

WHAT LEADS TO THE “CRIME OF CRIMES”? A COMPARATIVE ANALYSIS OF FOUR GENOCIDES

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“A day will come when sacred Troy shall
perish, And Priam and his people shall be
slain”.²

I. Introduction

In 146 BC, legions of Rome under *Scipio Africanus* the Younger, razed Carthage to the ground; made all 55,000 survivors of the war, including some 25,000 women, into slaves; and plundered all that is valuable in the city.³ While the salting of the city grounds seems to be a later invention, Carthage was stripped of all its possessions, including (the idols of) her gods.⁴ Ironically, some of these possessions and artifacts that were looted from Carthage were, in fact, pillaged by Carthage from Greek towns in Sicily.⁵ Soon after,⁶ Rome sacked Corinth,⁷ despoiled artifacts and enslaved all its inhabitants who were considered collectively guilty.⁸ Conquerors, Roman or otherwise, rinsed and repeated to dispossess people, repossess their properties, and

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² Scipio is said to have uttered this famous verse from Illiad when Carthage was perishing. Polybius, *The Histories* VI, W. R. Paton (transl.) Harvard University Press 1968) 403-439.

³ Ben Kiernan, ‘The First Genocide: Carthage, 146 BC’, (2004) 51 *Diogenes*, 27.

⁴ Gilbert Picard, *Le Monde de Carthage* (1956), 76.

⁵ Nicholas Purcell, “On the Sacking of Carthage and Corinth”, in Doreen Innes, Harry Hine, Christopher Pelling, (eds.), *Ethics and Rhetoric: Classical Essays for Donald Russell on his Seventy Fifth Birthday* (OUP 1995), 141 (“Purcell 1995”); cf. Clemente Marconi, ‘The Carthaginian Conquest and Destruction of Selinus in 409 B.C.’, Sylvian Fachard and Edward M. Harris (eds.), *The Destruction of Cities in the Ancient Greek World - Integrating the Archaeological and Literary Evidence* (CUP 2021) 85, 88 (describing plundering of private property from houses and valuables from temples in the Greek town of Selinunte in Sicily)

⁶ We do not know the exact dates of the razing of Carthage and Corinth. However, Polybius’ accounts of events and, more specifically, his concerns about the fate of his own country at the time of Carthage’s destruction suggests that the Fall of Corinth occurred later. Polybius, *The Histories* VI, W. R. Paton (transl.) Harvard University Press 1968) 403-439.

⁷ P. S. Derow, ‘Rome, Fall of Macedon and the Sack of Corinth’, in A. E. Astin, F. W. Walbank, M. W. Frederiksen, and R. M. Ogilvie (eds.) *The Cambridge Ancient History Vol VIII - Rome and the Mediterranean to 133 B.C.* (CUP 2008) 290

⁸ Purcell 1995, 133, 137 and 142.

often possess entire populations. Alexandria, Baghdad (Ctesiphon),⁹ Calcutta, Constantinople, Córdoba, Delhi, Nanjing,¹⁰ and Tenochtitlán all suffered a similar fate—some of them more than once—during conquests throughout the centuries.

Most warfare in history goes hand in hand with mass scale robbery of goods and valuables, including cultural artifacts from victims. Specifically, the transfer of ownership is such a frequent occurrence in genocide and genocide-like occurrences that one wonders why it has not yet been explored, at least fully addressed as the leading motive of collective criminality. After all, “any theory whatsoever that deals with human behavior, whether individual or social—is likely to have something to say about property”.¹¹ This paper builds on this observation and attempts to map out relationships of dispossession, repossession and possession of property and, people¹² as the primary motive/cause/drive behind the crime of genocide.

“Genocide” however, is a polysemic word.¹³ Political science literature uses the concept interchangeably as “ethnic cleansing”,¹⁴ “mass atrocities”,¹⁵ or more often, mass killing.¹⁶ However, most instances of mass atrocities are described as “crimes against humanity” in

⁹ Peter Jackson, *The Mongols and the Islamic World - From Conquest to Conversion* (Yale University Press 2017), 125-128.

¹⁰ Suping Lu, *The 1937 – 1938 Nanjing Atrocities* (Springer 2019), 145-151 (detailed accounts of looting “objects of value, be they as small as coppers, ... or as big as ... pianos”).

¹¹ John T Sanders, “Justice and the Initial Acquisition of Property”, (1987) 10 HJLPP 367, 367.

¹² Şener Aktürk, ‘Not So Innocent - Clerics, Monarchs, and the Ethnoreligious Cleansing of Western Europe’, 48(4) *International Security* (Spring 2024) 87, 104 *et seq.* (demonstrating that Jews and Muslims were seen as “monarchical/royal property” or possessions of those “on whose land they lived, like some sort of chattels” and that this counterintuitively enabled ethnic cleansing during the *reconquista* due to the pressure from supranational papal-clerical actors)

¹³ Polysemous words are described as words that share the same spelling but with multiple related meanings. A typical example would be the word paper, which refers to the substance of a writing material but which has evolved to mean the content of writing. Polysemous words are not to be confused with homonyms, words which have the same spelling but generally unrelated meaning. The word “bank”, which refers to the ride of a river and to a financial institution, is an example of homonyms. On polysemous words, see Alan D. Cruse, “Context Variability”, *Meaning in Language: An Introduction to Semantics and Pragmatics* (2002), 105 *et seq.*

¹⁴ Monica Duffy Toft, *The Geography of Ethnic Violence: Identity, Interests, and the Indivisibility of Territory* (Princeton University Press, 2003); Peter Balakian, *The Burning Tigris: The Armenian Genocide and America's Response* (HarperCollins, 2004).

¹⁵ Robert I. Rotberg (ed.), *Mass Atrocity Crimes* (Brookings 2010); James Larry Taulbee, *Genocide, Mass Atrocity, and War Crimes in Modern History: Blood and Conscience* (Praeger 2017).

¹⁶ “About the Targeted Mass Killing dataset” (Australian National University) <<https://politicsir.cass.anu.edu.au/about-targeted-mass-killing-dataset>> accessed 01.04.2024; Ervin Staub, “Genocide and Mass Killing: Origins, Prevention, Healing and Reconciliation” (2000) 21 *Political Psychology* 367; Matthew Krain, “State-Sponsored Mass Murder: The Onset and Severity of Genocides and Politicides” (1997) 41 *JCR* 331.

international law.¹⁷ International treaties and the legal literature employs a much more limited and nuanced definition of genocide,¹⁸ which includes a wider range of acts, which includes “killing”, as well as, for example, “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction”.¹⁹ Naturally, these acts may involve massive deprivation of property (dispossession) necessary for the survival of the group or forms of forced labor, including slavery, in harsh conditions (possession). Genocide is construed as mass violence (and other acts) which includes “a specific intent to destroy the group”, namely, “genocidal intent” (or *dolus specialis*).²⁰ This is precisely the point where the legal literature and the political science [mis]construe genocide as a “crime against identity”,²¹ and confuse the element of the crime with its cause/motive. Against this background, our aim is twofold. First, we will critically diagnose that the literature on the causes of genocide fails to accurately indicate a common cause for cases which are legally determined to be genocides. Second, we will demonstrate massive taking and redistribution of property and “proptertization” of people as the common cause in all genocides. In this sense, our ambition is merely to lay out the empirical groundwork for a midrange theory of genocide and not to fully present a property theory of genocide at the present stage.

