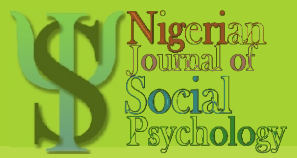


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INTERNATIONAL CRIMINAL COURT POSITION ON WAR CRIMES AND THE BIAFRAN EXAMPLE: REFLECTING ON THE IGBO POGROM AND EXAMINING THE AFRICAN LEADERS

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Abstract

This study is a reflection of International Criminal Court's position on global war crimes. It interrogates the inability of the ICC to declare the Igbo pogrom of 1966, as a genocide and war crime. Using historical analysis of secondary data, the paper argues that the failure of African Heads of States and Governments to recognize and discuss the massacre of the Igbo people in 1966, contributed to the failure to declare the pogrom genocide by International Criminal Court thus, set the ground for Nigeria-Biafra war to take place. This paper maintains that a resolution of the African leaders would have been taken at the Third Regular Assembly summit in Ethiopia in May, 1967, on the massacre and submitted to the United Nations Security Council for deliberations. The deliberation could have reenergized the International Criminal Tribunal to declare the massacre genocide, if brought up for debate at UNSC summit by African leaders. Rather, they stylishly avoided a mention of the genocide upon which the ICC lacked power of summon pursuant to a resolution adopted under chapter vii of the UN charter. The position of the paper is that both the IC T now ICC and African leaders were accomplice to the Biafra war.

Keywords: *Criminal Court, War Crimes, Biafra, Pogrom, African Leaders*

Introduction

The pathway to Nigeria's independence was dominated by ethnic suspicions. However, among all the colonized territories, no state has its independence prepared for disunity as Nigeria. Wary of the Igbo intelligentsias, the colonial government had at one time or the other, prepared other ethnic groups for Igbo hatred. Needless to say that at independence, the Igbo occupied prominent positions in which they have achieved feats. Their feats in military, education, civil service, and Foreign Service etc, made other ethnic groups suspicious of Igbo domination. For instance, Webster, Boahen and Tidy (1967), maintain that the political history of Nigeria between 1945 and 1966 (when the military took over control of the government of the country), was dominated by the problem of national unity. Powered by the divisive introduction of the regional assemblies by 1946 Governor Richards constitution, the concept of "three Nigerias" found its way in the political landscape of Nigeria, thus, heralding the rise of ethnic nationalism in the country.

Worthy of note is that, the unity advanced by Nigerian nationalists was battered by colonial policies that criss-cross the concept of three Nigerias. And as an Ijaw from Rivers area puts it: the partition of Nigeria is complete and the regional boundary lines have now been drawn so thick that the idea of one Nigeria, which many of us cherish has been completely destroyed

(Webster, Boahen and Tidy, 1967). This was the outcome of 1953 London conference and the resultant effects of the Kano riot, which made leaders of the regions, speak at different times but one common word. As Ahmadu Bello puts it, following the riots, all the people I have spoken to say “divide the country”. So the Kano riot left a deep wound on the emerging Nigerian state and its outcome, undoubtedly led to the massacre of 1966.

The massacre of the Igbo in 1966 has far-reaching implications on the structure of the system of government instituted by the colonial government. The structure is the quasi-federalism that did not deal with the regional sentiments. At the independence, the preference of Tafewa Balewa over Dr Nnamdi Azikiwe as Nigerian prime minister was to serve the colonial interest while the occupation of the Igbo in the various prominent positions was on other hand, a domination of the Igbo. Thus, the birth of Nigeria on October 1, 1960, was characterized by ethnic skirmishes, suspicions and internal wrangling.

Background to Nigeria-Biafra War

The January 15, 1966 coup of young Nigerian army officers led by Major Chukwuma Nzeogwu ousted the civilian government. The coup was erroneously dubbed the Igbo coup because it altered Nigeria’s domestic power relations in favour of the South. Nwankwo (2013) opines that the coup brought into power, a military ruler of Eastern Nigeria origin, Major-General J. T. U. Aguiyi Ironsi, who acted promptly against the coup plotters.

Among the number of factors responsible for the military take-over were corruption, nepotism, ethnic politics, prebendalism and mismanagement of the civilian politicians. One of the glaring aspects of the mismanagement was the inability to deal with the internal crisis bordering on Nigerian leadership. It is important to know that the succession crises that permeated Nigerian state before the military take-over include the 1962-63 census crisis, the 1963 Western Regional election, the intra-party conflict within the Action Group, and the 1964 Federal Elections. There were allegations that both the census and election figures were over-blotted and manipulated to the extent that their credibility as basis for socio-economic planning and legitimization of political authority in the country has been undermined.

