UN Security Council

400The Helsinki Final Act was agreement signed by 35 nations that concluded the Conference on Security and
Resolution 1244. Serbia warned the possibility of sanctions against Kosovo. The U.N General Assembly did not share the view regarding the opposition of Serbia relative to the Kosovo independence declaration. Serbia with the approval of UN Assembly of October 2008, indicated that it will seek advisory opinion from International Court of Justice regarding the Declaration independence of Kosovo.

According to the international legal analyses, the United Nations has never accepted secession as valid and it will never accept any type of secession, which is a part of its member country. International law does not recognize the legal right of secession unilaterally from any part of the sovereign state or from their parent state. The only exception is where a minority group is being oppressed and is not included in the development of the country by the government of that state. Even though the United Nations does not support secession, but advises governments to settle a secession claim in a constructive manner to avoid a conflict and civil war, in most cases the international community is needed to intervene to bring a cease fire and negotiate peace to both sides. However, the international body or United Nations does not deny the applicability of secession if it comes through an agreement between the government and the secessionists, or the secessionists have engaged in the intentional relationship with other states, or if the secessionists

Cooperation in Europe, held in Helsinki, Finland. The Helsinki Final Act discussed with a variety of issues divided into four “baskets.” The first basket included ten principles covering political and military issues, territorial integrity, the definition of borders, peaceful settlement of disputes and the implementation of confidence building measures between opposing militaries. The second basket focused on economic issues like trade and scientific cooperation. The third basket emphasized human rights, including freedom of emigration and reunification of families divided by international borders, cultural exchanges and freedom of the press. Finally, the fourth basket formalized the details for follow-up meetings and implementation procedures.

401 See supra note 13.
control the territory which they are demanding for self-determination. In this case, the legitimate
and legality of the Kosovo secession has been considered and recognized first by the international
community which made a strong case for Kosovo to be allowed to secede from Serbia.

The cause of this secession of Kosovo from Serbia was a result of ethnic conflict, ethnicity
between Serbs and Kosovan – Albanians, and this should be prevented in any state. Government
should treat its entire people equally or anyone who lives within its territory and should not
discriminate anyone as stated in the United Nations International Covenant on Civil and Political
Rights.403

4.7 Violation of International Humanitarian Law and Human Rights

Both International humanitarian law and human rights are protections instruments for each
person from arbitrary abuse. Human rights are inherent to the human being and protect the
individual at all times, in war and in peace.404 International humanitarian law only applies in
situations of armed conflict.405 IHL has the obligation to protect those persons who are the
victims of war not taking part (civilians) or are no longer part of the armed conflict.

Violations in of both internal and international conflicts in Yugoslavia was seen as ethnic
cleansing consisting of forced expulsion, killing certain ethnic group, destruction of properties and
intimidation. It was alleged that the Serb forces committed genocide in Srebrenica in Bosnia and

403 UN ICCPR art. 26.
404 International Committee of the Red Cross, International Humanitarian Law and Human Rights. ICRC has given
definition and the different between International humanitarian law and human rights.
405 See the Four Geneva Conventions of 1949 and Protocol of 1977 and its Protocols. Please see more details on page 8
of this paper.
Herzegovina. Massacres also allegedly took place in Markale. Genocide is prohibited as stated in the Convention on the Prevention and punishment of the Crime of Genocide of 9 December 1948.

Civilians were captured, taken to concentrated camps and beaten. Women were taken away from their men, and placed in different camps where they suffered sexual abuse, and allegedly repeatedly raped by the Serb policemen or soldiers. Rape and other forms of sexual violence fall within the prohibition of "cruel, inhuman or degrading treatment" prohibited under the human rights treaties, and indeed, may often rise to the level of torture. These acts are also explicitly and implicitly condemned by international humanitarian law.

It is estimated that 200,000 people died. It was counted that 1,326,000 were in exile or were refugees. Research done by Tibeau and Bijak in 2004 determined a number of 102,000 deaths and estimated the following breakdown; 55,261 were civilians and 47,360 were soldiers. Of the civilians; 16,700 were Serbs while 38,000 were Bosniaks and Croats. Of the soldiers, 14,000 were Serbs, 6,000 were Croats, and 28,000 were Bosniaks.

During the Kosovo war, serious breaches of human rights and International humanitarian law were perpetrated in the Villages of Pec, Vranic, Drenica, Donja Obrinja, and Golubova by the forces of Serbia under the supervision of Yugoslavian armed forces. Milosevic was the President of Yugoslavia by that time. Execution of civilians, hostage taking, and the use of human shields were taking place. Serbs bombed the village of Pec while the Kosovo Albanian civilians were still there;

407 Ibid.
some were killed and some fled the village, but Serbs alleged placed land mines on the way to kill those fleeing. The properties of Kosovo Albanians were destroyed or stolen while their livestock were killed. The violations also included inhuman treatment; serious injury to body or health; willful killing; taking hostages; extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; unlawful confinement of a protected person; unlawful deportation or transfer. These are barbarous acts which violate the fundamentals of human rights which are breaches of Universal Declaration of Human Rights of 10 December 1948, declared by the United Nations. This is also a Violation of international Humanitarian law, which is specified in the Articles 50, 51, 130 and 147 of grave breaches specified in the four and fourth 1949 Geneva Convention, and its grave breaches specified in the Additional Protocol 1 of 1977 as stated in Articles 11 and Article 85.

4.8. The Establishment of International Criminal Tribunal for Yugoslavia

The International Criminal Tribunal for the Yugoslavia (ICTY) is an International ad hoc court. It was established by United Nations Security Council Resolution 827, which was adopted on 25 May 1993 based on the Charter of the United Nations Chapter VII.

408 Universal Declaration of Human Rights of 10 December 1948.
409 See graves breaches specified in the four and fourth 1949 Geneva Convention Articles 50, 51, 130, and 147.
The Security Council, Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,\(^{412}\) Having considered the report of the Secretary-General (S/25704 and Add.1) pursuant to paragraph 2 of resolution 808 (1993).\(^{413}\)

The International Criminal Tribunal for Yugoslavia was created to prosecute the individuals who were responsible for violations of International Humanitarian law, during the war in the Former Federal Republic of Yugoslavia as of 1991. The proposal of this Court was first initiated by the Minister of Foreign Affairs of Germany, Klaus Kinkel. The ICTY has jurisdiction over the International Crimes: Violations of the law or customs of war, grave breaches of the 1949 Geneva Conventions, Genocide and crimes against humanity. It is to prosecute only those individual perpetrators and not governments or organizations. This court is regarded as one of the major courts and the first court of the United Nations in Europe since the Nuremberg International military Tribunal (IMT) which tried the leaders of Nazi Germany after the Second World War. The IMT was established by the Allied Powers who won the Second World War and the United Nations was not involved. The ICTY was created by the U.N Security Council. Due to the continuing deadly war in Yugoslavia since 1991, the United Nations Security Council requested the Secretary General, Butros Butros Ghali,\(^{414}\) to appoint an expert team to investigate the violations of international humanitarian law and human rights in Yugoslavia and give the feedback on the alleged atrocities.\(^{415}\) Mr. Butros Butros Ghali accepted the request and appointed the experts team.


\(^{414}\) Butros Butros Ghali was a Secretary General of the United Nations.

\(^{415}\) See supra note 313.
When he reported back to the U. N Security Council, the report was shocking to the international community and more especially to the European countries. The shocking report reminded the European community of the horror of Nazi Germany during the Second World War. This led many countries to call for the establishment of another Nuremberg Trial. The United Nations Security Council based on Resolution 808,⁴¹⁶ made another call for the creation of the international Criminal Tribune on February 22, 1992.

The Secretary General of the United Nations, Butros Butros Ghali submitted the prepared report two months later consisting of the Statutes of the Tribunal. The statute of the ICTY is annexed to the U. N Security Council. The report was adopted by the United Nations Security Council without a vote and this was done under the United Nations Charter of Chapter V11.

As a result the ICTY was established to maintain international peace and to restore Security in the former Republic of Yugoslavia. ICTY is part of the United Nations Security Council based on Article 29 of the United Nations Charter. The finances and administration of the ICTY are operated by and depend on the United Nations, while the Judicial system is independent without any interference from the United Nations Security Council or any member states.

The judges of the International Tribunal shall adopt rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters.⁴¹⁷ It is essential not only for the Tribunal itself in its present work in The Hague, but also as a reference for any other

⁴¹⁶ See supra note 316.
⁴¹⁷ ICTY Statute Article 15.
international criminal courts and tribunals currently existing or forthcoming.\textsuperscript{418} The United Nations Security Council would dissolve the Tribunal once Security and peace are maintained.

\textbf{4.8.1 The Structure of ICTY}

The International Criminal Tribunal for Yugoslavia is composed of Chambers, Prosecutor and Registry. As stated in Article 11 of the ICTY.\textsuperscript{419}

\textbf{I. The Chambers}

It consists of Trial Chamber and Appeal Chamber. The chamber has fourteen Judges. Three Judges are serving in the Trial Chamber,\textsuperscript{420} while five Judges serve in the Appeal Chamber.\textsuperscript{421} The Judges are expected to have vast experience and strong morals in order to execute their duties efficiently as stipulated in Article 13 of ICTY. The Judges are appointed by the United Nation General Assembly from the list of nominee of Judges submitted by the United Nations Security Council. The nomination of these Judges is from the state members and also from the non-state members of the United Nations. The Judges should be appointed based on their qualifications and Judges should have also experience in International law, human rights, criminal law and International humanitarian law.\textsuperscript{422} Upon the General Assembly of the U.N receiving the candidates who meet the requirements, the General Assembly will vote and elect the judges. The

\textsuperscript{418}Herve Ascensio, The rules of Procedure and Evidence of the ICTY.

\textsuperscript{419}ICTY Statutes Article 11.

\textsuperscript{420}ICTY Statutes Article 12, para. A.

\textsuperscript{421}Id. at Article 12, para. B.

\textsuperscript{422}Ibid.
selected Judges will serve a four year term and are eligible to be re-elected. The Judges of the ICTY are to elect the President of the ICTY as stated in Article 14. The President shall preside in the Appeals and president shall assign other Judges to the Chamber of Appeals and also to the Trial Chamber. The Trial Judges have a responsibility of appointing their presiding Judge, who will lead the proceedings of the Trial Chamber as stated in Article 14 of the Statute of the ICTY.

The rule of procedure and evidence used in the ICTY during the proceedings of pre-trial, trial, Appeal, Admission of evidence, protection of victims and witnesses and other appropriate matters should be adopted by Judges of ICTY as stated in Article 15 of ICTY Statute. The International Criminal Tribunal for Yugoslavia is located in The Hague, Netherlands as stipulated in the Article 31 of the Statute of the ICTY.

II. Prosecutor

The prosecutors are elected by the United Nations Security Council based on the nominations of Secretary General of the United Nations. While the officials in the office of the prosecutor are elected by the General Secretary based on the recommendations of the Prosecutors as refer to on Article 16. The Prosecutors are eligible for re-election after their four year term expires. The prosecutor must be competent with the highest experience in investigating criminal cases and should possess the highest level of morals. The prosecution team investigates cases based on the information received from the United Nations, Government, Non-governmental

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423 Ibid.
424 ICTY Statutes Article 16.
425 Ibid.
Organization, intergovernmental and also from any other source. The prosecutor has a responsibility to question the Victims, Suspects, and witnesses. This is important to gather the evidence. The prosecutor has the right to request permission from the concerned country for further investigation. The prosecutor should weigh the evidence, if there is a prima facie for the case to be tried before submitting it to the Trial chamber. If the evidence is sufficient the Judge will confirm, but if the evidence is insufficient the case will be dismissed.

III. The Registry

The Registry is responsible for the administration of the ICTY. The registry consists of a Registrar and other staff members. The registrar is appointed for a four year term by U.N Secretary General with a consultation of the President of the ICTY and is eligible for re-election based on Article 17. The other staff members are appointed by the Secretary General of the United Nations in consultation with the Registrar. The establishment of the ICTY was followed by the Indictment of Milosevic and his subordinates.

4.9 The International Crimes and Statute Violations

International crime is defined as a criminal act falling under international law. The definition of international crime is agreed upon and accepted by the states that ratified it under

\[\text{Ibid.}\]
\[\text{Ibid}\]
\[\text{ICTY Statute Article 17}\]
\[\text{Ibid}\]
customary international law. This established the international legal obligation to deal with the commission of the act. The aim of defining the international crime is to hold accountable individuals who committed the serious core crimes which are a concern to the international community but not to hold the state accountable for these crimes. These international crimes are crimes against humanity, the crimes of genocide, and war crimes. These crimes are internationally punishable. The crime of aggression is also part of international crime but it is not punishable as there is no definition from the states yet. These international crimes were committed during the armed conflict in the former Federal Republic of Yugoslavia. Slobodan Milosevic was allegedly held superior responsible for Grave breaches of the Geneva Convention of 12 August 1949, Article 2 of ICTY Statute; Violations of the law or customs of the war, Article 3 of the ICTY Statute; genocide Article 4 of the ICTY statute; and crimes against humanity, Article 5 of the Statutes of ICTY. Milosevic was charged as he was the commander in chief and head of state or commander responsible.

The former Head of State of the Federal Republic of Yugoslavia, Slobodan Milosevic, was charged with international crimes committed during the conflict within the former Federal Republic of Yugoslavia. These international crimes were Crimes against Humanity, War Crimes in Kosovo and Croatia and Genocide in Bosnia and Herzegovina. These core Crimes are in violation of the Statute of the International Criminal Tribunal for Yugoslavia. The Tribunal has probable cause to believe that Mr. Milosevic must be charged for the crimes that have been committed

\[^{430}\text{See Statute of the International Criminal Tribunal for the former Yugoslavia Articles 2, 3, 4 and 5.}\]
during the war. His strong support of Greater Serbs made it possible for the atrocities against the population of the former Yugoslavia. It also influenced the destabilization of the government of Yugoslavia.

As the President of the FRY, the Supreme Commander of the VJ, and the President of the Supreme Defense Council, and pursuant to his de facto authority, Slobodan Milosevic is responsible for the actions of his subordinates within the VJ and any police force, both federal and republican, who have committed the crimes alleged in this indictment since January 1999 in the province of Kosovo.\(^{431}\) As former head of the state and commander in chief of Yugoslavia, Slobodan Milosevic was held individually criminally responsible for planning, instigating, ordering, committing, aiding and abetting in the criminal act of preparation or execution according to Article 7 (1) of the statute of ICTY, as he failed his responsibility to stop or control his subordinates from the crimes and also failed to bring those who committed the crime to be prosecuted and punished based on Article 7 (3).\(^{432}\)

\[4.9.1\text{ Violation of the Statute of the International Criminal Tribunal for Yugoslavia}\]

**Article 2 - Grave breaches of the Geneva Conventions of 1949 of ICTY:**

The Grave breaches of the Geneva Conventions of 1949 were adopted in the ICTY Statute. And it is defined in Article 2 of the Statute of the ICTY,\(^{433}\) stated that this International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the

\(^{431}\)Slobodan Milosevic, Indictment.  
\(^{432}\) ICTY Statute article 7 para. 3.  
\(^{433}\)ICTY Statute Article 2.
Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:434

(a) willful killing;
(b) torture or inhuman treatment, including biological Experiments;
(c) willfully causing great suffering or serious injury to body or health;
(d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
(e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
(f) willfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
(g) unlawful deportation or transfer or unlawful confinement of a civilian;
(h) taking civilians as hostages.

Article 3 - Violations of the laws or customs of war.
The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:435
(a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;
(b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
(c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;
(d) seizure of, destruction or willful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;
(e) plunder of public or private property.

Article 4 - Genocide
1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.436

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434ICTY Statute Article 3.
435Ibid.
436ICTY Statute Article 4, para. 1.
2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: ICTY Statute Article 4, para. 2.

(a) killing members of the group;
(b) causing serious bodily or mental harm to members of the group.
(c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.
(d) imposing measures intended to prevent births within the group;
(e) forcibly transferring children of the group to another group.

3. The following acts shall be punishable:
(a) genocide;
(b) conspiracy to commit genocide;
(c) direct and public incitement to commit genocide;
(d) attempt to commit genocide;
(e) complicity in genocide.

Article 5 - Crimes against humanity:
The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: ICTY Statute Article 5.

(a) murder;
(b) extermination;
(c) enslavement;
(d) deportation;
(e) imprisonment;
(f) torture;
(g) rape;
(h) persecutions on political, racial and religious grounds.
(i) other inhuman acts.

It is important to note, however, that the ICTY has jurisdiction over crimes committed by individuals, not over NATO itself or its member states. ICTY Statute Article 4, para. 2. Further, it has no Jurisdiction over the crime of aggression.

437 ICTY Statute Article 4, para. 2.
438 ICTY Statute Article 5.
439 Lattimer Sands, Justice for Crimes Against Humanity, 2003 (pg. 149).
4.10 Legal point of View

4.10.1 Indictment of Slobodan Milosevic

Slobodan Milosevic was elected President of the FRY on 15 July 1997, assumed office on 23 July 1997, and remains President as of the date of this indictment. On May 22, 1999, the prosecutor of ICTY submitted the indictment of the former President of the Republic of Yugoslavia, Slobodan Milosevic to the Trial Chamber. On May 24, 1999, the Trial Chamber Judge David Hunt confirmed the indictment in The Hague in the Netherlands and advised that the indictment be sealed. On Thursday 27 May 1999 the International Criminal Tribunal for the former Yugoslavia (ICTY) announced the indictment of, and issued warrants of arrests against Milosevic. Milosevic was indicted while he was still the President of the Federal Republic of Yugoslavia.

The indictment charges the accused Slobodan Milosevic, in 29 counts with:

(a) Genocide and complicity in genocide under Article 4 of the International Tribunal’s Statute;
(b) Crimes against humanity involving persecution, extermination, murder, imprisonment, torture, deportation and inhumane acts (forcible transfers) under Article 5 of the Statute;
(c) Grave breaches of the Geneva Conventions of 1949 involving willful killing, unlawful confinement, torture, willfully causing great suffering, unlawful deportation or transfer, and extensive destruction and appropriation of property under Article 2 of the Statute;
(d) Violations of the laws or customs of war involving, inter alia, attacks on civilians, unlawful destruction, plunder of property, and cruel treatment under Article 3 of the Statute.

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440 Milosevic, Initial Indictment.
442 Id.
443 ICTY Statute art 3.
He was indicted for war crimes and crimes against humanity in Kosovo. The indictment is divided into four counts: Count 1: Deportation (a crime against humanity), Count 2: Murder (a crime against humanity), Count 3: Murder (a violation of the customs of war), and Count 4: Persecution (a crime against humanity).\(^4^4^4\) Despite the brutal killings in Kosovo, Milosevic could not be charged with genocide, since there was not sufficient evidence. The Prosecutor did not find sufficient proof of intent of ethnic cleansing of Kosovo - Albania.

Slobodan Milosevic is individually criminally responsible for the crimes referred to in Articles 2, 3, and 5 of the Statute of the Tribunal and described in this indictment, which he planned, instigated, ordered, committed, or in whose planning, preparation, or execution he otherwise aided and abetted.\(^4^4^5\) These crimes were allegedly committed between January 1999 and June 1999 in Kosovo, which is a province within the republic of Serbia in the former Federal Republic of Yugoslavia.

In June 2001, the war crimes in Croatia and genocide in Bosnia and Herzegovina were added to the charges against Milosevic. It is believed that genocide had taken place in Srebrenica, where eight thousand Bosnia Muslims were allegedly massacred. The Srebrenica massacre is the first legally established case of genocide in Europe since the Holocaust.\(^4^4^6\) The slaughter of Bosniaks (Bosnian Muslims) at Srebrenica is recognized as the gravest atrocity to take place in


\(^{4^4^5}\)Milosevic, Initial Indictment.

Europe since the Nazi genocide.\textsuperscript{447} This was a grave breach of Article 2 of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) of 9 December 1948. Article 2 of the CPPCG defines genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such:\textsuperscript{448} killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life, calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; [and] forcibly transferring children of the group to another group.\textsuperscript{449} Milosevic was also charged with the Killing of 340,000 and deportation of 740,000 Kosovo Albanians which was done by his subordinates. Grave breaches of the Geneva Conventions of 1949 were part of his charges. The forces of Serbia and Yugoslavia had unlawfully forced the Kosovo Albanians to leave Kosovo while thousands of others were displaced internally.

The Serbia and Yugoslavia forces had not only killed and unlawfully deported Kosovo Albanians but have been also engaged in a well-planned, destruction of personal identity documents and property including that owned by the Kosovo-Albanians. These army forces went further by pillaging and looting the commercial and personal property belong to Kosovo-Albanians and forced them to leave their properties including their homes. It is also alleged that the

\textsuperscript{447}Ibid.
\textsuperscript{449}Ibid.
Kosovo Albanians were humiliated, degraded, harassed, physically and verbally abused including racial insults, other forms of physical mistreatment, and beatings, based on religion and ethnicity.

4.10.2 Superior and Commander Responsibilities

Mr. Milosevic had been president of the former Federal Republic of Yugoslavia at the time of war in Kosovo. He was a supreme commander of the Yugoslavia Army (VJ) which included controlling the Serbian forces. When the war was declared in Yugoslavia, the federal forces and the Serbia forces were under the control of the Yugoslavia army which was under the supreme commander, Slobodan Milosevic. As President of the FRY, Slobodan Milosevic had the power to "order implementation of the National Defense Plan" and command the VJ in war and peace in compliance with decisions made by the Supreme Defense Council. He had lawful rights to prevent or stop his subordinate forces from committing atrocities, or enabling others or encouraging others to commit the crimes. As a head of state, he is held responsible for alleged crimes committed by his subordinates.

4.10.3 Immunity

Slobodan Milosevic was granted immunity when he was the President of Serbia and Yugoslavia as an official who still occupied specific duties in the office. Milosevic was immune as head of state from the prosecution of civil, or criminal offenses and any violation he committed.

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450Milosevic, Initial Indictment.
while he was in the office, due to his special responsibility in the office as stated in the Vienna Convention on Diplomatic Relations and Optional Protocol of 18 April 1961,\textsuperscript{451} and Convention on Privileges and Immunities of the United Nations of 13 February 1946.\textsuperscript{452} These Conventions allowed Milosevic to enjoy his immunity as a head of state based on his term in the office. And once he left the office, he was not protected with immunities.

The immunity of Milosevic was effective in terms of grave breaches of international law, allegedly committed in the war in Yugoslavia. According to the customary international law, the incumbent head of states immunity can be waived once they commit international crime. This waiver of immunity has given the right to any court to indict and prosecute Milosevic. The removal of his immunity was seen in the article 7 of the statute of ICTY so that he could stand trial. Milosevic was indicted while he was the head of state, and he was extradited to The Hague to stand trial after he left the office as the president of Yugoslavia.

**4.10.4 Jurisdictions of the ICTY**

The ICTY has jurisdiction over the crimes of: grave breaches of the Geneva Conventions based on Article 2 of ICTY Statute;\textsuperscript{453} Violations of the laws or customs of war as stated on Article3

\textsuperscript{451}Vienna Convention on Diplomatic Relations and Optional Protocols of 18 April 1961.

\textsuperscript{452}Convention on the Privileges and immunities of the United Nations of 13 February 1946, Adopted by the United Nation General Assembly.

\textsuperscript{453}ICTY Statute Article 2.
of Statute of the ICTY;\textsuperscript{454} Genocide a violation of Article 4 of the ICTY Statute;\textsuperscript{455} Crimes against humanity a violation of Article 5 and article 7 of the ICTY Statute.\textsuperscript{456}

The Jurisdiction of the International Criminal Tribunal for Yugoslavia is limited to core crimes or International crimes committed during the civil war in the Federal Republic of Yugoslavia. The Tribunal is entrusted with power to investigate and bring the perpetrators to justice those who committed serious violations of international humanitarian law as referred in Article 1 of the Statute of ICTY. These crimes are in violation of Article 2, 3, 4, and 5 of the statute of the International Criminal Tribunal for Yugoslavia. Based on this background, the ICTY has Jurisdiction to try Mr. Milosevic.

4.10.5 Extradition and Arrest of Milosevic

Slobodan Milosevic was the President of Serbia from 1989 to 1997. After the end of his term, he was elected the president of Yugoslavia from 1997 to 2000. The next presidential election in Yugoslavia was held on September 2000. Milosevic refused to accept the results and called for a run-off election.\textsuperscript{457} Due to pressure from demonstrators and his Army commanders, Milosevic did accept his downfall by force and his opponent became the President of Yugoslavia.

The authority of Yugoslavia issued a warrant for the arrest of Milosevic for power abuse and corruption. The house of Milosevic then was surrounded by the security forces and Milosevic

\textsuperscript{454}ICTY Statute Article 3.
\textsuperscript{455}ICTY Statute Article 4.
\textsuperscript{456}ICTY Statute Article 5.
\textsuperscript{457}Available at http://www.moreorless.au.com/killers/milosevic.html (last visited on Dec. 21, 2007).
had no choice but to hand himself over to the authority on March 2001. He was held in a Belgrade jail. Slobodan Milosevic was wanted in The Hague for alleged war crimes and crimes against humanity and was arrested.458

In the mean time the arrest warrant for Milosevic was issued by the ICTY while he was the President of Yugoslavia. On June 28, 2001 the authority of Yugoslavia took Milosevic to the United Nations jail in Bosnia, where he was extradited to ICTY situated in The Hague in The Netherlands. The arrest and extradition of Milosevic was accordingly with article7; article 8; article 20 (2), and article 29 of the ICTY Statute. The constitution of Yugoslavia forbid extradition of its nationals, but Zoran Dindic, the Prime Minister of Serbia ordered the extradition of Milosevic, which was opposed by the President of Yugoslavia based on the federal law. The initial arrest was for alleged offenses at home, but in June, Djindjic did the Americans' bidding and put Milosevic on a helicopter to the US military base at Tuzla, in Bosnia, from where he was flown to The Hague.459

Milosevic was extradited to stand trial in The Hague. His extradition to The Hague angered the population of Serbia against the government. The population demonstrated and demanded the return of Milosevic to Yugoslavia. The demonstrators included people from the Radical Party, the Socialist Party, Serbian Renewal, Serbian Unity as well as other parties plus tens

458 Frank Sesno, Yugoslav Authorities Arrest Slobodan Milosevic, CNN, March 30, 2001. Frank Sesno is the Anchor of CNN. He telephonically interviewed the Deputy Prime Minister of Serbia, Carko Kovac regarding the arrest of Slobodan Milosevic on March 30, 2001 - 5:12 p.m. ET.
of thousands of people who might have voted for the current authorities but were now furious that these leaders had kidnapped the former Yugoslav head of state, Slobodan Milosevic, and shipped him to the discredited Tribunal at The Hague. 460 Those who extradited Milosevic for trial at The Hague were scared that the election might be called off. The Police force was deployed as there was serious chaos.

