

# Genocide in Light of the Principles and Rules of International Law

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## Abstract

In Article 2 (4) of the UN Charter has agreed that members of the United Nations must not intervene in internal affairs of another country, and sovereignty and territorial integrity of countries must be respected. Now in Syria, ISIL terrorist group is committed crimes against Shiites with the involvement of Western and Arabic countries, most of which are permanent members of the Security Council. Crimes that deprive peace, security and the right to life, causing disruption to international and regional peace and security must be prosecuted not to witness the occurrence of such crimes. Killings committed by terrorist groups against Shiites in Syria are genocide under Article 6 of the Statute of the International Criminal Court and lack of attention to crimes committed by terrorist groups in international institutions such as the International Criminal Court continues to bring chaos for the international community and are the unpleasant results resulting from weakness of courts and international organizations including the UN Security Council.

**Keywords:** international crimes, terrorist groups, Syria, genocide, principles of international law

## 1. Introduction

Destructive and heretical ideas of Wahhabism, based on the beliefs of Hanbali Fiqh was founded in the fourth century and revived with the advent of Salafi definitions in the eighth century and organized in the twelfth century and this school began to issue in the fourteenth century A.D as a political commodity from one point to another. History and mainstreaming of this group show conspiracies designed by the colonial governments against Muslims for splitting of the Muslim Ummah and injecting literature of force without intellectual support in Islamic beliefs and pave the way to rule on the Islamic world and carry out The theory of "Divide and Rule" in the Islamic world. Undoubtedly, some of the common values in the international communities are peace and security and gains from them. For all world citizens of every race, religion and nationality, the enjoyment of a contented life of peace and security that guarantees their survival and the realization of scientific and industrial progress is a vital value. However, bitter historical experiences, including international armed conflicts, particularly in the first half of the twentieth century and especially the continuation of armed local and regional conflicts in recent decades, that its scope also extended to the present have turned peace into a dream and unattainable goal for humankind. Safeguarding the common values of humanity, first of all requires stipulating international rules and regulations and then attempting to pave the path for regarding them by all nations and governments and responding the question that whether killing Shiites in Syria is in accordance with the Principles and rules of international law of genocide? Ethnic and tribal differences of Muslims and followers of different religions, especially sporadic clashes among followers of different religions have significantly increased in recent decades and the civil war among Islamic sects have removed peace in Muslim regions of the Middle East. Coming to power of the Wahhabi regimes on the one hand and the growth of religious extremism such as the Taliban and ISIL in recent years and the unrest caused by Arab Spring reflects an extremely ugly face from Muslim communities. Muslim unity is the main condition for maintaining peace in Islamic religions but foreign intervention and programs in areas beyond the Islamic limits have narrowed the field for the survival and life of Shia Muslims. Crimes committed in such communities are a major concern of countries that suffer loss of such chaos and are unprecedented opportunities for Western Counties to achieve their goals and interests.

### *1.1 Arabic Republic of Syria and the Killing of Shiites*

Arabic Republic of Syria is a country in South-West Asia and the east coast of the Mediterranean Sea. (Iraqi, 1989, pp. 7-8) This country is neighbor to Turkey from north, to Iraq from east, to Lebanon and the

Mediterranean Sea from the West and to Jordan and Palestine from South. Currently, Syria crisis is the most important international event without exaggeration. (Political) developments are surrounding a vast region where the interest of many countries, including Russia, America, China and Europe Union collide together (Kamrani, 2014, p. 9).

### *1.2 Context of the Crisis in Syria*

One of the disadvantages of the Syrian regime is the rule of a single party. As the law states that only the Ba'ath Party can have political sovereignty (Nikai, 2012, p. 97), which leads to monopolized power in the hands of one party and therefore the various political groups disagree with this. In the meanwhile, opposition groups had subversive approach to government. In this situation, the political space was closed because there was some kind of political tyranny. Another negative point of the Syrian government is the Management Development Program of the country. Some religious Extremist Sunnis were protesting against Alawite roots of the presidential family (ibid, pp. 11-12) However, the Syrian sovereignty has involved different Sunni people in different positions including the cabinet ministers, security forces, military affairs, religious institutions, etc. In fact, Syria is a secular state. In mid-2011, with the escalation of popular protests in the Arab world, demonstrations also took place in the cities of Syria. Mass protests in Syria, unlike other Muslim countries, quickly changed the face and turned into military phase from the peaceful expression of demands. Additionally, the opposition in Syria went beyond borders and the unrest in Syria changed into a cold competition between regional and international powers including Turkey, Saudi Arabia, Russia, China, Iran and America. There is also news of equipping opponents with weapons through the borders of neighboring countries (Ibid., p. 12)

