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**The Nigerian Civil War and the Failure of United Nations to Set Up an  
International Criminal Tribunal: A Jurisprudential Analysis**

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## **The Nigerian Civil War and the Failure of United Nations to Set Up an International Criminal Tribunal: A Jurisprudential Analysis**

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### **Abstract**

**Purpose:** The purpose of the study is to analyse the failures of United Nations to set up an international criminal tribunal.

**Methodology:** The work is based on practical and historical approach; in this regard data will be collected via primary and secondary sources, ranging from textbooks, journals, newspapers, bulletins and law reports, emails, correspondence, oral account, videos, documentary, interviews, materials authored by various scholars and researchers on the topic.

**Findings:** The study discovered that Lack of Political will Power , Unreliable Funding , Outdated Power Structure and International Political Horse-trading were some of the reasons why United Nations failed to set up International Criminal Tribunal.

**Unique Contribution to Theory, Practice and Policy:** There should be need for reparation and restitution for these Biafrans who were victims. The study also recommends that a Sovereign National Conference should be convened rather than the National conference which took place in 2014.

**Keywords:** *Nigeria Civil War, Failure, United Nations, International Criminal Tribunal*

## INTRODUCTION

It was the civil rights icon, Martin Luther, who once declared that —the moral arc of the universe bends at the elbow of justice. This declaration has stood the test of time as mankind had evolved from the era of the transAtlantic slave trade, conquest and colonization to an era of human rights, territorial sanity, and the right of self-determination, democracy and the rule of law. Much of this human progress was achieved through the erosion of ignorance, civilization and the advancement of knowledge which increasingly revealed the evil, barbarity and lack of natural/universal justice in the practice of that ignoble era. The aftermath of the 1<sup>st</sup> world war was particularly epochal in the institutions created and the sweeping human rights advances it engendered. With the 2<sup>nd</sup> world war the world came to face the realities of gross human rights violations and the grave breaches of international humanitarian law particularly with the holocaust and the injustice of colonial subjugation. The 1945 United Nations Charter which established the rights of self-determination under international law, the Nuremberg trials which indicted Nazi war criminals, the Geneva Conventions on the rules and customs of war, the United Nation decolonization Charter, and the establishment of International Criminal Court (ICC) amongst others all came as a response to the genocide, war crime, crime against humanity, crime of aggression and the serious, gross and wide spread flagrant violation of human rights of the 2<sup>nd</sup> world war. Those who engaged in pogroms, genocide, rape, subjugation and other such war crimes always find justification for it. The Nazi's during the 2<sup>nd</sup> world war justified the Jewish Holocaust and found much support for it amongst those who bought their propaganda, but the creation of the special Nuremberg court brought the Nazi culprits to justice. The establishment of the four Geneva Conventions of 1949 and their Additional Protocols of 1977 alongside with the ICC has made sure that other culprits will not escape justice. These initiatives have made it possible to prosecute warlords such as Charles Taylor for crimes against humanity during the Liberia civil war, Slobodan Milosevic; Radovan Karadzic for crimes committed during the Serbian war, while President Al Bashir of Sudan is presently indicted for crimes against humanity in the Dafur crisis. Laurent Gbagbo the former president of Ivory Coast is presently on trial for post-election violence, also President Uhuru Kenyatta of Kenya and his deputy Williams Rotu, are presently facing trial in the Hague base ICC for their part in the 2008 postelection violence in Kenya in which scores were killed.

The special international criminal tribunal was established by the UN in 1994 to try culprits implicated in the Rwandan genocide, torture, rape and other violations. The tribunal have convicted many culprits while others are still on trials. Robert Bales an American soldier who massacred sixteen civilians in Kandahar Afghanistan in March 2012 was recently sentenced to life in prison without the possibility of parole by American Military authorities. He only avoided death penalty because he pleaded guilty. Though he

committed the crime while on active duty, in conditions of war he was found guilty because he violated rules and customs of war by killing civilians. In Bangladesh, the international criminal tribunal was set in 2009 to try those implicated in serious violation of IHL during the 1971 war of independence. Following the report of the war crime fact finding committee, notable persons such as Abdul Kalam Azad and Abdul Kader Mullah amongst others have recently been convicted for murder rape and torture. The same is true of the Democratic Republic of Congo where Thomas Lubanga and other culprits were hauled to the ICC to face trial for rape, and other war crimes.

The advancement of rights and the recognition of those rights which made Martin Luther King Jnr famously declared injustice anywhere is a threat to justice everywhere<sup>10</sup> has galvanized the world to act against criminals who are so willing to subject others to barbarities that if unpunished constitute a mortal danger for the whole of humanity. War crime, crime against humanity, genocide and crime of aggression are assault on our collective humanity and a setback on human civilization. It entrenches impunity and injustice in any society in which such atrocities are left unpunished. Any society that desires to live in harmony, enjoy human dignity, freedom, social justice, the rule of law and mutual respect must hold accountable those who violate or have violated the rules and customs of war and redress those who are victims of such violations.

In recognition of this necessity, Ghana made payment to all those who were victims of human rights violations under military rule as recommended by the National Reconciliation Commission (NRC) in 2006 and Ghana has emerged a better nation for that effort. It is impossible for Nigeria to become a successful nation or to enjoy social justice without coming to terms with a shocking past of pogrom/genocide of the needless war.<sup>11</sup> It is thus time for Nigeria to come to terms with her ignoble past either by setting up, if possible, an international criminal tribunal in partnership with UN Security

Council which will investigate and issue a report that will bring to trial all those implicated in the pogrom/genocide, war crime, crime against humanity perpetrated and committed during the Nigeria-Biafra war on both side of the conflict, or send them to ICC for trial in Hague.