The Post-war era had no shortage of mass violence and ethnic cleansing. Yet, less than a handful of such instances were recognized as “genocide” by international and national courts and tribunals since the entry into force of the Convention on the Prevention and Punishment of the

¹⁷ For crimes against humanity see Geoffrey Robertson, *Crimes Against Humanity: The Struggle For Global Justice* (The New Press, 2006); Roger S. Clark, “History of Efforts to Codify Crimes Against Humanity: From the Charter of Nuremberg to the Statute of Rome” in Leila Nadya Sadat (eds) *Forging a Convention for Crimes Against Humanity* (CUP 2011); M. Cherif Bassiouni, “Revisiting the Architecture of Crimes Against Humanity: Almost a Century in the Making, with Gaps and Ambiguities Remaining - the Need for a Specialized Convention” in Leila Nadya Sadat (eds) *Forging a Convention for Crimes Against Humanity* (CUP 2011). See also Draft articles on Prevention and Punishment of Crimes Against Humanity (2009), Adopted by the International Law Commission at its seventy-first session, in 2019, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session (A/74/10). The report will appear in *Yearbook of the International Law Commission*, 2019, vol. II, Part Two.

¹⁸ Convention on the Prevention and Punishment of the Crime of Genocide (signed on 9 December 1948, entered into force on 12 January 1951) (“Genocide Convention”), Article 2; Rome Statute of the International Criminal Court (signed on 17 July 1998, entered into force on 1 July 2002) (“Rome Statute”), Article 6.

¹⁹ Convention on the Prevention and Punishment of the Crime of Genocide (signed 9 December 1948, entered into force 12 January 1951) (“Genocide Convention”), Article II; Antonio Cassese, “On the Use of Criminal Law Notions in Determining State Responsibility for Genocide” (2007) 5 JICJ 875 (“Cassese 2007”); Claus Kress, “The Crime of Genocide under International Law” (2006) 6 ICLR 461.

²⁰ Genocide Convention Article II, Cassese 2007.

²¹ A. Dirk Moses, “Fit for Purpose? The Concept of Genocide and Civilian Destruction” in Donald Bloxham and A. Dirk Moses (ed) *Genocide* (OUP 2022).

Crime of Genocide (“Genocide Convention”). These are Rwandan genocide, Srebrenica genocide and Yazidi genocide where courts have determined the existence of *dolus specialis*, namely, the “specific intent” to commit genocide. This “genocidal intent” is essentially a manifestation of negative identity politics.²² So, why then, did genocide occur in Rwanda, Yugoslavia and Syria/Iraq but not in other massacres similarly and tragically defined by ethnic/religious hatred or other forms of negative identity politics? What do these three cases have in common with the Holocaust, the archetype for the crime of genocide?²³ This paper explores the motives/causes of “crime of genocide”, by differentiating it from other mass atrocities and ethnic cleansing driven by negative identity politics. While genocide is an irrational hate crime, this feature has been identified in other forms of mass atrocities which are not defined as genocide, not least as a matter of law. Therefore, despite the very conceptualization of the crime of genocide as a “crime against identity”, if it is to be distinct from, it must be distinguished by another feature. This is not merely, for example, “widespread and systematic murder” racially motivated but falling short of *dolus specialis*,²⁴ or the specific more inclusive list of victims’ identities of “crime against humanity of persecution”.²⁵ It is also not the availability of prosecution. International Criminal Court (“ICC”), the International Criminal Tribunal for Rwanda (“ICTR”), and the International Criminal Tribunal for the Former Yugoslavia (“ICTY”) as well as over 100 national courts can prosecute genocide and only a few have done so. We argue that the crime of genocide displays an an “ulterior political motive”²⁶ of dispossession and possession. Thus, dehumanization of victims is not the motive of the killing, expulsion, destruction and plunder. It is a means to deprive people from personhood which then “justifies” taking their property or objectifying them. The normative underpinning of the paper is that negative identity politics indeed play a role, but a different and more nuanced one than suggested by the literature on genocide studies. Genocidal intent or hate is not the “motive” of the crime, it is merely a means to an end for the selection of the target group by *génocidaires*.

²² Amy Gutman, *Identity in Democracy* (Princeton University Press 2004), 11 (“identi[fication] [stigmatization and targeting] [of a people] against their will by others by being given attributes of a particular kind of person”).

²³ Holocaust was, however, prosecuted as “crimes against humanity” during the Nuremberg Trials. The Medical Case, Judgment; The Milch Case, Case No.2, Military Tribunal No. II, The United States of America against Erhard Milch, Judgment; Justice Trial US Military Tribunal, Judgment.

²⁴ Guénaél Mettraux, “Special Genocidal Intent/Dolus Specialis” in *International Crimes: Law and Practice: Volume I: Genocide* (OUP 2019).

²⁵ Rome Statute, Article 7(1)(g).

²⁶ European Court of Human Rights, Case of Selahattin Demirtaş v. Turkey (No.2), 14305/17, 20 November 2018.

In line with the foregoing, the paper evaluates the causes of four genocides by employing a comparative historical analysis with a most different systems design (“MDSD”). It demonstrates that there are significant variances in the potential causes of a similar outcome (the commission of genocide in these four cases) whereas such as the population, ethnic composition, government structure, levels of freedom, polity, colonial history, and geopolitical region. This is to show lack of empirical basis for grand theories and middle-range theories which seek to explain the commission of genocide by elevating specific intent, an element of the crime, to the cause of the social phenomenon. The paper does neither claim there is a cause and effect relationship or a statistical correlation between possession/dispossession and genocide in the social scientific sense. It merely states that the politics of possession/dispossession in genocide are the subtle but more prominent feature than negative identity politics, a motive if not the cause. Section II of this paper introduces the research design, focusing on the objectives, dependent and independent variables, and the methodology. Section III explains the theoretical significance of the research and presents the current literature. Section IV presents our analysis on the property taking during the crime of genocide.

II. Research Design: Objectives, Variables, and Methodology

The Holocaust, Bosnian Genocide, and Rwandan Genocide are known as the most tragic instances in the twentieth century, if not in the history of humankind. Beyond the death toll and the ways in which violence was inflicted, they left a lasting impact on social and economic relations.²⁷ This raises an important question: why did genocide occur in Nazi Germany, Yugoslavia, Rwanda, and Syria/Iraq? While there are many states that include previous episodes of violence and political issues, they did not experience such a tragic history.²⁸ It is important to emphasize that this study employs a political science approach, using the legal term “crime of genocide” as its object of study. Adopting the most different systems approach from the political science discipline, we concentrate on the selection of cases and the relevant variables.

A. Dependent Variable: The Commission of Genocide

²⁷ Roland Hodler, "The Economic Effects of Genocide: Evidence from Rwanda" (2019) 28 Journal of African Economies 1.

²⁸ See Monthy G. Marshall "Major Episodes of Political Violence 1946-2019" (2020) <<https://www.systemicpeace.org/warlist/warlist.htm>> accessed 01.04.2024.

Genocide is not a political, but rather a legal concept.²⁹ The Genocide Convention 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: (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.”³⁰

The Rome Statute of the International Criminal Court (“Rome Statute”), Statute of the International Criminal Tribunal for the Former Yugoslavia (“ICTY Statute”), and the Statute of the International Tribunal for Rwanda (“ICTR Statute”) also includes an identical definition of the crime of genocide.³¹ The Charter of the International Military Tribunal (“IMT Charter”) did not include genocide as a crime. Article 6 of the IMT Charter included crimes against peace, war crimes, and crimes against humanity as crimes under the jurisdiction of the tribunal.³²

The term “genocide” was first used by Raphael Lemkin in 1944.³³ Yet, it remained a scholarly concept. Genocide became an international crime in 1948 when the Genocide Convention was adopted by the General Assembly.³⁴ According to Antonio Cassese, the Genocide Convention has two primary goals: first, “to oblige Contracting Parties to criminalize genocide

²⁹ William Schabas, *Genocide in International Law: The Crime of Crimes* (CUP 2009) (“Schabas 2009”).

