

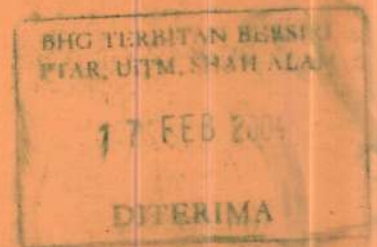
# Wahana AKADEMIK

ISSN :1675-2414



JURNAL ■ UNIVERSITI TEKNOLOGI MARA ■ CAWANGAN KEDAH ■ KAMPUS SUNGAI PETANI

Vol. 2 No. 1 ■ Jun 2003



- Addressing Metaphors and Symbols In An ESL Reading Comprehension Class.
- Corporate Financial Reporting : The Challenges In The New Millennium.
- Focussing On Teacher Talk In Motivating Students In The English Language Classroom At Universiti Teknologi MARA (UiTM).
- Genocide.
- How Can Three Dimensional Computing Inform The Industrial Design Process.
- Improving Mathematics Teaching And Learning.
- Kesedaran Pendidik Terhadap Elemen ISO 9000 — Kajian Awal Di Hulu Perak.
- Pembangunan Manusia Dari Perspektif Ekonomi Islam.
- Sistem Ekonomi Islam : Definisi, Falsafah Dan Masalah Asas Ekonomi.
- Ta'liq Agreement : A Proposal For Reformation.
- Extending Vocabulary The Fun Way.

*Hadiah*

**UiTM**  
**(KEDAH)**

ISSN 1675 — 2414





*Wahana*

**AKADEMIK**



JURNAL ■ UNIVERSITI TEKNOLOGI MARA ■ CAWANGAN KEDAH ■ KAMPUS SUNGAI PETANI

Universiti Teknologi MARA Cawangan Kedah  
Kampus Sungai Petani  
Peti Surat 187  
08400 Merbok  
KEDAH DARUL AMAN

# **WAHANA AKADEMIK**

*Jurnal*  
**Universiti Teknologi MARA Cawangan Kedah**  
**Kampus Sungai Petani**  
**Vol. 2, No. 1, Jun 2003**

## **JURNAL INI DITERBITKAN SEKALI DALAM SETAHUN**

Objektif utama jurnal ini diterbitkan ialah untuk menggalakkan kakitangan akademik menerbitkan penulisan ilmiah bagi menambah bahan bacaan yang meliputi ilmu dari pelbagai bidang. Selain itu, usaha ini dibuat agar budaya penulisan dapat dipupuk di kalangan kakitangan akademik sesuai dengan tarafnya sebagai sebuah universiti.

### **Diterbitkan oleh:**

Universiti Teknologi MARA Cawangan Kedah  
Kampus Sungai Petani  
Peti Surat 187  
08400 Merbok  
KEDAH DARUL AMAN

- © Hakcipta Terpelihara. Tidak dibenarkan mengeluarkan mana-mana bahagian, artikel, ilustrasi, isi kandungan jurnal ini dalam apa-apa juga bentuk dan dengan apa cara pun sama ada secara elektronik, fotokopi, mekanik, rakaman atau lain-lain tanpa mendapat kebenaran bertulis daripada penerbit.

**JAWATANKUASA JURNAL AKADEMIK  
UNIVERSITI TEKNOLOGI MARA CAWANGAN KEDAH  
KAMPUS SUNGAI PETANI**

**Penaung**

*Pengarah Kampus  
UiTM Cawangan Kedah  
Prof. Madya Dr. Zaliha Hj. Hussin*

**Penasihat**

*Timbalan Pengarah Kampus  
Bahagian Hal Ehwal Akademik  
Puan Zauyah Abd. Razak*

**Ketua Penyunting**

*Puan Wan Faizah Wan Abdullah*

**Penyunting**

*Puan Normala Ismail  
Puan Ho Chui Chui  
Puan Siti Salmah Abu Bakar  
Puan Noor Saliza Zainal  
Puan Maznah bt. Wan Omar  
Encik Francis Xavier a/l A.S. Rajoo  
Puan Angayar Kanni a/p Ramaiah  
Encil Abdul Latif Abdul Rahman*