### **Statement of Problem**

From the above background of study of this work, a statement of problem can easily be identified in that almost thirty years before Yugoslavia, before Rwandan, before Darfur, over two million people-mothers, children, babies, civilians-lost their lives as a result of the blatantly callous and unnecessary policies enacted by the leaders of the Federal Government of Nigeria. There is need for us to excavate the past because our today is beset by difficulties that often seem insurmountable. Tolerance and understanding frequently give way to hostility and ignorance, angered had replaced thoughtful deliberation and



insensitivity supplants compassion only by means of settlement either through law or out of court settlement can we reconstruct our future and ever hope to achieve a formidable country.

The failure of UN to set of an International Criminal Tribunal then within the territory of Nigeria, as recent examples of dissident activities have shown, could plunge Nigeria into another round of brutal civil war with more devastating consequences not only for the country but the sub-region as a whole. According to U.N. and U.S. State Department sources, an estimated 50,000 children were killed during the civil war and over a million of them were exposed to violence or participated in waging violence, while the number of women raped is put at more than 25,000. If a criminal tribunal can be suggested for the former Yugoslavia or Sierra Leone, we fail to see the basis for which Nigeria was conspicuously left unmentioned in discussion for trial of men who knowingly committed serious atrocities against defenceless and innocent people for political and other reasons. The silence of the international community over the past atrocities committed within the territory of Nigeria is partly responsible for the entrenched level of impunity in the count

### **Objectives of Study**

- i The aim of this work is to provide possible answers to the question raised in the statement of problem, specifically, the objective of this work is to probe to throw more light on the reason(s) why the United Nations Security Council fails to exercise their powers under the United Nations Charter VII
- ii The true role of international organisation in resolving conflict situations.
- iii To analyze the Nigerian civil war from a legal perspective since most of the account are view from the historical stand point.

### **METHODOLOGY**

The work is based on practical and historical approach; in this regard data will be collected via primary and secondary sources, ranging from textbooks, journals, newspapers, bulletins and law reports, emails, correspondence, oral account, videos, documentary, interviews, materials authored by various scholars and researchers on the topic. This is one area in which the use of internet has been immensely beneficial. Textbooks and journals have also been heavily relied upon in the areas of the study where they suffice. This research work is expository and analytical in nature, attempting to throw more light on grey and unpopular areas of the story of the Nigerian civil war.

### **LITERATURE REVIEW**

#### **The Remote and Immediate Causes of the Nigeria Civil War**

A lot have been written on the factors responsible for the outbreak and sustenance of the Civil War, but if we are to gain a firm grasp on the war, there would be need to attempt a

review of the factors that can be considered as background to the conflict, among which was the coup d'état of 15 January 1966, ethnic tension and resentment, countercoup and assassination, the pogrom, and the failure of the then government to implement the Aburi Accord.

In the book *—Trouble with Nigeria*, Chinua Achebe outlines the issues that impede the socio-economic cum political development of Nigeria to include, tribalism, false image of our self, leadership problem, lack of patriotism, social injustice and mediocrity; indiscipline and corruption. These issues according to Achebe slow down the wheel of development. These problems prepared the grounds for the outbreak of the civil war. The above problems identified by Chinua Achebe can be said and rightly so as the remote causes of the Nigerian civil war. However, the work exposes the ills that have ravaged Nigeria, but failed to discuss, the impact of the war on the citizenry.

The Nigerian Civil War was a discordant off-shoot of the Independent tree, Ikejiani and Ikejiani said that after independence, Nigeria was an unconsolidated nation and Nigerian unity was based on truce rather than on consensus and patriotism. As a consequence, Nigeria was after independence confronted with fundamental decisions between co-operation and conflict. It must never be forgotten that the struggle for independence was not long.

Throughout history, no common conscious effort has been made to build a nation so as to create genuine sense of belonging among the different ethnic groups. The political force was organized and Nigeria's political leaders were but indeed leaders of their various ethnic nation groups. And as we must read, in the dialogue that brought independence, the participants were mainly leaders from the three main ethnic/national groups and the nationalism which they generated had no deep roots and no deep psychological or ideological basis.

Evidently, within six years of independence, Nigeria was standing or sprawling on a soil soaked in farcical blood, thus withering away swiftly the exhalation and hope of the people in the independence. As noted earlier, the immediate cause of the Nigerian Civil War was the January and July Military Coup d'état in 1966. Whatever the reason, however, the military government of Major, General Aguiyi Ironsi did not last long. It was on 19th July, 1966 Northern Soldiers Struck. They killed 224 Eastern officers and other ranks, and Lt. Col. Yakubu Gowon who carried-out the coup emerged as the new Head of State. It must be confessed that the countercoup was based on the pattern-which the first coup took, for it would appear that only a certain ethnic political leaders and their senior military army officers were the target. In other words, it was more sinister than the first coup as the Gowon government failed to end the massacre of the Igbo. Umozurike observed that:

From September 29, 1966, there were wholesale massacre of Easterners in the North. The massacre was well organized and carried out by mobs; the native Administrative police and Northern elements in the army.

The correspondent of the international press who captured the scene said:

Crying heathen! And Allah! The mobs and troops invaded the Sabon Gari (Stranger's Quarters). Ransacking, looting and burning Ibo homes and stores and murdering their owners.

The federal power was unable to protect the lives, liberties and property of the federating states. Lt. Col Ojukwu who was the military governor of eastern region protested against this but it proved abortive. However it became imperative that the Easterners could utilize available alternatives to restore security.

Meanwhile, following the two bloody coups in 1966, the military governor of the Eastern Region of Nigeria; Lt. Col. Emeka Ojukwu, had refused to attend any Supreme Military Council's meeting outside the eastern region of Nigeria due to concerns over his safety. The Massacre of Igbo in Northern Nigeria only heightened Ojukwu's sense of isolation and insecurity. In turn, Ojukwu's public belligerency toward the Federal Military Government (FMG) (whom he suspected of tacitly supporting or having a hand in the massacres) served to antagonize the FMG, who began to suspect that Ojukwu planned to announce the succession of the Eastern Region from the rest of Nigeria. But in order to seek or negotiate for remedy of the situation, on January 5th-7th 1967, the leaders of the FMG led by Lt. Co. Yakubu Gowon, and the leaders of Biafra led by Lt. Ojukwu agreed to met at Aburi under the auspices of the Ghanaian Head of State, Lieutenant General Joe Ankrah.