³⁰ Genocide Convention, Article II.

³¹ Rome Statute Article 6; Statute of the International Criminal Tribunal for the former Yugoslavia (Security Council resolution 827 (1993), 25 May 1993) (“ICTY Statute”) Article 4; Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 (Security Council resolution 955 (1994), 08 November 1994) (“ICTR Statute”) Article 2.

³² Charter of the International Military Tribunal (IMT), Agreement by the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic and the Government of the Union of Soviet Socialist Republics for the prosecution and punishment of the major war criminals of the European Axis (signed on 8 August 1945, entered into force on 8 August 1945) 279 UNTS 82 (“IMT Charter”) Article 6.

³³ See Raphael Lemkin, “Genocide” (1946) 15 *The American Scholar* 227.

³⁴ Antonio Cassese, *International Criminal Law* (Oxford, 2008), p.127 (“Cassese 2008”) See also United Nations General Assembly (“UNGA”) Resolution A_RES_260(III)[A], “Adoption of the Convention on the Prevention and Punishment of the crime of genocide, and text of the Convention”.

and punish their authors within the legal system of each Party”; and second, “to provide for the judicial cooperation of those contracting states for the suppression of the crime”.³⁵

It is important to distinguish the term genocide from other related concepts, such as “mass atrocities” and “ethnic cleansing”. These terms differ in their specific meanings and legal applications. Genocide is uniquely defined by the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, and is recognized as a distinct international crime. In contrast, mass atrocities is an umbrella term encompassing large-scale, systematic violence, including genocide, war crimes, and crimes against humanity. Ethnic cleansing describes efforts to remove a particular ethnic group from a specific area, typically through forced displacement, without necessarily aiming for the group's destruction. For the purpose of this study, we focus exclusively on the crime of genocide as the object of study, given its specific legal definition and listed criteria, and do not include other forms of mass violence or human rights abuses.

B. Case Selection

This paper examines the causes of genocide in four specific cases: the Holocaust, Bosnian Genocide, Rwandan Genocide, and Yazidi Genocide, focusing on Nazi Germany, Yugoslavia, Rwanda, and Syria/Iraq. The analysis is limited to these four cases due to the absence of a fifth instance that meets the legal threshold for genocide. Genocide, with its high threshold, is distinguished from other forms of mass violence, such as mass murder, crimes against humanity, and ethnic cleansing.³⁶ Often described as the “crime of crimes” or “the

³⁵ Cassese 2008, p.127-128.

³⁶ For crimes against humanity, see Geoffrey Robertson, *Crimes Against Humanity: The Struggle For Global Justice* (The New Press, 2006); Roger S. Clark, “History of Efforts to Codify Crimes Against Humanity: From the Charter of Nuremberg to the Statute of Rome” in Leila Nadya Sadat (eds) *Forging a Convention for Crimes Against Humanity* (CUP 2011); M. Cherif Bassiouni, “Revisiting the Architecture of Crimes Against Humanity: Almost a Century in the Making, with Gaps and Ambiguities Remaining - the Need for a Specialized Convention” in Leila Nadya Sadat (eds) *Forging a Convention for Crimes Against Humanity* (CUP 2011). For ethnic cleansing see John Hagan and Todd Haugh, “Ethnic Cleansing as Euphemism, Metaphor, Criminology, and Law” in Leila Nadya Sadat (eds) *Forging a Convention for Crimes Against Humanity* (CUP 2011). See also Lori Fisler Damrosch, “Genocide and Ethnic Conflict” in David Wippman (eds) *International Law and Ethnic Conflict* (Cornell University Press 1998). For violence to life in international humanitarian law (also known as laws of war) see Rule 89: Violence to Life (ICRC, International Humanitarian Law Databases) <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule89>> accessed 01.04.2024.

gravest crime”,³⁷ genocide is uniquely defined by the requirement of *dolus specialis* (special intent) to destroy, in whole or in part, a national, ethnic, racial, or religious group.³⁸

Many instances of mass violence, such as the “Cambodian Genocide” or “Guatemalan Genocide” do not legally qualify as genocide due to the absence of this required intent. Two alleged cases currently pending judgment on genocide – Myanmar and Darfur – have not been included in this analysis due to the lack of final rulings by the International Court of Justice (ICJ) and the International Criminal Court (ICC). Similarly, while the ICJ recently issued a provisional order in the Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (*South Africa v. Israel*),³⁹ this order does not constitute a final judgment, as it only establishes *prima facie* jurisdiction.⁴⁰ Thus, our study is confined to the four instances, as they are among the few cases with both the factual basis and the legal judgment to satisfy the criteria for genocide.

1. The Holocaust

While the term “genocide” was used in the indictment,⁴¹ the Holocaust was not legally categorized as “genocide”, but as “crimes against humanity” by the International Military Tribunal (“IMT” or “Nuremberg Trials”) at Nuremberg.⁴² Genocide first appeared as an

³⁷ “The crime of genocide is unique because of its element of *dolus specialis* (special intent) which requires that the crime be committed with the intent ‘to destroy in whole or in part, a national ethnic, racial or religious group as such; hence the Chamber is of the opinion that genocide constitutes the crime of crimes, which must be taken into account when deciding the sentence.” See ICTR, *The Prosecutor v. Jean Kambanda*, Judgement and Sentence (ICTRY 97-23-S) 4 September 1998, para. 16. See also William Schabas, *Genocide in International Law: The Crimes of Crimes* (CUP 2000). See also Kress 2006, 463-466.

³⁸ The genocidal intent is very difficult to prove in legal proceedings. The ICTR in the Akayesu case confirmed that “On the issue of determining the offender's specific intent, the Chamber considers that intent is a mental factor which is difficult, even impossible, to determine. This is the reason why, in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact. The Chamber considers that it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others.” See ICTR, *The Prosecutor v. Jean-Paul Akayesu*, Trial Judgement (Case No. ICTR-96-4-T) 2 September 1998 (“ICTR, Akayesu Trial Judgment”); Cassese 2008, p.141-144.

³⁹ ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (*South Africa v. Israel*), Order of 26 January 2024, p.24-25.

⁴⁰ Statute of the International Court of Justice (24 October 1945) (“ICJ Statute”) Article 41; Peter J. Goldsworthy, “Interim Measures of Protection in the International Court of Justice” (1974) 68 AJIL 258.

⁴¹ Transcript for IMT: *France et al. v. Goering et al*, 1946 (“*France et al. v. Goering et al*, 1946”).