**Pegawai Penerbitan**

*Puan Azizah Khasim*

**Editor Kerja**

*Puan Azizah Ismail*

## **KANDUNGAN**

Dari Ketua Penyunting	i
Addressing Metaphors and Symbols In An ESL Reading Comprehension Class	1
<i>Mak Kem Seng</i>	
Corporate Financial Reporting: The Challenges In The New Millennium	11
<i>Norasmila Awang</i> <i>Roshima Said</i>	
Focussing On Teacher Talk In Motivating Students In The English Language Classroom At Universiti Teknologi MARA (UiTM)	19
<i>Alauyah Johari</i>	
Genocide	31
<i>Mohamad Sabri Yusoh</i>	
How Can Three Dimensional Computing Inform The Industrial Design Process	41
<i>Shahriman Zainal Abidin</i>	
Improving Mathematics Teaching And Learning	48
<i>Wan Zulkipli Wan Salleh</i> <i>Wan Siti Esah Che Hussain</i>	
Kesedaran Pendidik Terhadap Elemen ISO 9000 – Kajian Awal Di Hulu Perak	56
<i>Sofiah Molek Lope Aman Shah</i> <i>Mohd Razif Ibrahim</i>	

Pembangunan Manusia Dari Perspektif Ekonomi Islam	67
<i>Noor Saliza Zainal</i>	
Sistem Ekonomi Islam: Definisi, Falsafah Dan Masalah Asas Ekonomi	74
<i>Normala Ismail</i>	
Ta'liq Agreement: A Proposal For Reformation	85
<i>Nor Fadzlina Nawi</i>	
Extending Vocabulary The Fun Way	99
<i>Ho Chui Chui</i>	

## **DARIPADA KETUA PENYUNTING**

Assalamualaikum Warahmatullahi Wabarakatuh

Y.A.B. Dato' Seri Setia Di Raja Dato' Seri Syed Razak Syed Zain, Menteri Besar Kedah telah melakukan lawatan rasmi ke UiTM Cawangan Kedah pada 3 Julai 2003 yang lalu. Sempena lawatan beliau, Pengarah Kampus telah memberi taklimat mengenai kemajuan dan sumbangan UiTM Cawangan Kedah melalui penyelidikan dan perundingan terhadap negara khususnya negeri Kedah. Kata alu-aluan Y. Bhg. Dato' Naib Canselor UiTM dalam buku "UiTM Kedah Sepintas Lalu" sempena lawatan Menteri Besar Kedah telah menekankan peranan UiTM terhadap negara terutamanya dalam bidang penyelidikan dan perundingan untuk membantu kerajaan negeri bagi memajukan negeri masing-masing. Oleh itu, satu saluran perlu diwujudkan bagi mendokumentasikan hasil penyelidikan dan perundingan supaya ianya boleh dijadikan sumber rujukan oleh semua pihak yang berminat.

Justeru itu, UiTM Kedah telah menerbitkan jurnal akademik bertajuk 'Wahana Akademik' untuk menampung keperluan penerbitan tersebut. Untuk itu, Jawatankuasa Jurnal Akademik, Universiti Teknologi MARA Cawangan Kedah amat mengalu-alukan hasil penulisan akademik samaada hasil penyelidikan dan perundingan ataupun analisa '*literature*' untuk dimuatkan dalam penerbitannya.

**Wan Faizah Wan Abdullah**

# GENOCIDE

MOHAMAD SABRI YUSOH

*Pensyarah Pentadbiran & Undang-Undang  
Universiti Teknologi MARA, Cawangan Kedah  
Kampus Sungai Petani  
E-mail : [msabri449@kedah.uitm.edu.my](mailto:msabri449@kedah.uitm.edu.my)*

## ABSTRACT

*This paper contains an imperical study on genocide, quest for a proper definition, historical events and status quo at international level and also the current legal provisions and practices both at national and international arena. It also sought to give possible alternation solution to the prevailing issues.*

**Keyword** : **Genocide.**

## DEFINITION

The term 'genocide' comes from the Greek word 'genos' which means race or tribe and the latin word 'cide' which means killing. Thus, the word 'genocide' brought about a grief and grim story of a destruction of society or an ethnic group.