This would be followed by the enactment of a decree before the 21 of January, 1967, to restore the regions to their political positions prior to January 15, 1966. The military officers and the generality of Nigerians were happy to hear of the peaceful negotiation at Aburi. They strongly hoped that Aburi was their chance for peaceful resolution of problems in the federation. Actually the above accord was reached in Aburi conference and was accepted and agreed by the parties in the conference. It was unbelievable when on 26 January 1967; Gowon held a press conference in Lagos in which he purported to reject the agreements of the Accord. Gowon rejected most of these decisions, particularly those pertaining to the payment of displaced persons and the reconvening of the ad hoc constitutional conference.

As a follow-up, Gowon enacted Decree no. 8, which gave him power to declare state of emergency in any region irrespective of the wishes of the governor of the region.

Ojukwu, quoted by U.C. Njoku said that:

Aburi presented immense opportunity to present our case before the international community. I went there as a leader of Eastern Regional faction. During that period, it was legitimate having been duly appointed head of state to look after the east. The quarrel to a large extent was that nobody of any legitimacy appointed Gowon.

This statement recast the belief of Ojukwu towards the sovereignty of Biafra, which awaited the time. The FMG having realized the intention of Ojukwu, it decided to render the Eastern Region incapacitated, thus by creating more states. On May 27, 1967, Yakubu Gowon un-consultatively created twelve states, two of the three states into which the region had been created belonged to the minority groups who were jubilant. The solidarity of the former eastern region became automatically shattered. Against this backdrop, on May 30, 1967, Ojukwu proceeded with the backing of the regional parliament to proclaim the secession of the Eastern Region from the rest of Nigeria.

Okechukwu Ikejiani and M. Odinchezo Ikejiani submitted that the Eastern Nigerians had decided to look to themselves and to others for their protection and security. Oppressed and massacred, Eastern Nigerians recognized their common interest and demanded a realistic Nigerian unity based on a new federation and pleaded that their position be understood in the light of what had happened. They argued very convincingly that while the sentiment of belonging to one country still appealed to them, they would, as a matter of realism, want to live little apart, in a con-federal structure. Indeed, Eastern Nigeria declaration of independence was an outcome of the sober from experience that a sentiment of belonging together in the form of the then existing federation no longer could be justified in view of what had happened. And it was only when their pleadings were turned down that they declared their region independent.

### **Selected Cases of Crimes Committed during the Nigerian Civil War**

Remarkably, one of the worst wars Africa has ever seen ended according to Michael Peel in his book, without the reprisal massacres of Easterners that had been widely feared. Both Sides were tired after the long attrition. The Biafrans had many supporters overseas and had proven far better than the Federal Government at evoking a sense, whether justified or not- that they were pursuing a noble cause. Olusegun Obasanjo noted that General Gowon declared in a famous radio broadcast that the war had produced no victor and no vanquished. The resentments that had led to the conflict would burn on basically because of the crimes committed during the war.

1967-1970 marked a dark period in the annals of the political history of Nigeria. It was a period of civil war between the federal government of Nigeria and the break-away Republic of Biafra. At the onset of hostilities there was high expectation of an early victory on the Nigerian side. However, as the war became protracted; dragging on for thirty months, as posited by Ben Gbulie, all kinds of military tactics and strategies were employed by the



federal troops to ensure victory at all cost. This informs the systematic pattern of cruelty, in violation of established human rights and humanitarian law, was perpetrated by the Nigerian troops. Of particular interest were, according to Professor Chinua Achebe:

#### ❖ **The Asaba Massacre**

In reviewing forty years of the Nigerian Civil war that commenced with ethnic pogroms against peoples of Eastern Nigeria and later their proclamation of the republic of Biafra on May 30 1967, the Federal forces were soon able to snatch Benin from Biafra military hands and advance quickly toward the River Niger, arriving at Asaba in early October 1967. There are multiple versions of what transpired in Asaba. According to Oluwatoyin in his article entitled, ‘Remember to Forget’: The Nigerian Civil War, Its Post-War History and Memory Politics,’ Murtala Muhammed chief commander (GOC) Division II, and his lieutenants, including Colonel Ibrahim, felt humiliated by the Biafran Mid-West offensive. Armed with direct orders to retake the occupied areas at all cost, this division rounded up and shot as many defenseless Easterners; both men and boys as they could be find. Some reports place the death toll at five hundred, others as high as one thousand. The Asaba Massacre, as would be known, was only one of the many such post pogrom atrocities committed by the Nigerian soldiers during the war. It became a particular abomination for Asaba residents, as many of those killed were titled Igbo chiefs and common folk alike, and their bodies were disposed of with reckless abandon in mass graves, without regard to the wishes of the families of the victims or the town’s ancient tradition.

According to Chinua Achebe, His Holiness Pope Paul VI, having received no commitments from either the Nigerians or Biafrans for a case of cease fire, sent his emissary, the well-regarded Monsignor Georges Rocheau, to Nigeria on fact-finding mission. The book went on to say that the horrified Roman Catholic priest spoke to the French newspaper Le Monde following the visit, recounting, what he witnessed thus:

There had been genocide, for example on the occasion of the 1966 massacre...Two areas have suffered badly [from the fighting]. Firstly, the region between the towns of Benin and Asaba where only widows and orphans remain, federal troops having for unknown reasons massacre all the men.

Olusengun, captured that general Gowon broke his silence thirty-five years later on this matter and apologized for this atrocity to the Easterners in Asaba thus:

It came to me as a shock when I came to know about the unfortunate happenings that happened to the sons and daughters...of {Asaba} domain. If I felt very touched and honestly I referred to the killing and ask for forgiveness being the one who was in charge at that time. Certainly, it is not something that I would have approved of in whatsoever, I was made ignorant of it, I think until it appeared in the papers.