⁴² For the indictments see Nurnberg Military Tribunals Indictments <https://tile.loc.gov/storage-services/service/ll/llmlp/NT_Indictments/NT_Indictments.pdf> accessed 01.04.2024.

international crime in 1948 and, as a matter of law, it does not apply retroactively.⁴³ However, for the purposes of this paper, Holocaust will be considered as genocide.⁴⁴ Indeed, Holocaust would have fulfilled the requirements of genocide under Article 2 of the Genocide Convention and it is widely recognized as genocide in the scholarship.⁴⁵ The Nuremberg Trials also charged the defendants with

“deliberate and systematic genocide, viz., the extermination of racial and national groups, against the civilian populations of certain occupied territories in order to destroy particular races and classes of people, and national, racial or religious groups, particularly Jews, Poles, and Gypsies”

while legally referring to crimes against humanity.⁴⁶ Around six million Jews were killed in the Holocaust which constitutes two-thirds of the Jewish population of Europe, during the Second World War.⁴⁷ This number was followed by the killing of around 3.3 million of soviet prisoners of war, around 1.8 million Non-Jewish (Ethnic) Poles, and between 250,000-500,000 Gypsies.⁴⁸

2. The Rwandan Genocide and Bosnian Genocide

The existence of Rwandan and Bosnian Genocides were confirmed by the ICTR and ICTY respectively. The first ever instance which can be legally called genocide took place in 1994 in Rwanda, and it has led to the first ever genocide conviction in the *Akayesu case* by the ICTR.⁴⁹ Similarly, the ICTY in the *Krstić Case* confirmed the Bosnian Genocide.⁵⁰ The total

⁴³ See Yarik Kryvoi and Shaun Matos, "Non-Retroactivity as a General Principle of Law" (2021) 17 Utrecht Law Review 46.

⁴⁴ A. Dirk Moses, "The Holocaust and Genocide" in Dan Stone (eds) *The Histography of the Holocaust* (Palgrave, 2004); Raphael Lemkin, "Genocide as a Crime under International Law" (1947) 41 AJIL 145; John Q. Barrett "Raphael Lemkin and 'Genocide' at Nuremberg, 1945-1946" in C. Safferling and E. Conze (eds.), *The Genocide Convention Sixty Years after its Adoption* (TMC Asser Press 2010).

⁴⁵ Thomas W. Simon, "Defining Genocide" (1996) 15 WILJ, 243.

⁴⁶ Schabas 2009; *France et al. v. Goering et al.*, 1946.

⁴⁷ See UNGA Resolution A/RES/76/250 (25 January 2022), "Holocaust denial".

⁴⁸ "How Many People Did the Nazis Murder?" (United States Holocaust Memorial Museum, Holocaust Encyclopedia)

<<https://encyclopedia.ushmm.org/content/en/article/documenting-numbers-of-victims-of-the-holocaust-and-nazi-persecution>> accessed 01.04.2024.

⁴⁹ ICTR, *Akayesu Trial Judgment*.

⁵⁰ ICTY, *The Prosecutor v. Radislav Krstić*, Trial Chamber, Judgment (IT-98-33-T) 02 August 2001 ("ICTY, *Krstić Trial Judgment*"); ICTY, *The Prosecutor v. Radislav Krstić*, Appeals Chamber, Judgment (IT-98-33-A) 19 April 2004 ("ICTY, *Krstić Appeals Judgment*").

number of deaths in the Rwandan Genocide are vary widely, ranging from 500.000 to 800.000.⁵¹ It is estimated that 75% percent of the Tutsi population was lost.⁵² During the Bosnian Genocide, between 7.000-8.000 Bosnian Muslim men were systematically murdered and Bosnian women, children and elderly were displaced.⁵³

3. The Yazidi Genocide

The existence of Yazidi Genocide was not confirmed by an international court or tribunal. Yet, there are national court decisions⁵⁴ and United Nations Security Council documents⁵⁵ that confirm the acts committed against Yazidi people as genocide. The Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant confirmed that:

“Investigations and prosecutions are currently being taken forward in a number of European and North American jurisdictions, with national authorities in many States adopting a cumulative approach through which alleged ISIL members are charged with both terrorist offences and international crimes. These proceedings have included prosecutions of individuals for genocide, slavery, pillaging and enlisting child soldiers.”⁵⁶

It is reported that more than 5.000 Yazidi people were killed and more than 400.000 of them were displaced from their homes. Up to 2021, more than 2.800 Yazidi women and children are still held captive by the Islamic State (“IS”).⁵⁷

⁵¹ “Numbers” (Human Rights Watch) <<https://www.hrw.org/reports/1999/rwanda/Geno1-3-04.htm>> accessed 01.04.2024 (“Human Rights Watch, Numbers”).

⁵² Human Rights Watch, Numbers.

⁵³ Krstić Appeals Judgment, para.2; ICTY, Krstić Trial Judgment paras. 52 and 84.

⁵⁴ Bundesgerichtshof, Beschluss vom 30 November 2022 (3 StR 230/22); “UK acknowledges acts of genocide committed by Daesh against Yazidis” (GOV.UK, 1 August 2023) <https://www.gov.uk/government/news/uk-acknowledges-acts-of-genocide-committed-by-daesh-against-yazidis?utm_medium=email&utm_campaign=govuk-notifications-topic&utm_source=73605fb6-9857-4211-b878-877eb2e988ed&utm_content=immediately> accessed 01.04.2024.

⁵⁵ United Nations Security Council (“UNSC”), Letter dated 1 May 2021 from the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/Islamic State in Iraq and the Levant addressed to the President of the Security Council (S/2021/419, 3 May 2021) (“Report of 3 May 2021”).

⁵⁶ Report of 3 May 2021, para. 135. See also “ISIL/Da’esh Committed Genocide of Yazidi, War Crimes against Unarmed Cadets, Military Personnel in Iraq, Investigative Team Head Tells Security Council” (United Nations Meetings Coverage and Press Releases) <<https://press.un.org/en/2021/sc14514.doc.htm>> accessed 01.04.2024.

⁵⁷ “Germany/Iraq: World’s first judgment on crime of genocide against the Yazidis” (Amnesty International, 30 November 2021)

C. Method: Most Different Systems Design & Comparative Historical Analysis

The research will employ comparative historical analysis with a most different systems design (Table 1).⁵⁸ It will evaluate whether there exists a similar outcome, the commission of genocide (dependent variable) in the cases; whereas there are significant variances in the potential causes such as the population, ethnic composition, government structure, levels of freedom, polity, colonial history, and geopolitical region. These are ruled out as alternative explanations, since they do not explain the similar outcome, the commission of genocide.

	Nazi Germany	Yugoslavia	Rwanda
Population	79 million	23 million	6 million
Ethnic Composition	Germans: 94.3% Jews: 0.3% Gypsies: 0.04% Others (Source: 1939 census)	Serbs: 80 % Montenegrin: 7 % Muslim Slavs Sanjak: 4 % Gypsies Albanians others (Source: Freedom House, 1993-94)	Hutus: roughly 85 % Tutsi 14 % Twa 1 % (Source: UN)
Government Structure	Federal	Federal	Unitary
Level of Freedom (Freedom House)	N/A	Not Free (Source: Freedom House, 1993-94)	Not Free (Source: Freedom House, 1993-94)
Polity	Dictatorship, totalitarianism (Source: Deutscher Bundestag)	Dominant party (military-influenced) (Source: Freedom House, 1993-94)	Dominant party, military dominated, transitional (Source: Freedom House, 1993-94)
Formerly Colonized	No	No	Yes

<<https://www.amnesty.org/en/latest/news/2021/11/germany-iraq-worlds-first-judgment-on-crime-of-genocide-against-the-yazidis/>> accessed 01.04.2024.

⁵⁸ The evaluation for Yazidi Genocide will be included in the oncoming versions, after translating relevant case law from domestic jurisdictions.

Former Colonizer	None	None	Germany
Geopolitical Region	Europe	Eastern Europe	Africa
DV: Existence of Genocide	Yes	Yes	Yes

Table 1: Most different systems analysis

The most different systems design (“MDSD”) will be employed to show the main cause of the similar outcome in each case.⁵⁹ Even though the dependent variable (the existence of genocide) is similar in all three cases, the independent variables differ in each case. The comparative historical analysis will be employed to make a “systemic and contextualized comparison” by focusing on different time periods.⁶⁰ Accordingly, the analysis will be conducted in two consecutive parts. First, the cases of Nazi Germany, Yugoslavia, and Rwanda will be examined from a comparative perspective. This will represent the potential causes of genocide. Second, an analysis will be conducted for all cases to examine the cause of genocide in each of them.