### *1.3 The Syrian System of Government*

Bashar al-Assad is governing Syria in the framework which is influenced by the cultures that have influenced this land for centuries. But the distant and near past of Syria also affect how to govern the country. Some of the practices in government dates back to the Umayyad period, while other policies evolved as the leadership of the country was facing internal unrest and pressure from other countries. (rahpooyanedalat.com).

### *1.4 Religious Groups in Syria*

Followers of all religions including Islam and Christianity live in Syria among which Jewish minority is living in this country too. Sunnis make up 74% of the total, Alevis (the Twelver Shias and Ismailis) 13%, Christian 10% and Druze 3%. (Kamrani, 2014, p. 9) In terms of demographics, Arabs make up more than 90% of Syria's population, while Kurds make up about 9% of the population in Syria. Armenians, Turks, Circassians and Jews make up less than 1% of the population in Syria altogether. (Ibid).

## **2. The Terrorist Groups in Syria**

Syrian Muslim Brotherhood is one of strict critics of the government. They are looking to establish a government and are influenced by Wahhabism. This group has a public influence on the Sunni people. But other political groups opposed to the government such as liberals and left-wing groups do not have much popular support. Therefore, this group and its positions are discussed in detail in the following. The Muslim Brotherhood is among parties with high age in most countries in the region (Ahmadi, 2011, p. 25) In recent years, terrorist and extremist groups called "ISIS" and "Jabhat al-Nusra (JAN)" in the name of Islam and with the support of Western and Arabic countries aim at overthrowing the Assad's regime, killing of Shiites and destroying religious and holy sites and graves.

### **A - "ISIS"**

After the collapse of the Ba'ath regime of Saddam Hussein, operating power of Sunni Arab insurgent organizations became widespread against America. From 2003 to 2006, radical Salafi al-Qaeda groups called "Shura Mujahideen (Mujahideen Council)" were formed. This Council, beginning with the name "Jemaah al-Tawhid wal-Jihad" then called "Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn" and then was emerged in the name of "Islamic State of Iraq" in the general area of the Sunnis in Iraq (2006).

During the civil wars in Syria in which Bashar al-Assad's rule was lost in vast areas of the country, Islamic State of Iraq's fighters were brought to Syria and announced the existence of the Islamic State of Iraq and Syria, or ISIS.

ISIS on track to expand its territory, changed its name and now calls itself the Islamic Caliphate and for the Muslim world and names "Abu Bakr al-Baghdadi" Caliph of the Muslims (Abbasi, 2014, p. 94)

"Islamic State of Iraq and Syria" or ISIS resembles al-Qaeda ideologically and intellectually and in terms of behavioral aspects. However, the behavior of this terrorist group during the past decade, especially the last few

years, represents a more radical and more violent approach compared to al-Qaeda. (Ibid., P. 99) Most members of ISIS are non-native and exotic nationals from around the world. Many commanders of "ISIS" are non-Iraqis and from places like Saudi Arabia and Yemen. "ISIS" was formed in Iraq but grew in a shadow of events in Syria. Their competitor in Syria is "JAN" (Iran, 2014, p. 44)

(B)- *Jabhat* al-Nusra (JAN)