4.10.6 The Trial of Milosevic

It has been called the most important war crimes trial since Nazi leaders were prosecuted in Nuremberg, Germany after World War II.461 The International Criminal Tribunal for Yugoslavia arraigned the former President of Serbia and Yugoslavia on July 3, 2001 for war crimes, crimes against humanity and genocide during the war conflict in Kosovo, Croatia, Bosnia and Herzegovina. The Milosevic trial began at Hague on 12 February 2002.462 Milosevic was undergoing prosecution for genocide in the Bosnian campaign only.463 The indictment of Slobodan Milosevic was read by Judge Richard May in the Trial Chamber as stated in article 20 of the Statutes of the ICTY. Judge May presided at the arraignment. Milosevic did not enter a plea as he considered the Tribunal court illegal. As Milosevic refused to enter his own plea, the court did it for him before adjourning.464 The Tribunal entered the plea of not guilty on behalf of Milosevic.

460 Available at http://www.icdsm.com/files/activities.htm (last visited on Dec. 21, 2007).
461 NPR, Milosevic on Trial, Serbian Faces War Crime Charges in International Court of Justice (March 12, 2002).
464 Id. at 98.
This is based on the regulation of the court that if the defendant refuses to plea, the court is empowered by the rule of the court to plea on behalf of the accused.

Judge May advised Mr. Milosevic of his right to have a counsel to represent him as provided in article 21 of the ICTY Statute. Milosevic refused to have a counsel in the illegal court and also refused to recognize the Tribunal as a lawful court as it was not established by the United Nations General Assembly, and therefore had no jurisdiction to try him (See also Prosecutor v. Dusko Tadic ). Milosevic told the court that the Tribunal just wanted to protect NATO, who committed war crimes in Yugoslavia. Despite warnings from the court concerning these speeches of Milosevic in the court, Milosevic continued his speeches and was reminded seriously to stop by Judge May. Judge May on behalf of the court made a decision that for a trial to be fair, a counsel for Milosevic should be appointed. This was important for Mr. Milosevic to raise matters concerning his case. Milosevic argued that his arrest was unlawful, that the tribunal was illegal, and that NATO committed the war crimes in Serbia while he himself was a peacemaker.

The court then had a responsibility to give the prosecutors a chance to present their case. The prosecutors had probable cause that crimes were committed in Croatia, Bosnia and Herzegovina and Kosovo during the war in Yugoslavia. And it is their belief that Mr. Milosevic should be charged, as the prosecution provided sufficient evidence which showed that the crimes were committed. The prosecution requested of Judge May that all crimes committed in Kosovo,

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466 Available at http://www.c-span.org/milosevic/ (last visited on Dec. 21, 2007).
Croatia, Bosnia and Herzegovina be combined in one prosecution, but Judge May decided that the Kosovo trial should be separate while the Croatia, Bosnia and Herzegovina trial be consolidated.

The prosecution presented its case in February 2002. They started with a brief background of Mr. Milosevic as a president of Serbia and of the Federal Republic of Yugoslavia, including the Kosovo armed conflict. The prosecution accused and charged Milosevic that during his reign, there were deportations of Albanians from Serbia estimated at 800,000; 7,000 massacred in Srebrenica and estimated deaths of 4,000 in Kosovo. In respect to the deportations in Kosovo, the prosecution evidence showed 800,000 Albanians fleeing from the pillaging, raping, and murdering instigated by the Serb forces, who made coordinated and planned attacks from village to village and laid on special trains to take the inhabitants to the border after their homes had been looted and burned.\(^667\)

Among the charges covered in the indictments were the shelling of Sarajevo, atrocities in Vukovar and Srebrenica, torture and execution of detainees at the ghastly Omarska camp, and the deportation or forcible transfer of civilians in the Bosnian, Croatian, and Kosovo conflicts.\(^668\)

During the trial on Croatia and Bosnia and Herzegovina, the prosecution team charged Milosevic with war crimes and crimes against humanity, and he was also charged with genocide in Bosnia. The prosecution tried also to make a case of genocide against Milosevic in Kosovo but they could not establish the evidence showing that the genocide in Kosovo took place. Milosevic denied the charges. Milosevic went further and said that the Serbs were the victims in Kosovo, as they were deported from Kosovo. He accused the Kosovo Liberation Army of being anti-Serb.

\(^668\)Human Rights Watch, The Trial of Former Serbian President Slobodan Milosevic.
During the Kosovo Trial, the prosecution called witnesses from Kosovo to build their case against Slobodan Milosevic. One of these witnesses described how the Serbian forces murdered his family members. This testimony was helpful for the prosecution. Another witness was the head of Security of Serbia. He told the Tribunal that the orders he carried out for ethnic cleansing were not from the former President of the Federal Republic of Yugoslavia, Slobodan Milosevic. This witness was not in favor of the prosecution. The prosecution had several witnesses. The President of Croatia Stjepan Mesic accused Milosevic of tearing apart Yugoslavia by the war he created. Milosevic also hit back by putting blame on Mesic for assisting in the deterioration of Yugoslavia. The testimony of Mesic was good for the prosecution. During the trial of Milosevic many witnesses could not testify due to fear for their lives, as there had been threats from the supporters of Milosevic. Judge Richard May, who presided over the trial of Milosevic, decided to resign due to illness and died later. After his death, Judge Iain Bonomy was selected but not for presiding over the trial of Milosevic. Judge Robinson was appointed and became the presiding judge for the trial of Milosevic. Milosevic continued to conduct his defense as he refused counsel. There had been many delays and postponements during the trial of Milosevic, due to his illness. It was on these grounds that the doctors who were treating Milosevic recommended that Milosevic should be represented by counsel. Doctors feared that conducting his defense may further deteriorate his health due to stress. Judge Robinson made a decision to have counsel appointed for Milosevic. On September 2, the tribunal imposed two British defense lawyers on Milosevic, because of the

numerous delays his poor health had caused and the determination by four doctors that Milosevic could not take the stress of defending himself and preparing witnesses over the next fifteen months. Milosevic refused to have defense counsels and made an appeal to the Appeal Chamber against the decision of Judge Robinson. The Appeal Chamber confirmed to the Trial Chamber that Milosevic should lead his defense counsel, when he was able to do so and if Milosevic was unable to conduct his defense, the defense counsel should continue.

4.11 Legal Analyses

Milosevic argued that the tribunal court was illegal and he did not recognize the court as it was not established by the United Nations General Assembly, but by the Security Council. As a result, Milosevic protested that the court had no jurisdiction to try him. I feel there is a flaw in the argument of Mr. Milosevic concerning the legality of the court.

It has to be understood that the Court was created by the United Security Counsel under Chapter VII of the Charter of the United Nations. The General Assembly has empowered the Security Council to maintain international peace and security and take any necessary measures to prevent further humanitarian crisis as stated in Articles 1 and 2 of the UN Charter:

In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace

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and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf. 471

Therefore looking at the Charter of the United Nations, it proves that the international criminal tribunal for Yugoslavia was lawfully established with the concerned of United Nations General Assembly. 472

4.12 The Death of Milosevic

Slobodan Milosevic was found dead in his cell at The Hague on March 11, 2006. His trial for war crimes, crimes against humanity and genocide therefore ended without a verdict. 473 His prosecution came to an end after his death. Slobodan Milosevic was laid to rest Saturday beneath a tree at the family estate in his hometown, a quiet end for a man blamed for ethnic wars that killed 250,000 people in one of the turbulent Balkans' bloodiest chapters. 474

It is unfortunate that Milosevic died before his trial was concluded. Mr. Milosevic was not the only one that died before justice was served. The former head of state of Cambodia, Ta Mok, leader of Khmer Rouge died while he was still a prisoner, awaiting for his prosecution in Cambodia. He was alleged accused of crimes against humanity, war crimes and genocide. Augusto Pinochet of Chile died on 10 December, 2006 during his house arrest while waiting to be tried. He

472 See more in details section 4.8 of this chapter five.
473 Milsevic Trial Public Archive.

Available at http://www.washingtonpost.com/wp-dyn/content/photo/special/2/ (last visited on Jan. 18, 2008).
was charged for crimes against humanity in United Kingdom and in Chile. It is unfortunate that these leaders died before their victims could see justice served. In addition, the former president of Iraq, Saddam Hussein, was sentenced to death by a Special Iraq Court. He was hanged to death on 30 December, 2006. He was tried by the Iraq Court for genocide and crimes against humanity. Many Kurds were disappointed that he was executed before facing justice for his role in the Anfal campaign.\textsuperscript{475} How are the victims expected to cope with lack of prosecution in these cases? Should the court be blamed for not including the Anfal campaign or did the court find it not important to include these cases? We may have a lot of answers to address this, but no response is likely to bring complete healing to the victims. The death penalty has to be condemned and prohibited as in the statute of International Criminal Court.\textsuperscript{476} A term sentence or life sentence and rehabilitation has to be recommended. With the reform of the United Nations, the prohibition of the death penalty should be part of the discussion and should be a universal law for all states. Justice should punish the offenders but should not seek revenge at the expenses of justice or prejudice.

4.13 Conclusion

The indictment of Slobodan Milosevic while he was the head of state of Yugoslavia was a

\textsuperscript{475} BBC News, Iraq Court Drops Saddam's Charges.

\textsuperscript{476} Ibid.
historical landmark in the field of International Criminal Law in the twentieth century. Milosevic was the first president to be charged with and tried for genocide after the Convention on the Prevention and Punishment of the Crime of Genocide was defined and came into effect or force in January 1951. Milosevic died before he was convicted. His death could be sadness for the victims for not seeing justice done. Further he was the first President to be indicted while he was in office. The former head of state of Iraq, Saddam Hussein was the next leader to be charged and prosecuted for genocide. He was convicted and sentenced to death. He was hanged on December 30, 2006. But, during Intentional Military Tribunal’s of Nuremberg of Nuremberg, the accused of genocide were tried for crimes against humanity.

The indictment of Milosevic has widened and strengthened the legal framework of international criminal law within and beyond borders. He was arrested and transferred to The Hague after he was defeated in the controversial election despite the argument of Milosevic that the ICTY has no jurisdiction to prosecute especially him. It was justifiable that Slobodan Milosevic was brought to justice and before the United Nations Tribunal though he died before he was convicted. If he had been tried by national court in Yugoslavia, he might not have had a fair trial especially if some of the legal team in the national court were the victims or observed their loved ones being victimized during the conflict which may have prejudiced the court. However, once the rule of law is being followed properly the prosecution will be always be fair.

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477 See Supra 342.
478 Convention on the Prevention and Punishment of the Crime of Genocide, it was adopted on 9 November 1948. And it came into forced on 1951.
ICTR also prosecuted genocide cases though not head of state. The difference between the conflict in Rwanda and that of Yugoslavia was that Yugoslavia was part of an internal and an international conflict. The involvement of NATO in Kosovo made it an international conflict, while in Rwanda the war was a non-international conflict.

In my opinion, the case of Milosevic in the ICTY was justifiable, thereafter, any leader wanting to be involved in accumulating political power and position, would have as a precedent these various consequences, which can serve to discourage war conflicts.
CHAPTER FIVE

5.0 THE CASE OF CHARLES GHANKAY TAYLOR

5.1 Introduction

Mr. Charles Ghankay Taylor is the former President of Liberia who ruled the West Africa country from 1997 to 2003. He came to power through his rebel party, the National Patriotic Front of Liberia (NPFL), which fought against the government military forces. In 2003, he was sent into exile to Nigeria. However, he is now being prosecuted at the war crime tribunal in Freetown, Sierra-Leone, which transferred him to The Hague for prosecution.

5.2 Background: Who is Charles Taylor?

Mr. Taylor is a citizen of Liberia who was born on January 28, 1948 in Arthington, a town near Monrovia. He was born in a family of seven children. His mother belonged to a Gola ethnic group of Liberia, while his father was an American-Liberian who was born and grew up in Point Fortin, Trinidad. Mr. Taylor had been allegedly showing signs as a trouble-maker since he was a young boy. He was expelled from a private preparatory school, which was outside of Monrovia. If the school fees for Mr. Taylor were late, he would allegedly beat his own father for

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479 Prosecutor v. Charles Ghankay Taylor, Case No. SCSL – 03 – I.
480 Available at http://www.liberiapastandpresent.org/charles_taylor.htm. (last visited on Nov. 12, 2006).
the late payment. At one point, Mr. Taylor allegedly threatened to burn down his school when he
did not win the student council election.

Mr. Taylor went to study at Chamberlayne Junior College in Waltham, Massachusetts in
the United States at the age of 24 in 1972. While he was attending the Chamberlayne Junior
College, Mr. Taylor was also working as a truck driver, mechanic and security guard to earn some
pocket money. Mr. Taylor was after ward transferred to Bentley College when, in 1977, he earned
his Bachelor of Arts degree in Economics at the Bentley college in Waltham, Massachusetts.482

When Mr. Taylor was growing up, he was very curious to know the history of Liberia in
connection with The United States. This led to his discovery of how the Liberians, who lived as
free slaves in New Bedford, and who went by ship from Massachusetts to colonize Liberia, were
ruling their own native people when they returned to Liberia as Americo-Liberians. He found out
that they were discriminating economically and socially discriminating against the native Liberians.

Mr. Taylor becomes a member of the Union of Liberian Associations (ULA) in the
United States while he was studying toward his undergraduate studies at Bentley College. He
ended up as the national chairman of the ULA. During his reign as chair person of ULA, Mr.
Taylor became active in politics. During the visit of Liberian President William Tolbert, an
Americo-Liberian, to the United States, Mr. Taylor, with the ULA, protested and demonstrated
against the policies of Mr. Tolbert at the mission of Liberia in New York City in 1979.483 President

482 Available at http://www.infoplease.com/biography/var/charlestaylor.html (last visited on Nov. 12, 2006).
483 Terence Burlij, Liberia’s Uneasy Peace, A PROFILE OF CHARLES TAYLOR, Online NewsHour.
Tobelt ignored the demonstration and instead requested Mr. Taylor to have a debate with him. Mr. Taylor accepted and during the debate he threatened to take over the diplomatic mission of Liberia in New York. For this, Mr. Taylor was arrested and imprisoned in the United States of America. However, the president of Liberia did not lay any charges against Mr. Taylor, but instead, Mr. Tolbert decided to invite Mr. Taylor to come back home to Liberia. In the spring of 1980, Mr. Taylor went back to Liberia with a hope of changing Liberia and his fortune.

At the same time in Liberia, in a coup d’etat, the President Tolbert who invited Mr. Taylor to Liberia was murdered by army sergeant, Samuel Doe. President Tolbert was killed at his presidential home on April 12, 1980 and Samuel Doe came into power. Mr. Doe proclaimed himself as the head of state of the military government. This was seen as a victory for the native people of Liberia who for the first time in history would now see Liberia ruled by someone of native African descent. It is believed that Mr. Doe ruled the country based on the ethnic dictatorship against Americo-Liberians and he restrained or suppressed the opposition political parties. Mr. Doe ruled the country of Liberia with the military regime from 1980 to 1990.

Even though Mr. Taylor had a connection to Mr. Tolbert, President Samuel Doe gave Mr. Taylor a high position in his government due to his skill in economics and politics. Mr. Taylor was given a position as Head of the General Services Agency which was responsible for all government purchases in the government of Doe. Mr. Taylor had his ambitious. One morning Mr.

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484 Available at visited on Nov. 12, 2006). http://www.liberiapastandpresent.org/charles_taylor.htm (last visited on Nov. 12, 2006)
Taylor allegedly went into the office of the Director of the Government Agencies Services who controlled the budget in the Government. The Director was not in the office and Mr. Taylor declared himself as the Director of the Agency.\textsuperscript{486}

In May 1983, Mr. Taylor was removed and fired from his position in the Government of Liberia. He had been accused of the theft of money in the amount of $922,000.00 from the government of Doe which he deposited in a City Bank account.\textsuperscript{487} In October 1983, Mr. Taylor left Liberia and fled to the United States. In May 1984 while still in the United States, he was arrested and imprisoned after the Liberian Government requested that Mr. Taylor be extradited for the charges of embezzling money from the President Doe’s administration in Liberia.\textsuperscript{488} In September 1985, Mr. Taylor escaped from the prison and managed to flee the United States and return to Africa where he started the civil war in Liberia. On his return, Mr. Taylor organized a group of people and formed a rebel group called National Patriotic Front of Liberia (NPFL) in Ivory Coast. The aim of the NPFL rebel group was to fight against the government of Samuel Doe and depose him.

5.3 The Civil War in Liberia

The National Patriotic Front of Liberia headed by Mr. Taylor made the armed attack


\textsuperscript{487} Available at http://www.pbs.org/newshour/bb/africa/liberia/taylor-bio.html. (last visited on Nov. 12, 2006).

\textsuperscript{488} Available at http://www.liberiapastandpresent.org/charles_taylor.htm. (last visited on Nov. 12, 2006).
with his armed forces, against the government of Liberia from the neighbouring country, Ivory Coast in 1989.\textsuperscript{489} The government military forces retaliated and turned against the people living in that region, burning their homes and attacking the unarmed civilian population. Many people were killed and as a result many were forced to flee to the neighboring countries of Guinea and Ivory Coast.

Mr. Prince Johnson had a prominent position in the military government of Mr. Doe. Mr. Johnson sided with Mr. Taylor as his ally, in the invasion of Nimba County in which he, Mr. Johnson, was born.\textsuperscript{490} Due to an internal power struggle, he broke away from Mr. Taylor and formed his own armed guerrilla forces named Independent National Patriotic Front of Liberia (INPFL) based on the Gio tribe.

Mr. Taylor occupied and controlled part of the country of Liberia while Mr. Johnson controlled most of its capital, Monrovia. The Liberian President, Mr. Samuel Doe was deposed and tortured to death after rebel group invading his presidential palace in Monrovia, Liberia.\textsuperscript{491} After the fall of President Samuel Doe in 1990, the country broke into violent fighting. The civil war then turned into ethnic fighting to gain control over the diamond, timber, rubber and iron ore resources.\textsuperscript{492} The civil war left 250,000 people dead and one million people were forced to flee their homes to neighboring countries due to the heavy fighting.

\textsuperscript{489}See Supra note 469.
\textsuperscript{491}Available at http://www.liberiapastandpresent.org/SamuelKDoe.htm. (last visited on Nov.13, 2006).
\textsuperscript{492}Id.
Both Taylor and Johnson claimed power but The Economic Community of West African States (ECOWAS) appointed Amos Sawyer as a President of Interim Government of National Unity (IGNU) which was supported by Mr. Johnson. When Mr. Taylor attacked Monrovia in 1992, an agreement called ‘Contour Agreement’ was reached between the fighting groups of NPFL, IGNU and United Liberation Movement of Liberia for Democracy (ULIMO) to form a coalition. The coalition was formed in 1993. In 1994, another ‘Akosombo Agreement’ was attempted to replace the coalition in order to go toward the democratic government. IGNU disapproved the idea. However, Abuja Accord achieved the plan of democratic government in 1995. The following year a war broke out between NPFL and ULIMO in Monrovia and destroyed the city. The international NGO was forced to evacuate.

5.4 Mr. Charles Ghankay Taylor the President

The fight came to an end after the Abuja Accord was amended to include the disarming and demobilization of the fighters by 1997 so that the elections could take place in July 1997. Charles Taylor formed a new party called the National Patriotic Party (NPP). It won the majority during the election and Mr. Taylor then became President of Liberia. This resulted in political stability for the country of Liberia which allowed for the people who fled during the war as refugees to return home. On the other hand, leaders from opposition parties, including Mr. Prince

494 See Supra note 469.
Johnson, left the country for their safety in Nigeria fearing repercussions from his negative relationship with Mr. Taylor. The other ULIMO forces formed a new party called the Liberian United for Reconciliation and Democracy (LURD) which started fighting in Lofa County, in order to be able to control the diamond fields and destabilize the government of Mr. Taylor’s presidency. This fight turned into a second civil war in Liberia. It began in 2002 and ended in October 2003, after the United States and the United Nations military intervened preventing the rebel’s advance to Monrovia. In 2003, The President of the United States, George W. Bush had publicly called Charles Taylor to resign the Presidency.\textsuperscript{495} Mr. Taylor then resigned as President and went to Nigeria to be exiled\textsuperscript{496}

After Taylor’s resignation, Ellen Johnson-Sirleaf was elected the new President of Liberia in 2005. She made an official request to the government of Nigeria on March 17, 2006 for the extradition of Mr. Taylor in order for Mr. Taylor to stand trial in Sierra Leone for the crimes committed against humanity during the civil war in Sierra-Leone.

On March 25, 2006, the Nigerian Government agreed to release Mr. Taylor but not to extradite him since there is no extradition treaty between Nigeria and Liberia. On March 28, 2006, the government of Nigeria reported that Mr. Taylor disappeared from his Villa where he lived in his exile in Nigeria.\textsuperscript{497} The disappearance occurred after the government of Nigeria agreed to hand Taylor over to be tried by the Special Court in Sierra-Leone. Mr. Taylor was arrested in Gamboru

\textsuperscript{495}Available at \url{http://www.factmonster.com/biography/var/charlestown.html} (last visited on Nov. 13, 2006).

\textsuperscript{496}Available at \url{http://www.infoplease.com/ipa/A0908422.html}. (last visited on Nov. 13, 2006).

\textsuperscript{497}Lydia Polgreen, Nigeria says Ex-President of Liberia has disappeared, \textit{The New York Times}, March 29,
in northeastern Nigeria when he was trying to cross the border to Cameroon on March 29, 2006. He was put on a plane to Liberia, guarded by the Iris United Nations soldiers. On the same day he was arrested, he was handed over to the Liberian Government. After his arrival in Monrovia in a United Nations helicopter at 4:30 pm, he was transferred immediately to Freetown, Sierra-Leone.

The government of Liberia requested the government of Sierra Leone to find a new venue for Mr. Taylor to be tried even though they were already transferring Mr. Taylor to Freetown. As a result, the Special Court in Freetown made a request of the International Criminal Court in The Hague for the trial of Mr. Taylor to be held in their Court. The request also asks that the same judges who would have presided over the trial in Freetown be the same judges to preside in The Hague, with all the proceedings there to be as they would be done in Freetown. The Special Court in Freetown received a positive final decision from The Hague in the Netherlands.

5.5 CIVIL WAR IN SIERRA LEONE ALLEGEDLY AIDED BY MR. TAYLOR

The civil war in Sierra-Leone started in 1991 and ended in 2002 and was led by a rebel group, the Revolutionary United Front (RUF) of which Mr. Foday Sankoh was the leader. This civil war was allegedly aided by Mr. Taylor. The aim of the rebel group fighters was to depose the elected President Ahmad Teja Kabbah of Sierra-Leone. Mr. Taylor is accused of aiding the rebels group by giving the RUF rebels guns and other military equipment while he, Mr. Taylor, was getting

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498 Id.
diamonds in return. The loyal fighters of Mr. Taylor were allegedly among the RUF rebel groups assisting the RUF in fighting where many Sierra-Leonean people suffered atrocities. The RUF recruited child soldiers, killed innocent people, committed slave forced sex, drug trafficking and prostitution. They also amputated the limbs of innocent women and children, tortured them, hacked off their ears, noses and mutilated women, children and men. Some people were displaced and fled to neighboring countries.

5.5.1 Historic background of Sierra Leone

Sierra Leone is a constitutional democracy situated in the West of Africa. It lays on the coast of the Atlantic Ocean. The Republic of Guinea is to the north and northeast; Liberia is to the east and southeast, and the Atlantic Ocean on the west and south.\textsuperscript{501} It is believed that the first inhabitants in Sierra-Leone were Bulom people. During the fifteenth century, the Temne and Mende followed the Bulom to settle in Sierra Leone. And the next people to follow were Fulani from Guinea while Mende were believed to have originated from Liberia.

Sierra Leone was discovered by the Portuguese in 1462. The Portuguese were the first Europeans to explore the land and gave Sierra Leone its name, which means “lion mountains.”\textsuperscript{502} There seems some dispute whether it was the shape or climatic conditions that influenced Pedro da Cintra to come up with “Sierra Lyoa” meaning Lion Mountains.\textsuperscript{503} But an English explorer

\textsuperscript{501}Where is Sierra Leone? Map of Sierra Leone.
\textsuperscript{503}Brief Information on Sierra Leone.
renamed the country Sierra Leone in the sixteenth century. The British officially adopted the name Sierra Leone in 1787. 504

In the fifteenth century, sea explorers and traders established a trading place at the bay. Trade was done in the form of exchanging goods, clothes, swords, kitchen and household items for ivory and beeswax. Rent and gifts were paid in exchange for gold, slaves, beeswax, ivory and camwood. 505 By the mid 1550's, slaves replaced these items as the major commodity. 506 In 1652, the first slaves in North America were brought from Sierra Leone to the Sea Islands off the coast of the southern United States. 507 These slaves were taken to Georgia and South Carolina in America to work on plantations.

