

T.C.
ATILIM UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCE
DEPARTMENT OF INTERNATIONAL RELATIONS
INTERNATIONAL RELATIONS GRADUATE PROGRAM

**THE RELOCATION OF THE OTTOMAN ARMENIANS IN 1915 AND
INTERNATIONAL LAW: QUESTIONING THE INCIDENTS IN THE
LEGAL SPHERE**

Master Thesis

Seher Balıkçioğlu

ANKARA-2016

T.C.
ATILIM UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
DEPARTMENT OF INTERNATIONAL RELATIONS
INTERNATIONAL RELATIONS GRADUATE PROGRAM

**THE RELOCATION OF THE OTTOMAN ARMENIANS IN 1915 AND
INTERNATIONAL LAW: QUESTIONING THE INCIDENTS IN THE
LEGAL SPHERE**

Master Thesis

Seher Balıkcıoğlu

Thesis Supervisor

Prof. Dr. Hasan Ünal

ANKARA-2016
(cannot be fotocopied)

ACCEPTION AND APPROVAL

This is to certify that this thesis titled “ The Relocation of The Ottoman Armenians in 1915 And International Law: Questioning the Incidents in the Legal Sphere” meets with the commitee’s approval unanimously as “Master’s Thesis” in the field of “International Relations” following the successful defense of the thesis conducted in “February 11, 2016”.



Prof.Dr. Hasan Ünal/Supervisor



Prof.Dr.Kemal Çiçek/Member



Doç. Dr. Bestami Bilgiç/Member

ETHICS DECLARATION

I hereby declare that;

- I prepared this thesis in accordance with Atılım University Graduate School of Social Sciences Thesis Writing Directive,
- I prepared this thesis within the framework of academic and ethics rules,
- I presented all information, documents, evaluations and findings in accordance with scientific ethical and moral principles,
- I cited all sources to which I made reference in my thesis,
- I The work of art in this thesis is original,

I hereby acknowledge all possible loss of rights in case of a contrary circumstance. (in case of any circumstance contradicting with my declaration)

Name,Last Name:Seher Balıkçioğlu

Date, Signature:
11/02/2016



ÖZ

Balıkçioğlu, Seher. Osmanlı Ermenilerinin 1915'teki Tehciri ve Uluslararası Hukuk: Hadiselerin Yasal Çerçeve de Sorgulanması, Yüksek Lisans Tezi, Ankara,2016.

Bu tez temel olarak Osmanlı Ermenilerinin 1915'de Tehcir edilmesini uluslararası hukuk çerçevesinde analiz ederek, soykırım iddialarının geçerliliğini sorgulamaktadır. Bu bağlamda, ilgili uluslararası hukuki belgeler özellikle 1948 tarihli Soykırım Sözleşmesi incelenmiştir.

Tarihi gerçekleri saptırarak hukuki olarak farklı sonuçlara ulaşılabileceği Ermenilerin Tehciri konusunda olduğu gibi mümkündür. Bundan dolayı, burada açıkça ifade edilmeli ki, bu çalışmanın konusunu tarihi gerçekleri inceleyerek Türk ve Ermeni taraflarının anlatıları arasındaki farklılığı ortaya koymak oluşturmamakta olup, hukuki analizler Türk tarafının tarihi anlatıları temel alınarak yapılmıştır ki bu anlatılar saygın Türk ve Batılı bilim adamlarınca da desteklenmektedir.

Türkiye'yi Ermenilere karşı yargılama yapılmaksızın soykırım suçu işlemekle suçlamak ya da 1915 Tehciri'ni soykırım olarak nitelendirmek uluslararası hukukun ihlalidir. 1948 tarihli Soykırım Sözleşmesi'ne göre ilgili mahkemeler soykırım suçunun yargılanması için yetkili kılınmıştır. Tarihçilerin, politikacıların, gazetecilerin, hukukçuların bile Tehcirin soykırım olarak nitelendirilmesi ile ilgili kesin hüküm verme yetkileri yoktur, çünkü terim hukuki nitelik taşımaktadır.

Geriye yürümezlik ilkesi gereğince Soykırım Sözleşmesi'nin sözleşmenin kabulünden önce gerçekleşen hadiselerle uygulanması mümkün olmamakla birlikte, bu tez sözleşme uygulansaydı Tehcirin soykırım suçunu oluşturmayacağını savunmaktadır. Ayrıca, şu anki uluslararası ceza hukuku kapsamında Tehcir insanlığa karşı suç ya da savaş suçu dahi teşkil etmemektedir. Çünkü, askeri zorunluluklar Osmanlı Devletini tehcir kararını almaya zorlamıştır.

Anahtar Kelimeler: Osmanlı Ermenilerinin Tehciri, Uluslararası Hukuk, Soykırım Suçu, Osmanlı İmparatorluğu, Uluslararası Ceza Hukuku

ABSTRACT

Balıkçioğlu, Seher. The Relocation of the Ottoman Armenians in 1915 and International Law: Questioning the Incidents in the Legal Sphere, Master Thesis, Ankara, 2016.

This dissertation primarily analyses the relocation of the Armenian subjects of the Ottoman Empire, which mainly took place in 1915, in the sphere of international law in order to investigate the validity of the genocide allegations. In this context, all the relevant international legal instruments, in particular, the genocide convention of 1948, are examined.

It is obvious that by distorting the historical facts, one can achieve an exclusively different sequel in the legal dimension, as in the case of the relocation of Armenians. Thus, it has to be explicitly expressed here that it is not in the scope of this thesis to scrutinize the historical facts for to illustrate the asymmetries between the narratives of both the Armenian and the Turkish sides. In this respect, the legal analyses are based on the Turkish side of the story, as it is supported by many prominent Turkish as well as Western scholars.

Accusing Turkey of committing genocide against the Armenians or qualifying the relocation as genocide, even without a trail, is merely a violation of international law. Pursuant to the Genocide Convention of 1948 the relevant courts are assigned to convict on charges of genocide, consequently not historians, politicians, journalists even jurists have the final say regarding the qualification of the relocation as genocide, as it is a legal term.

Despite the general principle of non-retroactivity, which prohibits the application of the Convention on the events that took place prior to the related Convention, this study claims that if the convention were to be implemented, the relocation of Armenians would not constitute the crime of genocide. Moreover, under the current international criminal law the relocation of Armenians could not be qualified as crime against humanity or even a war crime. For, it was the military imperatives forced the Ottoman State to take the relocation decision.

Keywords: the Relocation of the Ottoman Armenians, International Law, the Crime of Genocide, the Ottoman Empire, International Criminal Law

ACKNOWLEDGEMENTS

I would like to thank my thesis supervisor Prof. Dr. Hasan Ünal, Dean of the Faculty, for supporting me throughout this MA programme.

I am also grateful to Eylem Demirez Arslan from METU for helping me find the relevant literature on international law. Without this assistance the study would not have been materialized.

I have to extend my deepest thanks to the academicians who contributed a lot in this thesis, without even knowing me, by presenting all the scholarly works produced over the years.

Last but not least, I wish to thank my family for believing in me throughout my life.

TABLE OF CONTENTS

ÖZ.....	i
ABSTRACT.....	ii
ACKNOWLEDGEMENTS.....	iii
TABLE OF CONTENTS.....	iv
ABBREVIATIONS.....	vi
INTRODUCTION.....	1

CHAPTER I

THE RELOCATION OF THE OTTOMAN ARMENIANS: A HISTORICAL OVERVIEW

1.1.The Road To The Relocation.....	5
1.1.1.The Birth of The Armenian Question	6
1.1.2.Anglo-Russian Rivalship in The East.....	8
1.1.3.The Revolutionary Organizations.....	10
1.1.4.The Armenian Insurrection at Van.....	14
1.2. The Relocation And Resettlement	
1.2.1.Who Were Subjected To The Relocation?.....	17
1.2.2.How Many Armenians Lost Their Lives?.....	20
1.2.3.The Armenian Population in the Empire.....	23
1.3. The Penal Code Of The Ottoman State.....	24
1.4.The Manifesto Of Hovhannes Katchaznoui.....	25

CHAPTER II

THE ENDING TREATIES OF WORLD WAR I AND THE ARMENIAN QUESTION IN THE SPHERE OF INTERNATIONAL LAW

2.1.The Joint Declaration.....	27
2.2.The Treaty Of Serves.....	28
2.3.The End Of The War Of Liberation	
2.3.1.The Treaty Of Lausanne.....	34
2.4.The Lex Specialis Principle.....	35

CHAPTER III
GENOCIDE IN INTERNATIONAL LAW AND THE RELOCATION OF THE
OTTOMAN ARMENIANS

3.1.The Doubiousness In The Definition Of Genocide.....	39
3.2.The Period Until The Approbation Of The Convention On Genocide	
3.2.1.The Peace Treaty Of Westphalia.....	40
3.2.2.The Emergence of The Term Genocide.....	41
3.2.3.The Nürnberg Trails_(November 1945 - October 1946).....	44
3.2.4.The Nazi Violence	51
3.3.The Convention On Genocide.....	52
3.3.1.The Elements Of The Crime Of Genocide.....	54
3.4.State Responsibility and The Role Of The International Court Of Justice(ICJ).....	64
3.5.Retroactivity Problem.....	66
3.6.Ethnic Cleansing.....	67
3.7.Can “Tehcir” Be Defined As Genocide?.....	68
3.8.Examples of The Forced Migration As a Way of Self- Defence.....	69
3.8.1.The First Genocide of 20th Century.....	70
3.9. A Brief History Of Genocide in Rwanda	71
3.10. Srebrenica Genocide.....	72
CONCLUSIONS.....	75
BIBLIOGRAPHY.....	81

ABBREVIATIONS

CUP	The Committee of Union and Progress
ICC	The International Criminal Court
ICJ	The International Court of Justice
ICTR	The International Criminal Tribunal for Rwanda
ICTY	The International Criminal Tribunal for the former Yugoslavia
ILC	The International Law Commission
TARC	The Turkish Armenian Reconciliation Commission
ICTJ	The International Center for Transitional Justice

INTRODUCTION

Sina Akşin: "As to genocide, this is more of legal term, because besides the facts, you also have to ascertain the element of intent, and you have to do this with the methodology of a penal jurist."¹

"[the] genocide par excellence was the Jewish one. It seems almost disrespect to the supreme tragedy of the Jews, to try to upstage the Armenian case (even though that is also a tragedy, but a two-way one)[...]"²

Declaration by the European Parliament or by the US Congress can never attain the respectability of impartiality, given the fact that in Europe and in the US, Armenians are a pressure group acting on their respective representative bodies, whereas the Turks are not. Further, to expect legal or quasi legal verdicts- as a declaration for genocide would be – from political bodies is contrary to the principle of the separation of powers, which Montesquieu discerned to be the very foundation not only for democracy, but also of civilized, decent government. In other words, political bodies should not be in a position to interfere with legal processes, nor, I may add, with history (or science in general)."³

Norman Stone: "There is No Armenian Genocide!"⁴

Albeit the multitudinous literature, reflecting either views of the pro-Armenians or the Turks, have hitherto been produced to detect the actuality of the events of 1915 or the relocation of the Ottoman Armenians, on the 100th anniversary of the incidents, I strongly believe that inquiring the events in a non-historical way might be constructive to everyone who is willing to read a report which is not politicized.

Coping with a multifaceted issue compels a unique approach in order to examine a certain aspect of the matter. For, historical, political, legal as well as psychological angles might be highly intertwined as in the case of the Armenian Question. Consequently, though the aim of the thesis is to analyze the incidents through the lens of international law, one should bare in mind the hardness of a clear-cut judicial concept concerning one of the most contentious issue facing Turkey.

¹Sina Akşin. "A General Appraisal of the Armenian Issue". *Review of Armenian Studies*, Special Issue, No:31,(2015):30.

² Ibid.,31.

³ Ibid.

⁴Norman Stone. "There is No Armenian Genocide". 13.09.2015<<http://www.genocidereality.com/headlinedetail.asp?id=42.>>.

By the same token, in the thesis I am not going to deal with the historical background of the events or so-called Armenian Genocide. Having said that a brief introductory pertaining to the past events will be penned. In a similar manner, it is not the aim of the thesis either to attest that no Armenian had been killed during the World War I or to blow out of proportion what had occurred to Turkish subjects of the Ottoman Empire.⁵

What is more, disclosing the bogus documents or forged information is not the main concern of this study either. Since a great number of decent historians have been working on the historical aspect of the Armenian Question by delving into the archives. Thus, I am of the opinion that it is not logical to push the limits, as large quantities of voluminous books have been published, in particular, by the Turkish Historical Society.