According to the internal conflicts in Syria, "Abu Bakr al-Baghdadi" sent one of his deputies, "Abu Mohammed Joulani", to Syria that led to the formation of the group "JAN" in Syria in 2011. "JAN" was known as a group affiliated with "al-Qaeda" in Syria by 2013, and became one of the famous key players of conflict in the country with recruitment and attracting financial resources. While the Intelligence Reports unveiled the intellectual and organizational relationships of this group with "Islamic State of Iraq", on April 9, 2013, "Abu Bakr al-Baghdadi" announced in an audio message that "JAN" is in line with the Islamic State of Iraq and declared the formation of "Islamic State of Iraq and Syria" with the integration of "JAN" and "Islamic State of Iraq". But soon audiotape attributed to "Abu Mohammed Joulani" aired. In this tape, he said about his relationship with the "Islamic State of Iraq" but rejected the idea of merging with this group and announced his allegiance to the "Al Qaeda" network led by "Ayman al-Zawahiri". Accordingly, despite Ayman al-Zawahiri's emphasis on the dissolution of the "ISIS" and separate activities of "Islamic State in Iraq" and "JAN" in Syria, "al-Baghdadi" emphasized the survival of "ISIS".

Consequently, major differences between Baghdadi and "Ayman al-Zawahiri" and clashes between "JAN" and "ISIS" took place. (Abbasi, 2014, pp. 101-102).

(C) ISIS's difference with JAN and al-Qaeda

ISIS Terrorist group, however, came from the al-Qaeda but has a different approach to the "Al Qaeda". Today, the leaders of these terrorist groups have many disputes together. Substantial differences of "Al Qaeda" and "ISIS" can be noted intellectually and operationally in multi-axes (Irani, 2014, p. 44):

1. In the present time, "Al-Qaeda" terrorist group led by "Ayman al-Zawahiri" knows its aim as promoting jihadi Salafism, armed confrontation with Western interests, Americans and American sympathizers in the region, and protecting the rights of Muslims (Sunni St.) and in the current situation is seeking for formation of a government or state, or caliphate in a geographical environment while the "ISIS" has announced that is following the establishment of the Islamic caliphate and specified its geographical environment and runs its own laws and decrees in any piece of land that has been captured. Accordingly, the "ISIS" aims at capturing the lands, territories and possessions, and it does not matter for them to take over lands related to the Syrian opposition in northern areas or areas of the Iraqi government (Ibid.)

2. Another difference of these takfiri terrorist groups is the type of their confrontation with opponents. "ISIS" has prioritized violent and vindictive attitude against Shiites and physically removing them and what calls consequence of Safavid rule, while "Ayman al-Zawahiri," the leader of "al-Qaeda" has issued a statement saying the inclusion of Islam and its sects and has known violent acts of ISIS" against the Shiites as diversionary actions resulted from mistaking the enemy. From this perspective, many believe that the ideas of the ISIS are adopted from Abu Musab al-Zarqawi. (Ibid)

### 3. Violation of the Principles and Rules of International Law in Syria

According to Article 38 of the Statute of the International Court of Justice and international conventions, there are some principles that all members of the international community must adhere to them and are binding. Peremptory norm (Jus cogens) is located at the head of international sources, which, if violated, result in criminal liability for the offender. This is a subject closely correlated with the sanction of international law, international security, order and international trading reputation. Peremptory norms (Jus cogens) are known under the title of fundamental superior and general rules of the international legal system and include a number of principles at the top of the hierarchy of rules of international law, and any other rule contrary to them is invalid and void. Violation of the rules causes international responsibility for the violator. Therefore, observing peremptory (Jus cogens) rules have increasingly great importance for the international community, because such rules constitute the pillars or basic framework of international law (Ziae Bigdelli, 2004, p. 192). Peremptory norms (Jus cogens) are excellent rules that are located at the head of all the rules. So following them is binding upon all because they represent the common interests of the international community and all international members are considered as stakeholders (MosaZadeh, 2004, p. 194). Vienna Convention on the Law of Treaties defines peremptory norm (Jus cogens) as follows:

A treaty that conflicts with one of peremptory norms (Jus cogens) of general international law at the time of

conclusion is void. According to the present Treaty, Peremptory Norm (Jus cogens) of general international law is a rule recognized by the international community countries as a principle that it is inviolable, and only through next rule (delayed) of general international law having the same character is changeable, accepted and recognized (Article 53).

Therefore, it should be said that the peremptory norm (Jus cogens) is binding for all countries and organizations and has sanction and breaching it creates legal responsibility for offenders.