Raphael Lemkin in his title 'Axis Rule in occupied Europe' explained the concept of genocide. He elaborated that genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended, rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be the disintegration of the political and social institutions, of cultures, language, national feelings, religion, the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the action involved are directed against individuals, not in their individual capacity, but as members of the national group.

When the Convention on the Prevention and Punishment of the crime of Genocide enter into force on the 12th January 1951, its Article II thus defined genocide by reference to specific acts. It read as follows:

"In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;



- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measure~ intended to prevent births within the group;
- e) Forcibly transferring children of the group to another group.” It should be noted that the definition of genocide by reference to specific acts listed above are a reflection of the inhumane destruction inflicted by the Nazi and fascist regime during the Second world War”.

Kuper, although critical of the convention's definition particularly because of its exclusion of political and social group, believes that “it provides a workable definitional core for interdisciplinary analysis and application”. He also credits the convention as having possibilities for preventive actions.<sup>1</sup>

Fein is also critical of the convention's definition and attempts to broaden it so as to include “all nonviolent collectivities who have or may become victim”.<sup>2</sup>

Fein defines genocide as “sustained purposeful action by a perpetrator to physically destroy a collectivity directly or through interdiction of the biological and social reproduction of group members, sustained regardless of the surrender or lack of threat offered by the victim”.<sup>3</sup>

Both *Fein* and Kuper consider the convention definition as a fundamentally working one. However, it would be a different case if both of them could foresee the problem faced by the international community nowadays in dealing with new calculus employed by the perpetrator of genocide crime. To fit such act or acts into the convention definition is not an easy thing to do. It is always open to debate.

To illustrate this uneasiness, let us look at the statement given by the defense minister of Paraguay in answering charges of genocide against the Ache Indians. He argued that there was no intention to destroy them. Although there are victim and victimizer, there is not a third element necessary to establish the crime of genocide, which is ‘intent’. Therefore, as there is no ‘intent’, one cannot speak of ‘genocide’.

The statement given by the permanent representative of Brazil to the United Nation *in* reply to the charges of genocide against Indians *in* the Amazon River region of Brazil also illustrates the complication in determining the conditions under which intention can be imputed. Thus, it is not always easy to fit such act or acts as within the definition of the Genocide Convention. Frank Chalk and Israel Charny viewed the same definition as ‘deeply flawed’. Chalk in his study on the History and Sociology of Genocide, cites the exclusion of political group and social class as one of the main reasons for rendering the Convention definition of little use to scholar.<sup>4</sup> Chalk believes that this exclusion led the International Commission of Jurist to exonerate both Macias in Equatorial Guinea and the Pakistani leadership *in* Bangladesh (East Pakistan at that time) from charges of genocidal killing.

Chalk define genocide as “a form of one sided mass killing in which state or other authority intends to destroy a group, as that group and membership in it are defined by the perpetrator”.

It has become apparently acceptable fact now that the definition of genocide in the Convention on Prevention and Punishment of the crime of Genocide is not practically conclusive. In view of the many problems faced in fitting the new mechanic employed by the perpetrator of the crime within the given definition led state to urge for the urgent need to have a redefinition of the term 'genocide' to bring it a new value in the prevention and punishment of the crime.

The statement given by the permanent representative of Brazil to the United Nation in reply to the charges of genocide against Indians in the Amazon River region of Brazil also illustrates the complication in determining the conditions under which intention can be imputed. Thus, it is not always easy to fit such act or acts as within the definition of the Genocide Convention.