In 1787 the British helped 400 freed slaves from the United States, Nova Scotia, and Great Britain in their return to Sierra Leone to settle in what they called the "Province of Freedom." 508 The numbers of freed slave increased and were all brought to Freedom, which was later named Free Town. And Free Town became a colony of the British in 1792. More freed slaves came and settled in Free Town even though they were taken from different countries in Africa during the slave trade. The indigenous people of Sierra Leone opposed the British colony and the domination of the Krio. 509

504 Ibid.
506 Ibid.
508 Ibid.
509 Krio is a tribe in Sierra Leone. They came to settle in Sierra Leone after the abolition of slave trade.
5.5.2 Independence

Sierra Leone has a history of political changes and coups d’etat, after gaining its independence. Sierra Leone became independent in 1961 without any revolt. Mr. Milton Margai became the first head of state of Sierra Leone. He was replaced by his half brother Albert Margai after his death in 1964. The brother ruled Sierra Leone until he was defeated in the next election by Siaka Steven. In 1967, the election was held which was won by Siaka Stevens under The All People’s Congress party, despite some doubt of the fairness of the election. Siaka Steven was deposed by Chief Brigadier David Lansana before being sworn into office as the Prime Minister of Sierra Leone. Brig. Lansana was overthrown by the military. On 26 April 1968, Stevens was installed as prime minister of a civilian government.\(^{510}\) The political revolt continued against the government of Sierra Leone, and the leaders of a newly formed party were arrested. Another coup d’etat was attempted against Steven but also failed. This followed a change of the constitution which declared Sierra Leone as a republic and abolished the post of the Prime Minister and replaced it with President. Steven became the President of Sierra Leone. Another coup d’etat was attempted to dispose Steven in 1974 but also failed. The government then amended the constitution again and declared Sierra Leone a one party system. Siaka Steven was replaced by Major General Joseph Saidu Momoh whom Steven appointed as his successor. An assassination and coup d’etat were attempted against Momoh but both failed.

5.5.3 Armed Conflict in Sierra Leone

The forces of the Revolutionary United Front (RUF) under the leadership of Foday Sankoh, attacked Sierra Leone from Liberia in 1991. The rebels of RUF fought alongside Charles Taylor's National Patriotic front of Liberia (NPFL).\textsuperscript{511} They wanted to finish the mission in Liberia first, and then move on to Sierra Leone.\textsuperscript{512} This attack was seen as the starting of the war in Sierra Leone. Domestic support within Sierra Leone mounted and by 29 April 1992, Momoh was overthrown in a military coup.\textsuperscript{513} Momoh fled to Guinea.\textsuperscript{514} He was replaced by Captain Vantine Strasser. Strasser was trying to bring a multi party system and democracy in Sierra Leone but he was overthrown in 1996 by Brigadier General Julius Maada Brio. Brio wanted to have a talk with the RUF rebel concerning the armed conflict.

A presidential election was held and Ahmad Tejan Kabbah became the president of Sierra Leone. He was overthrown by the military led by Major Paul Kolomah in 1997. Koromah was allegedly assisted by Charles Taylor of Liberia and the RUF. He called on the RUF to share his military government. Koromah was ousted by ECOMOG. And Kabbah was reinstated as the president of Sierra Leone. When the rebels reached the city of Free Town, in a matter of days they were said to have amputated the limbs of around 1,500 people.\textsuperscript{515} Kabbah was driven out of Free Town by the forces of the RUF and AFRC forces under the leadership of Koroma. Aid workers and government officials told a meeting in the capital of Freetown, that 1000 people had had their

\textsuperscript{511}Darkness Over Paradise, History of Sierra Leone.
\textsuperscript{512}Ibid.
\textsuperscript{513}Available at http://www.nationsencyclopedia.com/Africa/Sierra-Leone-HISTORY.html (last visited Jan. 31, 2008).
\textsuperscript{514}Ibid.
\textsuperscript{515}BBC News, Special Report, Sierra Leone's Civil war, (8July 1999).
limbs amputated and thousands more had been mutilated or executed since last spring.\textsuperscript{516} These acts were violations of humanitarian law and were crimes against humanity and war crimes done to the people of Sierra Leone.

The brutal RUF rebels and remnants of the deposed military junta, backed by President Taylor of Liberia, continued to ravage Sierra Leone in 1998.\textsuperscript{517} Their surprise murderous assault on Freetown in Jan. 1998 hardened support for the beleaguered Kabbah Government and stiffened the resolve of the ECOMOG members to meet the RUF with force.\textsuperscript{518} During the armed conflict the RUF occupied the main diamond mine at Kono in the eastern part of Sierra Leone. The unlawful sale of diamonds by the RUF was alleged. This followed the bloodiest offensive by the government forces against the RUF rebels.

The UN embargo on Sierra Leone diamonds was the world's reaction to the brutal actions of the RUF.\textsuperscript{519} The UN Security Council on 5 July 2000 decided that "all States shall prohibit the direct or indirect import of rough diamonds from Sierra Leone."\textsuperscript{520} Diamond trade from areas occupied by rebel forces, terrorizing civil population, was the main financing source of the civil war - or even the main cause of the civil war, as many analysts say.\textsuperscript{521} The bloodiest war continued in the land of Sierra Leone. Thugs supporting the two rebel leaders, Sankoh and Koroma, roamed country districts wielding machetes to sever limbs (often of children) in a campaign of terror which

\begin{footnotes}
\item \textsuperscript{516}Ibid.
\item \textsuperscript{517}Darkness Over Paradise, History of Sierra Leone.
\item \textsuperscript{518}Ibid.
\item \textsuperscript{519}Afrol Background, the Civil War in Sierra Leone.
\item \textsuperscript{520}Ibid.
\item \textsuperscript{521}Ibid.
\end{footnotes}
formed part of an attempt to grab the nation's diamonds.\footnote{522}{History of Sierra Leone, Slaverly and Freedom: seventeen to nineteen Century AD.}

In July 1999 Kabbah and Sankoh reached a controversial peace agreement in Lomé, the capital of Togo, putting in place arrangements for a shared government aim of the agreement was a ceasefire, disarming soldiers and sharing government power of Kabbah. Immunity was also granted to the rebel leader, Koroma including his forces. This led to the international peace keeping forces being sent to Sierra Leone by the UN Security Council, to maintain peace and security in the country, which had the bloodiest war. Britain, the former colonial power in Sierra Leone also sent some troops to assist a peace process. Both Sankoh and Koroma returned to Free Town based on the Lome Agreement. Elections were held in Sierra Leone and the rebels were defeated as Kabbah won with 70% of the vote. Sankoh was given a position in the ministry but failed to disarm his armed forces. This was a breach of the agreement. As the war erupted once again Sanko the rebel group including some of his men were arrested and imprisoned in Free Town.

By early 2002, UNAMSIL had disarmed and demobilized more than 75,000 ex-fighters, including child soldiers.\footnote{523}{United Nation Mission in Sierra Leone, Background.} This led the government to announce publicly that the war was over. Elections were held and were seen as fair and free, with help from UNAMSIL. And the displaced persons and refugees started returning home. UAMSIL assisted the government to build schools, Medical facilities, training police officers and more infrastructures. UNAMSIL monitored and trained Sierra Leoneans in human rights and was instrumental in setting up the Special Court for...
Sierra Leone to try those most responsible for war crimes. The Mission also assisted the Government in setting up a Truth and Reconciliation Commission, tasked with healing the wounds of war by bringing together perpetrators and victims of atrocities.\textsuperscript{524}

5.6 Human Rights violation and humanitarian law

During the civil war in Sierra Leone there have been human rights violations and abuses. It is estimated that more than 250,000 people have been killed and one million people have been displaced as people were forced to flee their homes to neighbouring countries due to heavy fighting since the coup d'état of 1989 waged by Mr. Taylor.\textsuperscript{525}

The civil war in Liberia has been going on for 14 years. The civil war has taken a lot of lives of Liberian civilians, adolescents and children. Many children have been victims of sexual assault, abduction, forced labor, rape, killing, torture and forced recruitment into the armed forces, displacement and other violations during the war conflict.\textsuperscript{526}

The young boys were forced or abducted from the refugee camps or displaced camps and recruited into the Armed Forces. The young girls and women were exposed to prostitution in the camp, sexual abuse, and rape by the government forces, non-state armed groups, and even boys as young as 12 years of age. Girls, as young as seven to eleven years were the target of rape. There has been a high rate of young girls’ pregnancies in the displacement and refugee camps. The gender

\textsuperscript{524}Ibid.

\textsuperscript{525}Available at http://www.globalsecurity.org/military/world/war/liberia-1989.htm.

\textsuperscript{526}United Nation Security council, Report of the Secretary-General to the Security council.
violation against women and children was rampant.\textsuperscript{527}

Due to overcrowding in the refugees' camps and displacement camps, women were forced to share the rooms with men. Also, there was no lighting in either the bathrooms or latrines. This played an integral part to the sexual violence:-

- One Liberian woman has told the humanitarian official that she witnessed her daughter being raped and killed on her 10th birthday.
- One gunman shot a girl of 16 years on her foot when she refused to have sex with him. He then amputated her leg below the knee.
- A grandmother found her granddaughter of 6 years unconscious and bleeding profusely when she was raped in the displacement camps that were outside of the capital city of Monrovia.\textsuperscript{538}

When most of the rape victims were trying to get medical help, it was noted that they were very reluctant to have their family members know anything about the situation, according to the UNDP report of the UN Inter agency Standing Committee Task Force, created to protect victims of rape from sexual exploitation and abuse during the Humanitarian crises.

In 2002, some principles were established by the United Nations Humanitarian Agency for its employees in Liberia. Incorporated in the staff code of conduct was that no staff member could engage in the sexual exploitation of girls under 18 years of age, in exchange for money, goods, or services. The Humanitarian employees were warned that they might face termination if the code of conduct was breached. Therefore, it was required that all the Humanitarian employees

\textsuperscript{527}Women Commission for refugees women and children in Liberia, Jan 2004.
were to report any abuses and to prevent any exploitation.\textsuperscript{529}

In 2003, the IRC conducted a discussion in the seven displacement camps and refugees' camps to try to discuss the rapes, sexual exploitation and other abuses and hear from the victims. During the discussion, many participants said they knew a lot of women who exchanged sex for food and protection and they found it common that women, for their own survival, would tolerate the exploitation by the soldiers, businessmen, humanitarian workers, including the NGO workers, and men for money. The International Rescue Committee (IRC) also made a survey and held a discussion concerning the issue of rape, sexual exploitation including the other abuses among the Liberian women and girls in the refugee camps in Sierra Leone. The IRC found out that one third of the women and girls were forced to have sex in exchange for getting food and protection. This had been happening before and at the time of displacement.

Women and children had been victims in the displacement camps during the war conflict in Liberia as they were also brutally targeted by the LURD soldiers who had been hacking off their limbs. These soldiers found that in committing this atrocity, it served to undermine the rule of President Taylor, and so it became part of their campaign to depose him of power.\textsuperscript{530} It was concluded that the preventative measures which had been taken against the sexual exploitation and other abuses were not effective enough to avoid it being repeated. It was also discovered that there was a lack in the reporting of the sexual abuses and confusion in the way the issues of sexual exploitation were supposed to be reported. Additionally, what actions to be taken against the


\textsuperscript{530}Ibid.
perpetrators was an unsolved issue.

Children had been recruited forcefully into the Armed Forces at an early age, often as young as nine years old, and they had been participating in the fighting by the LURD, including the government forces, during the civil war in Liberia. These recruited children came to the attention of the United Nations for the Security Council based on the report of (S/2003/1053), and the Secretary General has named the LURD, the MODEL and Armed Forces of Liberia (AFL) for being the parties who recruited the children in the armed conflict on the list of his agenda. The recruitment of the children as soldiers in Liberia began when the war conflict started with Charles Taylor in 1989 with his followers of NPFL. It has been estimated that between 6,000 and 15,000 children were recruited in the armed conflict since 1989 and 1997. These children were placed in groups and they have been called the Small Boys Units. Most of the younger children who fought in the civil war of 2000 and 2003 were, for the most part, forcibly recruited at the time of the raid on refugee camps or displacement camps by LURD, MODEL or the government forces. Most of the military soldiers were girls and boys under the age of eighteen. These acts are in violation of Articles 34, to 39 of the Convention on the Rights of the Child of 02 September 1990, and articles 1, 2, and 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict of 12 February 2002. Women were forcibly raped,

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533 Convention on the Rights of the Child of 02 September 1990, articles 34 to 39.
kidnapped, their limbs amputated along with other abuses suffered. They found it hard to cope with their new disabled life within their families. This was in violation of; Crimes against humanity, war crimes and article 1, 535 and 2 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 26 June 1987. 536 This was a breach of article 1 of the Convention on the Elimination of all Forms of Discrimination against Women of 18 December 1979. 537 Between 50,000 to 200,000 people have died since the war conflict started by Sankoh in 1991 in Sierra-Leone. Mr. Foday Sankoh died from the complication of a stroke in July 29, 2003 in a Freetown hospital during his trial process while he was still a prisoner in Freetown, Sierra-Leone. 538

After the civil war, the UNAMSIL assisted the government of Sierra Leone to establish the Truth Reconciliation for peace and amnesty.

5.7 The Truth Reconciliation Commission in Sierra Leone

The Truth and Reconciliation Commission was created as part of the Lome Peace Agreement Article 26, 539 for amnesty of the rebel group RUF and the government of Sierra Leone. It was established to face the past in order to heal the wounds and rebuild the country for the future.

535 Special Court for Sierra Leone, articles 2 to 5.
536 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 26 June 1987, articles 1 and 2.
537 Convention on the Elimination of all Forms of Discrimination Against Women of 18 December 1979, article 1.
539 Lome Peace Accord or Agreement of 7 July 1999, article 26.
According to the Truth and Reconciliation Act of 2000, the Commission which is loosely modeled on the South African Truth and Reconciliation Commission that looked into gross violations of human rights during apartheid is mandated "to create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone from the beginning of the conflict in 1991 to the signing of the Lome Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered."540

The amnesty provision provoked immediate controversy.541 At the last minute, the UN representative attached a reservation to his signature, stating that amnesty shall not apply to those who had committed international crimes of genocide, crimes against humanity or war crimes and other serious violations of international humanitarian law.542 But this provocation was defended at the national conference held in Sierra Leone.

The goal of the Commission was to reconcile the victims of the war and their perpetrators, and to forgive each other and for them to live together in a peaceful and promised future. The TRC is mandated to create "an impartial, historical record of the conflict", "address impunity; respond to the needs of victims; promote healing and reconciliation; and prevent a repetition of the violations and abuses suffered."543 But the Commission could not carry out its functions effectively due to lack of funds. It was also reported that the Commission had a lack of qualified people, and political interference from the government during the recruitment of the

542 Ibid.
543 Crisis Group, Sierra Leone's Truth and Reconciliation Commission, A Fresh Starts, Africa Briefing No.12, 20 December 2002.
personnel of the Commission. It was also seen as being without transparency, consequently, the national and international community lost confidence in the Commission despite its submission of recommendation to the government of Sierra Leone. These controversies led to the establishment of the independent court or Special Court for Sierra Leone to prosecute the perpetrators who committed the international crimes.

5.8 Establishment of the Special Court for Sierra Leone

5.8.1 Venue and Procedure

The Venue of the Court where Mr. Taylor is facing trial is in Freetown which is the capital of Sierra-Leone. The Court originated in 2002.\textsuperscript{544} This court was created when the President of Sierra-Leone requested help from the Secretary General of the United Nations in 2000, for him to create this Court in order to bring to justice those who committed the atrocities during the civil war in Sierra-Leone begun in 1991. The Government of Sierra Leone, in agreement with the United Nations, established the Statute of the Special Court (pursuant to Security Council Resolution 1315 of August 14, 2000), so that the Special Court must function in Accordance with the provisions of the present Statute.\textsuperscript{545} Resolution 1315,\textsuperscript{546} also gave the Secretary General the right to negotiate and make an agreement with the government of Sierra-Leone for the creation of the Independent

\textsuperscript{544}Available at \url{http://www.humanrightsfirst.org/international_justice/w_contex/w_cont_04.htm}.
\textsuperscript{545}See the agreement between the United Nations and the Government of Sierra Leone on the creation of the Special Court for Sierra Leone as stated in the resolution 1315 of 14 August 2000 of the United Nations Security Council. The court is to prosecute the accused committed serious crimes or international crimes in the territory of Sierra Leone since 30 November 1996.
Special Court in Sierra-Leone. The agreement to set up the Special Court was signed on January 16, 2002 and was ratified by the Parliament of Sierra-Leone in March 2002. Thus, the court is a hybrid.

The Rules of Evidence and the procedure were adopted from those which have been used by the International Criminal Tribunal for Rwanda and which can be adopted by the Judges, based on the amendment.\textsuperscript{547}

5.8.2 The Structure of the Special Court

There are eight judges in the special court and its structure is as follows:\textsuperscript{548}

a. The Chamber;

  1. The Trial Chamber;
  2. The Appeal Chamber.

b. The Prosecutor;

c. The Registry;

d. Language - English.

a. The Chamber

The Chamber consists of Trial Chambers and Appeal Chambers:

1. The Trial Chamber: there are three judges, one of which is from Canada, and the other is from

\textsuperscript{547}Special Court for Sierra Leone Statute, article 14. Available at http://www.humanrightsfirst.org/international_justice/w_context/w_cont_04.htm.

\textsuperscript{548}Special Court for Sierra Leone Statute article 11.
Cameroon. They are both elected by the Secretary General of the United Nations. The remaining judge is a domestic judge appointed by the Government of Sierra Leone. They are appointed based of their qualifications according to Article 12 and 13 of Statute of the Special Court for Sierra Leone.

2. Appeal Chamber

Based on the Article 12 and 13, the Secretary General of the United Nations has elected three other judges for the Appeal Chamber, while the government of Sierra Leone has appointed two judges. The judges should meet the qualifications requirement.

b. The President

The president of the Special Court is the presiding judge of Chamber of Appeals who is elected by the judges of Trial Chamber and judges of Appeal Chambers. The government of Sierra Leone or the United Nation Secretary General is to appoint an alternate judge upon request.

c. Registry

The Special Court has its own Registry. The Registry has a Registrar and other staff members. The Registrar has to be a staff member of the United Nations and has to be appointed for three years by the United Nations General Secretary with the consultation of the President for the Special Court, the Registrar can be re-appointed as stated in Article 16 of the statute. The Registrar has the obligation of serving the Special Court and responsible for the administration, including

\[549\text{Ibid. article 12 (3) and (4).}\]
responsible for victims and witnesses within the Registry. It shall also organize the counseling and trauma expert for the victims. The registry shall also responsible for the protection of the personnel, victims and witnesses.

d. Prosecutor

The Special Court for Sierra Leone also has a prosecutor, which is a separate body of the Court and is independent. The prosecutor is obligated to bring the accused under the jurisdiction of the court to investigate and try the cases according to Article 15 of the statute.

5.9 International Crimes and Statute Violations

Mr. Charles Taylor, the former President of Liberia, is being charged only for the alleged international crimes committed during the civil war inside the Republic of Sierra Lone. The Court had probable cause to believe that Mr. Taylor should be charged for the crimes against humanity and war crimes that had been committed because of his conspiracy with the rebel group of Sierra Leone. He was accused of assisting the RUF of Sierra Leone in military training; providing financial assistance; the supplying of ammunition and loyal members of his army; army personnel, and the giving of advice, direction and guidance towards a strong support to this rebel group. This support strongly influenced the destabilization of the government of Sierra-Leone. It also made possible, the atrocious acts against the civilians of Sierra-Leone. Mr. Taylor also assisted the RUF in exchanging diamonds for ammunition supplies in a joint criminal enterprise. This

enabled him to have the access to the mineral resources of Sierra-Leone which was in his personal agenda. The alleged crimes of Mr. Taylor are abductions; forced labor; unlawful killing; sexual and physical violence; use of child soldiers; burning civilians and looting. These crimes were committed in joint criminal enterprise with the rebel groups of Sierra-Leone in Sierra-Leone. These crimes are in violation of Articles 2, 3 and 4 of the Statutes of the Special Court for Sierra-Leone.551

5. 9.1. The Violation of the Status of the Special Court for Sierra Leone

Article 2 - Crimes against Humanity:
The following crimes committed as part of a widespread or systematic attack against any civilian population will be prosecuted by the Special Court which will have that power to do so:

a. Murder;
b. Extermination;
c. Enslavement;
d. Deportation;
e. Imprisonment;
f. Torture;
g. Rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence;552
h. Persecution on political, racial, ethnic or religious grounds;
I. Other inhumane acts Article 3 - Violations of Article 3, common to the Geneva Convention and Additional Protocol II.553

According to the Geneva Convention of August 12, 1949, for the Protection of War Victims, and of Additional Protocol II of June 8, 1977. The Special Court shall have

551 Available at http://www.sierra-leone.org/specialcourtstatute.html.
552 Statute for Special Court for Sierra Leone Article 2.
553 Statute for Special Court for Sierra Leone Article 3.
the power to prosecute persons who committed or ordered the commission of serious violations of Article 3. These violations shall include:

Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

1. Collective punishments;
2. Taking of hostages;
   a) Acts of terrorism;
   b) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
   c) Pillage;

The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;\textsuperscript{554}

Threats to commit any of the foregoing acts Article 4 - Other serious violations of International Humanitarian Law. Persons who committed the following serious violations of International Humanitarian Law will be prosecuted by The Special Court which shall have the power to do so:

Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

a) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitle to the protection given to civilians or civilian objects under the international law of armed conflict;

b) Conscripting or enlisting children under the age of 15 years into armed forces;\textsuperscript{554}

\textsuperscript{554}Ibid. Article 4.
forces or groups or using them to participate actively in hostilities.

Even though Mr. Taylor did not himself participate directly in committing those crimes against the civilians, he was directly responsible for the planning and execution of all that transpired in the war.\(^{555}\)

**Article 5 – Crimes under Sierra Leonean Law**

According to the Law of Sierra Leone, persons who committed the following crimes under Sierra Leone law shall be prosecuted by the Special Court which will have the power to do so;\(^{556}\)

a) Abusing a girl under the age of 13 years, contrary to section 6;

b) Abusing a girl of age between 13 and 14 years, violation of section;

c) Abduction of a girl for immoral reason, contrary to section 12.

2. According to the Malicious Damage Act, 1861 of Sierra Leone, relating to the wanton destruction of property will be offenses under the Law of Sierra Leone as follow;-

Setting fire to dwelling – houses, any person being there in, violation of section 2;

a. Setting fire to public buildings, contrary to sections 5 and 6;

b. Setting fire to other buildings, violation of section of 6.

Even though Mr. Taylor did not participate directly in committing these crime against the civilians, he was allegedly through superior and commander responsibility for the planning and execution of all that transpired in the war conflict in Sierra Leone.

5.10 The Legal Point of View

5.10.1 Indictment of Charles Taylor

\(^{555}\)Available at http://www.sierra-leone.org/specialcourtstatute.html. (Last visited Nov. 29, 2006).

\(^{556}\)Special court for Sierra Leone Article 5.
The Special Court for Sierra Leone has indicted Taylor on seventeen counts which were reduced to eleven counts for the alleged crimes committed within the territory of Sierra Leone during the war conflict. Mr. Taylor was indicted by the Special Court of Sierra Leone based on Article 15 of the Statute of the Special Court for Sierra Leone on March 3, 2003, while he was still the president of Liberia. The indictment was confirmed by the Trial Chamber on March 7, 2003, but was ordered to be kept sealed. The indictment was unsealed on June 4, 2003, the day the Special Court for Sierra Leone issued an arrest warrant for the former President of Liberia.

The unsealed indictment was revealed for the first time to Taylor when he went to Accra, Ghana to meet with other African leaders to discuss the peace process and to bring to an end to the civil war in Liberia. The indictment stripped the immunity of Mr. Taylor as a head of State, including all his political viability and legitimacy.

The prosecutor of the Special Court for Sierra Leone, under Article 15 of the statute of the special court for Sierra Leone (the statute) charges:
Charles Ghankay Taylor also known as Charles Ghankay Macarthur Dapkpana Taylor charged with crimes against humanity, violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and other serious violations of international humanitarian law, in violation of Articles 2, 3 and 4 of the statute.

The Special Court for Sierra Leone requested that the government of Ghana arrest Taylor. Ghana is a party to the Geneva Convention of 1949 and the alleged indictment against Taylor are offenses under Article 3 of the Geneva Convention of 1949. The government of Ghana had an

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557 See Prosecutor vs. Charles Ghankay Taylor, No. SCSL – 03-1 (Freetown, Sierra Leone, 3 March 2003).
558 Id.
obligation to decide the fate of the indictment of Taylor, whether to turn him over to the Special Court for Sierra Leone or to prosecute him since the indictment confers universal jurisdiction. The Government of Ghana decided to allow Taylor to return home to Liberia despite the indictment. Ghana and Sierra Leone have no extradition agreement thus, Ghana was not obligated to hand over Taylor to the Special Court for Sierra Leone. When Taylor was the president of Liberia, he was protected from prosecution because he had immunity as a Head of State under customary international law. Heads of State immunity is regarded as universal and most of the countries have accepted it. But this has changed since the Second World War, when the Treaties and International agreements were codified.