### *3.1 Peremptory Norms (Jus Cogens Rule) of the Prohibition of the Use of Force in Syria*

From a very long time so far, there have been two contradictory theories on the use of armed force and resort to war in international relations: Use of force, and prohibition of the use of force. These two approaches or theories have passed many ups and downs throughout history and each was considered the basis of performance for many countries in the world as the dominant theory. What is certain, this way has been construed as a fundamental rule along with a development from the side of use of force to non-use of force. However, the behavior of countries in most cases has not been consistent with this principle (Ziaeebidhendi Bigdeli, 2009, pp. 534-535).

International law, while accepting the principle of a ban on the use of force and sanctioning war, knows war legitimate only in two cases: 1- Legal-defense against aggression 2- Military operations to maintain international peace and security.

Based on the views of the United Nations Charter, the violated country has the right of "legitimate defense" or "legal-defense". So legal-defense is an exception to the rule of prohibition of the use of force and sanction of war, and is a certain right for countries to deal with aggression. However, it is controversial that what acts are considered as aggression (Center for Human Rights Studies, 2003, p. 45)

Legal-defense refers to a situation in which a country to armed aggression is given an urgent right of legal-defense against the armed invasion of a country or other countries to transgress enemies by any means of permissible and proportionate approach and

The second case is legitimate and authorized use of force or the second exception to the principle of prohibition of the use of force in international military operations. International military operations involve armed coercive measures which guarantee real effective sanction to a threat to peace or breach of the peace or act of aggression anticipated in the United Nations Charter.

According to Article 42 of the Charter if the Security Council determines that the measures provided for in Article 41 of the Charter (diplomatic and economic sanctions) were not sufficient and proved to be not enough, it can resort to coercive measures or the use of force and operations required to maintain international peace and security by air, sea and land. These measures may include protests, blockade, and other operations by air, sea or land forces by members of the United Nations.

In general, with the exception of two items of legal-defense and international military operations in accordance with international rules and regulations, any other forms of aggression are a crime against peace. Although the Charter does not define aggression, but Paragraph 1 of Article I refers to stopping any aggression and Paragraph 4 of Article 2 prohibits the use of force against the Territorial Integrity and Political Independence of each country. In accordance with Article 39, intrusion detection is Council's responsibility.

Apart from the legitimate cases, any foreign invasion to a country such as Syria is considered an aggressive war and a crime against international peace, and ultimately triggers the international responsibility of the aggressor countries.

Hence, the attempt to do any of the actions defined in Paragraph 3 of aggression resolution against Syria, without Security Council's authorization and without compliance with the principles of the UN Charter, does not have any legal basis and is contrary to international law and is considered a military aggression.

### *3.2 Non-interference in the Internal Affairs of Syria*

Sovereignty is the supreme authority of command or the possibility of implementation of a will superior to the will of the others (The judge Shariat Panahi, 1996, p. 72)

Right of National Sovereignty is stressed with different terms in the 3 paragraphs of Article 2 of the UN Charter dedicated to the principles governing international relations. Paragraph 1 of this Article states the "Principle of Sovereign Equality" of all members of the organization and its Paragraph 4 has asked all members to prevent from threat of force or applying it against "The territorial integrity or political independence" of each country or any other approach contrary to Goals of the United Nations in order to preserve sovereignty of all countries (Navazani - Farajzadeh, 2011, pp. 221-222). One of the principles of international laws that is widely used in

political literature is the principle of non-interference in the internal affairs of States. The principle of non-interference is one of the fundamental principles of the United Nations, including the fundamental rights and duties of governments; this is one of the fundamental rights of international community rooted in the Principle of the Sovereign Equality of States. This principle that its basis should be sought in customary international laws, is reflected in a number of international documents including Article 2, paragraph 7 of the Charter of the United Nations, in which non-interference in the internal affairs of States is anticipated and stressed in statements 2131 in 1965, and 2625 in 1970 adopted by the UN General Assembly. Accordingly, non-interference in the internal affairs of other states is required. Therefore, this principle mentioned in the regional and global levels is emphasized by governments and international organizations.