### **Historical events that gave rise to the notion of International Crime of Genocide.**

The term genocide has a very long and old history. It is a method often employed by the Spanish, Dutch, Portuguese and British in their pursuit to colonize a newly discovered world especially those parcels of lands inhabited by the indigenous people. In the sixteenth century, the Spanish for example had enslave, torture, and massacre thousands of indigenous people in the pretext to maintain civilize law and order in this newly discovered land.<sup>5</sup>

Some politician including the permanent representative of Brazil to the United Nation had argued that the acts committed against the indigenous population could not be characterized as a crime of genocide, since the perpetrator never eliminated the indigenous people as an ethnic or cultural group. They argued that there was lacking the special malice or specific intent necessary to characterize the occurrence of the crime of genocide. They said that the acts in question were committed for exclusively economic reason, i.e. the perpetrators having acted solely to take possession of the lands of the victim.<sup>6</sup>

The word 'genocide' was coined first by Raphael Lemkin. The notion of genocide as an international crime was initially drawn to the international attention during the fifth International Conference for the Unification of Criminal Law in Madrid in 1933. There, Lemkin, one of the international lawyer and a jurist involve, submitted a proposal “to declare the destruction of racial, religious or social collectivities a crime under the law of nation”.<sup>7</sup> This idea was developed further in his seminal work, 'Axis Rule in Occupied Europe'.<sup>8</sup>

The attitude of the international community on the issue of genocide as an international crime take a new turn during the Second World War when the Nazi and fascist regime torture and massacre millions of Jews in Europe, while the Japanese army resorting to the same methods in Asia.

After the end of the Second World War and after the United Nation Charter was established, the General Assembly in its resolution 96(1) dated 11th December 1946 declared that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world.

The UN General Assembly later on the 9th December 1948 in resolution 260A(III) approved and adopted the Convention on the Prevention and Punishment of the Crime of Genocide. This Genocide Convention is a response to the attempt by Nazi regime to eliminate the European Jews during the Second World War.

The Genocide Convention, which consists of nineteen articles, has two major purposes. The first is to codify international law regarding the crime of genocide. The second is to require the parties to the Convention to deter acts of genocide and punish, pursuant to their municipal laws, individual who commit genocide.

After the adoption of the Convention on the Prevention and Punishment of the crime of Genocide by the UN General Assembly, the troubling reminder of genocide acts executed during the Second World War is still predominant. This was evident in the massacres committed by the Pol Pot Khmer Rouge regime in Cambodia in the late 1970's. There, the Khmer Rouge exterminated Buddhist religious group. Out of a total 2,680 Buddhist monks from eight of Cambodia's monasteries, only 70 monks were found to survived in 1979. There is also mass persecution of three ethnic group; where the Vietnamese community were exterminated in whole, the Chinese community were reduced by half by 1979, and the Muslim Chams were reduced by 36 percent, from 250,000 to 160,000 by 1979.<sup>9</sup> The genocidal killing did not stop in Cambodia. There are many other areas throughout history, which shows that the crime of genocide is still very persistent.

To sum up, the massacres committed by Idi Amin in Uganda during his rule from 1971 to 1979; the Tutsi massacre of the Hutu in Barundi in the 1960s and 1970s; the Iraqi massacre of the Kurds in the late 1980s, and the catastrophic massacre of Muslims in Bosnia-Herzegovina by the Serbs are evidence of the need to redefine genocide and evidence of the need to have a specialize and permanent international enforcement mechanism. To deny such a need would mean to deny those massacred and their love ones justice and peace.

### **Practical analysis of the Article I through VIII of The Genocide Convention**

It is important to analyze Article I to Article VIII because it defines the acts which constitute genocide and the responsibilities of each party assumes to prevent and punish the perpetrator of genocide. Article I through VIII represent an integral part of the Genocide Convention and the analysis of it must be appreciated.

Article I read as follows:

"The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish."

This article has two purposes. First, the adoption of this article removes all doubt as to whether genocide was a crime under customary international law. Second, is

to eliminate question about the status of acts committed in peacetime. When the Nuremberg Tribunal had ruled that the persecution of the Jews in Germany before 1st of September 1939 was not punishable under the Charter, some interpreted this ruling to mean that genocide could only be committed in wartime. To ensure that all acts of genocide would come within the Convention's prohibition, explicit reference to acts in peacetime as well as in wartime was included.

Article II is the crux of the Convention as it defines the crime of genocide though by reference to specific acts and not in any general terms.

Article II listed five acts which would constitute genocide if committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group; as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group,
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part:
- d) Imposing measures intended to prevent births within the group

Any of these five acts together or severally need to be proven to establish the crime of genocide.