There are debates concerning the start and end dates of these instances. Since they contain plan or policy element, there are different interpretations regarding when did the commission of genocide started. Table 2 represents the start and end dates of the Holocaust, Bosnian Genocide, and Rwandan Genocide that we will rely in this paper.

	Start Date	End Date
Holocaust	20 January 1942	8 May 1945
Bosnian Genocide	2 April 1992	14 December 1995
Rwandan Genocide	7 April 1994	15 July 1994

Table 2: Start and end dates of the Holocausts, Bosnian Genocide, and Rwandan Genocide

⁵⁹ Carsten Anckar, "On the Applicability of the Most Similar Systems Design and the Most Different Systems Design in Comparative Research" (2008) 11 IJSRM 389.

⁶⁰ James Mahoney and Dietrich Rueschemeyer, "Comparative Historical Analysis in the Social Sciences" (CUP 2009). See also Arend Lijphart, "Comparative Politics and Comparative Method" (1971) 65 APSR 682.

Holocaust: The start date of the Holocaust is the most debatable one. One may argue that it is 30 January 1933, when Hitler became the German chancellor; whereas an alternative argument can be 9 November 1938, the date in which *Kristallnacht* occurred. Even the enactment of Nuremberg Laws, 15 September 1935 can be suggested as the start date of the Holocaust. We will consider 20 January 1942 as the start date of the Holocaust, which is the date of the Wannsee Conference. This was a conference conducted by the German senior officials. The purpose was to coordinate and plan the implementation of the policy of “final solution” (*Endlösung*), which sought to exterminate the Jewish population.⁶¹ The end date of the Holocaust is 8 May 1945, which is known as "Victory in Europe Day". This marks the official end of World War II in Europe.

Bosnian Genocide: Similar to that of the Holocaust, the start date of the Bosnian Genocide is also debatable. 2 April 1992, the beginning of the Siege of Sarajevo, and 14 December 1995, the Dayton Agreement, are mostly accepted as the start and end dates of the Bosnian Genocide respectively. Yet, one may argue that the genocidal plan was started to be commissioned months after the Siege of Sarajevo; whereas it did not instantly end with the Dayton Agreement. Alternatively, the starting data of the Bosnian Genocide can be as late as July 1945, the take-over of Srebrenica.⁶² The key factor that contributes to this debate is the complexity of the conflict in Bosnia and Herzegovina, which involved multiple factions and shifting alliances.

Rwandan Genocide: 7 April 1994 - 15 July 1994 is the widely recognized period for the Rwandan Genocide. Yet, even in this case one may still argue that the existence of a genocidal plan or policy can go back to several years ago starting with the oppression of the Tutsi minority.

As explained above, the time frame of this study will cover the periods of genocide and pre-genocide. Table 3 represents the time frame of the study for each case. The pre-genocide periods were determined with respect to the significant events and historical milestones. *Holocaust:* The pre-genocide period for the Holocaust will start from The German Reich that took place from 9 November 1918 to 28 February 1933 and cover the period until the Wannsee Conference. *Bosnian Genocide:* The pre-genocide period for the Bosnian Genocide will cover Second Yugoslavia period, which was started with the 1963 Constitution. *Rwandan Genocide:*

⁶¹ Peter Longerich, *Wannsee: The Road to the Final Solution* (OUP 2021).

⁶² ICTY, *Krstić Trial Judgment*, para.31 et. seq.

The pre-genocide period for the Rwandan Genocide will cover the period starting from the independence of Rwanda (1962) until 1994.

	Genocide	Pre-Genocide
Nazi Germany	1942-1945	1918-1942
Yugoslavia	1992-1995	1963-1992
Rwanda	1994	1962-1994

Table 3: Time frame of the study

III. Theoretical Significance, Literature Review, and Working Hypothesis

A. Literature Review

The literature points out to different factors that led to genocide in Nazi Germany, Yugoslavia, and Rwanda. These analysis is not sufficient to explain the common cause of genocide. Indeed, most of the analysis focuses on individual cases, rather than having a comparative analysis. In order to answer the question of what leads to genocide there must be a comparative analysis focusing on different cases with an intertemporal analysis. This research aims to make this comparative analysis in the three genocidal cases. Further, it is important to highlight that this paper combines a political science approach with a legal perspective. Since genocide is a legal concept, or rather a crime, its analysis should include the background legal knowledge, such as the requirement of a *dolus specialis*. Otherwise the cases of genocide can be analyzed altogether with other instances of mass murder and crimes against humanity, which would lead to a misleading conclusion. Considering that the crime of genocide is a totally distinct category from other mass violences, these will be excluded from the scope of this paper.

Yet, what are some alternative hypothesis that explain the causes of genocide? What other arguments can be found in the literature? The alternative hypothesis and the current literature review can be grouped in five main categories: (1) political structure and regime type, (2) ethnic and/or religious composition, (3) previous episodes of violence and long-standing power dynamics, (4) geopolitical goals, (5) ethnic dislike, and (6) economic inequalities. It is important

to note that the causes of ethnic cleansing are also considered in this literature review in order to have a meaningful explanation of the literature.

First, some scholars put a great emphasis on the political structure of the regimes. Verwimp (2003) names genocide as the attempt of Habyarimana regime to remain in power.⁶³ He argues that the regime split the population into two ethnic groups due to frustration of losing power. Similarly, Suljagić (2001) analysis the role of the Bosnian Serb Assembly on the Bosnian Genocide.⁶⁴ He suggests that the assembly as an institution and its members had two effects. First, they determined the policies which led to genocide; and second, they reconceptualized Bosniaks as cultural aliens. A similar argument also considers regime type as an alternative argument to the causes of genocide and/or ethnic cleansing. Rummel (1995) examines the effect of regime type on the cases of violence.⁶⁵

Second, another focus is on the ethnic and/or religious composition. Sells (2003) examines the role of religion in the Bosnian Genocide.⁶⁶ He concludes that religion led to deep issues and divisions which led to violence and ethnic cleansing. Straus (2008) focuses on the causes on genocide and concludes that there were three main causes: ethnic identity, ideology, and mass-media indoctrination.⁶⁷ Interestingly, Sokolovic (2005) criticizes the literature as most of the researchers were unable and unwilling to know what really happened in the Bosnian Case.⁶⁸ He argues that the Bosnian case was neither civil war, nor ethnic war, nor religious war. He classifies the Bosnian case as an organized crime which he calls "a crime against life itself".

Third, an alternative argument focuses on the previous episodes of violence and long-standing power dynamics. Uvin (1998) focuses on the Rwandan genocide and states that it was the consequence of previous episodes of violence, which originated from economic and political crises from 1980s onwards.⁶⁹ He evaluates several events which led to genocide such as the militia, political crises, economic crises, threats to the elite, and hate media. Yet, he argues that these explanations are not sufficient to have a full explanation of genocide. He concludes

⁶³ Philip Verwimp, "The Political Economy of Coffee, Dictatorship, and Genocide" (2003) 19 EJPE 161.

⁶⁴ Emir Suljagić, "Genocide by Plebiscite: The Bosnian Serb Assembly and Social Construction of "Turks" in Bosnia and Herzegovina" (2021) 23 Journal of Genocide Research 568.

⁶⁵ R. J. Rummel, "Democracy, Power, Genocide, and Mass Murder" (1995) 39 The Journal of Conflict Resolution 3.