The Heads of State who have violated international crimes are subject to universal jurisdiction and their immunity is waived. Most of the States in the world have ratified the Geneva Conventions of 1949, which require each state member to search for a persons suspected of committing Crime, or bring them to justice in their own court or to extradite them to the State, which has made a case against them. Countries have an obligation to prosecute under universal jurisdiction whenever a person who violates the high law (Jus Cogens principles) which should not be violated by any country or any individual. The former president of Chile, Augusto Pinochet, had his head of state immunity waived by the British House of Lords for alleged human rights violations that Pinochet committed during his reign as the President of Chile. Even though the Supreme Court of Chile held that the Geneva Convention did not apply to Pinochet. Mr. Pinochet

560 Charles Ghankay Taylor was indicted while he was the head of State of Liberia. He was charged for aiding the rebel group RUF during the civil war in Sierra Leone.
held immunity of Senate after he ceased as head of State, which was granted to him by the
government of Chile. Universal Jurisdiction applies to Crimes against Humanity, War Crime and
Genocide which are serious crimes under International Law. Accordingly, head of state immunity
should have been waived for Taylor. And he should have been prosecuted under universal
jurisdiction as the indictment against Taylor, violates Articles 2, 3 and 4 of the Statute of the
Special Court for Sierra Leone.⁵⁶¹

5.10.2 Defense Preliminary Motion and Legal Analyses

The defense counsel of Charles Ghankay Taylor appealed his indictment and the warrant
for his arrest to be nullified, citing that as a current head of state of Liberia, he was immune from
prosecution of civil and criminal cases while in office.⁵⁶² He held both personal and diplomatic
immunity, which protected him from any kind of prosecutions during his office duty. They argued
further that the special court for Sierra Leone has no jurisdiction over Taylor. The defense team
pointed out the case of the Democratic Republic of Congo (DRC) against Belgium (DRC v.
Belgium),⁵⁶³ before the International Court of Justice. The judgment was in favor of the DRC. The
incumbent Head of State at the time of his indictment, Charles Taylor enjoyed immunity from
criminal prosecution.⁵⁶⁴

⁵⁶¹ See Supra note 361, art.2,3 ,and 4.
⁵⁶² Mr. Taylor was indicted on 7 March 2003 by the Special Court for Sierra Leone. The warrant of his arrest was
communicated to the government of Ghana on 4 June 2004 by the Court, while Taylor was attending a peace
conference for Liberia.
⁵⁶³ See the case of DRC v. Belgium.
⁵⁶⁴ Marco Sassoli and Antoine A. Bouvier, How does Law Protect in War (2d, Expanded and updated ed. 2006).
The defense counsel argued further that exceptions from diplomatic immunities can only derive from other rules of international law such as Security Council resolutions under Chapter VII of the United Nations Charter (UN Charter), and the Special Court does not have Chapter VII of the UN Charter powers. Therefore since no judicial orders can be issued from a national Court, the indictment against Charles Taylor was invalid due to his personal immunity from criminal prosecution.\(^{565}\) Charles Taylor was enjoying immunity as a sitting head of state of Liberia. Therefore, the charges against him should be nullified. The defense counsel for Taylor also argued that the court has violated the sovereignty of the state of Ghana for requesting the arrest of Taylor.\(^{566}\) On 31 May 2004 the arguments of the defense counsel for Taylor were dismissed in Freetown by the Presiding Justice Ayoola, Justice Winger and Justice King.\(^{567}\)

The international crimes Mr. Taylor committed directly or indirectly are in violation of the Articles 2 crimes against humanity; violation of Article 3 common to the Geneva Conventions and of Additional Protocol II; and in violation of Article 4, other serious violations of international humanitarian law of the statute of special court. Therefore the court is in the line of international law and entrusted by the United Nations under Chapter VII of the U.N Charter to carry out its functions and bring the accused to justice. The court has jurisdiction to try Taylor as stated in Article 1(3),\(^ {568}\) and Article 6 of the statute of the Special Court for Sierra Leone.\(^ {569}\) These international crimes allegedly committed by Taylor have effect on his immunity. It is in this regard

\(^{565}\)Id.

\(^{566}\)Id.

\(^{567}\)See Supra note 516.

\(^{568}\)Statute of the Special Court for Sierra Leone article 1 (3).

\(^{569}\)Id. article 6.
that Mr. Taylor should face justice as in the case of U.S v. Noriega of Panama, Pinochet of Chile, Milosevic of former Yugoslavia and Jean Kambanda of Rwanda.

It is very interesting that Milosevic and Taylor argued jurisdiction during their court proceeding. It is known that the Special Court for Sierra Leone is hybrid court as it was established between the government of Sierra Leone and the United Nations, while ICTY was established by the United Nations Security Council.

Both these courts were created by the United Nations under Chapter VII of the UN Charter. The General Assembly has empowered the Security Council to maintain international peace and security and take any necessary measures to prevent further humanitarian crisis as stated in Article 1 under chapter 1 of the UN Charter. The other Articles 24 and 25 under chapter V of the UN Charter also stated clearly to prevent crisis and maintain peace and security to the international community. The United Nations Security Council is executing its duties on the behalf of the UN General Assembly.

These articles of the United Nations Charter have demonstrated how the ICTY and Special Court for Sierra Leone courts were entrusted by the UN Security Council to perform its function based on the statute agreed upon between the UN and the government of Sierra Leone, and ICTY. The courts were established under Chapter VII of the UN Charter. Therefore these courts are legal and entrusted by the United Nations to implement the agreement and prosecute the

570 United Nations Charter Chapter VII.
perpetrators who violate the international law. The courts are to cooperate with other states for extradition purposes. The court did not violate the sovereign state of Ghana. It was the right of the courts to cooperate and request Ghana to extradite Mr. Taylor as the court had jurisdiction to try him. Since there was no extradition treaty between the Special Court for Sierra Leone and Ghana, Ghana was not obliged to extradite Mr. Taylor to Sierra Leone. Ghana had also right to arrest and prosecute Taylor as the alleged crimes were international crimes. Ghana allowed Taylor to return to his country, Liberia, which was also its right to do.

5.10.3 Immunity

Charles Taylor of Liberia was a rebel leader of the National Patriotic Front of Liberia and was the President of Liberia from 1997 to 2003. He has allegedly aided the bloodiest civil war in the neighboring country, Sierra Leone through the rebel group RUF. When Taylor was appointed the President of Liberia, he was granted immunity as an officer still carrying out specific duty of the office. Due to his special responsibility in the office as stated in the Vienna Convention on Diplomatic Relations and Optional Protocol of 18 April 1961,\textsuperscript{573} and Convention on Privileges and Immunities of the United Nations of 13 February 1946,\textsuperscript{574} Taylor was immune as head of state from the prosecution of civil, criminal and any violation he had committed while he was in the office. He was given to enjoy his immunity by the Conventions as a head of state based on his term

\textsuperscript{573}Vienna Convention on Diplomatic Relations and Optional Protocols of 18 April 1961.
\textsuperscript{574}Convention on the Privileges and immunities of the United Nations of 13 February 1946, Adopted by the United Nation General Assembly.
in the office. But Taylor will not be protected with immunities, once he leaves the office or commits international crimes. The immunities of Taylor were affected in terms of grave breaches of international law when Taylor allegedly committed crimes against humanity and war crimes including the breaches of Humanitarian law during the war conflict in Sierra Leone. According to the customary international law, for the incumbent heads of state, their immunities can be waived once they commit international crime. This waiver of immunity has given the right to any court to indict and prosecute Taylor based on universal jurisdiction. The removal of his immunities was seen in the statute of the Special Court for Sierra Leone (SCSL), so that he could stand trial in Sierra Leone. Mr. Taylor was indicted on March 7, 2003 while he was the sitting head of state of Liberia, but his indictment was sealed until June 4, 2003 in Ghana.

5.10.4 Universal Jurisdiction and Charles Taylor

Ghana is a party to the Geneva Convention of 1949 and the alleged indictment against Taylor are offenses under Article 3 of the Geneva Convention of 1949. The government of Ghana had an obligation to decide the fate of the indictment of Taylor, whether to turn him over to the Special Court for Sierra Leone or to prosecute him since the indictment confers universal jurisdiction. The Government of Ghana decided to allow Taylor to return home to Liberia despite the indictment. Ghana and Sierra Leone have no extradition agreement thus. Ghana was not

575 Statute for Special Court for Sierra Leone Article 6.
obligated to hand over Taylor to the Special Court for Sierra Leone. When Taylor was president of Liberia he was protected from prosecution because he had immunity as a Head of State under customary international law.

Heads of State immunity is regarded as universal and most of the countries have accepted it. But this has changed since the Second World War, when the Treaties and International agreement were codified. The Heads of State who have violated international law are subject to universal jurisdiction and their immunity is waived. Most of the States in the world have ratified the Geneva Conventions of 1949 which require each State part to search for persons suspected of committing crimes, or bring them justice in their own court, or to extradite them to the State which made a case against them. Countries have an obligation to prosecute and extradite under universal jurisdiction a person who committed the international crimes which should not be violated by any country or any individual.

Although the former president of Chile, Augusto Pinochet, had senator for life immunity, it was waived by the British House of Lords for alleged human rights violations Pinochet committed during his reign as the President of Chile, even though the Supreme Court of Chile held that the Geneva Convention did not apply to Pinochet. Mr. Pinochet held immunity after he ceased to be head of State, this was granted to him by the government of Chile. Universal jurisdiction applied to crimes against humanity, war crimes and genocide which are serious crimes under International Law. The alleged indictment against Taylor, who violated Articles 2, 3 and 4 of the statute of

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577 Id.
578 Amnesty International, Universal Jurisdiction.
Special Court for Sierra Leone, can be prosecuted under universal jurisdiction. Accordingly, head of state immunity should be waived for Taylor. The Special Court for Sierra Leone has jurisdiction over the crimes against humanity, Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II including other serious violations of international humanitarian law of Article 4 of the Special Court for Sierra Leone. The Jurisdiction of the Court is only over International crimes committed during the civil war conflict in Sierra Leone. The Special Court has the right and power to investigate the accused including Taylor and bring them to justice.

5.10.5 Extradition

Extradition is a surrender by one nation to another of an individual accused or convicted of offenses outside of its own territory and within territorial jurisdiction of the other which, being competent to try and punish him, demands surrender. According to international law governments have no duty or responsibility to hand over the suspect to another country for prosecution, if there is no treaty of extradition between the two countries. An Extradition treaty is an agreement between two or more countries to surrender the perpetrator.

Before they surrender the accused, most countries study the contents of the request first, and the accused can only be tried based on the offenses in the extradition treaty. The defendant should not be tried for the same crimes twice (Ne bis in idem). If the crime committed is double criminality, both countries have right to try the defendant, but the defendant should not be tried for

579 Statute of Special Court for Sierra Leone Article 2, 3, and 4.
580 See United States of America, Plaintiff-Appellee v. Ramon Puentes, Defendant-Appellant, No. 93-4073 (May 2, 1993).
the same crimes twice (Ne bis in dem). But in the case of Charles Taylor, after he was advised to step down as the President of Sierra Leone, he went into exile in Nigeria. Liberia later has formally requested the extradition of former president Charles Taylor, who lived in exile in Nigeria and indicted for war crimes, the Nigeria presidency said in a statement. The Special Court for Sierra Leone has been also since then requesting the government of Nigeria to extradite Taylor to the SCSL to face the alleged crimes. Since Nigeria had no obligation to extradite Taylor, Nigeria refused to extradite Taylor as there was no extradition treaty between the government of Nigeria and Sierra Leone. Due to the alleged international crimes committed, Nigeria had jurisdiction to try Taylor through universal jurisdiction as Nigeria is part to the Geneva Convention of 1949, it has right to prosecute Taylor. Nigeria had also the right to extradite Taylor or to keep him. However, Nigeria decided to hand Taylor to his country of origin, Liberia. Liberia extradited Taylor to Sierra Leone. Mr. Taylor is now being prosecuted at a war crime tribunal in Free Town, Sierra Leone, which transferred him to the Hague for prosecution. The trial in the Hague is to follow the proceedings of the Special court of Sierra Leone in Free Town. Many witnesses who may have potential information in this case may not be able to travel and testify in the Hague, this could be due to financial constraint. If Taylor is convicted he would serve his sentence in the UK.

5.10.6 The Arrest and New Venue Request for Mr. Taylor

581 Special Court for Sierra Leone Statute Article 9.
582 Tom Ashby, Liberia requests extradition of Taylor, Redorbit, (Nigeria)
583 See Prosecutor v. Taylor, Case No. SCSL. 03 – I.
While in exile in Nigeria, Taylor became aware that he was going to be handed over to his country, and fled his home in Nigeria. Nigeria captured fugitive former Liberian President Charles Taylor on the border with Cameroon on Wednesday March 29, 2006 and deported him to Liberia, easing its embarrassment at his escape earlier in the week.\textsuperscript{584} Then the government of Liberia turned him over to the Special Court in Sierra Leone. The President of Liberia, Ellen Johnson Sirleaf, called for a new venue for Taylor to be tried. Liberia, Sierra Leone, and the SCSL raised concerns that prosecuting Taylor in Sierra Leone would present security risks that might destabilize the region and that Taylor’s continued presence in the region constitutes a threat to international peace and security.\textsuperscript{585} The Special Court in Freetown made a request to the Dutch Government and the International Criminal Court for the trial of Mr. Taylor to be held in The Hague in the Netherlands. The trial was to follow the proceedings of the Special Court of Freetown.

The Dutch Government responded that it can only allow the trial of Mr. Taylor in The Hague, if the United Nations Security Council passed a resolution, making such a request. Secondly, the Dutch Government would accept the trial of Mr. Taylor, provided that another Government provides a place where Taylor can be imprisoned upon conviction, or reside if found not guilty. The Security Council passed the Resolution for Taylor to stand trial in The Hague,\textsuperscript{586} while the United Kingdom offered him a place to spend his jail time if convicted. Taylor was transferred to The Hague on June 20, 2006. On July 21, 2006, Taylor was charged with international crimes

\textsuperscript{584} Kathryn Cramer and David G. Hartwell, Charles Taylor Caught, then, Nigeria Deports Charles Taylor to Liberia, Maiduguri, Nigeria, (March 29, 2006).

\textsuperscript{585} Mark A. Drumbl, Charles Taylor and the Special Court for Sierra Leone, ASIL Insight, Vol.10 issue 9 (April 12, 2006).

when he made his first appearance before the Special Court for Sierra Leone in The Hague. He pleaded not guilty. Nigeria is a member of the Geneva Convention of 1949. And through the universal jurisdiction, Nigeria can extradite Taylor to Sierra Leone in the absence of extradition agreement or to prosecute him.

5.10.7. Trial of Charles Taylor

Charles Ghankay Taylor the former president of Liberia was charged with the international crime of crimes against humanity and war crimes, and other serious violations of international humanitarian law during Sierra Leone’s civil war. Mr. Taylor is charged of 11 counts. These counts were: terrorizing the civilian population; physical violence (mutilation; cutting of limbs; killing (unlawful killings); sexual violence (rape and sexual slavery); conscripting or using child soldiers (children under the age of 15); forced labor and abduction; looting and burning. The Court had probable cause to charge Taylor with these crimes based upon his alleged conspiracy with a rebel group RUF in Sierra Leone. These crimes violated Articles 2, 3 and 4 of the statutes of the Special Court for Sierra Leone. These crimes are also a breach of international law and subject to universal jurisdiction.

On April 3, 2006 Taylor was arraigned before presiding Judge Richard Lussick of Trial Chamber II for Special Court for Sierra Leone. The Judge read the charges against Mr. Taylor,

587 See Prosecutor v. Charles Ghankay Taylor.
588 Statutes for Special Court of Sierra Leone.
which included murder; mass rape; sexual slavery; mutilation and the use of child soldiers during Sierra Leone's 1991-2002 war. The Judge asked Taylor whether he understood the charges against him. Taylor denied that he committed the crimes against the people of the Republic of Sierra Leone. And he challenged his appearance before the court, arguing that it was illegal. Taylor further stated: "For me it is not a matter now of entering a plea because I do not recognize the jurisdiction of this Court". Mr. Taylor further argued the legality of how he was apprehended and brought before the court. He concluded that he was not guilty. The Judge dismissed Taylor's claims and instructed Taylor to enter a plea. Taylor responded: "Most definitely, I did not and could not have committed these acts against the sister republic of Sierra Leone."

During Taylor's first appearance in court, the court appointed him defense lawyers since he did not have his own counsel. Due to lack of finances, Mr. Taylor could not obtain the lawyer of his choice. His goal was to have one of the lawyers who was part of O. J. Simpson's defense team, Harvard law Professor Alan Dershowitz. Dershowitz represent him, however, Taylor selected British lawyer Karim Asad Ahmad Khana to serve as his provisional counsel. Khana is an expert in human rights and international law. His defense team contested the legality of the Court. This

590 IRIN, Sierra Leone: Taylor pleads not guilt to crimes in sister republic.
591 Ibid.
592 BBC News, Taylor Pleads not Guilt at Trial, 3 April 2006.
593 Prosecutor v. O. J. Simpson. The case of O. J. Simpson was a high profile murder case but the defense team has eventual won the case. Simpson was accused of killing his ex-wife and her boyfriend in the United State of America. Professor Dershowitz was also part of the defense legal team of Claus von CBulow, this case was also a high profile murder case and the defense team won the case.
594 Cathy J. Potter, Taylor selects UK Lawyer as Provisional Counsel in War Crimes Trial, JURIST, April 06, 2006.

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challenge was subsequently filed before Sierra Leone’s Supreme Court, and was dismissed. The defense counsel also argued that the Special Court had no jurisdiction over Taylor, as a former head of State of Liberia. The defense counsel further argued that Taylor was indicted while he was the President of Liberia. And by that time he was still under protection of immunity as head of State of Liberia.

But the appeal court dismissed this argument, ruling that heads of state are not immune from prosecution of international crimes before international tribunal. Therefore, Taylor could be tried before the international tribunal or court. The Special Court for Sierra Leone is an independent international court and its operation is based on the international law. The Sierra Leone court is a hybrid court (mixed court) created by agreement between the United Nations and the government of Sierra Leone to prosecute the perpetrators who committed or have the greatest responsibility for the international crimes committed inside the territory of Sierra Leone. The court can only try the crimes committed after November 30, 1996 despite the war starting in 1991.

The Appeal Chamber further ruled that the Special Court does have jurisdiction to try Taylor for the alleged following international crimes: crimes against humanity; violating Article 3 of the Geneva Convention and Additional Protocol II; other serious violations of international

597 Id. at 18.
598 Statutes for the Special Court, Article 2.
599 Statutes for the Special Court, Article 3.
humanitarian law, and the use of child soldiers. The Special Court was acting independent from the municipal court of Sierra Leone. As for the question or challenge that Mr. Taylor was indicted while he was a President of Liberia, the Appeal Court ruled that head of state immunity is waived or that heads of state are not immune for international crimes when being tried in international courts or even in the national courts. Even though Taylor was a President of Liberia, who held immunity as head of state, due to the international crimes alleged committed by Taylor in Sierra Leone, he was not immune before the international court. Diane Orentlicher, law professor and director of American University in Washington, D. C's War Crimes Research, had been a legal adviser to the court of Sierra Leone regarding the prosecution of Taylor. Orentlicher held that the immunity that incumbent heads of state enjoy before foreign national court does not extend to international court. Although the Appeal Court found that there was no extradition treaty between Sierra Leone and Nigeria, it ruled that Taylor was properly before the court. Since there was no extradition treaty between Nigeria and Sierra Leone, Nigeria had no legal obligation to hand over Taylor to Sierra Leone. Since Nigeria is a member of Vienna Convention of 1949, Nigeria could have, however, prosecuted Taylor for the alleged crimes under the doctrine of universal jurisdiction. Universal jurisdiction allows countries to exercise jurisdiction over individuals for committing certain international crimes even when these crimes are not committed within their territory. Under international law, states are encouraged to incorporate universal

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600 Statutes for the Special court, Article 4.
601 Ibid.
602 Ibid.

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jurisdiction into their municipal laws. Nigeria also could have sent Taylor to his country of origin, Liberia, which Nigeria chose to do. Liberia subsequently transferred Taylor to Sierra Leone to be tried in the Special Court for Sierra Leone for Crimes against humanity and War crimes.

Taylor was transferred to the Special Court with the right procedures. Taylor was transferred to The Hague on June 20, 2006. On July 21, 2006, Taylor made his first appearance before the Special Court for Sierra Leone in The Hague, where he entered a plea of not guilty. The key point in the trial was not going to be whether Mr. Taylor committed the acts himself, but the argument was going to be about whether he ordered, supported or condoned such acts. The trial of the former president Charles Taylor began in June 4, 2007 in The Hague. If convicted, he would spend his jail time in the United Kingdom. Mr. Taylor, the former President of Liberia, who was charged for International crimes in the tribunal for Sierra Leone is in jail in The Hague waiting the outcome of his trial.

Taylor is being tried by the Special court for Sierra Leone in The Hague and not before the International Criminal Court, since his alleged crimes were committed before ICC came into effect. The ICC has no jurisdiction over international crimes committed before its establishment. The ICC can only try cases committed after July 01, 2002 when it came into force.

5.10.8 Conclusion

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604 Lansana Fofana, Mixed Feelings over Charles Taylor’s Transfer to the Hague, InterPress Service, June 20, 2006.
606 Ibid.
Taylor was indicted by Special court for Sierra Leone while he was the head of state of Liberia. 607 He was the first head of state to be charged and prosecuted for alleged committed international crime by aiding conflict in another country. The present trial of the former President, Charles Taylor, in the Special Court in Freetown, which has now moved to The Hague, will follow the proceedings of the special court of Freetown. The trial of Taylor is a loud message to all leaders and rebels internationally, who would strategize to come to power by any means necessary, and which often results in the killing of innocent civilians on one hand, and the inevitable misery that the population must face for their future. Furthermore, it is also a message that committing international crimes beyond borders through conspiracy will lead the accused to imprisonment, as happened to Taylor in special court in Sierra Leone. Taylor ended up being transferred to The Hague.

The venue change of Taylor's trial to The Hague has limited witnesses from testifying, especially those witnesses who may have more potential information to come forward to testify. And this information may help the court to have sufficient evidence when deciding the case. The transfer of Taylor may cause justice not to prevail. I believe that flying all witnesses to The Hague will be an expensive exercise and may lead to financial strain for the court. The venue could have moved to the Community Court of Justice of the Economic Community of West African States (ECOWAS CCJ), based in Lagos, Nigeria. 608 More witnesses could have been reached and more

607 See Supra note 454 and 455.
justice would have been served. The ECOWAS CCJ came into force in 1995. Nigeria may have a problem agreeing to Taylor being tried in ECOWAS CCJ in Nigeria because of extradition controversy of Taylor while he was in exile in Nigeria. This time he was not going to be a free man. But one should understand that the Community court of Justice is a court of West Africa countries and not a national court of Nigeria. Therefore that could be also another venue or the venue could also have moved to the International Criminal Tribunal for Rwanda based in Arusha, Tanzania of East Africa. ICTR came into force in 1995 – 2006.

The Special Court for Sierra Leone (SCSL) was established to prosecute those accused of responsibility for committing the crimes during the armed conflict. The Court has so far indicted 13 perpetrators and only five accused have been convicted since the beginning of the trial on June 3, 2004. Those accused committed crime directly or in conspiracy are tried in Free Town, except one the former President of Liberia, Charles Taylor, who was transferred to The Hague to be tried. Generally it is said that Sierra Leoneans are against the cost of a tribunal and are concerning at the Court of prosecuting superiors like Charles Taylor instead of trying soldiers who conducted direct the widespread killings and amputations of people. Some argue that the Court is too constrained in terms of its time frame, jurisdiction and enforcement powers, which will weaken its ability to deliver justice. Others see the Court as an exemplary model for other

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609 Id.
610 See Supra note 176.
611 Indictment of the Special Court for Sierra Leone.
612 Indictment of Charles Ghankay Taylor.
613 Taylor was the only accused who was transferred to the Hague for the security reasons as believed that he has still more support in the region. And this may cause a conflict during his trial in Free Town, Sierra Leone.
international tribunals. The Special court for Sierra Leone is a Hybrid as it was created by the Sierra Leone government and the United Nations. The Sierra Leone court differs from the tribunals of Yugoslavia and Rwanda. The U. N. Security Council created the tribunals of Yugoslavia and Rwanda alone, and they were not hybrid courts.

Another option to this dispute is a National Reconciliation which was also an attempt to bring the Sierra Leone nation together, unfortunately this attempt failed. Thus, the option left was to create the Tribunal court.

These tribunals that have been discussed are ad hoc courts (temporary courts) created for only trying specific criminal cases. The tribunals cease to exist once the cases are final. It was realized that to continue establishing tribunals would be too costly and challenging, since tribunals are created only to last for a specific period and at a specific venue. The United Nations General Assembly therefore realized the necessity of establishing a permanent International Criminal Court that could be more efficient and effective. This led to the establishment of International Criminal Court (ICC), a world permanent court, to deal with all international crimes and atrocities.
CHAPTER SIX

6.0. INTERNATIONAL CRIMINAL COURT

6.1 Introduction

International Criminal Court (ICC) is the world permanent court. It is established by the United Nations General Assembly to eliminate or reduce the International Criminal Tribunals. ICC has jurisdiction over all international crimes and power to exercise authority over a person. It will only deal with core crimes which are of international concern as stated in the Rome Statute (ICC Statute). The jurisdiction and functioning of the Court shall be governed by the provision of this Statute. ICC can only intervene in the domestic courts, when the national courts are not willing or not able or no longer function to try cases. ICC will only prosecute International crimes committed after the Statute came into force on July 01, 2001.

ICC is different from International Court of Justice (ICJ). ICJ is also a world court, established by the United Nations and came into force on April 1946. It is a civil tribunal that deals primarily with disputes between states, and it has no criminal jurisdiction to try individuals.

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614 Rome Statute or ICC Statute Article 4.
615 Statute of ICJ Chapter II Article 36.
6.2 **Background**

A call to create an International Court came in 1872 after human abuses during the Franco-Prussian war. This call was made by Gustave Moynier.\(^{616}\) The Prussians were supported by Germany. The victory of Prussia brought the unification of Germany.