As it is widely known the issue of “Genocide” has been one of the controversial matters throughout the history. On that account, “What precisely is “Genocide?”, “How is it defined in international criminal law?” are the key questions that need to be clarified in order to the better discernment of the very nature of the events of 1915. In this sense international regulations and its progress as to the issue will be pointed out,⁶ especially The United Nations Convention on Genocide.

The research question is “How to conceptualize the relocation of the Ottoman Armenians in terms of international law?”

Sub-question; “Whether or not the events of 1915 can be called as Genocide”

Hypothesis; Calling the events of 1915 as “genocide” has no legal ground, in the light of international law as well as international criminal law, in particular, “the UN Convention on the Prevention and Punishment of the Crime of Genocide”

I reckon that the thesis will assist the future researchers who seek for the legal aspect of the events. As it is mentioned earlier, despite many works have been

⁵Gündüz Aktan. “The Armenian Problem and International Law.”2001:263-264.01.09.2015<<http://www.mfa.gov.tr/data/DISPOLITIKA/ErmeniIddialari/gunduz-aktan-the-armenian-problem-and-international-law-2001.pdf>>.

⁶Michael M. Gunter. *Armenian History and The Question of Genocide*.The U.S.A.:Palgrave Macmillan,2011:ix.

published on the events of 1915, most of them have been promoted by the Armenian Diaspora as a mean to propaganda to gain support for their claims pertaining to the subject. Basically, as a perpetuation of the American and British war time brainwashing in the course of World War I, they still assert that approximately 1,5 million Armenians were deceased during the relocation and this should be qualified as genocide⁷. Those claims disproved even by Western scholars.

Beside the loophole in the literature concerning the legal feature of the incidents, a few works have been carried out so far, unfortunately in Turkish. Accordingly, writting a thesis on this account in English would be more beneficial not only for the Turkish citizens, but also to the wider academic circles and researchers throughout the world.

As I have already emphasized, being aware of the lack of literature on the international law aspect of the Armenian Question was the main concern of me at the very commencement of this tiresome process. Therefore, William Schabas as an expert on the Law of Genocide shed his light throughout this study.

In the first chapter, a historical overview of the relocation of the Ottoman Armenians is handled. Ending treaties of the World War I and their validity in terms of international law are analyzed in the second chapter. Finally, in the last chapter the law of Genocide is scrutinized. I should clarify that despite the thesis is structured on three chapters, whenever needed the general assessments on the issue are placed accordingly. Furthermore, although the titles of the chapters give the impression of certainty, there is no strict dividing method applied. As “International Law” is the main concern of the thesis in every chapter if necessary interpretations made in order to link the stages.

⁷Kemal Çiçek.“Relocation of the Ottoman Armenians”.01.10.2015<http://dearmeensekwestie.nl/index.php?option=com_content&view=article&id=157:relocation-of-the-ottoman-armenians-in-1915&catid=13:papers&Itemid=13>.

CHAPTER I

THE RELOCATION OF THE OTTOMAN ARMENIANS: A HISTORICAL OVERVIEW

1.1.The Road To The Relocation

The Armenian subjects of the Ottoman Empire had lived in peace for years, and they had been known as “loyal nation”(Millet-i Sadıka).⁸ Yet, as 19th century progressed, the conditions had commenced to shift in an adverse way.⁹ With the rise of Russia in the Crimea and the Caucasus, the Muslim populations, mostly Turks, had to move towards Anatolia and, eventually most of them perished. By the help of the Armenians to the Russian armies, this displacement/resettlement process brought about the establishment of the Armenian state in the early 20th century. In the wars of 1854-1856 and 1877-1878, the Armenians sided with the Russians as well. Hence, those wars would be the beginning of the future malice.¹⁰

In the course of World War I, the Armenians of the Ottoman State, mainly the Orthodox Armenians, sided with the Russians in order to secure certain privileges(an independent state), despite the fact that they had promised to act in accordance with the Ottoman State. This led to the decision of the relocation of the Armenians. By doing this, the Ottoman Government, in essence, tried to hinder the military activities of the Armenian subjects.¹¹

Bernard Lewis in his book “The Emergence of Modern Turkey” denotes that;

[T]he Armenians, who at the beginning of the nineteenth century were still known as the Millet-i Sadıka, the loyal community, and were described by a well-informed French visitor as the minority group most loyal to the Ottoman Empire and most trusted by the Turks. The change began with the Russian conquest of the Caucasus in the first quarter of the nineteenth century, and the creation of a Russian Armenia on the eastern border of Turkey, where the Armenian Church established and recognized and where Armenian governors and generals ruled provinces and commanded armies. The political and cultural impact of Russian

⁸Gunter, “Armenian History,” 2.

⁹Ibid.

¹⁰Aktan, “The Armenian Problem,” 279.

¹¹Ibid.

Armenia on the one hand, and the new national and liberal ideas coming from Europe on the other, powerfully affected the Ottoman Armenians[...]¹²

I consider that the reference to the comments of the French visitor well placed in the book by Bernard Lewis. As during the reign of Louis XIV, the Armenian printing office was closed down in France, whereas in the Ottoman State they were printing books.¹³

1.1.1.The Birth of The Armenian Question

In fact, the Treaty of Kuchuk Kaynarca(1774) was the starting point for the Russian advance in the Caucasus as well as the divulgement of the Russian interests over the Christians of the Ottoman State. By defeating the Ottomans the Russians received the area of Kabartay and in the Treaty, there was a clause which gave the right to guard the Christians living in the Ottoman State. The subsequent sieges of the Russians on the Ottoman soil forged ahead unabatedly.¹⁴

By nature, the partitioning of the Ottoman State dated back to 1780s. In this context one should mention the agreement between the Russians and Austrians in terms of the division of the Ottoman State. In 1787, Catherine the Great and Josephin, the Austrian Emperor came together in order to reach a conclusion regarding the Ottoman land. According to the plan called “Greek Scheme” an independent Orthodox state, Dacia, would be constituted in Moldavia-Wallachia and Bessarabia; the area between the Dnieper and Bug rivers would be given to Russia.¹⁵ Actually, the incidents that had taken place in the Balkans until the outbreak of the first world war could be rooted to this plan. The revolts in the Balkans afterwards the 1912-13 Balkan Wars even the First World War should be evaluated bearing in mind the “Greek Scheme”.

On the other hand on 18 February 1828 with the Turkmenchai Pact, Iran was forced to leave the Khanates of Erivan and Nahjivan to Russia. Thus the present day Iranian-Russian border was created. With this treaty The Catholicate of Etchmiadzin as well as the Armenians living under Iranian rule brought under the rule of Russia.

¹² Bernard Lewis. *The Emergence of Modern Turkey*. New York: Oxford University Press, 2002: 355-356.

¹³ Kamuran Gürün. *The Armenian File*. Istanbul: Türkiye İş Bankası Kültür Yayınları, 2007: 79.

¹⁴ Gürün, “*The Armenian File*,” 61-62.

¹⁵ Ibid.

The Russians had the entire Caucasus part of Russia. Here is crucial to highlight that the Erivan province was consisted of mostly Turkish Muslims at that time. .¹⁶

As a matter of fact, the battles among the Russians, Ottomans and Persians in 1827-1829 was the point of commencement of the population exchanges in the East lasted until 1920. Russia exiled 60.000 almost two thirds of the Muslims from Erivan Khanate and 50.000 to 90.000 (100.000 according to Kamuran Gürün¹⁷) Armenians went to the places left by the exiled Turkish Muslims.¹⁸

Owing to the Russian imperialism by 1900 nearly 1.4 million Turkish or Caucasian Muslims exiled, one third of them had died from either being murdered or disease. Then again between 125.000-150.000 Armenians went to Erivan and other parts of the Caucasus.¹⁹

At the end of the Crimean War, the Ottoman State declared the Imperial Reform Edict of 1856, which confirmed the Gulhane Edict of 1839 which accorded the non-Muslims of the state equal rights.²⁰In spite of the minorities of the Empire were securing new rights, the great powers, namely Russia, Britain, France, Austria, under the pretext of protecting religious minorities, began to intervene the domestic affairs of the Ottoman State. ²¹This was the very beginning of the path that resulted in the relocation of the Armenians in 1915.

During the same period with the edicts, the structure of the Armenian community was taking a new shape. In other words the diversification of the Churches were flourishing. In this context, the Armenian Catholics were reorganized as a separate community for the first time on 27 February 1830 by the efforts of France. (The Patriarchate first constituted in Adana later moved to Istanbul.)²²

As a consequence of the missionary activities of the foreign powers(the Americans and British), the number of Armenians who were converting to the

¹⁶ Gürün, "The Armenian File," 63-65.

¹⁷ Ibid.

¹⁸ Justin McCharty. "Let Historians Decide on So-called Genocide." (2001): 3.01.09.2015 <http://www.tc-america.org/files/news/pdf/mccarthy-historian.pdf>.

¹⁹ Ibid.

²⁰ Gürün, "The Armenian File," 64-68.

²¹ Ibid., 72.

²² Gürün, "The Armenian File," 75.

Protestant faith was increasing. The efforts gave its fruits and in 1859 the Protestant Armenians became a separate community.²³

1.1.2.The Anglo-Russian Rivalship in The East

The policy of Islamaziation was not employed in the Ottoman State. Following the conquest of the Balkans, some of the Orthodox Christians converted to Islam voluntarily, yet not by forcing or intimidating. Beside this, Islamic society was conventionally based on equal rights on the contrary to the caste system of Hindu society to the east or the aristocratic privileges of Christian societies to the West.²⁴

The Capitulations, which was signed with France in 1536, should be mentioned as France had economic privilidges from the Ottoman State, took the scene as the protector of the Europeans of the Empire until the enactment of the Capitulations with England in 1583. Actually, those developments were the seeds of the downfall of the Ottoman Empire, especially, foreign interference and consequential uneasiness among the non-Muslims and Muslims of the Ottoman Empire.²⁵

Here I should emphasize the 1789 French Revolution which generated the nationalist sentiment spreading from the Europe as explained by Bernard Lewis. At first, it was romantic. Yet, with the movements of social Darwinism, racialism and militarism, the nationalist movement transformed itself accordingly and became more radicalized by those school of thoughts. The uprisings in the Ottoman State that caused the independence of the non-Muslim communities one by one should be analyzed in this context. Moreover, the Armenians they were also following the Greek/Bulgarian model in order to attain independence bacame radicalized by the emergence of the revolutionary orgnizations at the end of the 19th century. The impact of the Great powers mainly the Russians on those organizations can not be put a side. The effect of the Marxist ideology in the Tsarist Russia also took a substantial part in the blooming of the revolutionary Armenian Organizations in the Ottoman State.²⁶

²³ Ibid.

²⁴Salahi Sonyel. *The Great War and Tragedy of Anatolia*. Ankara, Turkish Historical Society Printing House,2001:2-3.

²⁵Ibid.

²⁶Mim Kemal Öke. *The Armenian Question*. Ankara, Turkish Historical Society Printing House,2001:20-21.

The moral values began to diminish and this indicated the onset of the new imperialism in 1890s, the power struggle in world politics acquired more aggressive way.²⁷ The oil was the key resource of attraction.

Austria-Hungarians were craving for the Balkans, Russia's pan-Slavist policy was aiming the formation of the "Russian Orthodox Empire" in the Mediterranean basin, Britain had desired to administer the Middle East for to save its colony of India, France had commercial ties with the Ottoman State as early as since the reign of Suleyman the Magnificent, Germany had some concessions, especially Berlin Bagdad rail-road²⁸.

For this reason they delegated missionaries to manipulate the Christians and Muslims of the Empire to be exploited. Hence, they exerted, as if today, several methods, such as religious antagonism, human rights issues, promises of autonomy. The history proved that those affirmations were bogus, for the great powers were interested in the lands of the Ottoman state rather than the rights of the minorities.²⁹

The idea of constructing a railroad was opposed by both Britain and Russia.³⁰ Some argue that the railway was the cause of the war as well, at least one of the reasons.