The Charter states in the fourth paragraph of Article 2 that: the states will avoid the threat or use of force against the territorial integrity of each member states. Later, in Article 51, it is also stated that the Charter does not deprive the inherent right of individual or collective legal-defense of member states if an armed attack occurs against member states. Besides, there is another possibility for the use of force in international relations, administered by the United Nations Security Council.

The current situation, the issue of Responsibility to Protect is not created randomly. On the contrary, a cautious and gradual approach to this phenomenon in institutions like the UN Security Council, is the result of a deliberate move of governments that were happy to find a new excuse to interfere in the internal affairs of other countries through the opportunity created by America and the NATO in military intervention in Kosovo in 1999. At the same time, they were very concerned to experience such thing (NATO in military intervention) in the future. These concerns were emerged in a document adopted in the form of a resolution in 2005 by the General Assembly. This was a UN reform document, and the closest state to officially accepting the Responsibility to Protect. However, the final document has also references to the concept of Responsibility to Protect, but it strongly places it in the sole discretion of the UN Security Council.

In this sense, governments' pretext is completely taken for unilateral action against another government with the Responsibility to Protect. Accordingly, the option of resorting to the Responsibility to Protect for justifying (military) actions against Syria by the United States and its allies seem out of the question (Yengejeh, 1996, p. 12). Today, the interference in the affairs of countries is only about human rights violations and includes cases of war crimes, international crimes, genocide and the like. According to Chapter VII of the UN Charter, no organization is allowed to interfere in the internal jurisdiction of states, but today this emphasis is colorless.

### *3.3 Respecting the National Sovereignty of States*

National sovereignty is inseparable in accordance with the general principles of law, and every country has an independent sovereignty that no power and force is able to challenge it.

According to the national sovereignty, just the government of each country can decide for domestic affairs according to its interests. And these decisions are defined and binding for all citizens throughout the country.

But in the first place, the human rights cannot exceed international treaty obligations of a country and international peremptory norms (*Jus cogens*). And in the next place, that is the government that finally decides to implement the law, and even if the government is responsible for something, this does not damage to its national sovereignty. Accordingly, in any policy-making process on ethnic groups, state sovereignty should be safeguarded and any foreign interference or being influenced by international institutions should be avoided and only national interests and sovereignty should be considered.

On the other hand, the sovereignty of each country is reflected in the Constitution. (Naghizadeh, 2000, p. 145)

International human rights law should be helpful, and a goal in policy-making affairs about ethnicities. Human rights and international law are not dealing with separatism and challenging the sovereignty of states such as what is happening in Syria. But if binding international documents, and not some non-enforcement declarations are considered, human rights have put all its principles and rules in the light of public order and national sovereignty. Moreover, the human rights always speak of the individual's rights except special cases in which there is no sign of people's collective rights as ethnicity or minority groups, but that is the rights of persons belonging to minorities that are considered. Therefore, creating false ceilings that are not compatible with human rights law should be avoided in policy-makings. Policy-makings on ethnicities must lead to providing all Iranians including ethnic and religious minorities with civil rights and ensure and strengthen national unity. Any extreme in this way apart from inconsistency with the policy of the 11th government (of Iran) and slogan of moderation brings about irreversible damages to definitive vital national interests (Seifi, 1994, p. 237). Syria, like any other country that is recognized in international law, has a political independent sovereignty and what

harm this government were the involvement of neighboring states such as Saudi Arabia and Qatar which prevented formation of national unity to deal with those established a coalition government. And this is a clear violation of the principle of sovereignty in international law. What fueled the killing of Muslims and Shiites in Syria was the interference in the internal affairs of Syria and violating the territorial sovereignty of this country.

### *3.4 Self-determination of the People of Syria*

Syria's bloody crisis showed that the nation must give the final answer. Internal conflicts and the involvement of foreign elements and armed rebellions cannot be the idea of a great nation. The Syrian people are paying the price for past crimes, and they must determine their state comply with the principle of self-determination as defined in international law. Self-determination as a human right belonging to universal system of human rights, benefits the majority of the people of a state - nation. And the continuing impact of the people's will in the decision-making process of the country is the most important indicator for understanding the running or idling of this right within a political system. On the other hand, self-determination is not only related to the political dimension. Economic and social aspects of this right are also recognized in international documents and interpretations.