However, opinions have shown that the principal actors in the January 1966 coup were undoubtedly motivated by the revolutionary idea of affecting major structures and several other changes within the political system and as well, the pattern of economic relations. Ademoyega (1981) maintains that the political crises prepared the conditions that gave the major coup makers the opportunity to strike. Nwankwo (2013) also opines that despite Major-General Aguiyi Ironsi successful efforts in disorganizing the leaders of January 1966 coup, he was unable to neither return the country to civilian rule nor adopt political and social programmes of the coup leaders.

Thus, his Unification Decree no 34 May 24, 1966 aimed at entrenching a central government was in some sections of the country, wrongly perceived and conceived to be in favour of a particular ethnic group. Therefore, it is appropriate to note that the ethnic politics which had already penetrated into the military in form of double standards and also in terms of recruitment and promotion of officers has far reaching implication to the country’s political unity. One of the consequences of this ugly practice led to the violent and bloody attacks on officers of Eastern Nigeria origin by soldiers from Northern region. The attacks assumed enormous proportions particularly as the military of the Northern origin had successfully executed a counter-coup of July 29, 1966. The counter-coup came with organized killings of the Igbo people who were resident in the Northern Nigeria. In fact, it is evident that one of the aims of

the counter-coup was to split the country and possibly effect the secession of the North from the rest of the country.

Though, the original aim presumably favoured a creation of more states with a central government but unfortunately, the coup makers realizing that secession would place the North under serious economic disadvantages and would deprive the north of all materials benefits and proceeds of the rich oil production from the south since the North would be land-locked. Therefore, they were widespread killings of Igbo soldiers and civilians population which contributed to the loss of confidence on the new military government by Igbo ethnic group and in extension insecurity on the lives of the people and property in the federation.

Among the factors that facilitated the outbreak of the war, was a break in relations between the former Eastern Nigerians and the Federal Government and the renege in the Aburi agreement between the federal government and the Biafran representatives by General Yakubu Gowon. Ojukwu (1969) holds that despite the attempt of Ghanaian Head of State, LT General Joseph Ankrah to mediate peace between the Federalists and the Eastern Nigerian Government, the two parties to the conflict agreed to regionalize the army by the “creation of area commands corresponding to existing regions and under the charge of their commanders”. This means that the two parties agree to a law of collective responsibility that vested all powers of the Federal Government to the Supreme Military Council with a unanimous concurrence in major decisions of the council. Implicitly and on the other hand, it reveals a de facto acceptance of confederacies based on decision of Aburi peace proposal.

The Weakness of Aburi Peace Agreement

Though, there is a consensus that the attempt at Aburi to placate the dichotomy between the Federal forces and the representatives of the dissenting Biafra fell far from the supposed expectations. In other words, the Aburi meeting was unnecessary given the already concluded war plans by Nigeria’s military council. In what could be considered an aberration to the peace agreement, the politics about the arms’ deal and their storage in the North and the argument that the country’s arms and ammunition as opined by Lt- Col. Gowon needed to be replaced and since the Nigeria’s Defence Industries Corporation could not produce these, the only choice was to order from overseas proved to the insincerity of Aburi proceedings. Most worrisome is that, how could Nigeria be importing arms and ammunition at the zenith of its disintegration, and why were the arms not decentralized to allay the fear of the Easterners? In fact, it could be deciphered that state government actors were hypocritical in their presentations of issues at Aburi based on the support of British government.

According to Ogbaa (2007), the May 29, 1966 countercoup that saw the killing of more than 10,000 Easterners was instigated by British personnel in Ahmadu Bello University, Zaria who charged Northern students to fight against what they termed Southern domination in key areas of national governance and development as in higher education, politics, and administration. According to him, the Northern students were made to understand that the absence of senior Northern political and administrative leaders-the friends of the British in Nigeria-who were killed in the first military coup would forever made the north dependent on the south. For this reasons, the British High Commissioner to Nigeria, Sir Francis Cumming-Bruce who had toured the North, spoke to the emirs and government officials on the subject of security and political situation in Nigeria and secretly promised the North of the British military support (in the forms of supplies, logistics and advisers) should the violent situation further degenerate into full scale war.