I believe that the British Ambassador to Turkey, Sir Nicholas Roderick O'Connor, in his letter to the British Secretary of State for Foreign Affairs clearly stated the concern effectuated by the railway project in 1901;

It is unpleasant to contemplate the construction of a railway traversing the whole of Asia Minor and terminating in the Persian Gulf, in which the Great Britain takes no part or share.³¹

It can be said that the rising power of Germany and conflicting interests of the Great powers on the Ottoman land led to the first world war. Reaching an agreement on the division of the soil by the Great Powers could not be materialized. Therefore,

²⁷ Ibid., 20-22.

²⁸ Ibid., 25-30.

²⁹ Sonyel, "The Geart War," x.

³⁰ Öke, "The Armenian Question," 25-30.

³¹ Valerie H. Atwood. "The Baghdad Railway." 2013:1.01.09.2015.<
<http://repositories.lib.utexas.edu/bitstream/handle/2152/22585/ATWOOD-MASTERSREPORT-2013.pdf?sequence=1>>.

the major powers opted for the disbandment of the state from inside, using, as cited above, the coreligionist subjects of the State as a pretext to achieve their desires.³²

All along the second half of 1895 Britain shifted the policy on the Ottoman Armenians and backing the idea of an independent Armenia in the East. The Russians were doubtful of British policy and thought that Britain was acting to induce the Orthodox Armenians.³³

At the beginning of the 20th century, Britain signed two agreements with France and Russia, in 1902 and 1907 respectively. The fundamental reasons for the policy change of the Britain could be listed as: the brawl over the colonization in Asia was over, in 1905 Russia defeated by Japan and turned back to Europe and Middle East in terms of foreign policy interests and lastly the power of Germany and its influence over the Ottoman State (Bagdad-Berlin Railway project).³⁴

1.1.3.The Revolutionary Organizations

In reality, up to the Russian-Turkish War of 1877-78 there had hardly been any question regarding the Armenians both under the Seldjuk Empire and that of the the Ottomans. The Armenians served as pashas, deputies, ambassadors. Regrettably, the imperial powers of Russia, France and Britain with the signing of the Berlin Treaty brought the Armenian issue into the international arena concerning their imperialistic desires.³⁵ In this respect it might be meaningful to cite the article 61 of the Berlin Treaty;

The Sublime Porte engages to carry out without further delay the ameliorations and reforms which are called for by local needs in the provinces inhabited by Armenians, and to guarantee their security against the Circassians and the Kurds. It will give information periodically of the measures taken for this purpose to the Powers, who will watch over the execution of them.³⁶

Around this time the revolutionary Armenian nationalist political parties began to spread both inside and outside of the Ottoman State. One of them was the

³² Öke, “*The Armenian Question*,” 68.

³³ Bilal Şimşir. *British Documents on Ottoman Armenians*. Volume IV. Ankara, Türk Tarih Kurumu, 2008: x-xii.

³⁴ Ibid.

³⁵ Yusuf Halacoglu. *The Story of 1915*. Ankara, Türk Tarih Kurumu, 2008: 9.

³⁶ The Tablet. 13.09.2015 <<http://archive.thetablet.co.uk/article/20th-july-1878/11/the-treaty-of-berlin.>>.

Revolutionary Armenakan Party which was set up in Van at the end of 1885. Moreover, in 1887 the Hunchak Party was established by the Marxist Armenians in Geneva. The program of the party was “political and national independence of the Armenians in Anatolia.” The methods to achieve this target were publicity, disturbance of tranquility, and terror.³⁷ (The party changed its name to Revolutionary Hunchak Party in 1890.)

In 1890 the Dashnaksutyun or Armenian Revolutionary Federation was constituted in Tbilisi with more or less similar goals.³⁸ The weapons and ammunition for the organization were supplied by Russia. The incidents of the Armenians turned into terrorist activities in today's sense.³⁹ The branches of those parties were opened up in several parts of Anatolia then began their operations.⁴⁰

Before the outburst of the first world war the political committees aggrandized their activities. Despite the Patriarch was giving prayers regarding the victory of the Ottoman State, the Catholicos rigorously castigated that of the prayers. However, the committees of Istanbul, namely Dashnak, Hunchak proclaimed their adherence to the State.⁴¹

On the contrary of the Armenian claims that the insurrections began as a self-defence after the relocation, the revolts had already started when the relocation decision taken, even the Armenian authors disproved those allegations.⁴²

In the passage quoted below, Leo (Arakel Grigori Babakhanian-historian) relates the contacts with the Russians of Dr. Zavriev, member of the Dashnak Party, in charge of foreign relations since the onset of the World War I.

This person (Dr. Zavriev) negotiated with Vorontsov-Dashkov, the Governor-General of Transcaucasia, and promised him on behalf of the Dashnak Party and the Turkish Armenians that the Armenian people on both sides of the border would provide the Russians with support and help when they entered into war with Turkey. He further assured the governor-general that the resources of the Dashnaksutyun Party would be at his service, for he believed that this war was

³⁷ Halacoglu, “*The Story of 1915*,” 10.

³⁸ Ibid., 11.

³⁹ Hasan Dilan. *Fransız Diplomatik Belgelerinde Ermeni Olayları 1914-1918*. Ankara, Türk Tarih Kurumu, 2005: xvi-xvii.

⁴⁰ Ibid.

⁴¹ Esat Uras. *The Armenians in History and The Armenian Question*. Istanbul, Belge Yayınları, 1988: 855.

⁴² Ibid.

being fought with the aim of freeing the oppressed nations of the world from the domination of invaders.⁴³

As Esat Uras pointed out, the decision to fight against the Ottoman State had been agreed long before the relocation of the Armenians. Thus, the Turkish side has right to convey self-defence not the Armenian ones. Additionally, as Yusuf Halaçoğlu rightly puts "...until 1915, the Ottoman Empire only opposed those Armenians who were involved in terrorism." But the Western Governments continued to constrain the State for more reforms.⁴⁴

Some of the Armenian writers claim that the emergence of the Armenian Committees amplified as to protect the Anatolian Armenians. Yet, those claims are being put forward in order to justify the activities of those committees throughout Anatolia.⁴⁵

As a military historian Edward J. Erickson asserts;

Prior to 1914 most of the Great Powers supported or tolerated Armenian activities to some extent. Russia and Bulgaria, in particular, encouraged and supported the Armenian revolutionary committees by allowing them to operate freely within their respective territories. It was from these countries that most of the illegal weapons smuggling into the Ottoman Empire originated. France and the United States tolerated the committee's fundraising activities and allowed financial support to flow into the empire as well. When the war started, Russia, France and the UK all supported the efforts of the Armenians to rebel against the Ottomans. Russia bore the heaviest role by actively raising Armenian regiments for its army and then using them to invade the Ottoman lands.⁴⁶

I believe that some of the activities of the committees are worth noting here. One was the raid of the Ottoman Bank. Emphasizing this incident is of importance to demonstrate the foreign support behind those committees. The raid carried out on 14 August 1896. After the raid an official (the head-interpreter Maksimoff) from the

⁴³Ibid.,860.

⁴⁴Halacoglu, "*The Story of 1915*," 33.

⁴⁵Bülent Bakar. *Ermeni Tehciri*. Ankara, Atatürk Kültür, Dil ve Tarih Yüksek Kurumu Atatürk Araştırma Merkezi, 2013:32-33.

⁴⁶Edward J. Erickson, "The Armenian Relocations and Ottoman National Security." 01.09.2015. <http://www.mfa.gov.tr/data/DISPOLITIKA/ErmeniIddialari/edward-j-erickson-the-armenian-relocations-and-ottoman-national-security_-military-necessity-of-excuse-for-genocide.pdf>.

Russian Embassy helped the raiders and sent them to France by ship. According to Abdulhamid, Maksimoff had known the plot in advance.⁴⁷

An other incident that is worth highlighting is the assassination attempt to Abdulhamid on 21 July 1905. Though the attempt was failed, it is crucial as it was the illustration of the power and daring of the Armenian Committees.⁴⁸

The Erzurum Congress of the Dashnaksutyun

As cited by Altay Cengizer The Erzurum Congress of the Dashnaksutyun is critical for discerning the further decisions taken by the Ottoman State. In other words for to better interpretation of the events of 1915 one has to ponder on the respective Congress.⁴⁹ The Congress was held between June and July 1914 in Erzurum attended by Papasijan and Viremijan, the members of the parliament, and the Dashnak delegates from the Caucasus. (The Ottoman Empire entered World War I on November 1, 1914.)⁵⁰

In this congress held in Erzurum, they have worked on the text of the agreement, the terms of which, were set with the Russians pertaining to Russians's handing the occupied regions over to the Armenians, and Russians's guaranteeing a free Armenian state. Russian-Armenian agreement was approved by the congress, and the following articles were decided to be sent for the information of the committees.

1. To continue to show submission and keep silent until the declaration of war, but in the meanwhile to become well equipped with the weapons to be obtained from Russia and from the inner regions.
2. Should the war be declared, all the Armenians in the Ottoman would join the Russian forces with their firearms.
3. To keep silent on should the Turkish Army advances.
4. Should the Turkish Army withdraws or comes to the point of standstill, all the gangs should start their activities behind the lines in accordance with the plan they already have.

After the acceptance and distribution of the decisions taken at the congress, the member of the parliament Viremijan has proposed the following, in writing, to the Governor of Erzurum:

Should the Ottoman Government declares war upon Russia, on the event of Ottoman Army's launching an attack upon the Caucasus, the Ottoman Government should make a strong promise to the Armenians living in the region on the issues of cooperation during the war and to propagation, and this promise ought to be fulfilled.

⁴⁷ Bakar, "Ermeni Tehciri," 41.

⁴⁸ Ibid., 43.

⁴⁹ Atalay Cengizer. *Adil Hafızanın Işığında*. Istanbul, Doğan Kitap, 2014: 567-568

⁵⁰ Yılmaz Eracar. "Armenian Relocation and International Law." 01.09.2015 <<http://www.avim.org.tr/uploads/dergiler/ras-26-pdf.pdf>>.

Viremijan's application to the Governor of Erzurum, after having had the above mentioned four articles approved and his closing of the congress, served for the attainment of two specific objectives:

1. To be able to revive their national goals, should the Ottoman Government become victorious.
2. To keep the unfaithful secret Armenian organization away from the eyes of the Ottoman Government.

The 3rd Army reveals the decisions taken at the congress, and orders and warns the governor and the commanders under his service to be full alert.

The following is the information, which is forwarded by the 3rd Army, upon the measures taken by the Armenians in Russia and Turkey until the declaration of war.

1. The Muslim villages and towns on the eastern part of the border (in Russia) are being searched and the weapons found in the houses are distributed among the Armenians.
2. It has been heard that large number of weapons, ammunition, and bombs are stockpiled in Oltu, Sankamış, Kağızman, and Iğdır in order to arm the Ottoman Armenians, especially the Armenians living in the villages on the western part of the border (in Turkey). And that, the Russian General Loris Milikov's son together with Malkon and Ohannes, two leaders from the Daschnak Committee, has moved to Van via Abâga on September 10, 1914 in order to concretize the measures to be taken and the decisions pertaining to the distribution of the arms.
3. It has been understood that the Russian consuls in Iran having armed the Iranian Armenians, especially the ones in Rumiye and Salmas, sending them into the inner regions of the border with the promise of foundation of Armenia on the lands to be occupied in Turkey.
4. Some of the leaders of the Daschnak Committee of Caucasus and Turkey are organizing Armenian gangs in the regions neighbouring borders as follows.⁵¹

As it is clear from the above listed clauses that the Armenians even before the war had been in preparation against the Ottoman State.⁵² Western Armenians were sympathizing with France and Britain whereas the Eastern Armenians with the Russians. Given this fact under the influence of the great powers the Committee of the Dashnaksutyun simply pushed the Ottoman State pursue a different policy towards the Armenians. As revealed by Altay Cengizer that in this respect the Armenians acted in the context of realpolitik and could not constitute a long term policy being shaped inside the Ottoman State.⁵³

1.1.4.The Armenian Insurrection at Van

On 1 November 1914, with the Russian advance to the Eastern provinces of the Anatolia, the Ottoman State officially entered into the war. The Armenian

⁵¹Armenian Activities in the Archive Documents 1914-1918 volume I.Ankara.01.09.2015<http://uyg.tsk.tr/ataturk/arsiv_belgeleri/ermeni1.pdf>.