The idea of Prosecution of heads of State Started after the WWI, when the 1919 Peace Treaty of Versailles provided in Article 227 for the prosecution of Germany’s head of state, Emperor William II.\(^{617}\) It was believed that WWI, was brought by the German Empire under William II, which caused thousands of deaths. The United States of America, Great Britain, France, Italy and Japan as allied powers decided to create a peace treaty of Versailles which brought the war to an end. After the WWI ended in 1919, the Allies requested The Netherlands to extradite William II, who fled and exiled in the Netherlands, to be tried and punished for a supreme offense against international morality and the sanctity of treaties.\(^{618}\) But Queen Wilhelmina denied the request to extradite him. The Netherlands did not agree to hand over William II as a war criminal to the allies following the Armistice (negotiation).\(^{619}\) The former head of State of Germany remained in The Netherlands until his death on 04 June, 1941.

After the Second World War, which started in 1939 and ended in 1945, Nuremberg and Tokyo Tribunals were established by the Allies to Prosecute the Nazi Germans and the Japanese

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\(^{616}\) Gustav Moynier was a jurist from Geneva, Switzerland. He was co-founder of the International Committee of the Red Cross. Gustav was active involved in the Public welfare and the atrocities of Franco-Prussian led him to draft the proposal of the statutes of the Permanent court.


\(^{619}\) http://www.spartacus.schoolnet.co.uk/FWWkaiser.htm(last visited on March 19, 2007).

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for the war crimes committed during the Second World War. The Nuremberg tribunal was created to prosecute the Nazi Germans who committed the atrocities during the Second World War. The crimes were genocide or holocaust to eliminate minority groups, especially Jews, who had been the target; crimes against humanity; crimes against peace; and war crimes. The Nuremberg trial began in 1945 and ended in 1949. The Nuremberg Trial was the most important and the biggest trial for war perpetrators which prosecuted the military leaders, political leaders and others. The Tokyo Tribunal was also established to try the leaders of Japanese regime, who committed the war crimes in the far east of Asia.

The International Criminal Court (ICC) operates differently from the tribunals. ICC is a permanent world court, established by the UN General Assembly, while the tribunals (ICTY and ICTR) were temporarily created by UN Security Council. The ICC allows the victims and their families in court to express themselves of their grievance suffered from their accused. The ICC has created a fund in which the victims could demand compensation through their lawyers or by themselves.

6.3 Establishment of International Criminal Court

The United Nations continued to create Tribunals after the armed conflicts in the former Yugoslavia and Rwanda to bring the perpetrators to face justice. It was realized that continuing to

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620 Nuremberg International Military Tribunal Trials.
621 Nuremberg Military Tribunal Charter Article 6.
establish Tribunals would be too costly and challenging, since Tribunals are created only to last within a specific period and venue. The United Nation General Assembly therefore realized the necessity of establishment of a permanent International Criminal Court which could be more efficient and effective. This permanent Court should bring those individuals committing international crimes, crimes against humanity, war crimes and genocide before the court. Thus, the nations of the world decided to establish the permanent International Criminal Court to deal with all kinds of serious international atrocities.

After the establishment of the United Nations, the United Nations General Assembly then gave a responsibility to the International Law Commission to draft the Rules of Procedures and evidence for creation of International Criminal Court, but the draft was interrupted during the cold war and abandoned by the United Nation General Assembly. The plan of continuing establishment of the International Criminal Court was again brought up by Trinidad and Tabago in 1989.

In June 1989, motivated in part by an effort to combat drug trafficking, Trinidad and Tobago resurrected a pre-existing proposal for the establishment of an ICC and the UN General Assembly asked that the ILC resume its work on drafting a statute.623 And it was at this time that the International Law Commission (ILC) was again requested by the United Nations General Assembly to proceed drafting the rules for the permanent court. Upon completion of the drafting, the International Law Commission submitted its final draft to the United Nation General Assembly. The ILC recommended that the state parties meet to discuss and approve the draft of the

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623Coalition for the International Criminal Court, History of International Criminal Court.
ICC. Upon receiving the draft from the International Law Commission, the UN General Assembly selected an ad hoc committee to review the draft. The ad hoc committee submitted its recommendation to United Nations General Assembly, which led the UN General Assembly to appoint the Preparatory Committee and adopt the draft into the Statute of the International Criminal Court.

The Preparatory Committee was entrusted to compile the draft to the text of the Statute of International Criminal Court, establish of the rules of procedure and evidence, and determine the international crimes including the jurisdiction of the court. It also had to elaborate on the function of the court. The relationship of the International Criminal Court (ICC) and United Nations, including state members, was to be stated clearly.

In addition to providing input into the discussions, NGOs attending these meetings under the umbrella of the NGO Coalition for an ICC (CICC) advocated for a diplomatic conference to be held to finalize the treaty. The discussion took place from 1996 to 1998. From 15 June to 17 July 1998, a conference was held in Rome in Italy to discuss and negotiate the adoption of the Statute of ICC. The Statute was then supported and adopted by the majority of the state members and was named the Rome Statute. Some countries such as China, United States of America, Russia, Israel, Qatar and Iraq voted against the statute. While 21 countries refrained from voting in favor of ICC, sixty countries ratified the statute on 11 April 2002. The International Criminal Court was

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625 Ibid.
established at The Hague in the Netherlands and came into force on July 1, 2002.\textsuperscript{626} The Court has jurisdiction over serious international crimes as stated in the Rome Statute of the Court, which include the following:

a. The crime of genocide

It is the goal of the act to eliminate in whole or part, ethnical, racial group or religion or national persecution.\textsuperscript{627}

b. Crimes against humanity

Crime against humanity is some committed act which is part of systematic attack or widespread attack directed knowledgeably to civilians.\textsuperscript{628}

c. War Crimes

War crimes are grave breaches of the Geneva Convention of 12 August 1949, which protect people or property against the acts. The court has jurisdiction to these crimes particularly if the committed crimes are being planned for a large scale commission such as;\textsuperscript{629}

d. The crimes of Aggression

Aggression has been added as part of a crime within the jurisdiction of the international criminal court. The crime of aggression can only be enforced in the court once the definition has been adopted through the agreement of the states parties. Therefore, aggression will not be punishable until the nations of the world come up with the appropriate definition.\textsuperscript{630}

\textsuperscript{626} G. A 50/46 of 11 December 1995.
\textsuperscript{627} ICC Statute art. 6.
\textsuperscript{628} ICC Statute art. 7.
\textsuperscript{629} ICC Statute art. 8.
\textsuperscript{630} ICC Statute Article 5.
This author believes that nations are taking too long to define aggression, as it involves sensitive political issues while the world is losing thousands of innocent people through this war of aggressions. It is this author's opinion that part of the aggression crimes should be prosecuted such as willful killing and willfully causing great suffering or serious injury to one's body or health. These acts are an intent to wage war, foreseeing the consequences of killing a lot of persons that is a violation of international treaties. It is hoped that the definition will be reached soon and the wars of aggressions are reduced or eliminated.

Self-defense is a justifiable action to imminent threats. According to the international law any state has the right to defend its territory and its people. Countries have right to invite other states for military personnel to assist in intervene.

6.3.1 The Structure and Function of the International Criminal Court.

The structure of the International Criminal Court consists of the Judiciary, the office of the Prosecutor, the assembly of States Parties and the Registry. a. Judiciary Divisions

The international Criminal Court consists of eighteen judges. The Assembly of the State Parties elects the Judges for a period of nine year term each, and their term is not renewable. During the election of the judges, the balance for the gender is to be considered by the Assembly of State Parties who is electing the Judges. The elected Judges should come from different parts

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61^ICC Statute Article 34.
62^ICC Statute Article 36 para 1.
63^ICC Statute Article 36 (9) (b).
64^ICC Statute Article 36 (8) (a) (iii).
of the world. The five Judges should have established competence in the field of international criminal law while nine judges must have established experience in Criminal law and criminal procedure. The Judges must carry these expert experiences to fulfill and serve the principal of the world legal system without any prejudice. When judges of the court are elected they have to organize the division of the court and organize themselves within the division of the court. The elected judges should elect their president of the court. The judicial division of the International Criminal Court is divided into the Appeal Division, Trial Division and Pre-Trial Division:

b. The Appeal Division

The Appeal Division should not have less than six judges. The Appeal Division is further divided into Appeal Chamber, which has 5 Judges with their president included. The function of the Appeal Division is to review and hear the decision made by the Trial Chamber. A sentence can be appealed if there was a procedural error, error of the law, error of fact or any other error which occurred during the trial which prejudice fairness, the proceedings and the decision. It could be a proportion between the crime and the sentence issued by the lower Chamber. The Appeal Chamber is to decide to either reverse or amend the decision of the judgment or to reverse the sentence. The Appeal Chamber can also issue an order for a new trial before the different Trial Chamber and not refer the case to the trial where it was tried before to avoid the prejudice. The Appeal Chamber can also order a new trial if there is new evidence discovered, or if the new evidence was not available during the time of trial. This is only done if the Appeal Chamber finds the discovered evidence of

635 ICC Statute Article 36 (3) (b) (i).
636 ICC Statute Article 39 (1).
sufficient importance to reverse the sentence, based on Article 84 of the Rome Statute. 637

c. The Trial Division

The Trial Division consists of six judges who are expert in criminal trial. The Trial Chamber is split into Trial Chamber which is consists of three judges who perform the judicial function of the Trial Chamber according to the Article 39 (2) (b), 638 of the Rome statute. According to the Article 64 of the Rome statute, the main role of the Trial Chamber is to ensure that all the required procedures are followed and the trial is conducted fairly and expeditiously. The right of the accused must be full respected and protected. The victims and witnesses should also be protected.

If the Trial Division has a heavy workload and there are insufficient personnel, the presidency temporarily can assign the pre-trial judges to the Trial Division. According to the Article 39(4) 639 the judge who tried the case at the pretrial is ineligible to be assigned to the Trial Division to hear the same case. Trial Chamber determines the guilt and the innocent of the accused. It will deliberate the guilt of the accused and impose the sentence. The sentence should not exceed a maximum of thirty years or life imprisonment term. Financial penalties may also be imposed.

According to Article 77 of the ICC statute, 640 the Court can order monetary compensation to the victims, restitution, according to Article75 (2). 641 The trial should open to the public unless

637 ICC Statute Article 84.
638 ICC Statute Article 39 (2) (b).
639 ICC Statute Article 39 (4).
640 ICC Statute Article 77.
641 ICC Statute Article 75 (2).
there are some confidential or sensitive information given as evidence to be protected during the trial.

d. **Pre-Trial Division**

   The Pre-Trial Division consists of six judges.\(^{642}\) The Pre-Trial Division is further divided into Pre-Trial Chamber which has one or three judges. It determines if the case falls within the court's jurisdiction of the court. It is this court which confirms and rejects the authorization of the investigation. The Pre-Trial Chamber examine all the cases prepared by the prosecutors during the pre-trial stage and determines if the case is admissible or inadmissible for court proceedings and authorizes the prosecutors to make an investigation on the country concerned. The Pre-Trial Division has power to decide whether the case is to be submitted to the Trial Chamber.

e. **The Office of the Prosecutor**

   The prosecutors are elected by Assembly of state parties.\(^{643}\) This office is responsible to conduct the investigation and prosecutions of serious international crimes which fall within the jurisdiction of the court. The prosecutors are responsible for getting referrals made by the State Party or from the security council of the United Nations. The prosecutors evaluate the submitted cases to see whether the prosecutors should continue with the proceeding before any decision is made. The prosecutors can also obtain some information on crimes within the jurisdiction of the court which is given by the other informant or individual or non-governmental organization. The

\(^{641}\)ICC Statute Article 39 (2) b) (iii).

\(^{642}\)ICC Statute Article 42 para. (4).
prosecutors determine if there is a reasonable basis to proceed with the investigation.\textsuperscript{644} If the investigation is needed, the prosecutors will request the Pre-Trial Chamber to authorize the investigation. The statute considers a case to be inadmissible before the international criminal court if the case is being investigated by a state which has jurisdiction over the case. Except if the state is not willing to carry out the investigation genuinely. The office of the prosecutor has to consider the requirements of the statute during the decision whether to do the investigation or not. According to the Roman statute the office of the prosecutor should operate independently. The office should not act or seek any instruction from outside source such as states, international organization, NGO or from individual.

f. The Registry

The Registrar is elected by the judges for a period of a five year term which is renewable.\textsuperscript{645} The Registrar is responsible for the administration in serving the court which is headed by the Registrar. It is responsible for the administration regulations of the employment for employees including the staff of prosecutors. It has also a function for operation of the victims and witness.

6.4 The Assembly of States Parties

The Assembly of States Parties is the legislative body which oversees the functional of the International Criminal Court. It consists of the representatives of the States which ratified and acceded to the Rome Statute. Every State Party is represented by a representative who is being

\textsuperscript{644} ICC Statute Article 53 (1) (2).
\textsuperscript{645} ICC Statute art 43 para. 4 and 5.
proposed by the Head of the State or Foreign Affairs Ministry. The Assembly of State Parties is responsible for the budget, election of the judges, prosecutors and deputy prosecutors. This office has right to remove the judges, prosecutors, and deputy prosecutors.

According to the Article 119, regarding the disputes between two or more countries, the statute should be interpreted to see whether the judiciary function of the court should be decided through negotiation. If the negotiation failed then it can be referred to Assembly of State Parties. Every State Party has one vote and every effort should be made to come to the decision by the general agreement of both Assemblies of the State Parties. If there will be no agreement reached the decision should be taken by the vote.

6.5 Jurisdiction of the Court

The International Criminal Court has jurisdiction and power to exercise authority or jurisdiction over a person and it will only deal with serious crimes which are of international concern such as crimes of genocide, crimes against humanity, war crimes, and the crime of aggression as stated in Articles 5, 6, 7 and 8 of the Rome Statute. The Rome Statute governs the jurisdiction and the function of the Court. The jurisdiction of the Court is limited to crimes committed after the Statute came into force on July 01, 2002. Accordingly, the ICC has no jurisdiction over Rwanda tribunal, the former Yugoslavia tribunals and the Special Court for

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646 Article 5 of the ICC Statute.
647 Article 6 of the ICC Statute.
648 Article 7 of the ICC Statute.
649 Article 8 of the ICC Statute.
650 Article 11 of ICC Statute.
Sierra Leone. As these crimes of ICTY, ICTR and Special Court for Sierra Leone were committed before the establishment of the International Criminal Court.

The court does not have jurisdiction over any domestic courts. The ICC can only prosecute cases when the national courts are not willing or are not able to try cases. Then the state can refer them to the International Criminal Court. The International Criminal Court can only intervene in the domestic courts with the help of international communities, if the system of the national court no longer functions to prosecute those committed serious international crimes and if those who are involved are high-ranking officials of the authority. The International Criminal Court will only handle crimes, which are committed after the court was created.

The jurisdiction ratione loci that cases come to the court brought by the Security Council, the court has jurisdiction to try any individuals from all the states in the world even if the country is not a member to the statute of the ICC Court. But if the case is referred to the court by the prosecutor or by the state party in this case, the jurisdiction of the court is limited and restricted. The ICC has jurisdiction over the subject matter of the four serious crimes: The crime of genocide;\(^{651}\) crimes against humanity;\(^{652}\) war crimes;\(^{653}\) and the crimes of aggression.\(^{654}\) The ICC is also in the position to hear the treaty crimes cases as treaty crimes face serious problematic for the international community now days and need to be define not only to hear them. There is also a concern of crime against aggression, terrorism and drug crimes which must be discussed at the

\(^{651}\)See supra note 581.
\(^{652}\)See supra note 582.
\(^{653}\)See supra note 583.
\(^{654}\)See supra note 584.
reviewed. Aggression has been added as part of a crime within the jurisdiction of the International Criminal Court.

Crimes of aggressions can only be enforced in the court once the definition has been adopted through an agreement of the States Parties. Therefore, aggression is not yet punishable until the nations of the world come up with the definition. Terrorism is also one of the crimes added to international crimes but at the moment, terrorist acts are tried in the national courts with the procedure based on criminal law. It will be tried in the International Criminal Court once it is defined. The International Criminal Court has jurisdiction over all international crimes. In fact the ICC has already charged the first four accused from DRC for war crimes since establishment of the court, which came into effect on 01 July 2002.

6.6. Cases referred to the ICC

6.6.1. Uganda

The International Criminal Court issued the Public International Alert to bring to justice the Uganda Rebel leader Mr. Joseph Kony, and his three subordinates Vincent Otti deceased, Okot Odhiambo, and Dominic Onguen of the Lord' Resistance Army (LRA). Mr. Kony is wanted by the world court to face charges of child conscription, murder, rape, abduction, and all the alleged crimes in violation of international Human Rights in Uganda. The government of Uganda referred these cases to the ICC. At the moment, the government of Uganda and the rebel group of LRA are

engaged in a peace negotiation to end the war conflict of 20 years in Uganda. The government has offered the rebel's leader Mr. Kony amnesty. Despite the international warrant of arrest of Kony and others issued on 8 July 2005. The rebels group wants the ICC to withdraw the international warrant of arrest before signing the peace agreement with the government of Uganda to bring peace in Uganda. Uganda government wants to try the accused instead of ICC. This cannot bring peace to Uganda by trying the accused. The government of Uganda should try to set up a Truth reconciliation.

6.6.2. Democratic Republic of Congo

Mr. Thomas Lubanga Dyilo is the first suspect to be tried in the International Criminal Court in The Hague. Mr. Lubanga was a rebel leader to the Union of Congolese Patriots (UPC) which fought in the eastern part of Democratic Republic of Congo (DRC) during war conflict. The UPC is accused of massacring civilians in 2002 in Ituri. It is alleged that between 2002 and 2003, 800 civilians were killed by the UPC. Due to hostilities of UPC in the eastern part of the DRC, more than 100,000 civilians were reported displaced since December 2004. In February 2005, Mr. Lubanga was also accused of ordering the killing of nine Bangladeshi United Nations peace keepers in the volatile north-eastern Ituri region. Mr. Lubanga has been arrested on charges of

657See Supra note 523.
658Trial Watch, Thomas Lubanga.
659Congo Watch, DR Congo rebel Thomas Lubanga faces Hague Trial, March 17, 2006.
human rights violations on March 2005 and on March 17, 2006 was handed over to the International Criminal Court. On the August 28, 2006, he appeared in international criminal court for his war crimes. He was indicted of conscripting of enlisting under age minor children and forcing them to engage in serious hostilities. The next appearance of Mr. Lubanga in court was on September 28, 2006. The ICC confirmed the charges of Lubanga on 29 January 2007.

The ICC is currently trying four of the accused, all from the Democratic Republic of Congo or DRC: Prosecutor v. Thomas Lubanga Dyilo, Prosecutor v. Bosco Ntaganda, Prosecutor v. Germain Katanga, Prosecutor v. Mathieu Ngudjolo, and Jean Pierre Bemba Gombo, all of whom are in the custody of ICC in the Hague. Thomas Lubanga Dyilo was ordered to be released by the Trial Chamber on July 2, 2008 as the prosecutors denied submitting the necessary document to the judges which contain potential information regarding his crimes. Prosecutors appealed the decision. Lubanga remains in custody until the appeal is heard. If the DRC could have tried these four cases in their domestic court, it is likely that more witnesses would have come forward. However, it may have been that the government of the DRC transferred them to The Hague for a fair trial and to avoid being called biased during the prosecution.

6.6.3. Sudan

The other progress is that, the U.N. Security Council has requested the international criminal court to investigate the Darfur war conflict in Sudan. The reason for the investigation is to bring perpetrators to justice. The prosecutor of International Criminal Court has now identified two suspects alleged responsible for International atrocities in the region of Darfur. The Prosecutor is seeking summonses for State Minister for Humanitarian Affairs, Ahmed Muhammad Harun (Ahmad Harun), and Janjaweed Militia leader, Ali Muhammad ALI – ABD – AL- Rahman (Ali Kusayb). These are the two wanted suspects to be tried before the ICC. The government of Sudan refused to surrender the accused to International Criminal Court for their responsibility for alleged international atrocities in the region of Darfur.

ICC Prosecutor Luis Moreno-Ocampo has presented evidence showing that Sudanese President, Omar Hassan Ahmad Al Bashir committed the crimes of genocide, crimes against humanity and war crimes in Darfur. The alleged crimes are committed since 2003. Prosecutors are seeking arrest warrants for Al Bashir. Sudan is not part of the Rome Treaty (ICC), but ICC has jurisdiction over international crimes committed in any country regardless whether the country is a member or not.

668 Id.

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Mr. Al-Bashir is the first head of state to be charged by the ICC, the first head of state to be charged by the ICC with genocide, the first head of state to be charged by the ICC while in office, and the first head of state to be charged by the ICC whose country is not a party to the ICC. There is much controversy regarding the charges against Mr. Al-Bashir, and these charges are said to be undermining the peace process in Sudan. Al Bashir respondent that Sudan is not a state member to the ICC and therefore ICC has no jurisdiction to prosecute him.

The ICC is also investigating two Darfur rebel leaders of Sudan for allegedly attacking and killing ten international peace keepers forces from the African Union, which is regarded as a war crime as stated in Article 8, para. 2 (b) (iii) of the Rome Statute or ICC. The U.N. Security Council instructed the prosecutor of international criminal court to investigate the Darfur conflict.670

If the charges against Mr. Al-Bashir are to be withdrawn, they should also be withdrawn from the Darfur rebel leaders as they are also part of the peace process in Sudan. Additionally, Uganda rebel leader Mr. Joseph Kony and his subordinates in the Lord’s Resistance Army (LRA) are on warrant of arrest by the ICC,671 and are currently engaged in the peace process negotiation with the government of Uganda facilitated by the United Nations Mediator envoy to end the war conflict in Uganda. The LRA has been requesting the charges or warrants of their arrest to be withdrawn by the ICC for the peace negotiation to be more effective in Uganda. Should the charges of Mr. Al-Bashir be dropped, the charges against the Uganda rebel leaders of LRA should also be withdrawn though each situation is different. If the charges of the current Head of State of

671See Supra note 523.
Sudan, Omar al-Bashir goes ahead, he will be held accountable for commander and superior responsibility, as he failed to execute his duty for not punishing his subordinates by bringing them to justice. The ICC is an independent judicial body and it should be allowed to execute its duties based on the rule of law without interference.

The charges against Al-Bashir by ICC should not be blocked as this will discredit the credibility of the World Court. The peace process is needed in Sudan and the atrocities have to come to an end. Former heads of state Slobodan Milosevic, of Yugoslavia672 and Charles Ghankay Taylor of Liberia,673 were also indicted by other international Tribunals not the ICC while they were heads of state and the peace process was underway at the same time. If Milosevic and Taylor were indicted while they were heads of state, why should Al Bashir not be indicted? Taylor was requested to step down as a president of Liberia in 2003 for the sake of peace in Liberia, which he did. Today there is peace and a new President in Liberia after Charles Taylor. The situation of course differs, but what happened to Taylor in Liberia should also happen to Al-Bashir even though Sudan is not a state party to the ICC. No one should interfere with the responsibility of the court, if the court is to operate effectively. In this situation only the U.N. Security Council can defer the charges against Al Bashir as referred to in Article 16 of ICC Statute. On the other hand, the issue of countries who are not state party to the Rome Statute should be more clearly define in the statute when they commit international crime. In doing so, Additional Protocol should probably be added to Rome Statute. Should they be prosecuted when they are not members of ICC? Who

672 Prosecutor v. Slobodan Milosevic, Case No. IT-02-54-T.
673 Prosecutor v. Charles Taylor, Case No. SCSL-03-01-I.
should submit their cases to ICC when international crimes are committed? In the case of Sudan it was the United Nations Security Council requested ICC to investigate human abuse in Sudan. In my view, international community should also be given a chance to be involved in the submission communication to ICC of non-party members to this convention. United Nations Security Council with approval of U.N. General Assembly should do more in this regards.

The action required to carry out the decision of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

6.6.4. Namibia

Currently the case of the former head of state of Namibia, Sam Nujoma is being weighed by the International Criminal Court. The National Society for Human Rights (NSHR) in Namibia has submitted a case to the International Criminal Court against the former head of state of Namibia, Sam Nujoma for alleged international crimes. Also cited in the documents are former Defense Minister Erki Nghimtina, former Chief of Defense and now retired Lieutenant General Solomon 'Jesus' Hawala, and NDF First Battalion Colonel Thomas Shuuya. The NSHR on behalf of the victims wants Nujoma and others to be investigated for instigation, planning, supervision, abetting, aiding, defending and or perpetuating the disappearances of a number of Namibians. The NSHR requested ICC to charge former President Nujoma and the other three

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accused under "continuous violations doctrine." The ICC statute does not have any continuous violation doctrine.

The alleged crimes were committed from 1970 to 1992, while Mr. Nujoma was a head of the liberation movement and head of state of Namibia. These crimes allegedly committed by Nujoma and the other three are based on superior and commander responsibility, as heads of state and other individual are held responsible for the crimes committed by their subordinates as stated in Article 28 of Rome Statute or ICC Statute. According to the statute of International Criminal Court, it has no jurisdiction over the case of the former head of state of Namibia, Sam Nujoma, as these alleged crimes occurred before the ICC came into effect. The ICC can only prosecute accused who committed international crimes after July 01, 2002, when ICC entered into force based on Article 11 of ICC Statute. And it has no jurisdiction to try cases committed before its establishment as referred to in Article 24 of this statute. The ICC had received 2889 communications or cases of alleged crimes from at least 139 countries by 4 October 2007. Most of the cases were dismissed after the ICC reviewed them as it had no jurisdiction to try those cases.

The national court should do more to handle or prosecute these intentional crimes as states are given power to do so. State are also authorized to try international crimes through universal jurisdiction. International Criminal Court can only try those accused of committing international crimes if the states failed to do so.