According to Austin Ogwuda, who recorded that testifying at the Justice Oputa Panel, Major General Ibrahim Haruna, belligerent and unremorseful as ever, proclaimed:

As the commanding officer and leader of the troops that massacred 500 men in Asaba. I have no apology for those massacres in Asaba, Owerri and Ameke-Item, I acted as a soldier maintaining the peace and unity of Nigeria...if General Yakubu Gowon apologized, and he did it in his own capacity. As for me I have no apology.

It is against this backdrop that the effete and defective binoculars and modus operandi with which the International Community viewed the conflict was among the factors that gave vent to the eruption of other preventable, horrendous crimes against humanity as occurred in the postBiafra era in Burundi, Rwanda, Ethiopia, Somalia, Sudan and others in Africa.

#### ❖ **The Calabar Massacre**

Another notorious crimes; committed during the Nigerian civil war is the Calabar Massacre which occurs in 1968. The Nigerian forces overran Calabar in early 1968 without much resistance or investment. In actions reminiscent of the Nazi policy of eradicating Jews throughout Europe just twenty years earlier, the Nigeria forces decided to purge the city of its inhabitants. By the time the Nigerians were done, they had shot at least according to Achebe, one thousand and perhaps two thousand most of them civilians. There were other atrocities, throughout the region. In Oji River, 'The Times of London reported on August 2, 1968, the Nigerian forces opened fire and murdered fourteen nurses and the patients in the wards.' In Uyo and Okigwe more innocent lives were lost to the brutality and blood lust of the Nigerians soldiers.

Austin Ogwuda posited that in 1968, the Nigerians decided to mount a major strategic and tactical offensive designed to cut Biafra off from seacoast. The over forty thousand troops of the third division, led by army colonel Benjamin Adekunle, engaged in an amphibious, land and air onslaught on the Niger River Delta city of Port Harcourt. After several weeks of sustained air, land, and sea pounding; a period reportedly characterized by military atrocities, rapes, looting, outright brigandry. The third division slowly marched north, crossing the Imo River, toward the market town of Aba. With heavy casualties along the way, Adekunle and his men shot gleefully through a fierce Biafran resistance and took Aba in August and Owerri in September. The Aba offensive was particular gruesome According to a French Press Agency when it expressed forceful thus:

On entry into Aba, the Nigerian soldiers massacred more than 2000 civilians, young Igbos with terrifying eyes and trembling lips told journalists in Aba that in the villages Nigerian troops came from behind, shooting and firing everywhere, shooting everybody who was running, firing into the homes.

It was reported in Achebe's book that the newscasters in America were mesmerized by the story of a young college student, Bruce Mayrock, who set himself on fire to protest the killing of \_innocent Biafrans babies.' Bruce, sadly, later died in the hospital from his wounds. It was reported that he wanted to draw the attention of the media, delegates in session at the United Nations and United States Government official to what he believed was genocide in Biafra.

Outside the massacre which took place in Asaba and Calabar respectively, research had shown that other crimes such as rape, torture, crime against humanity, genocide, war crimes were committed during the war. In this Achebe laments the political killings of Nigerians (mainly the massacre and pogrom unleashed on the Igbo people resident in the Northern Nigeria on 29 May and 29 June, 1966: the bloody massacre at Asaba, Calabar, and Nsuka during the war, the starvation of Easterners during the war and the dispossession of Igbo people of their properties in Port Harcourt, Lagos, and other major cities; it is the cries of a psychologically wounded man. Through the description of such scenes, Achebe creates an imaginary scene of the traumatic horrors of war. This approach enables the reader to appreciate the themes of the book, which appeals to the reader's senses for caution so that such grievous terrorism will be avoided irrespective of the locale, but such violence has been continuously repeated even in our present political circle. To this end, Achebe lends his voice to a dialogue which, despite all efforts often ends in a misunderstanding- a most frustrating dialogue called the national question. From what critics have done, Achebe's memoir has been interpreted out of this context due to deep rooted ethnic bias. In appraising the views advanced by some reviewers of the book *There was a Country*, there are indications that the controversy stirred up by Achebe is an endless debate not intended. But there is a course of direction.

### **Nigeria's Compliance with International Humanitarian Law Standards during the Country's Civil War**

According to Prof. C. Osim Ndifon in his article entitle —From the Geneva Conventions 1949 to the Geneva Conventions Act 2004: Issues and Challenges on the Application of the International Humanitarian Law Treaty in Nigerial in recognition of the importance of the Geneva rules, the Nigerian government has moved beyond merely paying lip service to humanitarian law rules. For example during the Nigerian Civil War 1967- 70, the Nigerian government ensured that Biafran refugees were cared for by creating camps for them and through the provision of much needed medical attention and food. Non-military objects like houses were not destroyed by the federal forces. These features of the war were humane and met the purport and intendment of international humanitarian law. Furthermore, in November 1968, it was reported that the Nigerian authority tried a Nigerian officer for shooting a Biafran prisoner and executed him in full glare of British television

cameras. Moreover in the case of Pius Nwoga V The State, there the accused led some Army officers during the civil war to the home of the deceased with the sole aim of getting him killed .The court held that the deliberate and intentional killing of an unarmed person living peacefully inside the Federal Territory of Nigeria is a —crime against humanity| and even if committed during a civil war is a violation of the domestic law of Nigeria and deserved to be punished. The accused was sentenced to death.

In reviewing the Nigerian civil war of 1967 to 1968, the learned author argues that in order to prosecute the civil war itself, the Federal Government of Nigeria issued an Operational Code of Conduct to the Federal troops through the then Commander in Chief of the Armed Forces, Major-General Yakubu Gowon. The Code, which was binding on both the men and officers of the Armed Forces, was to ensure that the civil war was prosecuted in accordance to it. The Code did, however, state what punishment will be meted out to a soldier who commits a breach. It was directed that the code must be read in conjunction with the Geneva Conventions. The Code contained 12 rules amongst which were the following.