⁵²Eracar, "Armenian Relocation,"

⁵³Cengizer, "Adil Hafızanın Işığında,"569.

soldiers in the border regions fled to the Russian side. By employing guerilla tactics, the Armenian rebels attacked the army's supply trains, cut the roads and communication lines, ambushed and killed gendarmes, and destroyed bridges and fortifications. As a consequence both Muslim and Armenian civilians were affected from the two-sided battles in the region.⁵⁴

In April 1915 in Van Dashnaks organized an attack in connection with the Russian army. The Ottoman forces failed to prevent themselves and this increased the concerns of further advancement of the enemy. Thus, the expectation of similar attacks from the British and French forces gained momentum.⁵⁵ According to Edward J. Erickson:

Today there is no doubt that the Allies encouraged and supported the Armenian committees to revolt against the empire in the spring of 1915 and the Ottomans believed that what happened in Van was about to be repeated elsewhere.⁵⁶

Why the location of the Armenian insurgency is important? Answering this question will clarify the further measures taken by the Ottoman State. The incidents amounted till the uprising of Van made clear that national security of the State being threatened. All along Van revolt, the Ottoman Armies were fighting the Russians on the Caucasian frontier and the British in Mesopotamia and Palestine. Unfortunately, the Armenian revolutionry committees were located on the supply lines of the armies. Subsequently, the Armenian committees started to cut the lines of communication and attack the roads and railroads on the supply chain.⁵⁷

In this circumstances the Ottoman State had the right to consider the Armenian population of the Eastern Anatolia as enemies in the course of the First World War. Actually, this consideration would be confirmed by Boghos Nubar Pasha during the Paris Peace negotiations as he affirmed that they had been the part of the allied powers.⁵⁸

⁵⁴Eracar, "*Armenian Relocation*,"

⁵⁵ Erickson, "*The Armenian Relocations*,"

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ _____, Aktan, "The Lausanne Peace Treaty and the Armenian Question." 09.01.2015 <www.eraren.org/bilgibankasi/en/index1_1_2.htm>.

It is clear that military necessities forced the Ottoman State take the decision of relocation, not an excuse for genocide. As pointed by Gündüz Aktan listing main Armenian revolts would be fruitful to see the process led to the relocation of the Armenians.

1862 and 1895 Zeytun, 20 June 1890 Erzurum, 17 July 1890 Kumkapı, 1892 Merzifon, Kayseri, Yozgat, August 1894 first Sassoon revolt, 1895 raids on the Sublime Porte, 1895-96 Van, 1895 Trabzon, Erzincan, Bitlis, Maraş, Erzurum, Diyarbakır, Malatya, Harput Revolts, 26 August 1896 raid on the Ottoman Bank, 1904 Second Sassoon revolt, 21 July 1905 assassination attempt on Abdulhamid with a bomb, 1909 Adana revolt, April 1915 Van revolt (during the war), and the like.⁵⁹

On 24 April 1915, the Ministry of the Interior ordered that the Armenian Committee Centres would be closed, the documents be seized, and the committee leaders be arrested.

Upon this instruction of the Ministry of the Interior, 235 people (according to Kemal Çiçek) were arrested in Istanbul. This day, 24 April, on which the Armenians hold demonstrations each year claiming it is the date of the massacre, is the day when these 235 people were arrested.⁶⁰

But, the warnings of the government did not halt the activities of the Armenians. Consequently Enver Pasha, the Deputy Commander in Chief, suggested Talat Pasha, the Interior Minister, that the Armenians should be sent to Russia or dispersed within Anatolia, due to the constant rebellions around lake Van. At the same time, Russians were driving the Muslims into the Ottoman soil under very bad conditions. Under these conditions the relocation decision being taken.⁶¹

Pursuant to the encrypted telegraph sent by the British High Commissioner in Istanbul to the Admiral; “[The arrested] Armenians are either Armenian volunteers who served in the allied armies or responsible for massacres of Muslims.”⁶²

I reckon that it is quite clear from the telegraph that the intent of the Ottoman State was just quell the revolts of the Armenians, in particular the Armenian Committees in order to secure the country in the course of the war. There was no

⁵⁹ Aktan, “The Armenian Problem,” 281.

⁶⁰ Gürün, “*The Armenian File*,” 263.

⁶¹ Eracar, “*Armenian Relocation*,”

⁶² Halacoglu, “*The Story of 1915*,” 42.

racist intent to destroy the Armenians as a group. It was an instant decision had to be taken as a self-defence.

Nevertheless, the detainment of the committee members could not end the uprisings of the Armenians. The Ottoman State had to take the decision to relocate the Armenians to Syria and Iraq, especially the Armenians located in the Eastern Anatolia and Mersin-İskenderun,⁶³ that were outside of the war zone, yet inside the Ottoman territory. According to the Austro-Hungarian diplomatic sources:

The fact that harsh measures have been taken is the fault of the Armenians. Once the war had begun, the Armenians engaged in every imaginable kind of hostile activity against Turkish officials and the Turkish army. Furthermore after the arrival of the Russians, they mercilessly slew Muslims in the province of Van.⁶⁴

In accordance with the increasing uprisings a three clause law was enacted.

- 1.If in wartime the commanders of the Army, the Army Corps, or the divisions should face any opposition, armed aggression, or resistance to operations and arrangements related to the decrees of the government, the defence of the country, and the maintenance of public order, they are authorized and compelled to immediately take punitive measures through the Armed Forces, and to suppress any aggression and resistance.
- 2.The commanders of the Army Corps and the Army Divisions may transfer and settle in other quarters any inhabitants of villages and towns engaging in spying or treason, or in view of military exigencies.
- 3.This law will come into effect on the date of its publication.⁶⁵

1.2. The Relocation And Resettlement

1.2.1.Who Were Subjected To The Relocation?

The relocation or forced migration(as defined by Kemal Çiçek) was concerted to be applied to all Armenians who had been living in the vicinity of the logistics and supply chain of the Ottoman armies. In actuality, elderly men and women, military stuff, craftsmen, merchants, orphans as well as the Protestant and Catholic Armenians were absolved.⁶⁶

⁶³ Sina Akşin. *Kısa 20.Yüzyıl Tarihi*. İstanbul: Türkiye İş Bankası Kültür Yayınları,2014:81.

⁶⁴ Halacoglu, “*The Story of 1915*,”43.

⁶⁵ Uras, “*The Armenians in History*,”868.

⁶⁶ Halacoglu, “*The Story of 1915*,”44.

Those Armenians not affiliated with the subversive organizations only directed to enclosing Anatolian cities and towns. In order to maintain the order during the relocation and resettlement the 15-clause official instructions were sent out on 28 May 1915 to the provinces.⁶⁷

Formal Instructions regarding the resettlement of Armenians being transferred to other regions because of wartime and exceptional political necessity and how their food and other needs are to be met.

Article 1: Arrangements for the transportation of those to be transferred is the responsibility of local administrations.

Article 2: Armenians to be transferred are free to take with them all their movable property and animals.

Article 3: The protection of the lives and properties of Armenians to be transferred en route to their new settlements, their board and lodging and their rest is the responsibility of local administrations en route. Civil servants in all ranks are responsible for any negligence in this regard.

Article 4: Upon reaching the destinations of their new settlement, Armenians will either be settled in individual towns and villages in houses to be built, or in the villages to be established in locations designated by the Government. Due attention will be paid to establishing the villages in places which suit public health conditions, agriculture and construction.

Article 5: If there is no unowned and derelict land in the places of settlement for the establishment of villages, state-owned farms and villages may be allocated for this purpose.

Article 6: The boundaries of villages and towns to be established anew for the settlement of Armenians will be at least 25 kilometres distant from the Baghdad railroad and from other railroad links.

Article 7: A registration log will be established covering very accurately and in an orderly way the name, family name, age, profession, place of origin, place of settlement, together with names and ages of all members clearly indicated for all Armenians to be settled in villages and or newly established villages, this log will be the basis of the population registers.

Article 8: Persons to be settled at the designated places are prohibited from going to other places without the permission from the Commission to which they are attached and without the necessary special document from the local security force.

Article 9: All boarding needs of the people arriving, and the construction of these, and the preservation of the health and welfare of the people, is the responsibility of the Government, such expenses to be financed from the migrants' appropriations (funds).

Article 10: Arrangements for boarding and housing, expediting the completion of these, preservation of health and welfare of the people are the responsibility of the migrant commissions, led by the highest local civil servant. In places where there are no migrant commissions, these will be established anew, in accordance with the Regulations on Migrants.

⁶⁷ Halacoglu, "*The Story of 1915*," 44-45.

Article 11: District and provincial governors are authorised to assign sufficient civil servants necessary to carry out efficiently the tasks related to the transport, boarding, loading and settlement, with the concurrence of the Ministry.

Article 12: Each family to-be re-settled will be allocated appropriate land, taking into account their previous economic condition and their present needs.

Article 13: Allocation and distribution of land will be handled by the commissions.

Article 14: The boundaries and areas of the allocated land will be indicated on a Temporary (Provisional) Receipt which will be issued to the owner, with identical information clearly registered in the special register.

Article 15: Those engaged in agriculture and craftsmen who are in need will be issued an appropriate amount of operating capital, or the necessary tools and instruments.⁶⁸

On the contrary to the Armenian allegations, which are based on a premeditated act of causing the death of Armenians, the Government did not contemplate the very survival of the Armenians not that of the exterminating. In this respect the mental element of the crime according to the Genocide Convention could not be materialized. While accusing the Ottoman State, later on Turkey, committing genocide, one needs to prove the element of *dolus specialis* of genocide. In that situation even from the very beginning the final intent was sustaining the very existence of the group, and clearing the related area to open space for the army. The other set of rules were prepared for the real estates left behind by the people being transferred.⁶⁹

Here it should also be brought forward an encrypted telegram sent to the provinces on 29 August 1915:

The purpose of the government in removing the Armenians from the places where they are and relocating them in fixed zones is based on the need to stop this element engaging in activities against the government and following their national aspirations to set up a government of Armenia. Just as it is not proposed to destroy them, the security of groups must be guaranteed during the transfer and every measure must be taken for their nourishment by making expenditure from the funds allocated for the migrants. As already instructed, the government has firmly resolved that soldiers' families, artisans and Protestant and Catholic Armenians are not to be transported. Stern legal measures should be invoked against anyone who attacks an Armenian convoy group of gendarmes or officials who permit such attacks and those doing this must be dismissed from their posts

⁶⁸ Mehmet Saray. *Principles of Turkish Administration and Their Impact on The Lives of Non-Muslim Peoples: The Armenians as a Case Study*. Ankara: Atatürk Araştırma Merkezi, 2005:79-80.

⁶⁹ Halacoglu, "The Story of 1915," 48.

immediate and handed over to the Martial-Law Tribunal. If such events are repeated, the province and sub-province will be held responsible.⁷⁰

As cited in the above coded message the intent of the Ottoman Government was articulate. This is the key evidence that one should not speak up any intent to destroy the group with a racial hatred. Also the Martial Law Tribunal which took place in 1916 even before the Malta Trials is a clear attestation of the intent of punishing those who break the law.⁷¹

In spite of the fact that the Armenians were the subjects of the Ottoman State, they acted on behalf of the Russians, thus they could have been defined as Russian subjects as well. In this very complicated situation, instead of annihilating those Armenians sending them out of the theatre of operations in order to clear the area to facilitate the activities of the armies was the decision had to be made. As it is widely known, in the course of war the first obligation is to save the country. Ironically, this rule had been implemented more stringently by the states who had been denouncing the Ottoman State, later on Turkey.⁷²

1.2.2.How Many Armenians Lost Their Lives?

There have been plenty of speculations over the number of the Armenian deaths.⁷³ For instance, Toynbee(1916) 600.000, Morgenthau (1918) 800.000, Dadrian (1999)1.350.000.⁷⁴The allegations pointing 1.5 million Armenian deaths have been disproved by prominent historians.⁷⁵ In fact, examining how many Armenians lost their lives during the relocation is not in the scope of this study, giving a brief outlook regarding the numbers is essential as the complimentary element of the work. In terms of international criminal law, in particular, the Convention on Genocide, the amount of people should not be the main concern. On the other hand if one looks at the issue through the lens of the convention on genocide, not the numbers, the intent of the perpetrators does matter. In this respect in the case of Krstic(Srebrenica), the court decided that although more killing

⁷⁰ Halacoglu, "*The Story of 1915*,"48.