Against this background, it is right to explain the Aburi meeting in twofold of deceit and valour. While the former represents a decision already taken by the Northern leaders and their senior military officers for deliberations at Aburi, the latter emphasizes patriotism, sincerity and hope possessed by few elements of depraved Eastern representatives to get the country into a right track for good governance. More so, is the fact that in May 1966 post reprisal coup d'état, the North opted for a breakaway but some Western diplomats-the British and the Americans with some Nigeria permanent secretaries told them not to break up Nigeria. Ogbaa (2007) quotes the diplomats as telling them that everything the Northerners wanted they now have; so why leaving the country? Suffice it to say that issues such as this above together with other sentiments bore on the outcome of the first military coup, provided a flip for the on-ground secret meetings that dominated the proceedings at the meeting and guided the North in their deliberation at Aburi and later informed their reneged implementation of the Aburi resolutions.

To this end, the Aburi meeting was a formality to the already planned war by the Northern ethnic group despite the conscious and sincere disposition imbibed by Ghanaian Head of State-Lt-Col Joseph Ankrah and Eastern representatives during the deliberations. In other words, the Aburi summit could have averted the war as it later did not but the Northern insincerity to iron out the difference together with the British supports fanned the ember of the hatred that manifested in the civil war.

OAU and the African Leaders

The Nigeria's internal strife was a testament to the helplessness of Organization of African Unity, a body with a collective responsibility for promoting order, peace and security in the continent. Kioko (2003) holds that the Constitutive Act of the Union (the Act) provides for the right of the Union, in certain cases, to intervene in a member state and for the right of a member to request such intervention. In other words, Article IV of the Act provides for:

- (h) the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocides and crimes against humanity; and
- (j) the right of Member States to request intervention from the Union in order to restore peace and security.

By this, the Union has dual mandates and responsibilities to either proactively intervene or be invited to intervene in the Igbo pogrom in order to stop it. Despite this, one thing the Nigeria Military Government did was to internalize the crisis by incapacitating the Union that what was happening was Nigeria's internal affairs. On the one hand, the Nigerian Military Government regarded the declaration of Biafra as illegal and a rebellious act that threatened the corporate existence of Nigeria while on the other hand, broadcast warning to all foreign countries that any recognition of or military support for Biafra would amount to undue interference in the internal affairs and as well, the territorial integrity of Nigerian state. So, since the crisis was regarded as an internal affair by Nigerian State, its delegates began to canvass support against any deliberation of the crisis in the O.A.U. summit. Despite the spirited efforts of the Nigeria's delegations to truncate a discussion on the subject matter, the issue came up and was discussed with an overwhelming resolution adhering to the principle of respect for the sovereignty and territorial integrity of member states.

Another important problem that faced the African leaders in that summit was the independence of new African states. Majority of the African countries got independence within that period, and the fear that the spill-over effects would extend to some other countries if Biafra was supported to gain its independence, made almost, all the heads of state to tread with caution.

To that effect, no resolution on the state of insecurity was reached except that a delegation of 6 consultative missions of heads of state were sent to the head of Nigeria Federal Military Government to reassure him of the Assembly's desire and recognition of the territorial integrity, unity and peace of Nigeria.

In fact, the OAU General Assembly who could have discussed the massacre of the Igbo and transmit its resolution to the United Nations Security Council (UNSC) on Igbo genocide were buoyed by the fear of uncertainty. A resolution of the General Assembly of OAU would have empowered the UNSC to declare the Igbo genocide a war crime based on the Universal Declaration of Human Right.

Background History of the International Criminal Court

At the end of World War 1, the establishment of an International Tribunal that would judge political leaders accused of international terrorism was first proposed during the Paris Peace Conference in 1919. It was not until 1937 that the issue was discussed in Geneva under the auspices of the League of Nations, the result of which led to the establishment of permanent international court to try acts of international terrorism (Archibugi, Daniele, Pease and Alice 2018). Following the outbreak of the Second World War, the allied powers established two ad hoc tribunals to prosecute Axis leaders accused of war crimes in what Schabas William called 'Collective Responsibilities' (William, 2011). The collective responsibilities gave the international tribunal the sole right to try and prosecute individuals, countries or group of people that commit crimes against humanity. Despite the fact that the convention was signed by 13 countries, it was not ratified by any of them and was never entered into force (Galicki, 2016).