⁶⁶ Michael Sells, "Crosses of Blood: Sacred Space, Religion, and Violence in Bosnia-Herzegovina" (2003) 64 Sociology of Religion 309.

⁶⁷ Scott Straus, *The Order of Genocide: Race, Power, and War in Rwanda* (Cornell University Press 2008).

⁶⁸ Dzemail Sokolovic, "How to conceptualize the tragedy of Bosnia: Civil, ethnic, religious war or...?" (2005).

⁶⁹ Peter Uvin, *Aiding Violence: The Development Enterprise in Rwanda* (Kumarian Press 1998).

that the Rwandan Genocide was characterized by the structural factors such as long-standing dynamics of exclusion, marginalization, inequality, frustration, and racism. Prunier (1997) who also focuses on the Rwandan Genocide also poses a similar argument.⁷⁰

Fourth, the geopolitical goals of the states are argued to be the causes of genocide and/or ethnic cleansing. This view links the security concern to the commission of mass atrocities against civilians.⁷¹ Downes (2008) argues that in times of warfare, in which one country aims to conquer or annex another one, civilians are often targeted in the form of ethnic cleansing or mass murder.⁷² The reason for this is that states engage in ethnic cleansing to prevent groups that support the enemy from launching attacks from behind the frontlines, and to prevent future rebellions by those groups. Similarly, Valentino (2004) argues that in times of warfare, the losing state targets the population that are deemed to be supported by the opposition state.⁷³ But this explanation is not accurate for two reasons. First, as argued by Bulutgil, “not only the benefits but also the opportunity costs of ethnic cleansing would be higher during wartime compared to peacetime”.⁷⁴ Second, this argument does not explain ethnic cleansing cases that occur in peace time in which there are no security concerns as mentioned.

Fifth, another argument as the cause of genocide or ethnic cleansing is the ethnic dislike. Goldhagen (1997) argues that the anti-Semitism in the Nazi Germany can even go back to medieval times.⁷⁵ Kaufman (2006) also argues that the roots of ethnic cleansing are rooted in the past history.⁷⁶ Another similar view sees ethnic cleansing as a result of the formation of the modern nation-state. Wimmer (2002) and Ther (2016) argue that the basis of ethnic cleansing is rooted in the creation of the nation-state.⁷⁷ Ther (2016) further explains the reason behind this as the creation of a homogeneous nation-state and the problematic relation of this with ethnicity. He even names this as the dark side of the nation-state. Bulutgil (2016) criticizes these arguments as

⁷⁰ Gérard Prunier, *The Rwanda Crisis: History of a Genocide* (Columbia University Press 1997).

⁷¹ H. Zeynep Bulutgil, *The Roots of Ethnic Cleansing in Europe* (CUP 2016) (“Bulutgil 2016”).

⁷² Alexander Downes, *Targeting Civilians in War* (Cornell University Press 2006).

⁷³ Benjamin A. Valentino, *Final Solutions: Mass Killing and Genocide in the 20th Century* (Cornell University Press 2005).

⁷⁴ Bulutgil 2016, p.9.

⁷⁵ Daniel Jonah Goldhagen, *Hitler's Willing Executioners: Ordinary Germans and the Holocaust* (Vintage, 1997).

⁷⁶ Stuart J. Kaufman, “Symbolic Politics or Rational Choice? Testing Theories of Extreme Ethnic Violence” (2006) 30 *International Security* 45.

⁷⁷ Andreas Wimmer, “Ethnic exclusion in nationalizing states”, in Gerard Delanty and Krishan Kumar (eds.), *Handbook of Nations and Nationalism* (Sage, 2006); Philipp Ther, *The Dark Side of Nation-States: Ethnic Cleansing in Modern Europe* (Berghahn Books 2016).

they failed to be precise about the timing and occurrence of ethnic cleansing.⁷⁸ Further, this explanation fails to explain why other nation-states did not face ethnic cleansing.

Lastly, some scholars consider economic inequalities as causes of genocide. Harff (2003) stated that economic inequality increases the likelihood of the commission of violent acts against the population.⁷⁹ Accordingly, there is a correlation between economic inequality and the likelihood of violence occurring. Yet, it important to note that while economic factors can make the society more vulnerable to genocide and/or mass violence, a mere economic inequality cannot be considered as the sole reason.

B. Theoretical Significance and Working Hypothesis

The theoretical significance of our research lies in a two-stage analysis on the crime of genocide by focusing on the motive and target of the crime of genocide separately. First, regarding the cause of genocide, we argue that dispossession of people from their properties and their redistribution to *génocidaires* and to their collaborators, as well as the “possession” of people by *génocidaires* is the primary motive for genocide in the four cases. Second, we will turn to the target of genocide and how negative identity politics played a role in the target selection. We argue that, except Rwanda, in all cases the target selection was motivated by negative identity politics (ethnic/religious hatred) alongside expediency, the relative ease in picking up the specific victim group. By focusing on the judgments and the transcripts of Nuremberg Tribunals, the ICTY and national case law, we will demonstrate the complex relationship between the negative identity politics and such expediency in the selection of victim groups by *génocidaires*.

III. Analysis: Property Taking During Genocide

This version of the paper includes analysis for the Bosnian Genocide and Rwandan Genocide. The evidence presented below are taken from the testimonies of witnesses and judgments. The testimonies and conclusions of the Chambers demonstrate the existence of property taking in both cases.

⁷⁸ Bulutgil 2016.

⁷⁹ Barbara Harff, "No Lessons Learned from the Holocaust? Assessing Risks of Genocide and Political Mass Murder since 1955" (2003) 97 APSR 57.

A. Bosnian Genocide

In the case of *Blagojevic and Jokic*, Witness P-114, testified that “the men were ordered to give up any documents money and valuables that they still had”.⁸⁰ Witness P-112 also stated that “when he entered a classroom he saw two men, who were badly beaten. Soldiers asked for money and threatened to kill twenty of the men if they did not hand over a certain amount of money”.⁸¹ It is also confirmed that on 15 July, the soldiers took jewellery, watches and money from the prisoners and they also asked for 10,000 Deutsch Marks and told the Bosnian Muslim men that they would be killed unless they collected the money.⁸² Further, in the *Blaškić Case*, the Trial Chamber confirmed that:

“Several Croatian soldiers were also alleged to have stolen money from private individuals. One member of the D'okeri was alleged to have seized DM 2000 and jewels belonging to Elvir Ahmic. Two HVO soldiers were alleged to have taken money from Haris Hrnjic's wallet after he had surrendered. It was also alleged that DM 400 were taken from the body of Alija Ahmic. The witness Casim Ahmic also accused a group of five Croatian soldiers of stealing DM 300-400. The victims of these thefts were always Muslim. Finally, the witness Akhavan reported seeing HVO soldiers looting the houses that were still intact in Ahmici when he visited the village on 1 May 1993.”⁸³

In the same case, the fact that forces "looted private Muslim homes" were also confirmed.⁸⁴ Further, in the *Boškoski and Tarčulovski Case*, it was stated that “the police took money, valuables and identification cards from the men”.⁸⁵ In this case, the Chamber confirmed that:

“According to the International Management Group (“IMG”), which carried out assessments on 13 September 2001 and 19 June 2002, 6,500 houses in the conflict-affected areas were damaged to varying degrees, the majority belonging to ethnic Albanian citizens.¹⁰⁷³ The IMG estimated the cost of basic

⁸⁰ ICTY, Prosecutor v. Vidoje Blagojevic and Dragan Jokic (Case No. IT-02-60-T) Trial Chamber I, Judgment” (17 January 2005), para. 257 (“ICTY, Prosecutor v. Vidoje Blagojevic and Dragan Jokic”).