⁷¹ Kemal Çiçek. This comment made by Kemal Çiçek on a TV programme which was aired on CNN-Turk on 23 April 2015 at 21:00.

⁷² Gürün, "*The Armenian File*," 258.

⁷³ Akşin, "*Kısa 20.Yüzyıl Tarihi*,"82.

⁷⁴ Başbuğ, İlker. *Ermeni Suçlamaları ve Gerçekler*. İstanbul, Remzi Kitabevi,2015:206

⁷⁵Ministry of Foreign Affairs. 15.09.2015<<http://www.mfa.gov.tr/the-armenian-allegation-of-genocide-the-issue-and-the-facts.en.mfa>>.

happened in other areas, they could not be defined as genocide, as the core element of intent to destroy did not materialized.

The Krstic Trial Chamber held that [...]A campaign resulting in the killings, in different places spread over a broad geographical area, of a finite number of members of a protected group might not thus qualify as genocide, despite the high total number of casualties, because it would not show an intent by the perpetrators to target the very existence of the group as such.⁷⁶

It is clear from the judgement that the number of casualties does not matter in terms of *dolus specialis*. In this respect the Armenian Diasporas attempts to increase the number of deceased Armenians is just futile in the light of the Convention on Genocide. Just depending on the numbers not adequate to qualify the relocation of Armenians as genocide.

According to Yusuf Halaçoğlu, approximately 600.000 of the Armenians were subjected to the relocation. Approximately 500.000 Armenians were consigned to Syria from different locations. Some of them were merely transferred to the neighbouring cities. The convoys were assailed by the Arab and Kurdish Tribes. An approximate number of 8000-8500 can be given as the Armenians who lost their lives during the journey.⁷⁷

On the other hand trying to show all the removed Armenians as executed by the Ottoman State is an exaggeration and should be evaluated as a war time propaganda of the imperial powers. As Yusuf Halaçoğlu annotates:

Arnold Toynbee, whom the British Foreign Office assigned to write the Blue Book, claims that 600.000 Armenians put to death.[...]In fact the documents demonstrate that a large majority of those who did not return home had migrated to the USA, France, South America, as well as Australia, India and Iran. A large section of those who migrated overseas never came back and settled in the countries they had migrated to. Those who travelled to countries outside the Middle East did so by sea and scrutiny of the passenger lists of vessels entering

⁷⁶William Schabas. *The UN International Criminal Tribunals*. Cambridge, Cambridge University Press, 2006: 169.

⁷⁷_____, Halaçoğlu. "Tehcir sırasında 8.500 civarında Ermeni öldü". *Zaman*. 21.04.2013. 01.09.2015 <http://www.zaman.com.tr/pazar_prof-dr-yusuf-halacoglu-tehcir-sirasinda-8500-civarinda-ermeni-oldu-_2080760.html>.

American harbours at this date gives us adequate information about those who went to America, for example.⁷⁸

At the onset of the first world war the total population of the Anatolia is estimated around 17.5 million. Of 1.3 million was the Armenians, 1.4 million Greeks and the rest consisted of the Muslims. The Armenian Patriarche like the European Catholic and Protestant Churches could not register the census of the population. Thus, the statistics of the Armenians are most of the time not reliable and accurate. In this context the Ottoman statistics should be appraised as the most accurate data on the issue.⁷⁹

In actuality, what Justin McCharty asserts about the census of the population of the Armenians is quite interesting:

Although the modern Ottoman population registration system began in the 1830s, not until just before World War I did the Ottomans publish any of the data in a western language, only in Ottoman Turkish, indicating the published statistics were not meant to affect foreign opinion.⁸⁰

Eventhough the precise data on the number of the Armenian population who lost their lives, in the course of war, is hardly accessable, an estimated number can be given. Yusuf Halaçoğlu, he scrutinized the archives of Russia, the USA, France as well as Britain reached an approximate number of 300.000. Kamuran Gürün also cites the number of 300.000.⁸¹ Beside that Stanford Shaw and Ezel K. Shaw reached the number of 200.000.⁸²

However, as Justin MacCharty points out: “we should consider the number of the Muslim casualties while considering the Armenian deaths. According to the statistics 2.500.000 Muslims had died and most of them were the Turks...”⁸³

⁷⁸ Halacoglu, “*The Story of 1915*,” 65-66.

⁷⁹ Mustafa Çalık. *Ermeni Soykırımı İddiaları*. Ankara, Cedit Neşriyat, 2013: 59

⁸⁰ _____, McCharty. *The Population of the Ottoman Armenians*. 01.09.2015 < <http://www.tallarmeniantale.com/PopulationOttomanArmenians.pdf> >.

⁸¹ Halacoglu, “*The Story of 1915*,” 68.

⁸² Akşin, “A General Appraisal “ 26.

⁸³ Ministry of Culture and Tourism. 01.09.2015 < <http://www.kultur.gov.tr/EN,32704/demographic-information--before-and-after-relocation.html> >.

In addition, in 1919 roughly 200.000 Armenians deceased from famishment and affection in Erivan. Correspondingly, the historian Richard Hovannisian calls the first independent Armenian state as a death country. It is sarcastic that, “[T]he same author cannot believe that the same number of Armenians also died of the very same natural causes like famine, starvation and epidemics during the rule of the Ottomans and only thinks of genocide”.⁸⁴

1.2.3. The Armenian Population in the Empire

One has to recall that the population of the Armenians had never been amounted to the majority of the region where they had lived.⁸⁵ On the other side, the other minorities of the Ottomans for instance Serbians, Greeks when they attained their sovereignty, they had been the majority of the population. As Justin McCharty specifies:

What were the Armenian rebels trying to create? When Serbs and Bulgarians rebelled against the Ottoman Empire they claimed lands where the majorities were Serbs or Bulgarians. They expelled Turks and other Muslims from their lands, but these Muslims had not been a majority. This was not true for the Armenians. The lands they covered were overwhelmingly Muslim in population.⁸⁶

The Armenian Committees might have seen the defeat of the Ottoman State in the Balkan Wars as a preliminary sign of the disintegration of the State. Hence, when it was clear that the Ottoman State would be a participant in the imminent war, the Armenian Committees in the Eastern Anatolia began rising against the state.⁸⁷

It should be mentioned that even before the first constitution of the Ottoman State (in 1876), the Armenians, in 1860 (ratified by the Porte in 1863)⁸⁸ with the adoption of the first constitution, established the Armenian National Assembly. This is an indicator that illustrates the Armenian freedom in the Ottoman State.

⁸⁴ Sedat Laçiner. “What is the Armenian Problem.” *Turkish Weekly*. 16.10.2006.02.09.2015 <<http://www.turkishweekly.net/2006/10/16/article/what-is-the-armenian-problem/>>.

⁸⁵ Bakar, “*Ermeni Tehciri*,” 50.

⁸⁶ McCharty, “Let Historians Decide,”

⁸⁷ Bakar, “*Ermeni Tehciri*,” 55-56.

⁸⁸ Zeidner, Robert F. “Britain and The Launching of the Armenian Question.” *Middle East Studies*. 1976:467.02.09.2015 <http://www.ata.boun.edu.tr/faculty/NadirOzbek/Courses/HTR_311_2013/13_Zeidner_Britain%20and%20the%20Launchign%20of%20the%20Armenian%20Question.pdf>.

It is indisputable that the decision of the relocation was the interior issue of the Ottoman State. The State which had been under the threat of imperial powers. Russian Empire that had cleansed hundreds of thousands of Muslims from the Caucasus, Crimea, and the Balkans. The relocations, being applied solely to the Ottoman citizens, were not directed against any foreign power.

International law during the World War I era was void of any treaty or principle by which one state could render judgment on the legality of the internal decisions of another state.⁸⁹ The Allied powers also lacked justification to denounce the Ottoman actions as “crimes against humanity and civilization” since these also were concepts missing from the statutory, common, and treaty law of the day.⁹⁰ The phrase, produced during wartime by one warring party to defame its opponent, could be considered as propaganda.

Here is I should emphasize the opinion of Justin McCharty regarding the war time propaganda during the world war I. He empasizes in his book “Death and Exile” that “the sources of Britain, France and as well as the USA could not rely on, as they constituted war time propaganda, and the best source of the story of the eastern part of the Ottoman State during the war is the Ottoman Archives for what happened to the Muslims of the eastern provinces.”⁹¹

1.3. The Penal Code Of The Ottoman State

In the Ottoman Empire unwarranted rebellion against the Empire was a political crime called “bağy”.Pursuant to the Penal Code of 1858 the punishment of the crime was determined as death penatly, especially if the insurgents were armed. Harboursing the rebels was also criminalized by the same Code as well.Consequently, forced migration used to be employed those who were not involved in a rebellion,yet harboured those insurgents either Muslims or Christians.⁹²

In the lights of those regulations the relocation of the Armenians in 1915 should be assessed as the regular legal settlement policy of the State rather than a

⁸⁹ Aktan, “The Armenian Problem,”

⁹⁰ _____,Schabas.“A Legal Distinction between 'Genocide' 'War Crimes' and 'Crimes Against Humanity”YouTubehttps://www.youtube.com/watch?v=_avy5T2y_zs

⁹¹ _____,McCharty. *Ölüm ve Sürgün*. Ankara,Türk Tarih Kurumu,2014:189-191 endnote.

⁹² Abdullah Demir. “Hukuk Tarihi Açısından 1915 Ermeni Tehciri.” *e-Akademi Hukuk, Ekonomi ve Siyasal Bilimler Aylık İnternet Dergisi*. 2008. 02.09.2015 <<http://www.e-akademi.org/incele.asp?konu=HUKUK%20TAR%DDH%DD%20A%C7ISINDAN%201915%20ERMEN%DD%20TEHC%DDR%DD&kimlik=-721069565&url=makaleler/ademir-4.htm.>>

inconceivable decree. Taking into account the revolts of the Armenians in the Eastern part of the Ottoman Empire, the decree of the relocation was a right decision in order to the maintenance of the order. Thus, in 1915 there was a state of war, in the state of emergency the Ottoman State had to act in that way to defence itself.⁹³

1.4.The Manifesto Of Hovhannes Katchaznoui

I am of the opinion that the manifesto of Hovhannes Katchaznoui should be pointed here as well, as the sole evidence of an illustration of the reasons of the Armenian insurrections. The first president of Armenia after World War I Hovhannes Katchaznoui given a testimony at the Dashnak Party congress in Bucharest, Romania, in April 1923.⁹⁴ Here is an excerpt from that speech:

[...]In the Fall of 1914 Armenian volunteer bands organized themselves and fought against the Turks because they could not refrain themselves from organizing and refrain themselves from fighting. This was an inevitable result of a psychology on which the Armenian people had nourished itself during an entire generation: that mentality should have found its expression, and did so. [...]Without any positive basis of fact we believed that the Tzarist government would grant us a more-or-less broad self-government in the Caucasus and in the Armenian vilayets liberated from Turkey as a reward for our loyalty, our efforts and assistance.⁹⁵

⁹³Demir, "Hukuk Tarihi Açısından,"

⁹⁴Gunter, "Armenian History," 39.

⁹⁵The Manifesto of Hovhannes Katchaznoui. 13.09.2015 <<http://louisville.edu/a-s/history/turks/Katchaznoui.pdf>>

CHAPTER II

THE ENDING TREATIES OF WORLD WAR I AND THE ARMENIAN QUESTION IN THE SPHERE OF INTERNATIONAL LAW

2.1.The Joint Declaration

On 24 May 1915 the governments of France, Great Britain and Russia, pertaining to the Armenian subjects of the Ottoman Empire, declared that

[I]n the presence of these new crimes of Turkey against humanity and civilization, the allied governments publicly inform the Sublime Porte that they will hold personally responsible for the said crimes all members of the Ottoman Government as well as those of its agents who are found to be involved in such massacres.⁹⁶

It was the first usage of the concept of crime against humanity.