Kuper had categorized the specific acts into three categories. The first three acts relates to physical extermination. The fourth act relate to biological extermination while the fifth act relate to cultural genocide.

The precise listing of genocide acts would certainly assist a court in deriving at a just assessment of guilt.

The definition also requires the notion of intent to destroy in whole or in part a national, ethnical or religious group. This notion of intent is difficult to prove as evident from the failure of the International Tribunal for the Prosecution of Person Responsible for Serious Violation of International Humanitarian Law Committed In The Territory of The Former Yugoslavia.

In another example, the Paraguay Defense Minister, in answer to charges of genocide against the Ache Indians replied that:

“Although there are victim and victimizer, there is not a third element necessary to establish the crime of genocide, that is ‘intent’. Therefore, as there is no ‘intent’, one cannot speak of ‘genocide’.”

Article III listed another five acts punishable under the Genocide Convention. One is the actual commission of genocide itself, and the rest are on conspiracies, attempts to commit genocide, incitement to commit genocide and complicity to genocide. Out of the five acts, incitement to commit genocide is the most difficult to

prove. Here, the incitement can be oral or in written form. However, Article III requires it to be direct. It means that the words used must actually advocate the commission of genocide. The incitement must also be public i.e. it must be addressed to a substantial number of people.

Article IV provides for punishment of person committing genocide or any other acts enumerated in Article III irrespective whether they are constitutional rulers, public officers or private individuals. This article IV enable the parties to the Genocide Convention to punish a leader of a government, a person who serves the government or private individual not connected with any government. The only party exempted from punishment is the head of State or Constitutional monarchies, as under their respective national institution they are above the court of law of their home country. Besides this, there is no other defense based on status available to any other individual by the term of the convention. Note also that the Convention do not recognize order from the military superior as a defense from prosecution, though in time of war.

Article V is another important provision, imposing international obligation on State parties to the Genocide Convention. This Article V requires contracting parties to implement legislation in accordance with their respective Constitution to give effect to the provisions of the present Convention, and in particular to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in Article III.

From this Article V, it is clear that the Genocide Convention is not self- executing. This means that the parties accused of genocide are to be judged according to the domestic law of the place where they are prosecuted. This does to certain extent create problem *in* term of prosecution and punishment as state tend to politicize such *issues* in their own self-interest, and will not be so willing to prosecute those individuals which were members of their own government.

Article VI is on trial of persons charged with genocide. Article VI provides that: "Persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international panel tribunal as may have jurisdiction with respect to those contracting parties which shall have accepted its jurisdiction." The first part of Article VI permit the state where the crime took place to bring before its domestic court of an individual accuses of genocide. However, that is not the only place where the trial may be had. International practice also allows the states of which the individual is a national or the state against whose nationals the crime was committed to exercise jurisdiction.

Where genocide are perpetrated within internal boundary, it seem that the effect of these procedures as laid down in the first part of Article VI is not at all utopia. This is because under the present procedures, in most cases of domestic genocide, governments would be required to prosecute themselves since most genocide are committed by or with the complicity of governments. In actual practice, normally the mass murderers are somehow protected by their government .for the sake of their self-interest, except in those cases where governments have been overthrown.

Where genocide are perpetrated in the course of international warfare, the state in whose territory the crime was committed has jurisdiction and can apply to the offending government for extradition of the perpetrator. If the perpetrators have found refuge in other states, the application for extradition can be made to the government of those states. In practice, this is not just a smooth sailing. It may involve political compromise.

The second part of Article VI provides that a competent international panel may try individuals' accused of genocide, but here, only so long those individuals are under the control of a party, which has agreed to the jurisdiction of the tribunal. This has been proven difficult and made more difficult by the fact that Article VI does not require any contracting party to agree to the jurisdiction of such a tribunal. It is entirely at the discretion of those contracting state party.

Article VII of the Genocide is on extradition. Inter alia the first part provides that "Genocide and other acts enumerated in Article III shall not be considered as a political crimes for purpose of extradition",

This is significant, as it would generally deter states from providing sanctuary to those mass murderers under the pretext of providing political asylum. It does also prevent a party from denying an extradition on the ground that the crime is political.