⁸¹ ICTY, Prosecutor v. Vidoje Blagojevic and Dragan Jokic, para. 337.

⁸² ICTY, Prosecutor v. Vidoje Blagojevic and Dragan Jokic, para. 348.

⁸³ ICTY, The Prosecutor v. Tihomir Blaškić (Case No. IT-95-14-T) Trial Chamber, Judgment (3 March 2000), para. 424 (“ICTY, The Prosecutor v. Tihomir Blaškić”).

⁸⁴ ICTY, The Prosecutor v. Tihomir Blaškić, para. 375.

⁸⁵ ICTY, Boškoski & Tarčulovski, Trial Chamber II (Case No. IT-04-82-T), Judgment (10 July 2008), para. 52 (“ICTY, Boškoski & Tarčulovski”).

rehabilitation for all the damaged houses to be around 33 million euros.¹⁰⁷⁴ The MoI estimated that there had been half a billion euros worth of direct or indirect damage to the economy and over 150 million euros worth of damage as result of arson, destruction and damage to houses and property of citizens, as well as to infrastructure.”⁸⁶

Further, the UNPROFOR report dated 28 August 1994 (presented in the Mladić Trial Judgment) confirmed that “the Bosnian Serbs were continuing their practice of expelling non-Serbs: on 26 August 1994, a reported 480 Muslims, most of whom had all of their money and belongings taken away, arrived in Tesanj and Tuzla from the Banja Luka area”.⁸⁷ Another UNPROFOR, dated 11 September 1994, noted that “for several weeks prior, large numbers of non-Serbs had been ‘expelled’ from Bosnian-Serb controlled territory and that on 3 September 1994, about 500 non-Serbs crossed from the areas of Banja Luka and Sanski Most into Turbe”.⁸⁸

B. Rwandan Genocide

The evidence in the ICTR, in the *Bagilishema Case*, confirms that “in early 1993 attacks were being perpetrated by Hutu on Tutsi and their property and that the Accused attempted to prevent such occurrence”.⁸⁹ People were removed from their property and people had started to fight over property. On 13 April 1994, Prosecution Witness J testified that:

“she was attacked by Interahamwe at her home, which was then looted. She explained that as the Interahamwe had removed her property outside, the Accused, Major Jabo, the commander of the gendarmerie Kibuye, and two policemen arrived. According to the witness, Major Jabo stated that as she was the wife of a Hutu, nothing should happen to her, while the Accused said “that he was the representative of the Prefet who had announced that the time of the Tutsis had come”. The witness added that the Accused said that: “... the property belonged to the Hutu and that the property of the Tutsi should stay there, while the Tutsis who were to be killed would be sent off.”⁹⁰

⁸⁶ ICTY, Boškoski & Tarčulovski, para. 241.

⁸⁷ ICTY, *The Prosecutor v. Ratko Mladić*, Trial Chamber I (Case No. IT-09-92-T), Judgment (22 November 2017), para. 486 (“ICTY, *The Prosecutor v. Ratko Mladić*”).

⁸⁸ ICTY, *The Prosecutor v. Ratko Mladić*, para. 486.

⁸⁹ ICTR, *Prosecutor v. Bagilishema* (Case No. ICTR-95-1A), Trial Judgment (7 June 2001), para. 125 (“ICTR, *Prosecutor v. Bagilishema*”).

⁹⁰ ICTR, *Prosecutor v. Bagilishema*, para. 237.

People also testified that attackers “were holding some currency in their hands”.⁹¹ Further, the accused confirmed that “the committee was to ensure that the property could be stored or kept under the custody of the commune to avoid [its] misappropriation”.⁹² Another witness in the *Akayesu Case*, a Tutsi man (Witness A), testified that:

“five Tutsi were killed on the day of the meeting. From that date, witness A personally observed that the people were destroying houses, taking away corrugated iron sheets, doors and anything they could carry, and killing cows which they ate. Some of the people tried to run away when the killings began. Most of the victims were Tutsi.”⁹³

Another witness, a Hutu farmer (Witness N) further explained that:

“the destruction of houses, the killing of cows and even the killings, began following said meeting. She attributed the scale of the killings to the Accused’s fiery mood during said meeting and his urging to wage war against the Inkotanyi and the Tutsi.”⁹⁴

In the *Bikindi Case*, the court noted that:

“Antoine Nyetera interpreted the song as condemning a situation in which part of the population is allied with an enemy promising heaven and paradise, the enemy of yesterday and today, as demonstrated by the line in the song, “I am against Hutus who act in greed with the enemy because of promises, because of amounts of money paid.”⁹⁵

Another witness in the same case (Witness AJZ) confirms that “the vehicles were loaded with goods that were looted from Tutsi” and “some cows also looted from Nyamyumba were later brought to the roadblock”.⁹⁶ Witness AJZ further stated that “at night, when they returned to the roadblock, Bikindi’s vehicle was loaded with looted material”.⁹⁷ Witness AJY also saw cows

⁹¹ ICTR, Prosecutor v. Bagilishema, para. 238.

⁹² ICTR, Prosecutor v. Bagilishema, para. 260.

⁹³ ICTR, Prosecutor v. Akayesu (Case No. ICTR-96-4-T), Trial Judgment (2 September 1998), para. 353 (“ICTR, Prosecutor v. Akayesu”).

⁹⁴ ICTR, Prosecutor v. Akayesu, para. 354.

⁹⁵ ICTR, Prosecutor v. Bikindi (Case No. ZCTR-01-72), Trial Judgment (2 September 2008), para. 232 (“ICTR, Prosecutor v. Bikindi”).

⁹⁶ ICTR, Prosecutor v. Bikindi, para. 324.

⁹⁷ ICTR, Prosecutor v. Bikindi, para. 325.

arriving the next morning.⁹⁸ Witness AJZ also testified “Bikindi also explained that a quarrel about the property they had looted broke out at the roadblock, following which Paulin and Nokori were killed with bullets. Bikindi allegedly brought calm to the situation”.⁹⁹ This was also confirmed by Witness BKW’s testimony stating that “he heard Bikindi saying to Hassan Gitoki that priests had been killed and later learnt that Fathers Gatore and Vianney had been killed and that the property of one 'Kamwabahizi' had been looted”.¹⁰⁰ Further, in the *Gatete Case*, it is stated that:

“According to the witness, the Interahamwe had met with Gatete at the commune office earlier that morning and had immediately gone to attack Murekeyisoni. All the Interahamwe of the cellule, who numbered around 2,000 and were armed with traditional weapons, participated in the attack at about 6.30 a.m. "Felicien", the local Interahamwe leader, said that they should first kill Murekeyisoni and take their property later.”¹⁰¹

The judgment further noted Gatete saying that “It is of no use looting property. You must find the members of those families and kill them. These are the main Inyenzi. So I, therefore, urge you to look for them”.¹⁰² It is further stated that Gatete had promised to reward their people. He had told them, “The day is coming when you will sleep with their daughters and wives and you are going to eat their cows”.¹⁰³ In the case of Karamera and Ngirumpatse, it is stated that:

“In the evening of 13 May, after the attack against Tutsi refugees at Muyira Hill, Niyitegeka held a meeting at Kucyapa for the purpose of deciding on the programme of killings for the next day and to organise those killings against the Tutsis in Bisesero, who numbered approximately 60,000. The meeting was attended by about 5,000 people, 1398 Using a loudspeaker, Niyitegeka thanked attackers for their participation and commended them for their "good work", which referred to the killing of Tutsi civilians, Niyitegeka told them to share the

⁹⁸ ICTR, Prosecutor v. Bikindi, para. 325.