As clearly indicated by Gündüz Aktan;

In an obvious contradiction, a report resulting from an investigation of the war crimes committed by the Christians during the 1912-1913 Balkan Wars, in violation of the Hague rules(1907), failed to talk about the crime against humanity in the face of the worse tragedies that the Turks had suffered.⁹⁷

On the other side, the United States Secretary of State Robert Lansing seemed to have acceded to some extent the actions of the Turkish Government concerning the Armenian subjects. Thus, he avouched that the “more or less justifiable” right of the Turkish government to “deport” the Armenians to the extent that they lived “within the zone of military operations.”⁹⁸ At that time the Ottoman Armies were battling on three fronts.⁹⁹

⁹⁶ _____, Schabas, “Genocide in International Law” 02.09.2015 <<http://www.javeriana.edu.co/blogs/ildiko/files/Genocide-in-International-Law1.pdf> >.

⁹⁷ Aktan, “*The Armenian Problem*,” 265.

⁹⁸ _____, Schabas. “The Odious Scourge: Involving Interpretations of the Crime of Genocide.” *Genocide Studies and Prevention: An International Journal*. Volume I 2006:95. <<http://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1241&context=gsp>>.

⁹⁹ Aktan, “*The Lausanne Peace Treaty*”

At the Paris Peace Conference a Commission created in order to inquire the violations of international law perpetrated by Germany and its allies.¹⁰⁰ It is worth noting here that in the report there was no attribution of the 1907 Hague Regulations. That is to say, the legal ground for the prosecutions of the crimes was flawed. Furthermore, in the report there was no sign of whether the Armenian subjects of the Ottoman Empire would be classified in the scope of its mandate.¹⁰¹ It is lucid that without having a legal basis the report did mean anything in terms of its jurisdiction.

Also, the allied powers tried to punish Germany. Despite Germany went away without being tried, she opted to try those who were responsible for war crimes in the Courts of Germany called Leipzig Trials. The endeavor to prosecute the German Kaiser William II was unsuccessful, as the Kaiser absconded to Netherlands. Thus, the first try for an international criminal tribunal could not be actualized.¹⁰²

It should be stressed that in the Treaty of Versailles there was no reference to the crimes against the laws of humanity, as the Americans objected to that idea.¹⁰³

Is The Declaration Legally Binding?

Though, a declaration is a legal instrument, not binding as if the treaties or conventions.¹⁰⁴ In this respect, the declaration of the allied powers of the World War I as defining the events of 1915 crime against humanity was not legally binding.

2.2.The Treaty of Serves

On 18 January 1919, The British High Commissioner, Admiral Calthorpe, informed the Turkish Foreign Minister that 'His Majesty's Government are resolved to have proper punishment inflicted on those responsible for Armenian massacres'. [...] Trials would be predicated on the concept that an occupying military regime is entitled to prosecute offenders on the territory where the crime has taken place because it is, in effect, exercising de facto authority in place of the former national regime. Jurisdiction would not, therefore, be based on broader notions rooted in the concept of universality.¹⁰⁵

¹⁰⁰Schabas. "Genocide in International Law," 18.

¹⁰¹Ibid., 17.

¹⁰²_____, Schabas. *Genocide in International Law*. New York, Cambridge University Press, 2009: Kindle Book, Location 779-780.

¹⁰³Ibid., 785-786.

¹⁰⁴United Nations Treaty Collections. 02.09.2015 <
https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml>.

¹⁰⁵Schabas, "Genocide in International Law," 798.

Here is essential to bring up that the reason for the prosecution of the Turkish leaders could not be based on the concept of international crime or universal jurisdiction. What is more, as mentioned above, William Schabas rightly puts, even in the Hague Regulations there was no reference to the minorities of a nation. Hence there was no international/universal jurisdiction or supreme body regarding the minorities of a state. It is clear that the allied powers tried to find a pretext in order to criminalize those.

Prosecuted on the basis of the domestic penal code, several ministers in the wartime cabinet and leaders of the Ittihad Party were found guilty by a Court Martial, on 5 July 1919, of 'the organization and execution of crime of massacre' against the Armenian minority. The criminals were sentenced, in absentia, to capital punishment or lengthy terms of imprisonment.¹⁰⁶

The three main leaders of the Committee of Union and Progress (hereinafter the CUP) Enver, Talat and Cemal Pashas had abandoned the country at the end of the war. Thus, the prosecution of those was carried out in absentia. Yet, without having clear proof, the district governor of Boğazlıyan Kemal Bey was executed in compliance with the verdict of the related court. The execution brought about public demonstrations against the occupied rule and the government in Istanbul. Thus, the British authorities made a decision of moving the trial from Istanbul to Malta. At the end of the Malta proceedings there could come out no proof of the alleged crimes and the British High Commissioner ceased the inquiry by proclaiming that there was no need to prosecution of the suspects of so called Armenian massacres of 1915/the relocation of the Armenians), as there was no evidence and the trial was ended up with the release of the detainees.¹⁰⁷

At that time the Ottoman Archives was under the seizure of the allied powers. Hence as Yusuf Halaçoğlu rightly expresses in his book "Facts of Relocation of Armenians" that If the allied powers had had the archival evidence "Allied powers could certainly have found out, and they could have punished the guilty."¹⁰⁸

Here I also articulate that the Ottoman Archives is open to the public whereas not the Armenian ones. Here is what Patrick Walsh (A research fellow at University

¹⁰⁶ Ibid., 822.

¹⁰⁷ Mustafa Palabıyık. *1915 Olaylarını Anlamak: Türkler ve Ermeniler*. Ankara, Beta, 2015: 46-47.

¹⁰⁸ Halacoglu, "The Story of 1915," 118-119.

College Dublin's School of History and Archives, Patrick Walsh, called for both sides to commemorate all Ottoman victims – whether Muslim Turks or Armenian Christians – as casualties of a “great tragedy.”) has recently said concerning the issue;

“Each time I asked for the Armenian archives... they invented a pretext or said it was not possible or they did not answer at all, Turkish archives can be obtained with no problem.[...]Armenian archives are “not open as the Ottoman archives,” most current research had been based on British historical sources.”¹⁰⁹

Here is also very important to express that the Martial Court of Istanbul, under the oppression of the allied powers, was prosecuting those who were allegedly accused of the atrocities committed against the Armenians. Moreover in the course of the Paris Peace Conferences Woodrow Wilson opposed to the idea of crime against the laws of humanity as it would have been an ex-post facto law (retroactive) which was suggested by the Greek Foreign Minister.¹¹⁰

While the German Government accepting the treaty of Versailles conditionally by omitting the clause related to prosecution of war criminals by saying that its penal code prevented the surrender of Germans to a foreign government for prosecution and punishment whereas the Ottoman Government even before the Sevres Treaty had to execute the governor of Boğazlıyan under the oppression of the British rule in Istanbul. As mentioned earlier, the British rule after the signing of the Treaty of Sevres took some of the leaders of the CUP regime to Malta to prosecution. Pursuant to article 230 of the treaty;

The Turkish Government undertakes to hand over to the Allied Powers the persons whose surrender may be required by the latter as being responsible for the massacres committed during the continuance of the state of war on territory which formed part of the Turkish Empire on the 1st August, 1914. The Allied Powers reserve to themselves the right to designate the Tribunal which shall try the persons so accused, and the Turkish Government undertakes to recognise such Tribunal. In the event of the League of Nations having created in sufficient time a Tribunal competent to deal with the said massacres, the Allied Powers reserve to themselves the right to bring the accused persons mentioned above before the Tribunal, and the Turkish Government undertakes equally to recognise such Tribunal.¹¹¹

¹⁰⁹ Anadolu Agency. 02.09.2015 <<http://www.aa.com.tr/en/politics/497885--historians-call-for-normal-turkish-armenian-relations>>.

¹¹⁰ Aktan, “*The Armenian Problem*,” 265.

¹¹¹ Schabas, “*Genocide in International Law*,” 837.

Malta was a sort of prosecution in today's sense. As it can be inferred from the article the investigation of Malta was conducted with the aim to create an International Tribunal. Despite there has been no court ruling on the events of 1915, there is a legal investigation that is the part of the prosecution. Therefore, It can be said that according to the legal inquiries of the allied powers there was nothing found to call the events of 1915 as genocide. In today's sense it can be called nonsuit, as expressed by Uluç Gürkan.¹¹²

According to the Hague Regulations the crimes during the war should be committed against the enemy of the state, as touched upon above. Consequently, the Armenians as the subjects of the Ottoman Empire should not have been classified under those regulations. It was the interior affairs of the Ottoman State. Beside this, the conception of international crime did not exist. In that sense the concept of crime against humanity had not been acknowledged. Subsequently, the responsibility of the "would be" atrocities against the Armenians should have been under the mandate of the Ottoman State.¹¹³

The CUP at the beginning of the period of the forced migration was aware of the atrocities committed against the Armenians and tried to prevent such violations. The government with the aim of punishing those acting against the law of forced migration on 30 September 1915 sent the investigation commissions in order to inquire the breaches of the law. Those commissions sent those who were responsible for the violations, to the Martial Courts to be prosecuted. During the trials of the Martial Courts those liables were accused of various crimes such as, murder, rape, corruption, forcibly confiscating the properties of the Armenians, forced marriage with the Armenian women. Those trials continued till in the middle of 1916 and at the end 67 of them were sentenced to death penalty/capital punishment, and 524 of them were sentenced to imprisonment up to the different extents, 68 of them were sentenced to exile, forced labor or pay a fine.¹¹⁴

¹¹² Uluç Gürkan. *Ermeni Katliamı Suçlaması Yargılama ve Karar*. İstanbul, Kaynak Yayınları, 2015: 18-19.

¹¹³ Faruk Turhan. "Soykırım Suçunda Bir Grubu Tamamen veya Kısmen Yok Etme Amacı ve Ermeni Tehciri Olayı." 02.09.2015 < [http://hukuk.sdu.edu.tr/assets/uploads/sites/65/files/soykirim-sucunda-yok-etme...>](http://hukuk.sdu.edu.tr/assets/uploads/sites/65/files/soykirim-sucunda-yok-etme...).

¹¹⁴ Palabıyık, "1915 Olaylarını Anlamak," 42-44.

As a result, as well-stated by Kemal Çiçek, those verdicts of the courts give us a compelling evidence that there was no intention of the extermination of the whole race of the Ottoman Armenians. Thus, the intention to destroy according to the Genocide Convention can not be applicable to the forced migration of the Armenians. (The specific intent -Dolus specialis)¹¹⁵

Furthermore, the execution of the punishments of the CUP leaders, namely Talat, Enver and Cemal Pashas, who were convicted to death penalty, could not be materialized, as they had left the state on 1 November 1918. Yet, It can be said that the conviction did carry out by the Armenians, as the leaders were murdered. Thus, one should not ask for the punishment of the liables, as the Armenians had already executed would be “criminals”.¹¹⁶

After 23 April 1920 virtually all the rulings of the 1919-1920 Martial Courts were reversed by the Supreme Court, in spite of the fact that Istanbul was still under the siege of the allied powers.¹¹⁷ Even Vahkan Dadrian as the defender of the official discourse of the Armenians assents to some extent the defect of the trails by saying that “[T]hese trails were urged on by the victorious Allies, under whose shadow they took place.”¹¹⁸

In this respect, those tribunals should not be considered as the competent courts as cited in the article 6 of the Genocide Convention. Pursuant to the article;

Persons charged with genocide or any of the other acts enumerated in Article 3 shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.¹¹⁹

¹¹⁵ Kemal Çiçek. This comment made by Kemal Çiçek on a TV programme which was aired on CNN-Türk on 23 April 2015 at 21:00.

¹¹⁶ Diren Çakmak. “Soykırım Suçu: Suçun Gerçekleştiği Ruanda Örneği ve Suçun Gerçekleşmediği Ermeni Tehciri.” (2007). 18.09.2015 <<http://www.ayk.gov.tr/wp-content/uploads/2015/01/%C3%87AKMAK-Diren-SOYKIRIM-SU%C3%87U-SU%C3%87UN-GER%C3%87EKLE%C5%9ET%C4%B0%C4%9E%C4%B0-RUANDA-%C3%96RNE%C4%9E%C4%B0-1994-VE-SU%C3%87UN-GER%C3%87EKLE%C5%9EMED%C4%B0%C4%9E%C4%B0-ERMEN%C4%B0-TEHC%C4%B0R%C4%B0-1915.pdf>>

¹¹⁷ Palabıyık, “1915 Olaylarını Anlamak,” 48.