677 The International Criminal Court entered into force on 01 July 2002.
678 ICC Statute Article 11.
679 ICC Statute Article 24.
CHAPTER SEVEN

7.0 CONCLUSIONS AND RECOMMENDATIONS

7.1 REGIONAL CONVENTFION ON PROSECUTION OF INTERNATIONAL CRIMES

My research has discussed the development of international criminal law which lead to international criminal trials in International Criminal Tribunals such as IMT, ICTY, ICTR, and the Special Court for Sierra Leone. The paper focused primarily on the former president of Yugoslavia, Slobodan Milosevic and Charles Taylor of Liberia. They have been tried in the international tribunals. These tribunals are Ad - Hoc Courts (temporary courts) created for only trying specific criminal cases. The tribunals cease to exist once the cases are final. It was realized that to continue establishing tribunals would be too costly and challenging, since tribunals are created only to last for a specific period and at a specific venue. The United Nations General Assembly therefore realized the necessity of establishing a permanent International Criminal Court that could be more efficient and effective. This led to the establishment of International Criminal Court (ICC), a world permanent court, to deal with all international crimes and atrocities. The ICC has jurisdiction only over international crimes, namely: crimes against humanity, war crimes, crimes of genocide and crimes of aggression committed after the July 2, 2002, establishment of
The ICC has no jurisdiction over crimes committed before its establishment. The International Criminal Court will try those accused who committed international crimes, if the national court failed, or were not willing or were not able to try them as stated in Article 17 (a) of the Rome Statute of the International Criminal Court.

In my findings, I have examined the possibility of how international crimes could also be tried at the Regional level by establish Regional Conventions on Prosecution of International Crimes (Africa, Europe, American and Asia). Under these Conventions, regional criminal courts can be established to try the international crimes such as genocide, war crimes, crimes against humanity. Crimes of aggression and Terrorism can be tried at regional and international level once they are defined. This Regional Convention on Prosecution of International Crimes will fall under three Regional Systems as follows:

a) The Inter-American Regional System
b) The European Regional System
c) The African Regional System

Before describing in detail the idea of regional criminal court, I would like to mention the experience which developed during many decades in the field of human rights. The regional systems are continental systems, each of which has created a body of a commission of human rights and regional court of human rights, to deal with human rights violations.

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680 ICC Statute article 11.
681 ICC Statute article 17 para. 1 (a).
The Inter-America Regional System is the Organization of American States (OAS). It is an Organization of all American states members and was created in 1948. It is under OAS that the Inter-America Court of Human Rights was established through Chapter VII of Part II of the American Convention on Human Rights. Both the commission and the court protect and promote the human rights under the charter of OAS as stated in article 106 of the Charter of the Organization of American States. An individual, state member or non-government organization can submit their complaints directly to the Commission of Human Rights to deal with or hear the human rights violations and decide on these cases in the Americas. Submitting cases to the Inter-America Court of Human Rights is limited as only the commission or member state may submit their communication to the court. The cases are decided in the absence of the complainants and the respondents. The decisions are communicated to the parties involved.

The European Court of Human Rights is more advanced than Inter-American and Africa Court of Human Rights. It was created by the Council of Europe under the European Convention on Human Rights in 1948. It is located in Strasbourg, France. Individuals can submit their communications directly to the European Court of Human Rights. The European system has also a Commission on Human Rights. It deals with hearing the complaints concerning human rights. It can refer cases to the European Court of Human rights if needed. The commission and the court of human rights decide cases in the absence of victims and accused as stated in the Articles of the European Convention on human rights.

684 Charter of Organization of American States, article 106.

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The African Court of Human Rights and People's Rights was established by the African Charter which falls under the African Union, to oversee, protect and promote human rights in Africa. The African court of Human Rights is in Arusha, Tanzania. It came into force in July 2006. Prior to the African court of human rights, there had been a Commission of Human Rights which had been hearing and deciding human rights cases in Africa, and is based in Gambia. There shall be established within the Organization of African Unity an African Court of Humans and Peoples’ Rights hereinafter referred to as “the Court,” the organization, jurisdiction and functioning of which shall be governed by the present Protocol.685 The African Court of Human Rights will hear and decide cases of human rights violation in Africa. Only the commission or member state can submit cases to the African Court of Human Rights as in the case of the Inter-American system.

I hope the Asian continent will also have their own regional court of human rights in place in time to come in order to strengthen the fight against international crimes.

All the three Regional Courts of Human Rights hear only cases in the absence of the victims and accused. Upon reaching their decision, they communicate the decision to both victims and accused party. The commissions and the three regional courts of human rights decide cases in camera in the absence of the victims and accused and communicate the decision to both parties involved in the case. Individuals can take a case of human rights violations against another person or even against the government before these commissions. These commission and the courts on human rights have brought improvement in dealing and deciding the human rights violation cases

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and I believe that additional regional criminal courts will speed up the prosecution and may reduce international crimes. Development of regional approach to human rights is showing that it is a good way how to deal with the prosecution of international crimes also on the regional basis.

In my finding, I will focus on why I believe the regional international criminal courts or regional criminal courts which will fall under the Regional Convention on Prosecution of International Crimes can be of a great help in extending the prosecution of international crimes. Thus, I am of the opinion that the regional criminal courts could also prosecute international crimes. The reason for my opinion is that if the regional system can handle human rights violations, it can also equipped and be encouraged to prosecute international crimes since international crimes are increasing. The regional criminal court to be effective, it should rule its decision independent from interference and the rule of law should be respected. Once the national courts fail or are unwilling or unable to prosecute the accused who committed international crimes, cases can be referred to the regional criminal courts instead of submitting the cases to the International Criminal Court.

If a citizen or the international community requests a government to try criminal perpetrators in a national court and the government is reluctant to prosecute, this will mean the exhaustion of the case for domestic remedy. There are circumstances where the complaints do not need to exhaust the domestic remedies if the respondents are top government officials who may not allow their prosecution to take place in the national court while they are presently part of the governing body of the state. However, for any prosecution of international crimes to take place in the national
court, the government has to be aware of it and they are the one to prove the prosecution. I believe that there are no respondents in the world who would approve legislation that could be later be used to prosecute him. Therefore, individual or non-governmental organizations should be allowed to bring complaints directly to the Regional criminal Courts of Inter-American Regional system, European Regional System and African Regional System. It is important for all parties, the accused, victims, defense counsels, witnesses and prosecution in these international cases or crimes to appear in regional criminal court. In so doing, more witnesses can be reached and given the chance to testify in regional criminal court instead of flying them to the international criminal court (ICC) in the Hague. The court then will make a decision based on the admissibility and merit of the cases either to try or dismiss them. The regional criminal courts will not be taking over the function of the ICC but will work hand in hand with the ICC. This will speed up due process of the international crimes. If the regional criminal court failed or were unable to prosecute these cases, or if the trial was not fair to one of the parties in the case, then it can be referred to the ICC.

In current cases of human rights violations, complaints are only heard in regional human rights court in the absence of the victims and accused. Once the court reaches a decision, it will communicate the decision and the recommendation to the victims and accused. The accused can be an individual, company, organization or even a government.

For international crimes, I suggest that both the victims and the accused should appear in court in addition to their witnesses to testify if needed. I am of the opinion that trying the international crimes in the regional criminal courts will have the advantage of reaching more witnesses and
reduce costs instead of flying the witnesses to the ICC in The Hague. The cases can only be referred to ICC if there is a great demand to do so. In order to accommodate the cases of international crimes to be tried in the regional criminal courts, the court should be composed of Chambers that consist of a Pre-Trial Division, Trial Division and an Appeal Division, Registrar including Judges and prosecutors. The Appeal Division Chamber is needed to give a chance to both victims and respondents to appeal their cases if not satisfied with the decision of the courts. No judge or prosecutor should handle or make any decision in a case from their countries of origin. However, I suggest that an crime to be considered as an international crime after the completion of the statute or after establishment of the Regional Convention on Prosecution of International Crimes, additional protocol should be added to this Convention which is under the three regional system.

Judges should be appointed based on demand of the court. Judges and prosecutors have to meet the basic requirements in the field of International Law, Humanitarian Law/Law of War/ Law of Conflict, Human Rights Law, Criminal Law and International Criminal Law or any other additional fields of law if the courts so required. It is important to understand the nature of international crimes, and to know which international crimes occurred during war or in the absence of war. The rules and procedures in the court should be in the line of international law or based on the demands on the court. In addition, the aforementioned legal fields will be helpful in understanding who should be prosecuted and why the head of states or commanders or superior officers should be held responsible for the crimes committed by their subordinates as well as
individual accountability. The regional criminal courts should build cooperation with other countries in case of the arrest and extradition of the accused to be tried before the regional courts. In any arrest of the accused, the accused can be in prison in the country of his/her origin or to any country that accepts the custody of accused.

During my research, having looked at the continents and with each continent having many countries, I came to realize that if many states fail or are unable to try the perpetrators of international crimes, these cases would be referred to the International Criminal Court (ICC). This can cause a backlog of cases as many cases will pour in from different countries. If a complainant cannot trust the sitting government in trying perpetrators, especially, if the government in power is the accused, this will force the complainants to file their cases directly to ICC. The complainants can be the United Nations Security Council, Prosecutor of the ICC or international communities. If more countries continued to submit their cases to ICC instead of trying them, this can be an excessive load for the world court and I see that there is a need for the ICC to be assisted in fighting and prosecuting those who committed international crimes. The Office of the Prosecutor at ICC had received 2889 communications or cases of alleged crimes in at least from 139 countries by 4 October 2007. Most of the cases were dismissed after the ICC reviewed them as it had no jurisdiction to try those cases.

Thus, I suggest that international crimes should be tried in regional criminal courts and cases like those of the DRC and head of state of Sudan, Mr. Bashir could have been tried in the African Criminal Court based on the jurisdiction of the court. The national courts and regional criminal
courts have to work closely with ICC. An agreement can also be reached to decide which cases can be tried in the regional criminal courts and which can be tried by the ICC based on the weight of the case. In addition, states which are not cooperating with regional criminal courts should have their cases handled by the ICC.

I believe that with only eighteen judges at the ICC to try all the international crimes of the world is too much of a burden on the judges. It is in this regard that the regional criminal courts should do more to try international crimes. If the system can be in place and effective, international crimes can be reduced. I know it is not an easy task to try international crimes in the continental criminal courts, probably due to resources, man power and political reason. These courts are needed to try these crimes if every individual is to be given a chance of participating against these serious core crimes and bring those perpetrators to justice. In some circumstances, when there is a shortage of venues and resources to accommodate all interested parties in the regional criminal courts, the trial could take place in the national courts where these parties are. The court would be closer to the interested parties. The prosecuting team should be led by the legal team of the regional criminal court. It will be the responsibility of that government where these courts are located to provide security to the legal team of the regional criminal court if needed. I am not supporting the legal team to get extra salary from the government where the trial is taking place. The government is already contributing to the regional body, paying the salaries of the officials for the regional criminal court. Allowance money can be given to them if necessary for additional expenses by the regional criminal court.
Additionally, I also believe that sub-regional courts should also be encouraged to handle international crimes. The sub-regional court of the East Africa Court of Justice (EACJ) has requested to have jurisdiction over human rights violations. This sub-regional court is located in Arusha, Tanzania. EACJ replaced the East Africa Court of Appeal. The sub-regional court of Tribunal of the Southern Africa Development Community (SADC) situated in Windhoek, Namibia has jurisdiction over human rights violations as well as many other jurisdictions. The SADC Tribunal is currently trying its first case: William Michael Campbell (including 77 farmers) v. Robert Gabriel Mugabe for expropriating their farms in Zimbabwe. The victims had apparently exhausted their domestic remedies in the national court of Zimbabwe before approaching the SADC Tribunal. The Zimbabwean legal team excused themselves from the SADC Tribunal court and walked out from the court during the proceedings. This case is now referred to the SADC Secretariat to be heard by the Heads of States of Southern Africa.

The national courts should also try to do more to try the international crimes as was the case of the former head of State, Saddam Hussein and others, of Iraq. More witnesses, including the victims, had a chance to testify in the case. Saddam was convicted by a national court and hanged to death. ICC had no jurisdiction to try Saddam Hussein as his crimes were allegedly committed before the establishment of the ICC. Although his case was not referred to the ICC, this encouraged the national courts to try cases. States should also enforce the universal jurisdiction in their legislation in order for the domestic courts to try international crimes committed beyond their borders (extraterritorial jurisdiction).
Bringing the accused to justice is not the only option to solve international crimes or human rights violations which occurred during or after war or in the absence of war. The options of settling disputes in exchange for peace through Truth National Reconciliation or amnesty or negotiations are also other means for the society to reconcile. The Truth Reconciliation Commissions were seen in Chile, South Africa, Peru and Liberia as part of healing the wounds of the past and positive solution to dispute though the past acts cannot be forgotten. These Truth Reconciliations will lead to peace and stability of the country and forgiveness for the past acts. Negotiation by sharing governmental power with an opposition party or parties, if necessary, as happened in Kenya and Zimbabwe in 2008, is also a positive alternative to legal action in the peace process. Countries should be encouraged to use any suitable solution to maintain peace and stability in settling disputes concerning any human rights violations or international crimes.

Most of the conflicts I have identified in my research were ethnic conflicts caused by ethnic nationalism or ethnic division because of tradition beliefs or outright pursuit of political power. Society should avoid ethnic division or ethnic nationalism since it is a threat to peace and this could lead the country to political instability and the bloodiest of wars. The world has seen the bloodiest war during the civil war in Cambodia, Yugoslavia, Rwanda, Liberia, Sierra Leone, DRC, Sudan and others caused by outright pursuit of political power or ethnic division, and this should not be allowed to happen again. Another ethnic division was also pointed out by the current head of state of Namibia, Hifikepunye Pohamba in Namibia on August 2008, during the inaugural ceremony of the Katima Mulilo Urban Constituency office in Caprivi Region in the eastern part of
Namibia. Pohamba was concerned by the tension between the Mafwu and Masubia ethnic groups in Caprivi region. He said at the moment not only in Caprivi, but the entire Namibia has reached stages of disunity. 686 Pohamba further said "I appeal to all church leaders to pray for peace and unity not only in Caprivi but for the whole country for us to continue living in peace." 687

I am of the opinion that bringing the accused to justice or hold Truth National Reconciliation would be a relief to victims, for the suffering they went through and the loss of their loved ones during the conflicts. The trial or impunity of the acts may be of better reconciliation within the society and may avoid the revenge of the victims against perpetrators, which can lead to instability in the country. Bringing the accused to justice will also deter those who may be planning a conflict, sending a message to be aware of the consequences of prosecution.

I believe more justice can be done if international crimes are also considered to be tried in the regional criminal courts in the future as it has succeeded to hear and make decisions in other cases of Human Rights violations. I also feel that heads of states should undergo some leadership seminars to improve their understanding of the role and motives of heads of states, including better recognition of potential causes of the conflict, identification solutions to such conflict, and discerning possible consequences of such conflicts. This leadership training would be better to be done during the summit meeting of the heads of state such as Millennium meeting and others.

International criminal law on offenses against humanity such as genocide should not go 686 Reagan Malumo, Namibia, Pohamba Call for Peace and Unity, New Era, 12 August, 2008. 687 Id.
untried and unpunished, let alone unnoticed. No person should be above the law.
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U.N. Charter Article 47, para. 2.
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UN. Charter Article 47, para. 4.
U.N. Charter Article 49.
U.N. Charter Article 50.
U.N. Charter Article 51.
U.N. Charter Article 52, para.1.
NATO Charter Article 4.
NATO Charter Article 5.

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Special Court for Sierra Leone Statute.

The established of the International Criminal Court.

United Nations has created this Convention Against Torture and other cruel inhuman or Degrading Treatment or punishment prohibit any person to act against this Convention. And any one violate the said convention, should face justice.

Vienna Convention of 1980 Article 52.

Vienna Convention of 1980 Article 52.


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Map of Sierra Leone.
ANNEXES

ANNEX ONE

THE NUREMBERG PRINCIPLES

Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and
in the Judgment of the Tribunal, 1950

Principle I
Any person who commits an act which constitutes a crime under international law is responsible
therefore and liable to punishment.

Principle II
The fact that internal law does not impose a penalty for an act which constitutes a crime under
international law does not relieve the person who committed the act from responsibility under
international law.

Principle III
The fact that a person who committed an act which constitutes a crime under international law
acted as Head of State or responsible government official does not relieve him from
responsibility under international law.
Principle IV

The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

Principle V

Any person charged with a crime under international law has the right to a fair trial on the facts and law.

Principle VI

The crimes hereinafter set out are punishable as crimes under international law:

(a) Crimes against peace:

(I) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances; (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (I).

(b) War Crimes:

Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation of slave labor or for any other purpose of the civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or persons on the Seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.
(c) Crimes against humanity:

Murder, extermination, enslavement, deportation and other inhumane acts done against any civilian population, or persecutions on political, racial, or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.

Principle VII

Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.
ANNEX TWO

ANNEX PART TWO: SLOBODAN MILOSEVIC

ESTABLISHMENT OF INTERNATIONAL CRIMINAL TRIBUNAL FOR YUGOSLAVIA

(S/RES/827 (1993))

The Security Council,

Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,

Having considered the report of the Secretary-General (S/25704 and Add.1) pursuant to paragraph 2 of resolution 808 (1993),

Expressing once again its grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina, including reports
of mass killings, massive, organized and systematic detention and rape of women, and
the continuance of the practice of "ethnic cleansing", including for the acquisition and
the holding of territory,

Determining that this situation continues to constitute a threat to international peace and
security,

Determined to put an end to such crimes and to take effective measures to bring to
justice the persons who are responsible for them,

Convinced that in the particular circumstances of the former Yugoslavia the
establishment as an ad hoc measure by the Council of an international tribunal and the
prosecution of persons responsible for serious violations of international humanitarian
law would enable this aim to be achieved and would contribute to the restoration and
maintenance of peace,

Believing that the establishment of an international tribunal and the prosecution of
persons responsible for the above-mentioned violations of international humanitarian
law will contribute to ensuring that such violations are halted and effectively redressed,

Noting in this regard the recommendation by the Co-Chairmen of the Steering
Committee of the International Conference on the Former Yugoslavia for the
establishment of such a tribunal (S/25221),

Reaffirming in this regard its decision in resolution 808 (1993) that an international
tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991,

Considering that, pending the appointment of the Prosecutor of the International Tribunal, the Commission of Experts established pursuant to resolution 780 (1992) should continue on an urgent basis the collection of information relating to evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law as proposed in its interim report (S/25274).

Acting under Chapter VII of the Charter of the United Nations,

1. Approves the report of the Secretary-General;

2. Decides hereby to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace and to this end to adopt the Statute of the International Tribunal annexed to the above-mentioned report;

3. Requests the Secretary-General to submit to the judges of the International Tribunal, upon their election, any suggestions received from States for the rules of procedure and evidence called for in Article 15 of the Statute of the International Tribunal;

4. Decides that all States shall cooperate fully with the International Tribunal and its
organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 29 of the Statute;

5. Urges States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel;

6. Decides that the determination of the seat of the International Tribunal is subject to the conclusion of appropriate arrangements between the United Nations and the Netherlands acceptable to the Council, and that the International Tribunal may sit elsewhere when it considers it necessary for the efficient exercise of its functions;

7. Decides also that the work of the International Tribunal shall be carried out without prejudice to the right of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law;

8. Requests the Secretary-General to implement urgently the present resolution and in particular to make practical arrangements for the effective functioning of the International Tribunal at the earliest time and to report periodically to the Council;

9. Decides to remain actively seized of the matter.

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, 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 (hereinafter referred to as "the International Tribunal") shall function in accordance with the provisions of the present Statute.

Article 1

Competence of the International Tribunal

The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the...
former Yugoslavia since 1991 in accordance with the provisions of the present Statute.

Article 2

Grave breaches of the Geneva Conventions of 1949

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(a) wilful killing;
(b) torture or inhuman treatment, including biological experiments;
(c) wilfully causing great suffering or serious injury to body or health;
(d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
(e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
(f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
(g) unlawful deportation or transfer or unlawful confinement of a civilian;
(h) taking civilians as hostages

Article 3

Violations of the laws or customs of war

The International Tribunal shall have the power to prosecute persons violating the laws
or customs of war. Such violations shall include, but not be limited to:

(a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;

(b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;

(d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;

(e) plunder of public or private property.

Article 4

Genocide

1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) killing members of the group;
(b) causing serious bodily or mental harm to members of the group;
(c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) imposing measures intended to prevent births within the group;
(e) forcibly transferring children of the group to another group.

3. The following acts shall be punishable:
   (a) genocide;
   (b) conspiracy to commit genocide;
   (c) direct and public incitement to commit genocide;
   (d) attempt to commit genocide;
   (e) complicity in genocide.

Article 5

Crimes against humanity

The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

(a) murder;
(b) extermination;
(c) enslavement;
(d) deportation;
(e) imprisonment;
(f) torture;
(g) rape;
(h) persecutions on political, racial and religious grounds;
(i) other inhumane acts.

Article 6

Personal jurisdiction

The International Tribunal shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.

Article 7

Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was
committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.

Article 8
Territorial and temporal jurisdiction

The territorial jurisdiction of the International Tribunal shall extend to the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters. The temporal jurisdiction of the International Tribunal shall extend to a period beginning on 1 January 1991.

Article 9
Concurrent jurisdiction

1. The International Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.

2. The International Tribunal shall have primacy over national courts. At any stage of the
procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal.

Article 10
Non-bis-in-idem

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal.

2. A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal only if:
   (a) the act for which he or she was tried was characterized as an ordinary crime; or
   (b) the national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already
been served.

Article 11

Organization of the International Tribunal

The International Tribunal shall consist of the following organs:

(a) The Chambers, comprising two Trial Chambers and an Appeals Chamber;

(b) The Prosecutor, and

(c) A Registry, servicing both the Chambers and the Prosecutor.

Article 12

Composition of the Chambers

The Chambers shall be composed of eleven independent judges, no two of whom may be nationals of the same State, who shall serve as follows:

(a) Three judges shall serve in each of the Trial Chambers;

(b) Five judges shall serve in the Appeals Chamber.

Article 13

Qualifications and election of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including
international humanitarian law and human rights law.

2. The judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for judges of the International Tribunal from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

(b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in paragraph 1 above, no two of whom shall be of the same nationality;

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twenty-two and not more than thirty-three candidates, taking due account of the adequate representation of the principal legal systems of the world;

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the eleven judges of the International Tribunal. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-Member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality
obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

3. In the event of a vacancy in the Chambers, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of paragraph 1 above, for the remainder of the term of office concerned.

4. The judges shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Court of Justice. They shall be eligible for re-election.

Article 14

Officers and members of the Chambers

1. The judges of the International Tribunal shall elect a President.

2. The President of the International Tribunal shall be a member of the Appeals Chamber and shall preside over its proceedings.

3. After consultation with the judges of the International Tribunal, the President shall assign the judges to the Appeals Chamber and to the Trial Chambers. A judge shall serve only in the Chamber to which he or she was assigned.

4. The judges of each Trial Chamber shall elect a Presiding Judge, who shall conduct all of the proceedings of the Trial Chamber as a whole.
Article 15  
Rules of procedure and evidence  
The judges of the International Tribunal shall adopt rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters.  

Article 16  
The Prosecutor  
1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.  
2. The Prosecutor shall act independently as a separate organ of the International Tribunal. He or she shall not seek or receive instructions from any Government or from any other source.  
3. The Office of the Prosecutor shall be composed of a Prosecutor and such other qualified staff as may be required.  
4. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral character and possess the highest level of competence and experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor shall serve for a four-year term and be eligible for
reappointment. The terms and conditions of service of the Prosecutor shall be those of an
Under-Secretary-General of the United Nations.

5. The staff of the Office of the Prosecutor shall be appointed by the Secretary-General
on the recommendation of the Prosecutor.

Article 17

The Registry

1. The Registry shall be responsible for the administration and servicing of the
International Tribunal.

2. The Registry shall consist of a Registrar and such other staff as may be required.

3. The Registrar shall be appointed by the Secretary-General after consultation with the
President of the International Tribunal. He or she shall serve for a four-year term and be
eligible for reappointment. The terms and conditions of service of the Registrar shall be
those of an Assistant Secretary-General of the United
Nations.

4. The staff of the Registry shall be appointed by the Secretary-General on the
recommendation of the Registrar.

Article 18

Investigation and preparation of indictment

1. The Prosecutor shall initiate investigations ex-officio or on the basis of information
obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.

2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.

3. If questioned, the suspect shall be entitled to be assisted by counsel of his own choice, including the right to have legal assistance assigned to him without payment by him in any such case if he does not have sufficient means to pay for it, as well as to necessary translation into and from a language he speaks and understands.

4. Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

Article 19

Review of the indictment.

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a prima facie case has been established by the Prosecutor, he shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.
2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

Article 20

Commencement and conduct of trial proceedings

1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the International Tribunal, be taken into custody, immediately informed of the charges against him and transferred to the International Tribunal. 3. The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for trial.

4. The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence.

Article 21

Rights of the accused
1. All persons shall be equal before the International Tribunal.

2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the Statute.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

(a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) to be tried without undue delay;

(d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses
against him;

(f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;

(g) not to be compelled to testify against himself or to confess guilt.

Article 22

Protection of victims and witnesses

The International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

Article 23

Judgement.

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

2. The judgment shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 24

Penalties
1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Article 25

Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:

   (a) an error on a question of law invalidating the decision; or

   (b) an error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers.

Article 26

Review proceedings

Where a new fact has been discovered which was not known at the time of the
proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal an application for review of the judgement.

Article 27
Enforcement of sentences
Imprisonment shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal.

Article 28
Pardon or commutation of sentences
If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal accordingly. The President of the International Tribunal, in consultation with the judges, shall decide the matter on the basis of the interests of justice and the general principles of law.