- a) Under no circumstance should pregnant women be ill-treated or killed.
- b) Children must not be molested or killed. They were to be protected and cared for.
- c) Youths and school children must not be attacked unless they are engaged in open hostility against Federal Government Forces. They should be given all protection and care.
- d) Hospital staff and patients should not be tampered with or molested.
- e) Soldiers who surrender should not be killed. They are to be disarmed and treated as prisoners of war. They are entitled in all circumstances to humane treatment and respect for their person and their honour.
- f) No property, building etc will be destroyed maliciously. g) Churches and mosques must not be desecrated.
- h) No looting of any kind.
- i) Women will be protected against any attack on their person, in particular they are protected against rape or any form of indecent assault.
- j) Male civilians who are hostile to the Federal Forces are to be dealt with firmly but fairly. They must be humanely treated.
- k) All military and civilian wounded will be given necessary medical attention and care. They must be respected and protected in all circumstances.

- l) Foreign nationals on legitimate business will not be molested but mercenaries will not be spared; they are the worst of enemies.

It is necessary to point out that the obligation the Federal Government imposed on itself consequent upon the Operational Code was of a standard higher than that demanded by International Humanitarian Law (IHL) with regard to non-internal armed conflict. On the whole, considering the fact that the armed conflict was a non – international character, and that the Federal Government threw its doors open to allow international military observers to monitor the conduct of the war, showed the commitment of the Federal Government to honoring the obligations under international humanitarian law. It is for this reason that it has been said that on the only major occasion when the will of the Nigerian Government to implement international humanitarian law was put to test, it came out with considerable credit.

However, there are others who viewed the action of the Nigerian government in the civil war as one of mixed blessings. While the conduct of the Federal Government of Nigeria would appear to have attracted commendation, the precedential value of these indicia is diluted by the government's assertion that it was not leaving by the Convention standard voluntarily. Indeed, some have even gone ahead to argue that at no time during the conflict did the Federal Government expressly acknowledge the applicability of Article 3. Moreover, it did not always abide by them. On at least two occasions International Committee of the Red Cross (ICRC) hospitals were bombed by the Nigerian Air Force, on other occasion an ICRC plane was shot down, and on frequent occasions Biafran towns and cities were subjected to prolonged and apparently indiscriminate bombardment prior to their occupation. Although it is impossible to determine whether such acts are reflective of governmental ambivalence about the relative benefits of the laws of war or the absence of consistently effective government control over tactical operations, since the were committed on individual basis and thus impossible to trace these incidences to any conscious government policy. The same cannot be said about the policy of economic blockade of the Biafran enclave. This matter, which many saw as a deliberate policy of the Federal Government of Nigeria to weaken the opponents and bring a quick end to hostilities, threw up the issue of whether such conduct was not inconsistent with the principle of humanity and a therefore an illegitimate weapon of warfare. This was more so in the light of the absence of any express prohibition in any of the extant statutes of international humanitarian law then in force.

### **The Prosecutors of the War**

A number of individuals played key roles during the Nigeria Biafra War. The principals actors in 1967, according to the most controversial debate stirred by Achebe's *There was a Country* however were both Sandhurst-trained soldiers-Odumegwu Ojukwu, who was



thirty three and Yakubu Gowon, who was thirty two. One was from a highly privileged background and the other was the so called darling of the British establishment. According Odumegwu Ojukwu in his book entitled *Emeka* posited that on the Biafra, aside from General Odumegwu Ojukwu, Major General Philip Effiong, Chief of General Staff; Brigadier

Tony Eze, Brigadier Pat Amadi, Colonel Joe (—Air Raid) Achuzie, Colonel Nsudo, Colonel Iheanacho, Colonel Archibong, Brigadier Patrick Amadi, Biafran Army, Colonel Patrick Anwunah, Chief of Logistics and principal staff officer to Ojukwu, Colonel David Ogunewe, Military Adviser to Ojukwu, Patrick Okeke, Inspector General of Biafra Police, Sir Louis Mbatia, Chief justice of Biafra and the young and talented Matthew mbu, Biafran Foreign Minister.

On the Nigerian side, apart from General Yakubu Gowon, the then Nigerian Head of State, there were Obafemi Awolowo, deputy chairman, Supreme Military Council, Brigadier Emmanuel Ekpo, Chief of Staff, supreme headquarters, Brigadier Murtala Ramat Mohammed, Brigadier Mobalaji Johnson, Lieutenant Colonel Shehu, Musa Ya'Adua, Brigadier Hassan Katsina, Chief of Staff, Nigerian Army, Brigadier Emmanuel Ikwue, Chief of Air Staff, Real Admiral Joseph Wey, Chief of Naval Staff, Dr. Taslim Elias, Attorney General, H.E A. Ejueyitchie, secretary to the federal military Government, Anthony Enahoro, commission for information, Olusegun Obasanjo, Colonel Benjamin, Theophilus Y. Danjuma and the twelve state governors.

However, with all the above actors, Ojukwu and Gowon were the two main protagonists of the Nigerian Civil War, yet they only ever met face-to-face once, and that meeting took place before the war. They never gave themselves the opportunity to actually sit down and discuss their views on the war, but even if such a conversation had taken place, there would likely have been no positive result. At least one thing becomes clear when their respective points of view are juxtaposed and analyzed. In their own minds, both Gowon and Ojukwu saw their own position as non-negotiable.

## **The Establishment of International Criminal Tribunals**

### **Examples of International Criminal Tribunals**

Since after the First World War, there had been various international criminal tribunals which are either adhoc or hybrid in nature. For the purpose of this work few examples will suffice and they are as follows:

#### **➤ Nuremberg Trial**

The most important war crimes trials following World War II were held in Nürnberg, Germany, under the authority of two legal instruments. One, the so-called London Agreement, which was signed by representatives of the United States, the United Kingdom,

France, and the Union of Soviet Socialist Republics (USSR) in London on August 8, 1945; the other, Law No. 10, which was issued by the Allied Control Council in Berlin on December 20, 1945.