¹¹⁸ Gunter Lewy. *The Armenian Massacres in Ottoman Turkey*. The University of Utah Press, 2005: 81-82.

¹¹⁹ Convention on the Prevention and Punishment of the Crime of Genocide. 02.09.2015 <http://www.oas.org/dil/1948_Convention_on_the_Prevention_and_Punishment_of_the_Crime_of_Genocide.pdf>.

During the Paris Peace Conference the head of the National Delegation, Bogos Nubar Pasha asked for taking part in the conference on the ground that they had been fighting against the Ottoman State in the course of war.¹²⁰ In other words, they were part of the enemies. Hence, had they been the warring side of the war, there should have been no claim of genocide, as stressed by Gündüz Aktan.

In consonance with the article 89 of the Treaty of Sevres the task of delineating the boundaries of Armenia would be left to President Wilson of the USA.

Article 88 of the Treaty of Sevres

Turkey, in accordance with the action already taken by the Allied Powers, hereby recognises Armenia as a free and independent State.

Article 89 of the Treaty of Sevres

Turkey and Armenia as well as the other High Contracting Parties agree to submit to the arbitration of the President of the United States of America the question of the frontier to be fixed between Turkey and Armenia[...]¹²¹

By the same token in order to reveal the genuine intentions of the great powers I have to touch upon The Sykes-Picot Agreement.

The Sykes-Picot Agreement was signed on 16 May 1916 between France and Great Britain. This treaty led to the allocation of Turkish held areas, that is to say, Syria, Iraq, Lebanon and Palestine between France and Great Britain.¹²² Russia participated in this agreement later on and would be allocated Erzurum, Trabzon, Van, Bitlis and a region from the Southeastern Anatolia. Afterwards Italy also became a party to the treaty and would annex the province of Antalya and the dodecanes.¹²³

The Treaty is also important that no area allocated to an independent Armenian state.(As mentioned in the Treaty of Sevres)¹²⁴ This is also an evidence that the Armenians used by Great Powers in order to achieve their final aims on the Ottoman soil.¹²⁵

¹²⁰ Aktan, "*The Lausanne Peace Treaty*"

¹²¹ Ibid.

¹²² Encyclopaedia Britannica.02.09.2015<<http://global.britannica.com/event/Sykes-Picot-Agreement.>>.

¹²³ Şeref Ünal. *Uluslararası Hukuk Açısından Ermeni Sorunu*. Ankara,Türk Tarih Kurumu Basımevi,2011:53-54.

¹²⁴ Ibid., 55.

¹²⁵ Gürün, "*The Armenian File*," 283.

2.3.The End Of The War Of Liberation

At the end of the World War I and the War of Liberation, Turkey signed several agreements. Overlooking those accords contravene to the principle of *lex specialis* as well as *pacta sunt servanda*¹²⁶ (promises shall be kept).¹²⁷ Article 26 of the Vienna Convention on Law of Treaties codifies the principle of *pacta sunt servanda* as “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”¹²⁸

2.3.1.The Treaty of Lausanne

The Treaty of Sevres was never ratified and substituted by the Treaty of Lausanne of 24 July 1923, including a declaration of amnesty all the offences committed between 1 August 1914 and 20 November 1922.¹²⁹ In this respect even if there had been any crime conducted in the course of the war either by the Armenians or Turks, would not have been an issue any more.

Under the paragraph 6 of the respective declaration, the Armenians who had been outside of the current border (such as Syria) would have right to return and receive their assets.¹³⁰

The Turkish Government, sharing the desire for general pacification with which all the Powers are animated, declare their intent in not to contest the measures carried out under the auspices of the Allied Powers during the period between the 20th October, 1918, and the 20th November, 1922, with the object of re-establishing families scattered owing to the war and or replacing legitimate proprietors in possession of their goods.¹³¹

It is worth marking that in the Treaty of Lausanne the property rights were regulated as well (Article 65-72). As stated in the related article any dispute over the

¹²⁶Pulat Tacar. “ State Identity, Continuity, and Responsibility: The Ottoman Empire, the Republic of Turkey and the Armenian Genocide: A Reply to Vahagn Avedian”. *The European Journal of International Law* Vol. 23 no. 3. 2012:831.02.09.2015<<http://www.ejil.org/pdfs/23/3/2308.pdf>>.

¹²⁷Ibid.

¹²⁸Vienna Convention on the Law of the Treaties.03.02.2016.<<https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>>

¹²⁹Schabas, “*Genocide in International Law*,”837.

¹³⁰Aktan, “*The Lausanne Peace Treaty*”

¹³¹Ministry of Foreign Affairs.02.09.2015< http://www.mfa.gov.tr/viii_-declaration-of-amnesty.en.mfa>.

restitution of property should have been concluded within 18 months. As Gündüz Aktan mentioned, the restrictions have already become invalid, the Armenians can not enforce of the implementation of the clauses regarding the property rights any more.¹³²

In reality, the Armenian Question had cleared up even before the Treaty of Lausanne came into existence, with the Treaties of Moscow(16 March 1921) and Kars, which circumscribed the eastern borders of Turkey. In addition, with the Kars Treaty(13 October 1921) a full general amnesty was approbated for the brutalities and crimes that had been committed by both parties during the war in the Caucasus front.¹³³

Regrettably, if we look at the article 11 of the Declaration of Independence of the Republic of Armenia, It says; “The Republic of Armenia stands in support of the task of achieving international recognition of the 1915 Genocide in Ottoman Turkey and Western Armenia.”¹³⁴

Additionally,those ideals that are mentioned in the declaration also placed in the constitution of Armenia in 1995. In the preamble of the Constitution of 1995; “The Armenian People, recognizing as a basis the fundamental principles of the Armenian statehood and national aspirations engraved in the Declaration of Independence of Armenia[...].”¹³⁵

In line with the article 5 of the Ankara Treaty which was signed with France on 20 October 1921 “[B]oth sides will announce a general amnesty in the evacuated area[...].”¹³⁶ It is obvious from the article that the amnesty was not only related to the acts of the Turkish side but also that of the French.¹³⁷

2.4.The Lex Specialis Principle

As reported by the article 55 of the Draft Articles on the Responsibility for Internationally Wrongful Acts which was accredited by the International Law Commission at its 53rd session (2001) endorses that

¹³² Aktan, “*The Lausanne Peace Treaty*”

¹³³ Ibid.

¹³⁴ The Government of the Republic of Armenia.02.09.2015.< <http://www.gov.am/en/independence/>> .

¹³⁵ National Assembly of the Republic of Armenia.<02.09.2015<http://www.parliament.am/parliament.php?id=constitution&lang=eng>>.

¹³⁶ Franco-Turkish Agreement.02.09.2015.<http://www.hri.org/docs/FT1921/Franco-Turkish_Pact_1921.pdf>.

¹³⁷ Tacar, “State Identity, Continuity, and Responsibility”

These articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of a State are governed by special rules of international law.¹³⁸

On that account, the treaties of Kars, Ankara and, Lausanne constitute *lex specialis*. In fact for Turkey as well as the contracting parties the case was closed by signing those treaties.¹³⁹

To the degree that article 11 of the above mentioned commentary:

Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.¹⁴⁰

Consequently, in accordance with this article Turkey can not be forced to obtain the responsibility of the Ottoman State even if Turkey is the successor state of the Ottomans.(Under the assumption of applicability of the Convention on Genocide retroactively) If Turkey confirms that the acts took place in the Ottoman State, in that case the way to the prosecution could open. Currently, Turkey as well as Armenia are not the parties to the International Criminal Court, either the USA.(hereinafter the ICC).In this way, the ICC established to prosecute the individuals not the states. The relocation of the Armenians took place 100 years ago, finding people nearly impossible when taking into the average life-span of a person.¹⁴¹ Moreover the state responsibility pursuant to the Convention on Genocide is quite problematic area and needs further clarification. In conforming to the Convention on Genocide the International Court of Justice(hereinafter the ICJ) is assigned to make decisions

¹³⁸Responsibility of States for Internationally Wrongful Acts. 02.09.2015.<http://www.eydner.org/dokumente/darsiwa_comm_e.pdf>.

¹³⁹ Tacar, "State Identity, Continuity, and Responsibility"

¹⁴⁰Responsibility of States for Internationally Wrongful Acts. 02.09.2015.<http://www.eydner.org/dokumente/darsiwa_comm_e.pdf>.

¹⁴¹_____,Schabas. "Uluslararası Vahşet Suçlarına Dair Bir Paradigma Olarak İnsanlığa Karşı Suçlar." *Yeni Türkiye Ermeni Meselesi Özel Sayısı IV*,Ankara,Yeni Türkiye Stratejik Araştırma Merkezi,(2014)3085-3086.

regarding the states and the ambiguities in the convention, upon the request of the parties.¹⁴²

On the grounds, firstly Turkey should accept the so called “wrong-doings” of the Ottoman State in spite of the above mentioned treaties. Then, the ICJ should be assigned to determine the retroactive applicability of the Convention on Genocide. All the steps have to be taken in order to open a case on the matter.

¹⁴²Yasin Aslan and İlter Aksoylu. *Uluslararası Hukuk Bağlamında Asılsız Soykırım İddiaları*. Ankara: Bilge Yayınevi,2014:174-175.

CHAPTER III

GENOCIDE IN INTERNATIONAL LAW AND THE RELOCATION OF THE OTTOMAN ARMENIANS

3.1.The Doubiousness In The Definition Of Genocide

Some of the annotations listed below are of upmost importance to conceive the complexity in the elucidating of the term genocide.

Genocide is sustained purposeful action by a perpetrator to physically destroy a collectivity directly or indirectly, through interdiction of the biological and social reproduction of group members, sustained regardless of the surrender or lack of threat offered by the victim.(Helen Fein)¹⁴³

Genocide in the generic sense is the mass killing of substantial numbers of human beings, when not in the course of military forces of an avowed enemy, under conditions of the essential defenselessness and helplessness of the victims.(Israel W. Charny).¹⁴⁴

The concept of genocide applies only when there is an actualized intent, however successfully carried out, to physically destroy an entire group (as such a group is defined by the perpetrators). (Steven T. Katz)¹⁴⁵

Genocide is a form of one-sided mass killing in which a state or other authority intends to destroy a group, as that group and membership in it are defined by the perpetrator.(Frank Chalk and Kurt Jonassohn)¹⁴⁶

Appropriately, Political scientist Michael Gunter¹⁴⁷ in his book, titled “Armenian History and the Question of Genocide,” touches upon the vagueness of genocide by referencing of French historian, psychologist and political scientist Jacques Semelin;

Given the difficulty in defining the term genocide, one might be tempted to paraphrase US Supreme Court Justice Potter Stewart and simply declare that he knows it when he sees it. Such semantic solution, however, would be legally

¹⁴³ Alette Smeulers and Fred Grünfeld. *International Crimes and Other Gross Human Rights Violations*. Boston: Martinus Nijhoff Publishers, 2011: 166.

¹⁴⁴ Ibid.

¹⁴⁵ R.J.Rummel. “Genocide”. 11.09.2015 <<https://www.hawaii.edu/powerkills/GENOCIDE.ENCY.HTM>>.

¹⁴⁶ Smeulers, “*International Crimes*,” 166.

¹⁴⁷ Gunter, “Armenian History,” 10.

untenable and might also tempt one with a grudge against some foe to cry genocide too easily and thus trivialize the concept.¹⁴⁸

As it can be construed from the above listed concepts of genocide there is no concurrence even among the scholars. Ergo, one can easily see that those definitions are not identical to the legal conceptualization of genocide, as explained later on.¹⁴⁹ As there has been a legal definition since the adoption of the Genocide Convention in 1948, the final say should be given to the competent courts not the politicians or biased scholars, even the jurists.

Leo Kuper should be cited here as a sociologist, who studied law, suggested a new term “genocidal massacre” in order to emphasize the arduousness in ascertaining the subjective element of intent in the crime of genocide. By doing this, he assumed that the new term would decrease the judgements that are based on personal assessments rather than an objective approach. Despite all the studies on the subject, Leo Kuper by labeling the relocation of Armenians as genocide made a pure personal judgement and contradicted himself.¹⁵⁰

3.2.The Period Until The Approbation of The Convention On Genocide

3.2.1.The Peace Treaty Of Westphalia

The Peace Treaty of Westphalia of 1648 that ended the Thirty Years’ War, has three key axioms which are; state sovereignty; non-intervention of one state in the internal affairs of another and (legal) equality of states.¹⁵¹

In this respect, minorities were the internal affairs of the states. The notion of international crime did not exist. In such a way, the issues identifying with the minorities of the states would be dealt with under the domestic laws of the states.¹⁵² The Peace of Westphalia is said to have ended the exertion of the imposition of any

¹⁴⁸ Ibid.