Article 29
Cooperation and judicial assistance.
1. States shall cooperate with the International Tribunal in the investigation and
prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:

(a) the identification and location of persons;

(b) the taking of testimony and the production of evidence;

(c) the service of documents;

(d) the arrest or detention of persons;

(e) the surrender or the transfer of the accused to the International Tribunal.

Article 30

The status, privileges and immunities of the International Tribunal

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal, the judges, the Prosecutor and his staff, and the Registrar and his staff.

2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the
Convention referred to in paragraph 1 of this article.

4. Other persons, including the accused, required at the seat of the International Tribunal shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal.

Article 31

Seat of the International Tribunal

The International Tribunal shall have its seat at The Hague.

Article 32

Expenses of the International Tribunal

The expenses of the International Tribunal shall be borne by the regular budget of the United Nations in accordance with Article 17 of the Charter of the United Nations.

Article 33

Working languages

The working languages of the International Tribunal shall be English and French.

Article 34

Annual report

The President of the International Tribunal shall submit an annual report of the International Tribunal to the Security Council and to the General Assembly.
1. On the 12 November 2001 the Prosecutor presented an indictment which was transmitted to me as a Judge of a Trial Chamber for review under Article 19 of the Statute of the International Tribunal and Rule 47 of the Rules of Procedure and Evidence.

2. Article 19 requires a Judge to whom an indictment has been transmitted to review it and if "satisfied that a prima facie case has been established by the Prosecutor" to confirm the indictment; and, if no so satisfied, to dismiss it. Rule 47 requires the Judge to examine each of the counts in the indictment and any supporting material the Prosecutor may provide to determine, applying the standard in Article 19, whether a case
exists against the suspect. The purpose, therefore, is to determine whether there is a fit case to justify the commencement of proceedings against the accused on the indictment and to ensure that there is material to support the allegations in it, thus preventing the commencement of proceedings for which there is no support. The discharge of this task has been likened to that performed by a grand jury or committing magistrate under the common law or a judge’s instruction under some civil law systems.

3. The indictment charges the accused Slobodan Milosevic, in 29 counts with:

(a) Genocide and complicity in genocide under Article 4 of the International Tribunal’s Statute;

(b) Crimes against humanity involving persecution, extermination, murder, imprisonment, torture, deportation and inhumane acts (forcible transfers) under Article 5 of the Statute;

(c) Grave breaches of the Geneva Conventions of 1949 involving wilful killing, unlawful confinement, torture, wilfully causing great suffering, unlawful deportation or transfer, and extensive destruction and appropriation of property under Article 2 of the Statute;

(d) Violations of the laws or customs of war involving, inter alia, attacks on civilians, unlawful destruction, plunder of property, and cruel treatment under Article 3 of the Statute.

4. In very brief, summary form, the allegations are as follows. The indictment is
concerned with events which took place in Bosnia and Herzegovina between 1992 and 1995. The Prosecution case is that this accused, together with others, participated in a joint criminal enterprise, the purpose of which was the "forcible and permanent removal of the majority of non-Serbs, principally Bosnian Muslims and Bosnian Croats, from large areas of the Republic of Bosnia and Herzegovina." It is alleged that this criminal enterprise was carried out by means of the commission of numerous crimes during a series of offensives against the non-Serb population.

5. These offensives are alleged to have been carried out by 'Serb forces' in attacks on towns and villages in over 40 municipalities in Bosnia and Herzegovina which were taken over by such forces. It is further alleged that during these attacks thousands of Bosnian Muslims and Bosnian Serbs were killed (including the thousands executed after the fall of Srebrenica). Thousands more were imprisoned in over 50 detention facilities such as camps, barracks, police stations and schools: while there, they were subjected to inhuman living conditions and forced labour; many were murdered and others subjected to torture, beatings and sexual assault. Of those not imprisoned, thousands were forcibly transferred and deported from their homes: the total expelled or imprisoned is alleged to have been over a quarter million people.

6. It is further alleged that during the take-overs, and thereafter, there was robbing and plunder of public or private property belonging to the non-Serb population and that the
take-overs were accompanied by wanton destruction of homes, religious institutions and historical monuments. In particular, it is alleged that part of the Serb forces conducted a prolonged shelling and sniping campaign against civilians in Sarajevo between April 1992 and November 1995 including 26 incidents of shelling and 47 incidents of sniping which are specified in the indictment.

7. The accused is said in the indictment to have been criminally responsible for the above crimes, firstly, by reason of his individual criminal responsibility under Article 7(1) of the Statute. It is alleged in this connection that he planned, instigated, ordered, committed or otherwise aided and abetted the various crimes. It is not alleged that he physically committed the crimes personally, but that he participated in the joint criminal enterprise, working with or through others in order to achieve the objective of the enterprise, which involved the commission of the crimes.

8. The other participants in the criminal enterprise are alleged to have included members of the political and military leadership of the Socialist Federal Republic of Yugoslavia (SFRY) and later the Federal Republic of Yugoslavia (FRY), Serbia and Republika Srpska (RS); senior members of the Serbian Ministry of Internal Affairs (MUP), the Yugoslav People’s Army (JNA) and the Yugoslav Army (VJ), together with the commanders of various police and paramilitary units.

9. It is alleged that as the dominant political figure in Serbia, SFRY and FRY, the
accused exercised effective control or influence over the other participants in the joint criminal enterprise and himself participated in it; and that he did so inter alia, by controlling, directing or supporting the units of the JNA, VJ, Bosnian Serb Army (VRS), MUP and Serb paramilitaries who carried its objectives out; by assisting the RS leadership in the take-overs of municipalities and participating in the planning of the same; and by manipulating and controlling the Serb state-run media in order to spread false reports, which were intended to create an atmosphere of fear and hatred.

10. It is also alleged that the accused is responsible, as a superior under Article 7(3) of the Statute, for the participation of the JNA, VJ and other units in the crimes alleged in the indictment. In particular it is said that he exercised control by the following means:

(a) from March 1991 until June 1992 the accused effectively controlled the ‘Serbian Bloc’ within the Presidency of the SFRY (which exercised the powers of the Presidency including that of collective Commander-in-Chief of the JNA).

(b) from April 1992 the Supreme Defence Council (of which the accused was a member and over which he had substantial influence and control) had de jure control over the JNA and VJ;

(c) the accused also had de facto control over the JNA and VJ; and

(d) the accused exercised control over the agents of the Serbian MUP and State Security
who directed and supported the actions of special forces and Serb paramilitaries in Bosnia and Herzegovina.

11. The above is a summary of the crimes alleged in the indictment and of the way in which it is alleged that the accused was connected to them; and, having reviewed the indictment, I have to consider whether a prima facie case has been established by the Prosecutor. As noted, Article 19 of the Statute requires the reviewing Judge to be satisfied that a prima facie case has been established by the Prosecutor before confirming it. The test to be applied in determining whether a prima facie case has been established has been the subject of decisions by reviewing Judges of the International Tribunal. For instance, in the leading case on this topic in 1995, when reviewing the indictment in Kordic et al, Judge Kirk McDonald adopted the test formulated by the International Law Commission in its Draft Statute for an International Criminal Court:

"a prima facie case for this purpose is understood to be a credible case which would (if not contradicted by the Defence) be a sufficient basis to convict the accused on the charge."

12. This test was followed by Judge Hunt in 1999 when reviewing the indictment in Milosevic et al, albeit slightly re-formulated; to the effect that a prima facie case exists "where the material facts pleaded in the indictment constitute a credible case."
13. When determining whether to grant leave to the Prosecutor to amend the same indictment in 2001, Judge Hunt said that there had been investigation of what constitutes a prima facie case since the earlier decision and the definition was now differently expressed, i.e. whether there is evidence (if accepted) upon which a reasonable tribunal of fact could be satisfied beyond reasonable doubt of the guilt of the accused on the particular charge. However, this formulation is based on the test to be applied in determining a motion under Rule 98 bis for judgement of acquittal after the close of the Prosecution case, a later stage of the proceedings than the present review. On the other hand, Judge Hunt also said that the substance of the test was the same; and, indeed, both formulations contain the essential concept that the Prosecutor must provide sufficient evidence which, if it is accepted, would be sufficient for a conviction of the accused.

14. Accordingly, I adopt the test for review as formulated by Judge Kirk McDonald as the more appropriate for this stage of the proceedings. In adopting the test, I would add a caveat; the case must be one which is based on evidence, which if it is accepted by a Trial Chamber, would be a sufficient basis for conviction. Therefore it would appear more appropriate to speak of a prima facie case being a credible case which, if accepted
14. and uncontradicted, would be a sufficient basis on which to convict the accused. It is for a Trial Chamber to determine whether to accept the facts pleaded in the indictment: this is not the task for the reviewing Judge.

15. In reviewing this indictment I have examined each count and considered the supporting material provided by the Prosecutor. I have heard counsel for the Prosecution. I requested the Prosecutor to submit additional material and also adjourned the review to give her the opportunity to modify the indictment. I apply the standard set out in Article 19, as explained above. I am now satisfied that the Prosecutor has established a prima facie case on each count and that there is material to support the counts. The requirements of both Article 19 and Rule 47 have been met.

16. For the foregoing reasons,

I CONFIRM all the counts in the indictment presented by the Prosecutor.

And ORDER, further, that the annotated indictment attached to the Prosecutor's presentation be not considered part of the supporting materials for the purposes of disclosure to the accused.

Done in English and French, the English text being authoritative.

Dated this 22nd day of November 2001

At The Hague

The Netherlands
Richard May
Judge
International Tribunal
ANNEXES: CHARLES TAYLOR

ANNEX FIVE

Agreement for the Special Court
16 January 2002, as amended

AGREEMENT BETWEEN THE UNITED NATIONS
AND THE GOVERNMENT OF SIERRA LEONE

ON THE ESTABLISHMENT OF A SPECIAL COURT FOR SIERRA LEONE

WHEREAS the Security Council, in its resolution 1315 (2000) of 14 August 2000, expressed deep concern at the very serious crimes committed within the territory of Sierra Leone against the people of Sierra Leone and United Nations and associated personnel and at the prevailing situation of impunity;

WHEREAS by the said resolution, the Security Council requested the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an
independent special court to prosecute persons who bear the greatest responsibility for the commission of serious violations of international humanitarian law and crimes committed under Sierra Leonean law;

WHEREAS the Secretary-General of the United Nations (hereinafter ?the Secretary-General?) and the Government of Sierra Leone (hereinafter "the Government") have held such negotiations for the establishment of a Special Court for Sierra Leone (hereinafter ?the Special Court?);

NOW THEREFORE the United Nations and the Government of Sierra Leone have agreed as follows:

Article 1

Establishment of the Special Court

1. There is hereby established a Special Court for Sierra Leone to prosecute persons who bear 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.

2. The Special Court shall function in accordance with the Statute of the Special Court for Sierra Leone. The Statute is annexed to this Agreement and forms an integral part thereof.

Article 2
Composition of the Special Court and appointment of judges

1. The Special Court shall be composed of a Trial Chamber and an Appeals Chamber with a second Trial Chamber to be created if, after the passage of at least six months from the commencement of the functioning of the Special Court, the Secretary-General, the Prosecutor or the President of the Special Court so request. Up to two alternate judges shall similarly be appointed after six months if the President of the Special Court so determines.

2. The Chambers shall be composed of no fewer than eight independent judges and no more than eleven such judges who shall serve as follows:

(a) Three judges shall serve in the Trial Chamber where one shall be appointed by the Government of Sierra Leone and two judges appointed by the Secretary-General, upon nominations forwarded by States, and in particular the member States of the Economic Community of West African States and the Commonwealth, at the invitation of the Secretary-General;

(b) In the event of the creation of a second Trial Chamber, that Chamber shall be likewise composed in the manner contained in subparagraph (a) above;

(c) Five judges shall serve in the Appeals Chamber, of whom two shall be appointed by the Government of Sierra Leone and three judges shall be appointed by the Secretary-General upon nominations forwarded by States, and in particular the
member States of the Economic Community of West African States and the
Commonwealth, at the invitation of the Secretary-General.

3. The Government of Sierra Leone and the Secretary-General shall consult on the
appointment of judges.

4. Judges shall be appointed for a three-year term and shall be eligible for re-
appointment.

5. If, at the request of the President of the Special Court, an alternate judge or judges
have been appointed by the Government of Sierra Leone or the Secretary-General, the
presiding judge of a Trial Chamber or the Appeals Chamber shall designate such an
alternate judge to be present at each stage of the trial and to replace a judge if that
judge is unable to continue sitting.

Article 3
Appointment of a Prosecutor and a Deputy Prosecutor

1. The Secretary-General, after consultation with the Government of Sierra Leone,
shall appoint a Prosecutor for a three-year term. The Prosecutor shall be eligible for
reappointment.

2. The Government of Sierra Leone, in consultation with the Secretary-General and the
Prosecutor, shall appoint a Deputy Prosecutor for a three-year term to assist the
Prosecutor in the conduct of the investigations and prosecutions.
3. The Prosecutor and the Deputy Prosecutor shall be of high moral character and possess the highest level of professional competence and extensive experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor and the Deputy Prosecutor shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source.

4. The Prosecutor shall be assisted by such Sierra Leonean and international staff as may be required to perform the functions assigned to him or her effectively and efficiently.

Article 4
Appointment of a Registrar

1. The Secretary-General, in consultation with the President of the Special Court, shall appoint a Registrar who shall be responsible for the servicing of the Chambers and the Office of the Prosecutor, and for the recruitment and administration of all support staff. He or she shall also administer the financial and staff resources of the Special Court.

2. The Registrar shall be a staff member of the United Nations. He or she shall serve a three-year term and shall be eligible for re-appointment.

Article 5
Premises
The Government shall assist in the provision of premises for the Special Court and such utilities, facilities and other services as may be necessary for its operation.

Article 6

Expenses of the Special Court

The expenses of the Court shall be borne by voluntary contributions from the international community. It is understood that the Secretary-General will commence the process of establishing the Court when he has sufficient contributions in hand to finance the establishment of the Court and 12 months of its operations plus pledges equal to the anticipated expenses of the following 24 months of the Court's operation. It is further understood that the Secretary-General will continue to seek contributions equal to the anticipated expenses of the Court beyond its first three years of operation. Should voluntary contributions be insufficient for the Court to implement its mandate, the Secretary-General and the Security Council shall explore alternate means of financing the Court.

Article 7

Management Committee

It is the understanding of the Parties that interested States may wish to establish a management committee to assist the Special Court in obtaining adequate funding, provide advice on matters of Court administration and be available as appropriate to
consult on other non-judicial matters. The management committee will include representatives of interested States that contribute voluntarily to the Special Court, as well as representatives of the Government of Sierra Leone and the Secretary-General.

Article 8

Inviolability of premises, archives and all other documents

1. The premises of the Special Court shall be inviolable. The competent authorities shall take whatever action may be necessary to ensure that the Special Court shall not be dispossessed of all or any part of the premises of the Court without its express consent.

2. The property, funds and assets of the Special Court, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

3. The archives of the Court, and in general all documents and materials made available, belonging to or used by it, wherever located and by whomsoever held, shall be inviolable.

Article 9

Funds, assets and other property

1. The Special Court, its funds, assets and other property, wherever located and by
whomsoever held, shall enjoy immunity from every form of legal process, except in so far as in any particular case the Court has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.

2. Without being restricted by financial controls, regulations or moratoriums of any kind, the Special Court:

(a) May hold and use funds, gold or negotiable instruments of any kind and maintain and operate accounts in any currency and convert any currency held by it into any other currency;

(b) Shall be free to transfer its funds, gold or currency from one country to another, or within Sierra Leone, to the United Nations or any other agency.

Article 10

Seat of the Special Court

The Special Court shall have its seat in Sierra Leone. The Court may meet away from its seat if it considers it necessary for the efficient exercise of its functions, and may be relocated outside Sierra Leone, if circumstances so require, and subject to the conclusion of a Headquarters Agreement between the Secretary-General of the United Nations and the Government of Sierra Leone, on the one hand, and the Government of the alternative seat, on the other.
Article 11

Juridical capacity

The Special Court shall possess the juridical capacity necessary to:

(a) Contract;

(b) Acquire and dispose of movable and immovable property;

(c) Institute legal proceedings;

(d) Enter into agreements with States as may be necessary for the exercise of its functions and for the operation of the Court.

Article 12

Privileges and immunities of the judges, the Prosecutor, Deputy Prosecutor and the Registrar

1. The judges, the Prosecutor, Deputy Prosecutor and the Registrar, together with their families forming part of their household, shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents in accordance with the 1961 Vienna Convention on Diplomatic Relations. They shall, in particular, enjoy:

(a) Personal inviolability, including immunity from arrest or detention;

(b) Immunity from criminal, civil and administrative jurisdiction in conformity with the Vienna Convention;

(c) Inviolability for all papers and documents;
(d) Exemption, as appropriate, from immigration restrictions and other alien registrations;

(e) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents by the Vienna Convention;

(f) Exemption from taxation in Sierra Leone on their salaries, emoluments and allowances.

2. Privileges and immunities are accorded to the judges, the Prosecutor and the Registrar in the interest of the Special Court and not for the personal benefit of the individuals themselves. The right and the duty to waive the immunity, in any case where it can be waived without prejudice to the purpose for which it is accorded, shall lie with the Secretary-General, in consultation with the President.

Article 13

Privileges and immunities of international and Sierra Leonean personnel

1. Sierra Leonean and international personnel of the Special Court shall be accorded:

(a) Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with the Special Court;

(b) Immunity from taxation on salaries, allowances and emoluments paid to them.

2. International personnel shall, in addition thereto, be accorded:
(a) Immunity from immigration restriction;
(b) The right to import free of duties and taxes, except for payment for services, their furniture and effects at the time of first taking up their official duties in Sierra Leone.
3. The privileges and immunities are granted to the officials of the Special Court in the interest of the Court and not for their personal benefit. The right and the duty to waive the immunity in any particular case where it can be waived without prejudice to the purpose for which it is accorded shall lie with the Registrar of the Court.

Article 14

Counsel

1. The Government shall ensure that the counsel of a suspect or an accused who has been admitted as such by the Special Court shall not be subjected to any measure which may affect the free and independent exercise of his or her functions.
2. In particular, the counsel shall be accorded:
   a. Immunity from personal arrest or detention and from seizure of personal baggage;
   b. Inviolability of all documents relating to the exercise of his or her functions as a counsel of a suspect or accused;
   c. Immunity from criminal or civil jurisdiction in respect of words spoken or written and acts performed in his or her capacity as counsel. Such immunity shall continue to
be accorded after termination of his or her functions as a counsel of a suspect or accused.

d. Immunity from any immigration restrictions during his or her stay as well as during his or her journey to the Court and back.

Article 15
Witnesses and experts

Witnesses and experts appearing from outside Sierra Leone on a summons or a request of the judges or the Prosecutor shall not be prosecuted, detained or subjected to any restriction on their liberty by the Sierra Leonean authorities. They shall not be subjected to any measure which may affect the free and independent exercise of their functions. The provisions of article 13, paragraph 2(a) and (d), shall apply to them.

Article 16
Security, safety and protection of persons referred to in this Agreement

Recognizing the responsibility of the Government under international law to ensure the security, safety and protection of persons referred to in this Agreement and its present incapacity to do so pending the restructuring and rebuilding of its security forces, it is agreed that the United Nations Mission in Sierra Leone shall provide the necessary security to premises and personnel of the Special Court, subject to an appropriate mandate by the Security Council and within its
Article 17

Cooperation with the Special Court

1. The Government shall cooperate with all organs of the Special Court at all stages of the proceedings. It shall, in particular, facilitate access to the Prosecutor to sites, persons and relevant documents required for the investigation.

2. The Government shall comply without undue delay with any request for assistance by the Special Court or an order issued by the Chambers, including, but not limited to:
   a. Identification and location of persons;
   b. Service of documents;
   c. Arrest or detention of persons;
   d. Transfer of an indictee to the Court.

Article 18

Working language

The official working language of the Special Court shall be English.

Article 19

Practical arrangements

1. With a view to achieving efficiency and cost-effectiveness in the operation of the Special Court, a phased-in approach shall be adopted for its establishment in
accordance with the chronological order of the legal process.

2. In the first phase of the operation of the Special Court, judges, the Prosecutor and the Registrar will be appointed along with investigative and prosecutorial staff. The process of investigations and prosecutions of those already in custody shall be initiated.

3. In the initial phase, judges of the Trial Chamber and the Appeals Chamber shall be convened on an ad hoc basis for dealing with organizational matters, and serving when required to perform their duties.

4. Judges of the Trial Chamber shall take permanent office shortly before the investigation process has been completed. Judges of the Appeals Chamber shall take permanent office when the first trial process has been completed.

Article 20
Settlement of Disputes

Any dispute between the Parties concerning the interpretation or application of this Agreement shall be settled by negotiation, or by any other mutually agreed-upon mode of settlement.

Article 21
Entry into force

The present Agreement shall enter into force on the day after both Parties have notified
each other in writing that the legal requirements for entry into force have been complied with.

Article 22

Amendment

This Agreement may be amended by written agreement between the Parties.

Article 23

Termination

This Agreement shall be terminated by agreement of the Parties upon completion of the judicial activities of the Special Court.

IN WITNESS WHEREOF, the following duly authorized representatives of the United Nations and of the Government of Sierra Leone have signed this Agreement.

Done at Freetown, on 16 January 2002 in two originals in the English language.

Signed by:

The Hon Solomon E. Berewa, Attorney-General and Minister of Justice of the Republic of Sierra Leone

Mr Hans Corell, Under Secretary-General for Legal Affairs of the United Nations
ANNEX SIX

Statute for the Special Court
16 January 2002, as amended

STATUTE OF THE SPECIAL COURT FOR SIERRA LEONE

Having been established by an Agreement between the United Nations and the Government of Sierra Leone pursuant to Security Council resolution 1315 (2000) of 14 August 2000, the Special Court for Sierra Leone (hereinafter "the Special Court") shall function in accordance with the provisions of the present Statute.

Article 1

Competence of the Special Court

1. The Special Court shall, except as provided in subparagraph (2), have the power to prosecute persons who bear 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, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.
2. Any transgressions by peace keepers and related personnel present in Sierra Leone pursuant to the Status of Mission Agreement in force between the United Nations and the Government of Sierra Leone or agreements between Sierra Leone and other Governments or regional organizations, or, in the absence of such agreement, provided that the peacekeeping operations were undertaken with the consent of the Government of Sierra Leone, shall be within the primary jurisdiction of the sending State.

3. In the event the sending State is unwilling or unable genuinely to carry out an investigation or prosecution, the Court may, if authorized by the Security Council on the proposal of any State, exercise jurisdiction over such persons.

Article 2

Crimes against humanity

The Special Court shall have the power to prosecute persons who committed the following crimes as part of a widespread or systematic attack against any civilian population:

(a) Murder;
(b) Extermination;
(c) Enslavement;
(d) Deportation;
(e) Imprisonment;
(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence; (h) Persecution on political, racial, ethnic or religious grounds;

(i) Other inhumane acts.

Article 3

Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II

The Special Court shall have the power to prosecute persons who committed or ordered the commission of serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include:

(a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) Collective punishments;

(c) Taking of hostages;

(d) Acts of terrorism;

(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
(f) Pillage;

(g) The passing of sentences and the carrying out of executions without previous
judgement pronounced by a regularly constituted court, affording all the judicial
 guarantees which are recognized as indispensable by civilized peoples;

(h) Threats to commit any of the foregoing acts.

Article 4

Other serious violations of international humanitarian law

The Special Court shall have the power to prosecute persons who committed the
following serious violations of international humanitarian law:

(a) Intentionally directing attacks against the civilian population as such or against
individual civilians not taking direct part in hostilities;

(b) Intentionally directing attacks against personnel, installations, material, units or
vehicles involved in a humanitarian assistance or peacekeeping mission in accordance
with the Charter of the United Nations, as long as they are entitled to the protection
given to civilians or civilian objects under the international law of armed conflict;

(c) Conscripting or enlisting children under the age of 15 years into armed forces or
groups or using them to participate actively in hostilities.

Article 5

Crimes under Sierra Leonean law
The Special Court shall have the power to prosecute persons who have committed the following crimes under Sierra Leonean law:

(a) Offences relating to the abuse of girls under the Prevention of Cruelty to Children Act, 1926 (Cap. 31):

(i) Abusing a girl under 13 years of age, contrary to section 6;

(ii) Abusing a girl between 13 and 14 years of age, contrary to section 7;

(iii) Abduction of a girl for immoral purposes, contrary to section 12.

(b) Offences relating to the wanton destruction of property under the Malicious Damage Act, 1861:

(i) Setting fire to dwelling - houses, any person being therein, contrary to section 2;

(ii) Setting fire to public buildings, contrary to sections 5 and 6;

(iii) Setting fire to other buildings, contrary to section 6.

Article 6

Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime.

2. The official position of any accused persons, whether as Head of State or Government or as a responsible government official, shall not relieve such person of
criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Special Court determines that justice so requires.

5. Individual criminal responsibility for the crimes referred to in article 5 shall be determined in accordance with the respective laws of Sierra Leone.

Article 7

Jurisdiction over persons of 15 years of age

1. The Special Court shall have no jurisdiction over any person who was under the age of 15 at the time of the alleged commission of the crime. Should any person who was at the time of the alleged commission of the crime between 15 and 18 years of age come before the Court, he or she shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and
in accordance with international human rights standards, in particular the rights of the child.

2. In the disposition of a case against a juvenile offender, the Special Court shall order any of the following: care guidance and supervision orders, community service orders, counselling, foster care, correctional, educational and vocational training programmes, approved schools and, as appropriate, any programmes of disarmament, demobilization and reintegration or programmes of child protection agencies.

Article 8

Concurrent jurisdiction

1. The Special Court and the national courts of Sierra Leone shall have concurrent jurisdiction.

2. The Special Court shall have primacy over the national courts of Sierra Leone. At any stage of the procedure, the Special Court may formally request a national court to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence.