The second part or Article VIII provides that request between parties for extradition of individuals accused of acts of genocide is to be governed by the municipal laws of the requested state. This second part reads:

"The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaty in force."

This Article VII is not itself an extradition treaty. It mainly serves as a declaration declaring the willingness of the contracting party to grant extradition of individuals involve in the genocidal crime and in those acts enumerated in Article III in accordance with their municipal laws and treaty in force.

Over the years, under the auspices of this Article VIII there are a number of International Tribunals that had been set up to prosecute perpetrators of the crime of genocide. These include the International Tribunal for the prosecution of persons responsible for serious violation of international humanitarian law committed in the territory of the former Yugoslavia since 1991 and the International Tribunal for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in Rwanda.

Though the creation of such a tribunal is a matter wholly separate from the Convention, it is very important to ensure the success of these International Tribunals since a failure would mean the failure of the international community as a whole in seeing that the Genocide Convention and justice is upheld. Their successes are also important in terms of deterrent and serve as a warning to others that any perpetrators of genocidal crime would certainly expect a harsh reaction of the International Community and thus prosecution. Fear of harsh

punishment may act as a form of deterrent for the leaders, and with greater impact on subordinates especially since a plea of superior order is not an acceptable defense.

**The problems of enforcement on matters affecting human rights and genocide within the United Nation.**

Matters affecting human rights and genocide enjoy a greatest regard in the international arena and it is often always defended against any gross violation in the rhetoric of human rights. However, the very same rhetoric serves also to frustrate attempt to devise effective procedures for protection against violation of human rights.<sup>10</sup>

Apart from this impediment, the problem of enforcement is often worsening by the difficulty in assessing the sincerity and strength of the commitment to human rights policies. This dilemma can be observed from the Cambodia human rights issue. After the Pol Pot Government which had imposed the most brutal and murderous regime was overthrown in 1979 by the invasion of Vietnamese troop, the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities had reported to the Human Rights Commission that the situation under the Pol Pot regime constitute "nothing less than auto-genocide" and that the events described in the documents were "the most serious that had occurred anywhere in the world since nazism". The Government of Australia, Canada, Norway, United Kingdom, and the United States were quick in denouncing the Pol Pot regime before the Human Rights commission and in urging the Commission to initiate action. Yet in the UN General Assembly in September 1979, these very same governments, with the exception of Norway, voted for continued assignment of the Cambodian seat to the ousted government.

By continuing to recognize the Pol Pot regime, these governments were in fact affirming the very mass murder on the most lavish scale; a thorough disreputable choice ever made.

At present time, the major impediment to the procedures for the implementation of human rights and accordingly genocide punishment and prevention are the confrontation in the United Nation between a State rights orientation and a Liberal orientation.

Under a State rights orientation, the state is viewed as the source of human rights. There are no entitlement to these rights prior to, and independent of the state. The state does not recognize rights; it grants them. From this orientation, the protection of human rights is viewed as essentially a function of the state. In the internal affairs of a state, human rights is regarded as the exclusive concern of the state itself.

Most of the Third World and developing countries are likely to accommodate this state rights orientation as the right approach in dealing with" human rights issues. These states are also more likely to interpret the raising of such human rights issues as a pretext for interference in the domestic affairs of sovereign states.

Most of the developed countries' approaches to human rights issues are more liberal orientation. Under this approach, human rights are conceived as inherent in the very nature of man, not tied to citizenship in a particular society. This individual rights, served as a protection against the tyranny of the state and this remain a central element in the liberal orientation. Under the liberal orientation, non-governmental organization and individual petitions are appreciated and accepted as a source of information and as a means for activating United Nation consideration of human rights violations.

The tussle between these two orientations had resulted in a political compromise, which in the end frustrate all the efforts to promote human rights and serve as a mole in the enforcement, punishment and prevention of crime against genocide and thus humanity.

Lack of strong commitment by key states within the United Nation is another reason for the failure to implement, punish and prevent genocidal crime The United States for example, which initially played an important role in the human rights program of the United Nations and is currently pressing for effective implem entation, signed but failed to ratify, such key covenants and conventions such as the Convention on Economic, Social and Cultural Rights, Convention on Civil and Political Rights, Convention on the Prevention and Punishment of the crime of Genocide, and Convention on the elimination of all forms of racial discrimination.