➤ **International Criminal Tribunal for Former Yugoslavia/Rwanda**

The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) are both ad hoc Tribunals set up by the United Nations Security Council, in exercise of its powers under Chapter VII of the United Nations Charter. While the ICTY was established in response to the violations of International Humanitarian Law within the territory of the former Yugoslavia, during the Yugoslav War, the ICTR was a direct response to the monumental genocide which occurred within a hundred-day period, beginning after the April 6, 1994 assassination of President Juvenal Habyarimana.

It must be underscored that both Tribunals are quite peculiar in certain respects; for while the ICTY, on one hand, is the first International Criminal Tribunal set up to try violations of International Humanitarian Law after the Tokyo and Nuremberg Trials, the ICTR. On the other hand, is the first of such Criminal Tribunal to be set up in Africa. Its establishment, indeed, preceded the establishment of the Special Court for Sierra Leone, which was created, on its part, to prosecute breaches of IHL during the Sierra Leonean civil war, and which is responsible for the current incarceration of the Liberian Warlord, Charles Ghankay Taylor.

➤ **Extra-ordinary Chamber in the Courts of Cambodia**

In June 2003 the United Nations (UN) and the Cambodian government signed an agreement to set up a UN-assisted genocide tribunal to try former leaders of the Khmer Rouge. The agreement capped years of difficult negotiations, which had faltered over the level of foreign control of the tribunal. The compromise agreement allows the majority of the judges to be Cambodian but requires at least one foreign judge to support a tribunal ruling.

➤ **Special Court for Sierra Leone**

In 2002 the UN and the Sierra Leone government jointly established a war crimes tribunal, the Special Court for Sierra Leone, to try individuals who had committed atrocities during Sierra Leone's civil war, which lasted from 1991 to 2000. Unlike the tribunals for the former Yugoslavia and Rwanda, which are administered by the UN and composed of UN-appointed judges and prosecutors, the Special Court is jointly administered by the UN and the Sierra Leone government and contains a mix of Sierra Leonean and international judges. The court has jurisdiction over serious violations of international humanitarian law

and certain Sierra Leonean criminal laws. To avoid placing an undue burden on the court, its jurisdiction is limited to crimes committed since November 30, 1996.

However, in July 1998 UN delegates approved a statute creating a permanent International Criminal Court (ICC) to try people accused of genocide (systematic extermination of a group), war crimes, crimes against humanity, and crimes of aggression. The ICC was designed to replace ad hoc tribunals of limited jurisdiction, such as those created to address the conflicts in the former Yugoslavia and in Rwanda. The ICC, with headquarters in The Hague, The Netherlands, officially came into being on July 1, 2002.

### **The Failure of United Nations to Establish International Criminal Tribunal after the Nigerian Civil War**

Given the few examples of international criminal tribunals established by the United Nations Security Council (UNSC) in agreement with the country concerned over the years in resolving issues of armed conflict, it is very clear that the UNSC failed to set up same tribunal after the Nigerian Civil war. During the Nigerian civil war there were reasons to lament the death of the widely respected secretary general of the United Nations, Dag Hammarskjold, who was killed in an air crash in September 1961. The Burmese diplomat U Thant, selected to replace him, would lead the UN from 1961 to 1971. Unlike Dag Hammarskjold, who was an expert at conflict resolution, and a humanist, U Thant was a decidedly different kind of man.

Under his watch, the UN took a noninterventionist position and deferred to local bodies such as the Organization African Unity for policy advice and guidance, UN provided the AU a great deal of latitude in decision making and implementation. An argument could be made for this stance at least at the beginning of the arm conflict, but as the humanitarian crisis worsened, leading ultimately to the starvation and death of millions, even the most committed anarchist would have expected greater United Nations involvement. That did not happen, and several people believe that had the UN been more involved, there would not have been as many atrocities, as much starvation, and as much death.

Achebe wrote that in October, 1969, Ojukwu reached out desperately to the UN to —mediate a cease-fire as a prelude to peace negotiation His pleas were met with a deafening silence. The UN rather referred him to AU for direction. This was a calculated opportunity for the Nigerian troops who now had the international cloak of the UN under which to commit a series of human rights violations. Failing to end the protracted

Biafran guerrilla offensive, the Nigerian army openly attacked civilians in an ill-advised, cruel, and desperate attempt to incite internal opposition to the war and build momentum toward a quick surrender.

The vacuum in the moral and humanitarian leadership from the United Nations meant that the Nigerian Federal Government could operate with reckless abandon, without appropriate monitoring from international agencies. There would be precious little proof of the war time atrocities had it not been for private non-governmental agencies and individuals. In February 1969 alone nearly eight hundred civilians were massacred by targeted Nigerian air force strikes on open markets near Owerri-Umuohiagu and Ozuabam. The Nigerian air force pilots were particularly notorious for not respecting Geneva Convention resolutions describing civilian safe heavens, such as hospitals, refugee and food distribution camps, and centers of religious worship.

In an article called —Who Cares about Biafra Anyway! that was published in Harvard Crimson, Jeffery D. Blum described the horrors witnessed by Harvard University school of Public Health professor Jean Mayer

Distribution centers and refugee camps are boomed and strafed if any large numbers of the people are visible in the daylight. Red Cross insights are singled out for special attention by Nigerian bombers. Mayer saw one European engaged in working on the Biafra side of the war front carrying 117 dying children in his truck to a hospital in a single night. ‘

These air strikes backfired for Nigeria, further eroding international support for their war effort. Ojukwu seized on this opportunity, releasing a statement to the international press following an address to the consultative assembly in Umuahia. He lambasted the Federal troops for having begun a last desperate effort in the form of a land army pogrom.