Article 9

Non bis in idem

1. No person shall be tried before a national court of Sierra Leone for acts for which he
or she has already been tried by the Special Court.

2. A person who has been tried by a national court for the acts referred to in articles 2 to 4 of the present Statute may be subsequently tried by the Special Court if:

(a) The act for which he or she was tried was characterized as an ordinary crime; or

(b) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the Special Court shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 10

Amnesty

An amnesty granted to any person falling within the jurisdiction of the Special Court in respect of the crimes referred to in articles 2 to 4 of the present Statute shall not be a bar to prosecution.

Article 11

Organization of the Special Court

The Special Court shall consist of the following organs:
(a) The Chambers, comprising one or more Trial Chambers and an Appeals Chamber;
(b) The Prosecutor; and
(c) The Registry.

Article 12

Composition of the Chambers

1. The Chambers shall be composed of not less than eight (8) or more than eleven (11) independent judges, who shall serve as follows:

(a) Three judges shall serve in the Trial Chamber, of whom one shall be a judge appointed by the Government of Sierra Leone, and two judges appointed by the Secretary-General of the United Nations (hereinafter “the Secretary-General”).

(b) Five judges shall serve in the Appeals Chamber, of whom two shall be judges appointed by the Government of Sierra Leone, and three judges appointed by the Secretary-General.

2. Each judge shall serve only in the Chamber to which he or she has been appointed.

3. The judges of the Appeals Chamber and the judges of the Trial Chamber, respectively, shall elect a presiding judge who shall conduct the proceedings in the Chamber to which he or she was elected. The presiding judge of the Appeals Chamber shall be the President of the Special Court.

4. If, at the request of the President of the Special Court, an alternate judge or judges
have been appointed by the Government of Sierra Leone or the Secretary-General, the presiding judge of a Trial Chamber or the Appeals Chamber shall designate such an alternate judge to be present at each stage of the trial and to replace a judge if that judge is unable to continue sitting.

Article 13

Qualification and appointment of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. They shall be independent in the performance of their functions, and shall not accept or seek instructions from any Government or any other source.

2. In the overall composition of the Chambers, due account shall be taken of the experience of the judges in international law, including international humanitarian law and human rights law, criminal law and juvenile justice.

3. The judges shall be appointed for a three-year period and shall be eligible for reappointment.

Article 14

Rules of Procedure and Evidence

1. The Rules of Procedure and Evidence of the International Criminal Tribunal for
Rwanda obtaining at the time of the establishment of the Special Court shall be applicable mutatis mutandis to the conduct of the legal proceedings before the Special Court.

2. The judges of the Special Court as a whole may amend the Rules of Procedure and Evidence or adopt additional rules where the applicable Rules do not, or do not adequately, provide for a specific situation. In so doing, they may be guided, as appropriate, by the Criminal Procedure Act, 1965, of Sierra Leone.

Article 15

The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons who bear the greatest responsibility for serious violations of international humanitarian law and crimes under Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996. The Prosecutor shall act independently as a separate organ of the Special Court. He or she shall not seek or receive instructions from any Government or from any other source.

2. The Office of the Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor shall, as appropriate, be assisted by the Sierra Leonean authorities concerned.
3. The Prosecutor shall be appointed by the Secretary-General for a three-year term and shall be eligible for re-appointment. He or she shall be of high moral character and possess the highest level of professional competence, and have extensive experience in the conduct of investigations and prosecutions of criminal cases.

4. The Prosecutor shall be assisted by a Deputy Prosecutor, and by such other Sierra Leonean and international staff as may be required to perform the functions assigned to him or her effectively and efficiently. Given the nature of the crimes committed and the particular sensitivities of girls, young women and children victims of rape, sexual assault, abduction and slavery of all kinds, due consideration should be given in the appointment of staff to the employment of prosecutors and investigators experienced in gender-related crimes and juvenile justice.

5. In the prosecution of juvenile offenders, the Prosecutor shall ensure that the child-rehabilitation programme is not placed at risk and that, where appropriate, resort should be had to alternative truth and reconciliation mechanisms, to the extent of their availability.

Article 16

The Registry

1. The Registry shall be responsible for the administration and servicing of the Special Court.
2. The Registry shall consist of a Registrar and such other staff as may be required.

3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the Special Court and shall be a staff member of the United Nations. He or she shall serve for a three-year term and be eligible for re-appointment.

4. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses. The Unit personnel shall include experts in trauma, including trauma related to crimes of sexual violence and violence against children.

Article 17

Rights of the accused

1. All accused shall be equal before the Special Court.

2. The accused shall be entitled to a fair and public hearing, subject to measures ordered by the Special Court for the protection of victims and witnesses.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

4. In the determination of any charge against the accused pursuant to the present
Statute, he or she shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;

(b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;

(c) To be tried without undue delay;

(d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

(f) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the Special Court;

(g) Not to be compelled to testify against himself or herself or to confess guilt.

Article 18
Judgement.

The judgement shall be rendered by a majority of the judges of the Trial Chamber or of the Appeals Chamber, and shall be delivered in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 19

Penalties

1. The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years. In determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.

2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chamber may order the forfeiture of the property, proceeds and any assets acquired unlawfully or by criminal conduct, and their return to their rightful owner or to the State of Sierra Leone.

Article 20

Appellate proceedings
1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chamber or from the Prosecutor on the following grounds:

(a) A procedural error;

(b) An error on a question of law invalidating the decision;

(c) An error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chamber.

3. The judges of the Appeals Chamber of the Special Court shall be guided by the decisions of the Appeals Chamber of the International Tribunals for the former Yugoslavia and for Rwanda. In the interpretation and application of the laws of Sierra Leone, they shall be guided by the decisions of the Supreme Court of Sierra Leone.

Article 21

Review proceedings

1. Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chamber or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit an application for review of the judgement.

2. An application for review shall be submitted to the Appeals Chamber. The Appeals Chamber may reject the application if it considers it to be unfounded. If it determines
that the application is meritorious, it may, as appropriate:

(a) Reconvene the Trial Chamber;
(b) Retain jurisdiction over the matter.

Article 22

Enforcement of sentences

1. Imprisonment shall be served in Sierra Leone. If circumstances so require, imprisonment may also be served in any of the States which have concluded with the International Criminal Tribunal for Rwanda or the International Criminal Tribunal for the former Yugoslavia an agreement for the enforcement of sentences, and which have indicated to the Registrar of the Special Court their willingness to accept convicted persons. The Special Court may conclude similar agreements for the enforcement of sentences with other States.

2. Conditions of imprisonment, whether in Sierra Leone or in a third State, shall be governed by the law of the State of enforcement subject to the supervision of the Special Court. The State of enforcement shall be bound by the duration of the sentence, subject to article 23 of the present Statute.

Article 23

Pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the convicted person is
imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Special Court accordingly. There shall only be pardon or commutation of sentence if the President of the Special Court, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law.

Article 24

Working language

The working language of the Special Court shall be English.

Article 25

Annual Report

The President of the Special Court shall submit an annual report on the operation and activities of the Court to the Secretary-General and to the Government of Sierra Leone.
ANNEX SEVEN

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL – 03 – I

THE PROSECUTOR

Against

CHARLES GHANKAY TAYLOR also known as

CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR

INDICTMENT

The Prosecutor, Special Court for Sierra Leone, under Article 15 of the Statute of the Special Court for Sierra Leone (the Statute) charges: CHARLES GHANKAY TAYLOR also known as (aka) CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR

with CRIMES AGAINST HUMANITY, VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II and OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW, in violation of Articles 2, 3 and 4 of the Statute as set forth below:

THE ACCUSED
1. CHARLES GHANKAY TAYLOR aka CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR (the ACCUSED) was born on or about 28 January 1948 at Arthington in the Republic of Liberia.

GENERAL ALLEGATIONS

2. At all times relevant to this Indictment, a state of armed conflict existed within Sierra Leone. For the purposes of this Indictment, organized armed factions involved in this conflict included the Revolutionary United Front (RUF), the Civil Defence Forces (CDF) and the Armed Forces Revolutionary Council (AFRC).

3. A nexus existed between the armed conflict and all acts or omissions charged herein as Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and as Other Serious Violations of International Humanitarian Law.

4. The organized armed group that became known as the RUF, led by FODAY SAYBANA SANKOH aka POPAY aka PAPA aka PA, was founded about 1988 or 1989 in Libya. The RUF, under the leadership of FODAY SAYBANA SANKOH, began organized armed operations in Sierra Leone in March 1991. During the ensuing armed conflict, the RUF forces were also referred to as "RUF", "rebels" and "People's Army".

5. The CDF was comprised of Sierra Leonean traditional hunters, including the Kamajors, Gbethis, Kapras, Tamaboros and Donsos. The CDF fought against the RUF
and AFRC.

6. On 30 November 1996, in Abidjan, Ivory Coast, FODAY SAYBANA SANKOH and Ahmed Tejan Kabbah, President of the Republic of Sierra Leone, signed a peace agreement which brought a temporary cessation to active hostilities. Thereafter, the active hostilities recommenced.

7. The AFRC was founded by members of the Armed Forces of Sierra Leone who seized power from the elected government of the Republic of Sierra Leone via a coup d'état on 25 May 1997. Soldiers of the Sierra Leone Army (SLA) comprised the majority of the AFRC membership. On that date JOHNNY PAUL KOROMA aka JPK became the leader and Chairman of the AFRC. The AFRC forces were also referred to as "Junta", "soldiers", "SLA", and "ex-SLA".

8. Shortly after the AFRC seized power, at the invitation of JOHNNY PAUL KOROMA, and upon the order of FODAY SAYBANA SANKOH, leader of the RUF, the RUF joined with the AFRC. The AFRC and RUF acted jointly thereafter. The AFRC/RUF Junta forces (Junta) were also referred to as "Junta", "rebels", "soldiers", "SLA", "ex-SLA" and "People's Army".

9. After the 25 May 1997 coup d'état, a governing body, the Supreme Council, was created within the Junta. The governing body included leaders of both the AFRC and RUF.
10. The Junta was forced from power by forces acting on behalf of the ousted government of President Kabbah about 14 February 1998. President Kabbah's government returned in March 1998. After the Junta was removed from power the AFRC/RUF alliance continued.

11. On 7 July 1999, in Lomé, Togo, FODAY SAYBANA SANKOH and Ahmed Tejan Kabbah, President of the Republic of Sierra Leone, signed a peace agreement. However, active hostilities continued.

12. The ACCUSED and all members of the organized armed factions engaged in fighting within Sierra Leone were required to abide by International Humanitarian Law and the laws and customs governing the conduct of armed conflicts, including the Geneva Conventions of 12 August 1949, and Additional Protocol II to the Geneva Conventions, to which the Republic of Sierra Leone acceded on 21 October 1986.

13. All offences alleged herein were committed within the territory of Sierra Leone after 30 November 1996.

14. All acts and omissions charged herein as Crimes Against Humanity were committed as part of a widespread or systematic attack directed against the civilian population of Sierra Leone.

15. The words civilian or civilian population used in this Indictment refer to persons who took no active part in the hostilities, or who were no longer taking an active part
in the hostilities.

INDIVIDUAL CRIMINAL RESPONSIBILITY

16. Paragraphs 1 through 15 are incorporated by reference.

17. In the late 1980's CHARLES GHANKAY TAYLOR received military training in Libya from representatives of the Government of MU'AMMAR AL-QADHAFI. While in Libya the ACCUSED met and made common cause with FODAY SAYBANA SANKOH.

18. While in Libya, the ACCUSED formed or joined the National Patriotic Front of Liberia (NPFL). At all times relevant to this Indictment the ACCUSED was the leader of the NPFL and/or the President of the Republic of Liberia.

19. In December 1989 the NPFL, led by the ACCUSED, began conducting organized armed attacks in Liberia. The ACCUSED and the NPFL were assisted in these attacks by FODAY SAYBANA SANKOH and his followers.

20. To obtain access to the mineral wealth of the Republic of Sierra Leone, in particular the diamond wealth of Sierra Leone, and to destabilize the State, the ACCUSED provided financial support, military training, personnel, arms, ammunition and other support and encouragement to the RUF, led by FODAY SAYBANA SANKOH, in preparation for RUF armed action in the Republic of Sierra Leone, and during the subsequent armed conflict in Sierra Leone.

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21. Throughout the course of the armed conflict in Sierra Leone, the RUF and the AFRC/RUF alliance, under the authority, command and control of FODAY SAYBANA SANKOH, JOHNNY PAUL KOROMA and other leaders of the RUF, AFRC and AFRC/RUF alliance, engaged in notorious, widespread or systematic attacks against the civilian population of Sierra Leone.

22. At all times relevant to this Indictment, CHARLES GHANKAY TAYLOR supported and encouraged all actions of the RUF and AFRC/RUF alliance, and acted in concert with FODAY SAYBANA SANKOH and other leaders of the RUF and AFRC/RUF alliance. FODAY SAYBANA SANKOH was incarcerated in Nigeria and Sierra Leone and subjected to restricted movement in Sierra Leone from about March 1997 until about April 1999. During this time the ACCUSED, in concert with FODAY SAYBANA SANKOH, provided guidance and direction to the RUF, including SAM BOCKARIE aka MOSQUITO aka MASKITA.

23. The RUF and the AFRC shared a common plan, purpose or design (joint criminal enterprise) which was to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas. The natural resources of Sierra Leone, in particular the diamonds, were to be provided to persons outside Sierra Leone in return for assistance in carrying out the joint criminal enterprise.
24. The joint criminal enterprise included gaining and exercising control over the population of Sierra Leone in order to prevent or minimize resistance to their geographic control, and to use members of the population to provide support to the members of the joint criminal enterprise. The crimes alleged in this Indictment, including unlawful killings, abductions, forced labour, physical and sexual violence, use of child soldiers, looting and burning of civilian structures, were either actions within the joint criminal enterprise or were a reasonably foreseeable consequence of the joint criminal enterprise.

25. The ACCUSED participated in this joint criminal enterprise as part of his continuing efforts to gain access to the mineral wealth of Sierra Leone and to destabilize the Government of Sierra Leone.

26. CHARLES GHANKAY TAYLOR, by his acts or omissions, is individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Indictment, which crimes the ACCUSED planned, instigated, ordered, committed or in whose planning, preparation or execution the ACCUSED otherwise aided and abetted, or which crimes were within a joint criminal enterprise in which the ACCUSED participated or were a reasonably foreseeable consequence of the joint criminal enterprise in which the ACCUSED participated.
27. In addition, or alternatively, pursuant to Article 6.3. of the Statute, CHARLES GHANKAY TAYLOR, while holding positions of superior responsibility and exercising command and control over his subordinates, is individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute. The ACCUSED is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and the ACCUSED failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

CHARGES

28. Paragraphs 16 through 27 are incorporated by reference.

29. At all times relevant to this Indictment, members of the RUF, AFRC, Junta and/or AFRC/RUF forces (AFRC/RUF), supported and encouraged by, acting in concert with and/or subordinate to CHARLES GHANKAY TAYLOR, conducted armed attacks throughout the territory of the Republic of Sierra Leone, including, but not limited, to Bo, Kono, Kenema, Bombali and Kailahun Districts and Freetown. Targets of the armed attacks included civilians and humanitarian assistance personnel and peacekeepers assigned to the United Nations Mission in Sierra Leone (UNAMSIL), which had been created by United Nations Security Council Resolution 1270 (1999).

30. These attacks were carried out primarily to terrorize the civilian population, but
also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property.

31. As part of the campaign of terror and punishment the AFRC/RUF routinely captured and abducted members of the civilian population. Captured women and girls were raped; many of them were abducted and used as sex slaves and as forced labour. Some of these women and girls were held captive for years. Men and boys who were abducted were also used as forced labour; some of them were also held captive for years. Many abducted boys and girls were given combat training and used in active fighting. AFRC/RUF also physically mutilated men, women and children, including amputating their hands or feet and carving "AFRC" and "RUF" on their bodies.

COUNTS 1 - 2: TERRORIZING THE CIVILIAN POPULATION AND COLLECTIVE PUNISHMENTS

32. Members of the AFRC/RUF supported and encouraged by, acting in concert with and/or subordinate to CHARLES GHANKAY TAYLOR committed the crimes set
forth below in paragraphs 33 through 58 and charged in Counts 3 through 13, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The AFRC/RUF also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF.

By his acts or omissions in relation, but not limited to these events, CHARLES GHANKAY TAYLOR, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 1: Acts of Terrorism, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.d. of the Statute; And: Count 2: Collective Punishments, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.b. of the Statute.

COUNTS 3 - 5: UNLAWFUL KILLINGS

33. Victims were routinely shot, hacked to death and burned to death. Unlawful killings included, but were not limited to, the following:

Bo District
34. Between 1 June 1997 and 30 June 1997, AFRC/RUF attacked Tikonko, Telu, Sembehun, Gerihun and Mamboma, unlawfully killing an unknown number of civilians;

Kenema District

35. Between about 25 May 1997 and about 19 February 1998, in locations including Kenema town, members of AFRC/RUF unlawfully killed an unknown number of civilians;

Kono District 36. About mid February 1998, AFRC/RUF fleeing from Freetown arrived in Kono District. Between about 14 February 1998 and 30 June 1998, members of AFRC/RUF unlawfully killed several hundred civilians in various locations in Kono District, including Koidu, Tombodu, Foindu, Willifeh, Mortema and Biaya;

Bombali District

37. Between about 1 May 1998 and 31 July 1998, in locations including Karina, members of AFRC/RUF unlawfully killed an unknown number of civilians;

Freetown

38. Between 6 January 1999 and 31 January 1999, AFRC/RUF conducted armed attacks throughout the city of Freetown. These attacks included large scale unlawful killings of civilian men, women and children at locations throughout the city, including the State House, Parliament building, Connaught Hospital, and the Kissy, Fourah Bay,
Upgun, Calaba Town and Tower Hill areas of the city.

By his acts or omissions in relation, but not limited to these events, CHARLES GHANKAY TAYLOR, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 3: Extermination, a CRIME AGAINST HUMANITY, punishable under Article 2.b. of the Statute;

In addition, or in the alternative:

Count 4: Murder, a CRIME AGAINST HUMANITY, punishable under Article 2.a. of the Statute;

In addition, or in the alternative:

Count 5: Violence to life, health and physical or mental well-being of persons, in particular murder, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.a. of the Statute.

COUNTS 6 - 8: SEXUAL VIOLENCE

39. Widespread sexual violence committed against civilian women and girls included brutal rapes, often by multiple rapists. Acts of sexual violence included, but were not limited to, the following:

Kono District 40. Between about 14 February 1998 and 30 June 1998, members of
AFRC/RUF raped hundreds of women and girls at various locations throughout the District, including Koidu, Tombodu, Kissi-town (or Kissi Town), Foendor (or Foendu), Tomendeh, Fokoiba, Wondenou and AFRC/RUF camps such as "Superman camp" and Kissi-town (or Kissi Town) camp. An unknown number of women and girls were abducted from various locations within the District and used as sex slaves;

Bombali District

41. Between about 1 May 1998 and 31 July 1998, members of AFRC/RUF raped an unknown number of women and girls in locations such as Mandaha. In addition, an unknown number of abducted women and girls were used as sex slaves;

Kailahun District

42. At all times relevant to this Indictment, an unknown number of women and girls in various locations in the District were subjected to sexual violence. Many of these victims were captured in other areas of the Republic of Sierra Leone, brought to AFRC/RUF camps in the District, and used as sex slaves;

Freetown

43. Between 6 January 1999 and 31 January 1999, members of AFRC/RUF raped hundreds of women and girls throughout the Freetown area, and abducted hundreds of women and girls and used them as sex slaves.

By his acts or omissions in relation, but not limited to these events, CHARLES
GHANKAY TAYLOR, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 6: Rape, a CRIME AGAINST HUMANITY, punishable under Article 2.g. of the Statute;

And:

Count 7: Sexual slavery and any other form of sexual violence, a CRIME AGAINST HUMANITY, punishable under Article 2.g. of the Statute;

In addition, or in the alternative:

Count 8: Outrages upon personal dignity, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.e. of the Statute.

COUNTS 9 - 10: PHYSICAL VIOLENCE

44. Widespread physical violence, including mutilations, was committed against civilians. Victims were often brought to a central location where mutilations were carried out. These acts of physical violence included, but were not limited to, the following:

Kono District

45. Between about 14 February 1998 and 30 June 1998, AFRC/RUF mutilated an unknown number of civilians in various locations in the District, including Tombodu,
Kaima (or Kayima) and Wondedu. The mutilations included cutting off limbs and carving "AFRC" and "RUF" on the bodies of the civilians;

Freetown

46. Between 6 January 1999 and 31 January 1999, AFRC/RUF mutilated an unknown number of civilian men, women and children in various areas of Freetown, including the northern and eastern areas of the city, and the Kissy area, including the Kissy mental hospital. The mutilations included cutting off limbs.

By his acts or omissions in relation, but not limited to these events, CHARLES GHANKAY TAYLOR, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 9: Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.a. of the Statute;

In addition, or in the alternative:

Count 10: Other inhumane acts, a CRIME AGAINST HUMANITY, punishable under Article 2.i. of the Statute.

COUNT 11: USE OF CHILD SOLDIERS

47. At all times relevant to this Indictment, throughout the Republic of Sierra Leone,
AFRC/RUF routinely conscripted, enlisted and/or used boys and girls under the age of 15 to participate in active hostilities. Many of these children were first abducted, then trained in AFRC/RUF camps in various locations throughout the country, and thereafter used as fighters.

By his acts or omissions in relation, but not limited to these events, CHARLES GHANKAY TAYLOR, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 11: Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities, an OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW, punishable under Article 4.c. of the Statute.

COUNT 12: ABDUCTIONS AND FORCED LABOUR

48. At all times relevant to this Indictment, AFRC/RUF engaged in widespread and large scale abductions of civilians and use of civilians as forced labour. Forced labour included domestic labour and use as diamond miners. The abductions and forced labour included, but were not limited to, the following:

Kenema District

Between about 1 August 1997 and about 31 January 1998, AFRC/RUF forced an unknown number of civilians living in the District to mine for diamonds at Cyborg Pit
in Tongo Field;

Kono District

50. Between about 14 February 1998 and 30 June 1998, AFRC/RUF forces abducted hundreds of civilian men, women and children, and took them to various locations outside the District, or to locations within the District such as AFRC/RUF camps, Tombodu, Koidu, Wondedu, Tomendeh. At these locations the civilians were used as forced labour, including domestic labour and as diamond miners in the Tombodu area;

Bombali District

51. Between about 1 May 1998 and 31 July 1998, in Bombali District, AFRC/RUF abducted an unknown number of civilians and used them as forced labour;

Kailahun District

52. At all times relevant to this Indictment, captured civilian men, women and children were brought to various locations within the District and used as forced labour;

Freetown

53. Between 6 January 1999 and 31 January 1999, in particular as the AFRC/RUF were being driven out of Freetown, the AFRC/RUF abducted hundreds of civilians, including a large number of children, from various areas within Freetown, including Peacock Farm and Calaba Town. These abducted civilians were used as forced labour.
By his acts or omissions in relation, but not limited to these events, CHARLES
GHANKAY TAYLOR, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the
Statute, is individually criminally responsible for the crimes alleged below:

Count 12: Enslavement, a CRIME AGAINST HUMANITY, punishable under Article
2 of the Statute.

COUNT 13: LOOTING AND BURNING

54. At all times relevant to this Indictment, AFRC/RUF engaged in widespread
unlawful taking and destruction by burning of civilian property. This looting and
burning included, but was not limited to, the following:

Bo District

55. Between 1 June 1997 and 30 June 1997, AFRC/RUF forces looted and burned an
unknown number of civilian houses in Telu, Sembehun, Mamboma and Tikonko;

Kono District

56. Between about 14 February 1998 and 30 June 1998, AFRC/RUF engaged in
widespread looting and burning in various locations in the District, including
Tombodu, Foindu and Yardu Sando, where virtually every home in the village was
looted and burned;

Bombali District

57. Between 1 March 1998 and 30 June 1998, AFRC/RUF forces burned an unknown
number of civilian buildings in locations such as Karina;

Freetown

58. Between 6 January 1999 and 31 January 1999, AFRC/RUF forces engaged in widespread looting and burning throughout Freetown. The majority of houses that were destroyed were in the areas of Kissy and eastern Freetown; other locations included the Fourah Bay, Upgun, State House and Pademba Road areas of the city.

By his acts or omissions in relation, but not limited to these events, CHARLES GHANKAY TAYLOR, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 13: Pillage, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.f. of the Statute.

COUNTS 14 - 17: ATTACKS ON UNAMSIL PERSONNEL

59. Between about 15 April 2000 and about 15 September 2000, AFRC/RUF engaged in widespread attacks against UNAMSIL peacekeepers and humanitarian assistance workers within the Republic of Sierra Leone, including, but not limited to locations within Bombali, Kailahun, Kambia, Port Loko, and Kono Districts. These attacks included unlawful killing of UNAMSIL peacekeepers, and abducting hundreds of peace keepers and humanitarian assistance workers who were then held hostage
By his acts or omissions in relation, but not limited to these events, CHARLES GHANKAY TAYLOR, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 14: Intentionally directing attacks against personnel involved in a humanitarian assistance or peacekeeping mission, an OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW, punishable under Article 4.b. of the Statute;

In addition, or in the alternative:

Count 15: For the unlawful killings, Murder, a CRIME AGAINST HUMANITY, punishable under Article 2.a. of the Statute;

In addition, or in the alternative:

Count 16: Violence to life, health and physical or mental well-being of persons, in particular murder, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.a. of the Statute;

In addition, or in the alternative:

Count 17: For the abductions and holding as hostage, Taking of hostages, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.c. of the Statute.
Dated this 3rd day of March 2003

Freetown, Sierra Leone

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David M. Crane

The Prosecutor