That is why the measures for respecting the right of self-determination require political, economic and social analysis of the corresponding country. What is going on in Syria is something related to self-determination and not something unlawful that does not fit under this right and its pillars (Parvin, 2012, p. 38).

## **4. The Nature of the Crimes Committed in Syria**

Accurate determination of crimes including the definition and the factors involved in their research not only facilitates affairs for the (judicial) actors such as prosecutor, but also guarantees the principle of "legality of offenses and punishments". It should be noted that this principle in international law does not necessarily benefit from the scrutiny stipulated in domestic laws, because in international law there is an ability to raise international criminal responsibility of the individual for violations of customary international law too (Beygzadeh, 1998, p. 69).

### **A. Crimes against Humanity**

The nature of human society is that in which different types of relationships arise and in the course of these relationships, sometimes the worst tyrannical relations are also shaped and, consequently, the most brutal behaviors are done against some people and the most painful sufferings are imposed upon them. In our organized human society, the right to appeal against the imposed pains and sufferings is accepted as a general principle of law and within the framework of legal and judicial mechanisms, investigation of claims and the adjudication of individuals who claim violation of rights or committing crimes against themselves is accepted as a fair solution. In fact, the main purpose of establishing the judiciary and all judicial mechanisms is to resolve disputes among individuals, maintaining social order, addressing litigation of the oppressed and ultimately justice proceedings. (Gerhard, 2008, p. 65) According to the Statute of the International Criminal Court, crimes against humanity are to do any of the following acts against a group of civilians, widespread or organized: Murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other forms of severe deprivation of physical liberty that violate the fundamental provisions of international law such as torture, rape, sexual slavery, forced prostitution, forced pregnancy, Forced sterilization, or any other sexual violence at the same level (Statute of the International Criminal Court) Certainly terrorist groups' actions against Shiites can be considered non-conforming with these types of crimes.

### **B. The Crimes of Genocide**

The purpose of the genocide is specified actions (Article 6) intended to destroy whole or part of a national, ethnic, racial or religious group. Genocide is not limited only to ethnic or group massacre and includes cases of severe injury to physical or psychological health of members of the group, imposing measures to prevent births within the members of the group, forcibly transferring children of the group to another group, etc. Crimes of genocide can occur both in wartime and in peacetime. (Beygzadeh, 1998, p. 70)

The beginning of Article 6 of the Statute of the International Criminal Court provides that, "The purpose of genocide in this statute is any of the following acts committed with intent to destroy whole or part of a national, ethnic, racial or religious group committed under the same title. It is noticeable that, this Article says "the intent to destroy, whole or ...". Consequently, only committing 5 examples stipulated in Article 6 is not enough for the realization of the Crime of Genocide, but the existence of "intent to destroy, whole or part of the national, ethnic, racial or religious group" must be proved as well. In other words, it must be proved that the accused have killed members of a certain religious groups "because of hostility to that particular group, and with the intent to destroy

them wholly or partially. (Poor Bafrani, 2011, p. 269)

#### B-1 The material element of genocide

Realization of genocide depends on manifesting the murderer's intent in destroying members of a group, severe damage to physical or psychological health of members of the group, the deliberate exposure of a group to poor living conditions leading to physical deterioration, taking measures to prevent reproductive of a group, and forcibly transferring children from one group to another. Article 2 of the Convention on the Prevention and Punishment of Genocide, Article 4 of Statute of the International Criminal Tribunal for the Former Yugoslavia, Article 2 of the Statute of the International Criminal Tribunal for Rwanda and Article 6 of the Statute of the International Criminal Court have referred to this matter. (Azizi, 2007, p. 17) These examples show that the realization of both physical and biological genocides, and realization of most genocides through positive criminal behavior (action) as the inadequacy of attempt to leave the action is in occurrence with some of its cases and examples.

Such that in the case of Kambanda (Prime Minister of Rwanda), the Court recognized him guilty of genocide for failing his duty to stop the massacre occurred, despite his awareness to it. (Kriangsak, 2003, p. 104).