### **Possible Reasons for the Failure of the United Nations to Establish International Criminal Tribunal after the Nigerian Civil War**

Given that the UN failed in its responsibility during and after the hostilities that took place within the territory of Nigeria from 1967 to 1970, several factors are said to be the reasons for the failure. The following had been discovered as reasons:

#### **❖ Complete Reliance on Regional Bodies**

In the introduction (submitted on 15 September) to his annual report to the General Assembly on the work of the organization, for the period 16 June of 1968 to 15 June 1969, the Sectary-General stated he was deeply distressed that the tragic conflict in Nigeria was continuing. The activities of United Nations with regard to the conflict had been of an exclusively humanitarian in nature, the Sectary General stated, and it should be possible, nothing withstanding all the political and other difficulties for the humanitarian activities of the UN to continue and for the flow of supplies to the tricking areas to be maintained.

For the purpose of coordinating efforts and thus overtaken the most effective action, he added, a number organization both governmental and private, had agreed in 1968 that all the humanitarian aid to the victims of the Nigerian conflict would be channeled through

International Committee of the red Cross. This arrangement included the relief activities of the UN, mainly those of the United Nations Children's Fund (UNICEF). The Secretary-General hoped that larger shipment of relief supplies would be made available and that persons in positions of responsibility and authority will facility the movement of these supplies.

In April 1961, the secretary General had announced the appointment of SAID-UDDIN KHAN to succeed NILS-GORAM GUSSING as his representative to Nigerian on humanitarian activities. Mr. Gussing had arrived Nigeria in August in 1968 as the Secretary-General's representative to assist in the relief and humanitarian activities for the civilian victims of the hostilities; in September 1968, following a request from federal government of Nigerian for the appointment of an observer to visit the war affected areas in Nigeria. The Secretary General had designated Mr. Gussing for this purpose as well. During 1968 and 1969, the representatives submitted interim report on their activities; the reports were issued in the form of press releases.

As for the political side of the question, the Secretary General stated in the introduction to his annual report that the right course was to leave the political aspect of the Nigerian problem to the O. A. U. for solution. He hope that the state manlike and imaginative initiatives take by O. A. U. will be followed by wise and conciliatory action by both parties so that a just and fair settlement of the issues that had occasion that tragic conflict might be achieved by peaceful means. The during general debate in the opening phases of the General assembly's 24<sup>th</sup> session-at various meetings held between 19 September and 8-October-1969 several representatives expressed concerned by the situation and hoped that a peaceful solution could be found.

#### ❖ **Lack of Political will Power**

Having undertaken a historical excursion of the efforts of the world community to see that violations of Law of international concern do not go unpunished, from the trial of Nazi's, the establishment of the two adhoc tribunals for the former Yugoslavia and Rwanda, culminating in the Millennial event of framing a treaty for a permanent International Criminal Court in Rome, in July 17, 1998, one can conclude without fear of contradiction that the impunity which the violations of crimes of genocide go unpunished in Nigeria is not due to death of appropriate penal machinery and sanctions for breaches but the lack of political and moral will on the part of the state. For instance Ahmed Harun and Aliyu Ashe a minister and leader of Janjaweed (Military militia) were indicted by the International Criminal Court for genocide in Dafur region, but Sudan government refused to make arrest them until sometimes in October 2008 when Aliyu Ashe was arrested leaving Ahmad Harun. Again, Lewis Ocompo the ICC prosecutor issued indictment warrant for the arrest of Sudan President, Omar Hassan Al-Bashir for the allegation of genocide committed in



the Western reign of Dafur. But the Arab League and African Union (AU) leaders objected arguing, it is not what is needed to solve the Dafur Crisis. They accused the ICC of being nothing more than a tool of the Western countries, while in Africa the ICC Open it cases against individuals for alleged crimes, but the court's bias against Gaza atrocities, the court is like a barking dog one that is capable of biting.

#### ❖ **Unreliable Funding**

Raising money is a constant problem with so many crises vying for the world's attention. Many U.N. agencies and humanitarian operations are funded by voluntary contributions, and appeals are not getting enough donations. The World Food Programme suspended a food voucher programme serving more than 1.7 million Syrian refugees after many donors failed to meet their commitments. All 193 member states contribute to the

U.N.'s regular budget and a separate peacekeeping budget, but some countries are chronically behind on their payments. In early November, members owed about \$3.5 billion for regular operations and peacekeeping.

#### ❖ **Outdated Power Structure**

The same five countries — the victors of WWII — have been the power players since 1945: the United States, Russia, China, Britain and France. They were then and are today, the only permanent members of the powerful, 15-seat Security Council. Each has veto power, which has led to near-paralysis of the council on some major crises like Syria and Ukraine. Critics say the Council simply doesn't represent the world today. At its inception, the U.N. had 51 member states. It now has 193, many of them clamoring for more clout. All countries are represented in the General Assembly, but that body can only pass non-binding resolutions. Often mentioned as countries deserving of permanent Security Council seats are Germany, Japan, India, South Africa, Nigeria, and Brazil. But there are no signs the big five intend to give up any power or share it with more countries.

#### ❖ **International Political Horse-trading**

There is widespread behind-the-scenes jockeying for top jobs in the U.N. Secretariat and U.N. agencies, not to mention seats on key bodies like the Human Rights Council and the Security Council. Every country belongs to a regional group that lobbies to ensure it is well represented. There is often criticism that those who get the seats are not the best qualified, such as dictatorships elected to the rights council.

#### ❖ **Lack of Interest from the Gowon Government**

Although, nations of the world have contributed so much in the promotion of peace and security through the International Criminal Court, by way of putting together collective resources, security has not been completely achieved due to non-cooperative attitudes of

some states. For instance, in Sudan; when the ICC prosecutor mounted pressure on Sudan government. They announced the arrest of Aliyu Ashe Leader of Janjaweed Militia, but they refused to hand him over to ICC saying that they would conduct their own investigation. That was exactly what happens after the war in Nigeria. Gowon was not ready to prosecute those who were involved in the war, probably, because he himself was part of them.