When the Genocide Convention was recommended to the US President in 1949, the Senate main objections were said to be on constitutional ground. The true fact underlying these objections was a sentiment that ratification of the conventions and covenants would expose the US to external interference in its domestic affairs.<sup>11</sup> It is not until November 4, 1988 that Ronald Reagan signed the Genocide Convention Implementation Act enabling the United States to become the 98th party to the Convention on the Prevention and Punishment of the Crime of Genocide.

The other problem faces in the implementation of human rights is in the area of right of individual petition. This right of individual petition is very important, given the fact that the state itself is usually the main violator of human rights and cannot be entrusted with their protection. Many western states had campaigned for the inclusion of the rights of individual petition in the Convention on Civil and Political Rights, but it failed to win the necessary support.

As a compromise solution, provision was made in an optional protocol for state to recognize the competence of the Human Rights Committee to receive and consider petition from individuals. Unfortunately, since its adoption in December 1966, only nine of the western industrialized states i.e. the Scandinavian countries, Canada, Italy, Netherlands and Portugal have ratified the protocol; and by May 1993 another 29 states ratified it which most of them are Caribbean and Latin American States and a few African states.

At present position, the UN is not responsible for punishment of the crime of genocide. This may be the result of the Genocide Convention itself. The emphasis



of the Genocide Convention is on punishment of the crime along the lines of municipal criminal law. Given the fact that governments generally commit most genocide, punishment in order to be effective would require supranational institutions and procedures. This requirement can be evidently seen from the experience of Armenians genocide case in 1919 and 1920 where the Turkish government tried some of those involved in the mass killing of Armenians. There, the accused, which include leaders of the former government, were found guilty in absentia. However, here the Turkish municipal court failed to charge them under the term 'genocide' though there are evidence to support the charge.

### **Alternative Solutions.**

Though difficulties exist in finding a blanket solution to the prevailing problems in the area of genocide, the international community together with the United Nations must not end its quest of practical alternative solutions.

Some of these problems can be tackled on a case-by-case basis, which may include consideration on:

- Developing more vigorous and pro-active preventive measures, strategies, plans or programs for the promotion of tolerance between the different races and ethnic groups.
- Imposing a more severe punishment on the wrongdoers.
- Economic sanctions by the international communities.
- Recognizing the NGOs, both at national and international levels as advocates and legal representatives of those suffering at the International Genocide Tribunal, International Genocide Convention and the United Nations; and
- Providing monetary, social and economic incentives, technical support and expertise to nations, races and ethnic groups in exchange for greater tolerance and understanding among the various races and ethnic groups.

### **NOTES**

<sup>1</sup> Leo Kuper, "Theoretical Issues relating to Genocide: Uses and Abuses" University of Pennsylvania Press, 1994.

<sup>2</sup> Fein, "Genocide, Terror, Life Integrity and War Crimes" University of Pennsylvania Press, 1994.

<sup>3</sup> Fein in her Introduction to Genocide Watch.

<sup>4</sup> Frank Chalk, "Redefining Genocide", University of Pennsylvania Press, 1994.

<sup>5</sup> Francisco de Victoria, "On the Indians, or On the Law of War Made by the Spaniards on the Barbarians" quoted by S. James Anaya in his title 'Indigenous People in International Law', Oxford University Press, New York, 1996.

<sup>6</sup> see The United Nation, H.R. Communication no.478, 29 September 1969.

<sup>7</sup> Raphael Lemkin, "Genocide as a crime under International Law", AJIL 41 (1947),146.

<sup>8</sup> It was published in 1944 under the auspices of Carnegie Endowment for International Peace.

<sup>9</sup> see Ben Kiernan's chapter, "The Cambodian Genocide: Issues and Responses in Genocide: Conceptual and Historical Dimension", University of Pennsylvania Press, 1994.

<sup>10</sup> Kuper delivered these views in 'The Prevention of Genocide', 1985.

<sup>11</sup> Richard Lilich, Ed, U.S. Ratification of the Human Rights Treaties, 1981.