In the context of this, the ad hoc tribunals include the International Military Tribunal that sat and prosecuted German leaders in Nuremburg and the International Military Tribunal for the Far East that also tried and prosecuted Japanese leaders in Tokyo (Fichtelberg, 2009). In fact, it will suffice to say that the 1919 Paris Peace Agreement and the exit of League of Nations failed in both intents and purposes to comprehensively set up the International Criminal Court, but the idea was sowed and sustained up till 1948 when the United Nations General Assembly first recognized the need for a permanent international court to deal with all atrocities of the kind prosecuted after the World War II. On the request of the General Assembly, the International Law Commission drafted two statutes in early 1950s but these were laid aside by the outbreak of the Cold War thereby making the establishment of International Criminal Court unrealistic. As Dempsey (1998) puts it, the establishment of international criminal court was shelved and made it politically unrealistic due to the factors of the Cold War. From the foregoing however, it would be deciphered that the outbreak of the Cold War detained the inauguration of ICC which would have come earlier than the time but reaffirmed the hatred between the East and West. Though there is no doubt that the widespread suffering occasioned by the Yugoslavia's crisis and resulted to war crimes, crime against humanity and genocide in the guise of 'ethnic cleansing' commanded international attention. However, there was an effort to halt the widespread human suffering by the UN Security Council in establishing the ad hoc International Criminal Tribunal for the Former Yugoslavia, to hold individuals accountable for those atrocities and, by so doing deter similar crimes in the future.

The International Criminal Court and the Igbo Pogrom

One of the problems of ICC in dealing with the Igbo pogrom was the British interest in maintaining the unity of Nigeria for their selfish interest. Of a great interest is that, it was widely accepted by scholars that the Igbo massacre of 1966 was genocide. The massacre started

at the airport near the 5th Battalion's home city of Kano. America's Time Magazine (1966) reports that as a Lagos-bound jet had just arrived from London, and as the Kano passengers were escorted into the customs shed, a wild-eyed soldier stormed in, brandishing a rifle and demanding in a local Hausa dialect *'ina Nyamiri'* (where are the dammed Igbo)? The Igbo among the custom officials dropped their chalk and fled, only to be shot down in the main terminal by other soldiers. As the Hausa troops turned the airport into shambles, bayoneting the Igbo workers, gunning them down in the corridors and hauling them off the plane to be lined up for a shot in the airport, the international community did not invoke the charter of Universal Declaration of Human Right to protect the Igbo from ethnic cleansing. As Kofi Annan notes:

For nearly half century-almost as long as the United Nations has been in existence-the General Assembly has recognized the need to establish such a court to prosecute and punish persons responsible for crimes such as genocide. Many thought... that the horrors of the Second World War-the camps, the cruelty, the exterminations, the Holocaust-could never happen again. And yet they have. In Cambodia, in Bosnia, and Herzegovina, Rwanda our time-this decade even-has shown us that man's capacity for evil knows no limits. Genocide...is now a ward of our time, too, a heinous reality that calls for a historical response (Annan, 1998).

While the Igbo genocide was never heard in ICC, foreign countries that ought to have taken actions in order to prevent Igbo starvation rather took side with the Federal Government. Like Gourevitch (2010) wrote, the situation with the Igbo is akin to war in Vietnam and as Forsyth (2015) writes that the State Department was flooded with mail, as many as twenty-five thousand letters in a day about the situation in Biafra but it got to where President Lyndon Johnson told his Undersecretary of State, "just get those nigger babies off my TV set". The implication shows that neither the Super power countries nor the Federal Military Government of Nigeria was ready to take the genocide to ICC for deliberation as it appeared that each was comfortable with the killing despite their humanitarian aid. In fact, Gourevitch (2010) further asserts that by the war's end, in 1970, Washington's total expenditure on food aid for Biafra had been equivalent to 'about twenty minutes of the Apollo Eleven flight'. But Forsyth, who was an unapologetic partisan of the Biafran cause, reserved his deepest contempt for the British government, which supported Nigerian blockade. He further asserts that even as the Nigeria's representative to abortive peace talks declared, "Starvation is a legitimate weapon of war, and we have every intention of using it". In this context, the Labour Government in London dismissed the reports of Biafran starvation as enemy propaganda.