#### B-2 The spiritual element of genocide

In all intentional crimes, whether absolute or conditional, domestic or international, with the exception of merely material crimes, committers' malice must be proved, in the sense that the subject's conscious will, is associated with the prohibited conduct and its outcomes (Habibzadeh, 2009, Pp. 114-115). Some lawyers believe that due to certainty of crime in the transnational organized crimes, the Court is needless of delving into the psychological elements. And manifesting malice does not prove the independence of such crimes from this element and it is maximally effective in shifting burden of proof and putting it on the shoulders of the perpetrator. Basically, the motivation of the perpetrators in the realization of the crime is not important, except that to be considered in the range of commutation or punishment and responsibility, but a crime like genocide are a different story and have mainly been demonstrated on the basis of particular motivation to reveal its elegant border with other crimes, especially the crimes against humanity. Thus, in mass killings, acts enumerated in five paragraphs of the Convention and the Statute of the Court must be, together with specific intent or rather the effort to destroy all or part of a national, ethnic, racial or religious group (Ardebili, 2007, p. 55).

Its psychological element is:

1. General malice that occurs after consciously committing the act known as a crime.
2. The specific malice which takes shape in the light of the victim's will in the denial of life.
3. Motivation that makes sense according to perpetrator's desire on the destruction of all or part of a specific group. (Sharifi, 2011, p. 81) So the most important basic difference between the crime of genocide and crime against humanity is a psychological element.

### 5. The Trial of Criminals in Syria

These days, ISIS's crimes are no secret. Crimes committed in Syria are marked and approved by the countries with human rights claim. The massacres in Syria prompted them to investigate the criminal activities of the group.

#### A. Need for countries to deal with the organizers of the terrorist acts in Syria

A coalition of more than 40 countries was created in dealing with terrorist groups in Iraq and Syria, and with respect to joining of foreign terrorists to ISIS and JAN through recruitment and direct financial support from them, six citizens of Saudi Arabia, Kuwait, Algeria and Iraq were boycotted and important measures such as blocking assets, travel ban and arms embargo for ISIS, JAN and al-Qaeda affiliates and their key sponsors was considered for them and mentioned in this resolution to execute these measures urgently. The UN Security Council has demanded all countries to cooperate with this international organization in dealing with the organizers and suppliers of terrorist acts in accordance with Resolution 1373 adopted in 2001, apply national measures in order to prevent flow of foreign terrorists to Iraq and Syria, prevent financing for terrorist activities and prevent from providing financial support for terrorist groups mentioned above. Moreover, this institution has asked other countries to strongly prevent from giving any financial assets or economic resources directly or indirectly to the terrorist group and prohibit their citizens from any aid or services in this area. <http://www.hvm.ir>.

#### B. Condemnation of any transaction with terrorist groups in Syria

About control of oil fields by ISIS and JAN and other Al Qaeda-linked groups in Security Council Resolution 2170 some cases are also stipulated. Besides, this resolution in addition to expressing concern about the use of aircraft vehicles to transport gold and other precious items and economic resources for sale on the international markets in areas controlled by ISIS has declared that violators' actions will lead to freezing their assets and that the Security Council has followed the content of two resolutions 2160 and 2161 targeted Taliban, al-Qaeda, Takfiris and JAN to curb terrorism and prevent from its extension to other countries in a legal and administrative framework of Resolution 2170 of the Security Council and has applied sanctions as a common tool In all three resolutions to control, weaken and limit the terrorist groups. It also played role in how to try countries sponsor of ISIS and involved in equipping this group and formation of them and consequently have international responsibility toward their international crimes. Security Council has announced that due to the transnational effects of ISISs crimes, countries involved in the process of forming and supporting these terrorist groups are certainly as violators of international law in accordance with international regulations in humanitarian affairs and human rights and genocide in Iraq and Syria. (Ibid)