⁹⁹ ICTR, Prosecutor v. Bikindi, para. 326.

¹⁰⁰ ICTR, Prosecutor v. Bikindi, para. 326.

¹⁰¹ ICTR, Prosecutor v. Gatete (Case No. ICTR-2000-61-T), Trial Judgment and Sentence (31 March 2011), para. 161 (“ICTR, Prosecutor v. Gatete”).

¹⁰² ICTR, Prosecutor v. Gatete, para. 453.

¹⁰³ ICTR, Prosecutor v. Gatete, para 101, footnote 88 and para. 126, footnote 119.

people's property and cattle, and to eat meat so that they would be strong to return the next day to continue the work, that is, the killing.”¹⁰⁴

In the same case, the defendant alleged that “the government gave them some instructions because it wanted to stop the killings and provide security for persons and property”.¹⁰⁵ Further, in the Kajelijeli Case,

“Prosecution Witness GDD testified that, at the end of the day, the assailants had killed approximately 80 Tutsis in more than 12 families, destroyed all houses in Kinyababa cellule and looted the victims’ property. The Witness and Sendugu Shadrack, the President of the MRND, looted a cow, killed it and shared it before going to the canteen. The Witness testified: “Of course, we didn’t forget Kajelijeli. We sent him a bucket full of meat.”¹⁰⁶

Prosecution Witness GAO also testified that he saw “the group to steal a cow”.¹⁰⁷ Witness BCZ in the *Kalimanzira Case*, there was a “crisis committee” which included Jonathan Niyongana, Jean Rupari, Sylvestre Manzi, and Ignace Yirirwahandi.¹⁰⁸ BCZ further states that “the purpose of this meeting was to discuss how to distribute the stolen property of dead Tutsis”.¹⁰⁹ BCZ also stated that “it was decided that the property would be sold and the money shared between the public”.¹¹⁰ Witness BWO, from the same case, testifies that “Hutu civilians armed with spears, machetes, and clubs came to steal their cattle”.¹¹¹ Witness ACB6 also testified that “The attackers eventually left after being repelled by the refugees and stealing several cows. ACB6 and her family spent Friday night on the hill without further problems”.¹¹²

In the *Kamuhanda Case*, Defence Witness GPR stated that “She saw that the attackers were in the process of slaughtering cattle, loading the various pieces of meat into the vehicles

¹⁰⁴ ICTR, Prosecutor v. Karamera and Ngirumpatse (Case No. ICTR-98-44-T), Trial Chamber III, Judgment and Sentence (2 February 2012), para. 1148 (“ICTR, Prosecutor v. Karamera and Ngirumpatse”).

¹⁰⁵ ICTR, Prosecutor v. Karamera and Ngirumpatse, para. 695.

¹⁰⁶ ICTR, Prosecutor v. Kajelijeli (Case No. ICTR-98-44A-T), Trial Chamber II, Judgment and Sentence (1 December 2003), para 486 (“ICTR, Prosecutor v. Kajelijeli”).

¹⁰⁷ ICTR, Prosecutor v. Kajelijeli, paras. 562 and 598.

¹⁰⁸ ICTR, Prosecutor v. Kalimanzira (Case No. ICTR-05-88-T), Trial Chamber III, Judgment (22 June 2009), para. 618 (“ICTR, Prosecutor v. Kalimanzira”).

¹⁰⁹ ICTR, Prosecutor v. Kalimanzira, para. 618.

¹¹⁰ ICTR, Prosecutor v. Kalimanzira, para. 618.

¹¹¹ ICTR, Prosecutor v. Kalimanzira, para. 316.

¹¹² ICTR, Prosecutor v. Kalimanzira, para. 344.

and looting the Pastor's house".¹¹³ The Court confirmed that The attackers looted the Pastor's residence, stealing money, mattresses and other possessions belonging both to the Pastor and the refuge.¹¹⁴ Another defense witness in the same stated that "he attackers butchered the cattle and loaded them into the vehicles along with the refugees' property and that of the Pastor".¹¹⁵

Witness CBS, in the *Kanyarukiga Case*, testified that, "[i]t was obvious ... [t]he reason was simply that people had been attacked or were attacked in our homes, so we sought refuge at that place. They killed people, looted cattle, cows, and killed them".¹¹⁶ Witness YAU further testified that, "Fulgence Kayishema and Gaspard Kanyarukiga asked the displaced Tutsi to give them money so that Kayishema and Kanyarukiga could buy food for those hiding at the church".¹¹⁷ Witness YAU personally heard Kayishema and Kanyarukiga ask people for money.¹¹⁸

In the *Kayishema and Ruzindana Case*, Witness Z testified that "not many people died during this time period, but that there was pillaging of property that was distributed later amongst the attackers".¹¹⁹ In the *Kayishema and Ruzindana Case*, the Trial Chamber concluded that

"[t]he cruelty with which the attackers killed, wounded and disfigured their victims indicates that the propaganda unleashed on Rwanda had the desired effect, namely the destruction of the Tutsi population. The involvement of the peasant population in the massacres was facilitated also by their misplaced belief and confidence in their leadership, and an understanding that the encouragement of the authorities to guaranteed them impunity to kill the Tutsis and loot their property."¹²⁰

IV. Concluding Remarks

¹¹³ ICTR, Prosecutor v. Kamuhanda (Case No. ICTR-99-54A), Trial Chamber II, Judgment (22 January 2003), para. 398.

¹¹⁴ ICTR, Prosecutor v. Kamuhanda (Case No. ICTR-99-54A), Trial Chamber II, Judgment (22 January 2003), para. 414 ("ICTR, Prosecutor v. Kamuhanda")

¹¹⁵ ICTR, Prosecutor v. Kamuhanda, para. 430.

¹¹⁶ ICTR, Prosecutor v. Kanyarukiga (Case No. ICTR-2002-78-T), Trial Chamber II, Judgment (1 November 2010), para. 160.

¹¹⁷ ICTR, Prosecutor v. Kanyarukiga (Case No. ICTR-2002-78-T), Trial Chamber II, Judgment (1 November 2010), para. 284 ("ICTR, Prosecutor v. Kanyarukiga").

¹¹⁸ ICTR, Prosecutor v. Kanyarukiga, para. 284.

¹¹⁹ ICTR, Prosecutor v. Kayishema and Ruzindana (Case No. ICTR-95-1-T), Trial Chamber II, Judgment (21 May 1999), para. 448 ("ICTR, Prosecutor v. Kayishema and Ruzindana").

¹²⁰ ICTR, Prosecutor v. Kayishema and Ruzindana, para. 290.

This research evaluates the following comparative research puzzle: “Why did genocide occur in Nazi Germany, Yugoslavia, Rwanda and Syria/Iran?”. The aim of this paper is to identify the main reason(s) that led to these three tragic instances. We argued that the definition of genocide (the existence of a specific intent to destroy a particular group) is not what causes it. We made a distinction between the defining elements of genocide and the real cause behind this crime. This version of the research includes analysis and evidence for the Bosnian Genocide and Rwandan Genocide taken from ICTY and ICTR case-law respectively. The evidence presented before the courts, including witness testimonies, support that there exist (1) dispossession of people from their properties, (2) the redistribution of properties to *génocidaires* and to their collaborators and (3) the “possession” of people by *génocidaires*. Our preliminary research for the Holocaust and Yazidi genocide also supports this conclusion.