From 1968, the Biafran genocide took a new twist with the British Government highly involved in arms deal with the Federal Military Government of Nigeria. As opined by Waugh (1968), the year 1968 will be remembered as the one in which a British government, for the first time in its history, was prepared to condone the mass starvation to death of innocent civilians as a means of implementing one aspect of its peace foreign policy. In a relative development, Emekesiri (2012) notes that the British government letter to apologize to the Biafra is nothing but a sorrier story. According to him, for those seeking to understand Britain's role in the world, there is now an important side of the Biafran story to add-British complicity in the slaughter. The declassified files show that the then Wilson government backed the Nigerian government all the way, arming its aggression and apologizing for its actions. This is one of the sorrier stories in British foreign policy, through by no means unusual. Therefore, the philosophy

behind British or the ICC inability to declare the Igbo killings as genocide has to do with foreign interest. This interest manifested in the partiality and negligence taken by ICC which is saddled with the responsibilities of protecting, securing and promoting human freedom and their rights of existence.

The Pre-War Times' African Leaders

The situation in Nigeria between 1960 up to the time of Biafra war served as a litmus test to the solidarity and unity for the countries that just emerged, and were still emerging from the invidious shackles of colonialism. Ousman (2020) maintains that the survival of Nigeria as a nation had helped Africa. It provided the needed leadership in ending white minority rule in Zimbabwe, South Africa and Namibia as the rest of African countries privately supported the Nigerian Military Government while also, claiming to be neutral (Ousman, 2020). Before the outbreak of the Nigeria-Biafra war, many African leaders did not want to openly support the secession Biafra, rather, they were committed to pledge solidarity to the Federation of Nigeria.

According to Schabowska and Himmelstrand (1978), in analyzing the attitudes of African countries maintain that only countries which had not gone through acute ethnic conflicts of their own and which had a relatively high degree of internal integration took a pro-Biafran stand. Other countries however, sided with the Federation because their acknowledgement of Biafra's right to self-determination could have become a dangerous internal precedent. To this extent, they became wary of internal disunity in supporting the seceding Biafra could cause and chose to stay aloof. Achebe (2004) maintains that most African countries through the doctrine of the Organization of African Unity supported Nigerian Federation with the same reason espoused by the great powers. The reason was in keeping with the cooperate existence of Nigeria due to British interest and to dissuade Nigeria not to show support to the East in the East-West psychological war.

Despite this, Julius Nyerere was the first African head of state to recognize the sovereignty of Biafra. Others include Zambia's Kenneth Kaunda, Gabon's Omar Bongo and Ivory Coast's Houphouet-Boigny. The attitudes of these countries depict strong opposition to Igbo massacre and a re-invitation to the national conscience that could permit nation building or ethnic integration synonymously used in Anglo-Saxon political and sociological literature in dealing with the policies of the newly built states. There is no doubt that Biafra independence was a bad precedent to some African countries on the one hand but on the other hand, were the consequences or aftermath of the independence commiserate with the thousands of lives lost in the war? The truth is that African leaders should have put first the safety of the people being while seeking for another diplomatic solution to end the imbroglio.

Conclusion

The 1966 up to 70s killing of the Igbo people in Nigeria was engineered by the British and her agent-Sir Francis Cumming-Bruce, a British High Commissioner in Nigeria who had toured the Northern region to promise the emirs and Northern officials of the British solidarity and support to the North should the security situation and violent in the country degenerate to a full scale war. The war which was initially dubbed a police match took exactly 30 months to be prosecuted however, foreign interest and aid helped to prolong the war that saw the killing of more than 10, 000 Igbo people. The war was widely reported as genocide and ethnic cleansing however, there was no attempt from the major powers to either condemn or recognize the killing as genocide. While it is argued that the ICC supposed to try and prosecute the actors of the genocide, there was an argument that the attempt should have started from the OAU by African leaders.

As stated above, the discussion on Igbo pogrom in UNSC should have started with the African leaders. Ironically, each was afraid of the spill-over effect and the danger Biafran secession could portend hence, they left the killing of Igbo innocent civilians and soldiers unmentioned during and after the UNSC summit. By this, the ICC lacked the powers since there was no mention of it at UNSC which should have recommended for the declaration of Igbo massacre as genocide. In this context, the killing was perceived as an attempt to keep the unity of Nigeria and maintenance of national sovereignty. Therefore, it is believed that African leaders (except Julius Nyerere, Omar Bongo, Kenneth Kaunda and Houphouet-Boigny), British Government and the pro Nigeria's European countries' support to Military Government contributed to incapacitate the ICC power to declare the Igbo killings a genocide.

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