#### C. The necessity of establishing the International Criminal Court on Syria

In accordance with Security Council resolutions 1269 and 1368,

terrorist and criminal acts of these groups are condemned by this Council due to the effects of such criminal acts by terrorist groups at the local, regional and international level; So, according to international documents, protocols and mentioned resolutions due to the underlying causes of violations of international responsibilities, there are enough pretexts for legal prosecution of these countries that support terrorist groups and the Syrian government can litigate against these countries that are supporters of terrorist groups at the International Criminal Court in The Hague. However, the issuance of Resolution 2170 by the Security Council has formed a global coalition against ISIS terrorist group on the international scene. But it is not enough to combat terrorism and maintain peace and formation of the International Criminal Court to prosecute the leaders of these terrorist groups and their supporters is a practical and necessary measure to maintain international peace and security in the world. (Ibid).

#### D. ISIS's crimes according to the Statute of the International Criminal Court

Statute of the International Criminal Court with the official name of the Rome Statute on the International Criminal Court has been set in the form of an introduction, 13 chapters and 128 articles. This Statute involves diverse and important issues that each of them has been set after many long discussions.

Rules about the establishment of the Court, jurisdiction and applicable laws general principles of criminal law, the structure and organization of the Court, investigation and prosecution of the accused, process of trial, punishments, appeal and retrial, judicial cooperations and international partnerships with the court, the execution of the Court's order explicitly (EBrahimi, 1998, p. 46)

Issues about the Court's jurisdiction raised in Statute, which is mainly composed of four parts;

A) Supplementary Jurisdiction of the national courts (ibid.)

B) Crimes under the Court's jurisdiction, in accordance with Paragraph 1 of Article 5 of the Statute of the crime of genocide, crimes against humanity, crimes of war and the crimes of aggression are located under the jurisdiction of the Court. (Ibid.)

C) The consent of the governments in the exercise of the Court's jurisdiction;

D) The Court's jurisdiction in relation to national authorities (Natural Persons) (ibid) This terrorist group's crimes are completely anticipated in Articles 5 & 9 in the Statute of the International Criminal Court. According to Article 7 of the Statute, this group has committed crimes against humanity and also war crimes under Article 8. Moreover, according to the general principles stipulated in Article 22 onwards of the Statute of the International Criminal Court, all assistance and cooperation with this organization is a crime (Www.zebhi.ir).

The best solution in place to prosecute these crimes in Court is that the UN Security Council to ask it. This leads to prosecution of countries that assisted and participated (in strengthening terrorist groups like ISIS, etc). For example, the Islamic Republic of Iran may raise a request at the UN Security Council and if 2 or 3 countries also support it, the Security Council can be one of plaintiffs of this case according to Statute of the International Criminal Court. As the Council has also raised the request of prosecution of "Omar al-Bashir" and the Court prosecuted him.

## 6. Conclusion

Syria, like any other country that is recognized in international laws enjoys independent political sovereignty.



Internal conflicts, the involvement of foreign elements and armed rebellions cannot be the dialogue of a great nation. According to the investigations and in accordance with Article 6 of the Statute of the International Criminal Court, crimes committed in Syria against the Shiites by terrorist and extremist groups such as ISIS and JAN and with the supports of Western and Arabic Countries are considered as genocide. Genocide implies on severe injury to physical or psychological health of members of the group, imposing adverse conditions of life, imposing measures to prevent births within the members of the group, forcibly transferring children belonged to a national, ethnical and religious group to another group, etc with the intent to destroy them wholly or partially. Since terrorist groups aim at destroying all Shiites of Syria, they are committing genocide.

Despite such crimes committed by these groups, not only the perpetrators are not prosecuted by international courts, but they are financially and militarily are equipped, and even UN resolutions issued are condemning the Alawitt Syrian government, and there is no reaction from the security Council in this regard to terrorist groups.

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## Notes

Note 1. After severe Abu Bakr al-Baghdadi's injury, leader of ISIS terrorist group, in Iraq's military campaign, "Abu Ala al-Afri" is his successor. "Al-Afri" has temporarily been appointed as the chief leader of the "ISIS". Al-Afri is born in Nineveh area.

Note 2. Abu Musab al-Zarqawi established a network in 2004 called "Jamaat Tawhid and Jihad" and took over his leadership and was killed in the bombing of US troops in Iraq.

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