## **CONCLUSION AND RECOMMENDATIONS**

### **Conclusion**

The work gives insight into the reasons why an international criminal tribunal was not set up in Nigeria after its civil war. In fairness and borrowing a large leaf from the American Marshal Plan that followed World War II and resulted in the reconstruction of Europe, the federal government of Nigeria launched an elaborate scheme highlighted by three Rs-from Reconstruction, Rehabilitation, and Reconciliation. The Government also went on to create a National Youth Service Corps (NYSC) scheme to promote national unity and integration. But beyond the three Rs and the NYSC scheme, there was no real effort to face and deal with the feelings that had led to the war. This was a war that claimed and estimated two million lives, most of them ethnic Igbos from the South East, and in which the warring parties were both guilty of acts that probably should have been decisively brought to justice once the war ended, hence the importance of this work.

### **Recommendations**

Apart from the pogrom of 1966 and the savage war of the period 1967 to 1970, the political, economic and social deprivation of the Easterners were cases of deliberate evil and serious violations of international humanitarian law. The incapability of UN to deal realistically with the threat to peace posed by the Nigerian war had further raised the issue of the extent to which they could successfully intervene in crisis situations and help resolve problems of this nature that are characterized as internal affairs of member states. It is also germane to note that in the present state of international relations, no extra-state organization possesses any power of veto over the action of its individual members. This situation became complicated with the irreconcilable position of Nigeria and Biafra during the war. Drawing from insights gained from the work, certain recommendations could be proffered.

- i There should be need for reparation and restitution for these Biafrans who were victims. Which could be monetary reparation or compensation for systematic and sustained human and group rights violations. It would give happier lease of life to these victims and reduce human right violation even in a period of crisis.
- ii A Sovereign National Conference should be convened rather than the National conference which took place in 2014. The situation which leads to the

convocation of a national conference arises from the thinking that the existing order or regime, is incapable of solving economic and political problems and the institutions of the state are rather weak or ineffective to assert authority while the democratic opposition is not strong enough to effect regime or system change. A sovereign national conference is the convocation of by and large, civil society organizations, workers' unions, political parties, professional associations, religious denominations, and government representatives to discuss and chart new ways forward for the nation. As the word sovereign 'suggests, the conference is not subject to the authority of the state and its outcome may supplant and sweep away existing order while heralding an entirely new order. It has the capacity to take effective and effectual decisions relating to the tenure, survival and/or limits of power of the existing regime. This means that a sovereign national conference is interpreted as a transitional phase in the process of a mass struggle to carry out system or regime change.

- iii There should be need for government to address the underlying causes of conflict, and thus show commitment in implementing peace and reconciliation processes, so as to avoid what happen on the of 08, April 2015 when Greece demanded more than \$300 billion from Germany as compensation for World War II damages, with Germany claiming to have settled its reparations to Greece in a post-war agreement. The latest dispute adds to the tensions between the two countries, caused by Greece's inability to pay off its European Union loan. Meanwhile, as Zlatica Hoke reports, the Greek government is looking into boosting ties with Russia. This would aid in curtailing the extent of violations against people either internally or externally.
- iv The constitution of Nigeria should address more explicitly and unequivocally than it has done the fundamental question of the character of federal union. It should be supported with necessary institutional arrangements which should invest more energy and resources on the following areas: - A people oriented economic development plan based on social justice and gender equality; A political system that protects the sovereignty of the people from the disorientation of primordial forces; -A genuinely progressive national ideology that replaces the hypocrisy of primordial irredentism with the civic values of a modern or purposefully modernizing nation-state, and the constitution should strengthen residency and citizenship right vis-à-vis aboriginal rights. These would curb the extent of social, economic and political deprivation of Biafrans which have continued to experience since 1966.
- v International organizations should not wait till war bursts out, and when many things might have been in disarray before they mediate. For instance, when

latent tensions are discovered, there might be the need for the establishment of an adhoc Board of internal mediation, with members drawn from such a body as the Permanent Court of Arbitration, and placed at the disposal of the contestants. A body of this sort might have been invaluable early in the Nigerian crisis, between November 1966 and March 1967 when both parties were apparently groping for a way out of their impasse but could not agree on the advisability of mediation by outside states.

- vi Also, while there is need for the United Nations Organization to rise up effectively to challenges posed by conflict situation in Africa, there is greater need for the regional and sub-regional organizations to be more actively involved in resolution of crisis of nations that falls under their jurisdiction. Thus supranational organizations that are African based are expected to be more concerned and initiative as regards efforts that will facilitate peace and conflict resolution in any part of the continent, rather than waiting for, or over-relying on, the U.N. mediatory and peace keeping roles in view of the fact that the world body has many global concerns that need its attention. This matter is particularly significant while bearing in mind the lackadaisical attitude exhibited by the UN towards the Nigerian Civil War, as it believed that there were other areas that need its urgent attention such as the Arab- Israeli war of 1967 and the Vietnam war which was approaching its climax by 1969.
- vii Perpetrator should be sent to international criminal court for prosecution. On this, Gowon himself had noted that it was the Igbo that objected to the creation of corridor for movement of medical
- viii aid and food supplies to the civilian population at the period; on this, I am ready to face the International Criminal Court of Justice at the Hague for prosecution over the role played by me during the war and, fortunately, some Nigerians are still alive to bear witness to the roles played by both the leadership of the secessionist group and the then Federal Military Government under my leadership.
- ix African Union should be revitalized. Revitalizing the A.U. will therefore require political will and commitment on the part of the A.U. to address conflicts in Africa. Also, the African standby force which the organization decided to establish should be well-organized and equipped in order to live up to the challenges posed by conflict situations in any part of the continent.
- x In order to protect minority and ethnic group interests from extinction because of superior pressures from other ethnic groups, and the tendency for other groups to dominate by politics of systematic ethnic cleansing, both the Federal and State Constitutions shall make the following provisions: Recognize and

- give effect to the dichotomy of cultural indigene-citizens as different from non-indigene citizens in ways that the State Constitution cannot alone provide.
- xi Given the importance of the social sector to the wellbeing of citizens and the optimal functioning of the economy, a significant step towards achieving this goal will require the enactment of a comprehensive Bill of Rights, as a Social Charter underlying the bond between government and citizens



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