¹⁴⁹ Smeulers, “*International Crimes*,”166.

¹⁵⁰ Akşin, “A General Appraisal,”28-29.

¹⁵¹ Sasha, Safonova. *Relevance of the Westphalian System to the Modern World*.02.09.2015.<<http://www.articlemyriad.com/relevance-westphalian-system-modern-world-sasha-safonova/>>.

¹⁵² Aktan, “The Armenian Problem,”264.

supranational authority on European states. Major European powers agreed to abide by the maxim of territorial integrity. Thereupon, state sovereignty meant the independence of the state from foreign powers and the state's supremacy over its boundary.¹⁵³

William Schabas affirms that "International human rights law can also trace its origins to the law of armed conflict, or international humanitarian law."¹⁵⁴ Henceforth, the Hague Conventions of 1899 and 1907 should be determined as the beginning point for the evolution of international human rights law then later international criminal law.

The Hague Convention of 1907 was to regulate the crimes executed in the course of war, in other words it was about war crimes. Which means the crimes that conducted within the state would not be in the scope of the convention and would not be criminalized in accordance with the convention. In spite of the fact that in the aforementioned convention there was a clause respecting the civilian population of the occupied territory, there was no certain suggestions on national or ethnic minorities in the regulations.¹⁵⁵

3.2.2.The Emergence of The Term Genocide

"We are in the presence of a crime without a name." what the Prime Minister of Britain, Winston Churchill, said, to expound the Nazi violence.¹⁵⁶ Subsequently, the word genocide first coined by the Polish-Jewish jurist Raphael Lemkin (1900–1959)¹⁵⁷ in his work "Axis Rule in Occupied Europe" (1944), who had transmigrated to the USA in 1941. From an etymological standpoint, the word is derived from ancient Greek word Genoc(Race) or Latin (Gens-Tribe, Clan) and -cide(kill).¹⁵⁸

¹⁵³Miyoshi,Masahiro.*Sovereignty and International Law*.02.09.2015<https://www.dur.ac.uk/resources/ibru/conferences/sos/masahiro_miyoshi_paper.pdf>.

¹⁵⁴Schabas, "Genocide in International Law,"699.

¹⁵⁵Schabas, "Genocide in International Law" 18.

¹⁵⁶Prevent Genocide International. 11.09.2015<<http://www.preventgenocide.org/genocide/crimewithoutaname.htm>>.

¹⁵⁷Sergey Sayapin. "Raphael Lemkin: A Tribute. *European Journal Of International Law*, Volume 20,Issue 4,(2009). 11.09.2015<<http://ejil.oxfordjournals.org/content/20/4/1157.full>>

¹⁵⁸Gunter, "Armenian History,"223.

Raphael Lemkin had shown great enterprise lobbying the nations in order to outlaw the crime, then the crime of genocide.¹⁵⁹ Given that he had lost 49 members of his family, including his parents¹⁶⁰ in the World War II as a consequence of the Nazi atrocities against the Jews, he might have been under the psychological effect of this trauma.¹⁶¹ In fact, his attempts in the aftermath of the war to get codified the crime, bore fruit in 1946 which is the date of the UN General Assembly Resolution 96(I) enclosing the term genocide as a crime under international law for the first time, even though not legally binding. With this resolution the Economic and Social Council (hereinafter the ECOSOC) was assigned to draw up a draft convention on the crime of genocide.¹⁶²

Before moving forward, it should be highlighted here that the description which was placed in the Resolution was not the replica of Raphael Lemkin's denotation of genocide. Thus, in his book, *Axis Rule in Occupied Europe*, Raphael Lemkin had revealed a much broader annotation of genocide in comparison with the one in the Resolution. According to Raphael Lemkin:

[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 disintegration of the political and social institutions, of culture, language, national feelings, religion, and 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.¹⁶³

I conjecture that an explanation regarding the coinage of the word genocide and its association with the Ottoman Armenians would help to clarify the allegations to some extent. As it is widely known Raphael Lemkin begot the word not only to refer to the Nazi atrocities but also to the tragedies of the Ottoman Armenians.¹⁶⁴ In

¹⁵⁹ Schabas, "Genocide in International Law"

¹⁶⁰ A. Dirk Moses. "Raphael Lemkin, Culture and the Concept of Genocide." *The Oxford handbook of Genocide Studies*, (2012):39. 11.09.2015 http://www.dirkmoses.com/uploads/7/3/8/2/7382125/moses_lemkin_culture.pdf.

¹⁶¹ Holocaust Memorial Day Trust. 11.09.2015 <<http://hmd.org.uk/resources/stories/hmd-2016-raphael-lemkin.>>.

¹⁶² Schabas, "Genocide in International Law," 1976.

¹⁶³ Prevent Genocide International. 11.09.2015 <<http://www.preventgenocide.org/lemkin/AxisRule1944-1.htm>>.

¹⁶⁴ Seto Boyadjian. "A half Truth is a Whole Lie". (2014). 11.09.2015 <<http://asbarez.com/130164/thomas-de-waals-futile-attempt-at-trivializing-the-armenian-genocide/>>.

the first place, Raphael Lemkin was not a historian, as mentioned above, he was a lawyer, hence what he had known concerning the Ottoman Armenians might have been based upon one-sided narratives. Furthermore, inventing a term is an academic effort, this does not make the creator of the word a credible source to judge the historical facts on his own. Therefore, in the Armenian case, Raphael Lemkin's reference of the Ottoman Armenians, while had been creating the concept of genocide, can not be taken as a legally binding declaration. Additionally, the Swiss historian and academician, Dominik J. Schaller, after examining the works of Raphael Lemkin, in his article on the colonial rule in Africa, concludes:

The way Lemkin has perceived Africans can only be described as racist. In his manuscripts, Africans are portrayed as either weak-willed and helpless victims or as bloodthirsty cannibals. His obvious lack of ethnographic knowledge made him misunderstand Africa as "the heart of darkness." Besides, his attitude that Africans themselves have to be blamed for their fate is more than problematic and questions the value of his historical scholarship.¹⁶⁵

In conformance to the UN General Assembly Resolution of 96(I), December 11, 1946:

Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations.

Many instances of such crimes of genocide have occurred when racial, religious, political, and other groups have been destroyed, entirely or in part. The punishment of the crime of genocide is a matter of international concern.

The General Assembly, therefore, affirms that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices -whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds- are punishable;

Invites the Member States to enact the necessary legislation for the prevention and punishment of this crime;

Recommends that international co-operation be organized between States with a view to facilitating the speedy prevention and punishment of the crime of genocide, and, to this end,

¹⁶⁵ Dominik J. Schaller. "Raphael Lemkin's view of European Colonial Rule in Africa: between condemnation and admiration". *Journal of Genocide Research*, 7(4), (2005): 536. 11.09.2015 < <http://inogs.com/wp-content/uploads/2013/05/INoGS-JGR-Schaller.pdf> >.

Requests the Economic and Social Council to undertake the necessary studies, with a view to drawing up a draft convention on the crime of genocide to be submitted to the next regular session of the General Assembly.¹⁶⁶

The most important feature of the resolution is that genocide determined as an international crime. Pursuant to the resolution “religious, racial, political or any other” groups are listed in the definition the crime of genocide. By comparison, the word “other reasons”, it widened the compass of the definition of crime against humanity given in the Nürnberg Charter.¹⁶⁷ In the Charter:

Crime against humanity: Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecution on political, racial or religious grounds in execution of or in connexion with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.¹⁶⁸

3.2.3. The Nürnberg Trails (November 1945 - October 1946)

With the Nazi violence against the Jews during the World War II, the notion of charging people, who are culpable in committing crimes within the country, began to gain ground. Then, The London Conference (The London Conference began on June 26, 1945 where representatives from the United States, Great Britain, France and Russia met to begin work on establishing an international tribunal.) became the starting point respecting the crimes executed within the country, as well as the beginning of international criminal law. But it is pivotal to assert here that the crime had to be linked to the war. Hence, this would give an apology to intrude in the domestic

¹⁶⁶United Nations General Assembly Resolution. 11.9.2015<http://archive.adl.org/education/curriculum_connections/spring_2005/spring_2005_lesson_2_resolution.html>

¹⁶⁷ Aktan, “The Armenian Problem,”

¹⁶⁸The Charter and Judgement of the Nürnberg Tribunal. 11.09.2015<http://legal.un.org/ilc/documentation/english/a_cn4_5.pdf>.

affairs of the states.¹⁶⁹ It can be deduced that World War II and consequently the Nürnberg Trials which triggered off the commencement of the deviation in the perception of international relations and also international adjudication of the crimes.

Albeit, the conceit of crime against humanity came into existence, the term of genocide could not obtain a sufficing exactitude at that time. Notwithstanding, in the course of the trials, in defiance of the prosecutor's usage of the term genocide, in the verdict there was no attribution to that crime.¹⁷⁰

In fact, punishing those whose acts taken place inside the territory of the accused was a new phenomenon, as the issues related to minorities had been handled by the states themselves as the domestic affairs. Therefore, there had been no codification concerning the crimes committed in the territories of the state, as cited above.(The Hague Conventions)¹⁷¹

In this sense, to adjudicate those responsible for the atrocities against the Jews inside the Germany, the allied powers needed a new sort of codification and resorted to the Marten Clause of the Hague Convention of 1907 to concoct the regulations.¹⁷²

One has to see the evolution in the meaning of crime against humanity. As the first codification of the term in the Charter included the connection with the war crimes. The first definition of crime against humanity was a part of international humanitarian law (Marten Clause of the Hague Convention of 1907) rather than international criminal law. It is of utmost importance to emphasize that even if the term crime against humanity codified in the Charter by including the phrase "before or during the war", the atrocities against the Jews prior to 1939 left without conviction. This is also a sort of indicative of the principle of non-retroactivity. As the incidents that had taken place before the war was thought as the domestic affairs of Germany.¹⁷³

¹⁶⁹ Aktan, "The Armenian Problem,"

¹⁷⁰ Ibid.

¹⁷¹ Schabas, "A Legal Distinction,"

¹⁷² Ibid.

¹⁷³ Ibid.

Howbeit, two notions “genocide” and “crime against humanity” being formed in the same period, in the Nürnberg Trails the term crime against humanity codified instead of genocide. For, they believed that employing crime against humanity would be lawfull under customary international law. Yet, as reported by William Schabas, even customary international law was lacking to define crime against humanity. As to talk about customary international law, there should have been practices. Moreover, after 1990s with the evolution of international criminal law, the concept of crime against humanity has attained much broader meaning, especially after the International Criminal Tribunal for the former Yugoslavia (hereinafter the ICTY). Thereupon, the concept of crime against humanity began to be depicted in times of peace or war as well as internal and external conflicts as if the term genocide.¹⁷⁴

To sum up, eventhough the Nürnberg Trails have been displayed as the beginning point for international criminal law, it has been critisized by many in terms of its credibility. As the victorious nations compelled Germany to obey the rules. Thus, it can not be said they were legitimate in their actions. As the aim was the prosecute the criminals of war, there should have been the liables of the crimes in both sides.¹⁷⁵ In other words, the victorious powers should have been prosecuted for the war crimes as well. In this sense the ICTY-1993 and International Criminal Tribunal for Rwanda (hereinafter the ICTR-1994) could be named as the real international criminal tribunals (ad-hoc) prior to the establishment of the ICC in 2002.

On that account, It is very critical to make a simplification in terms of a better apperception of the nuts and bolts of international law. Even the crime of genocide to some extent needs to consent of the nations at least to become jus cogens or peremptory norm. (According to Italian jurist Antonio Cassese, the main difference between a customary norm and peremptory norm, the former requires state practice and opinio juris¹⁷⁶, whereas the latter not.)¹⁷⁷ In order to speak about the universal

¹⁷⁴ Schabas, “A Legal Distinction”

¹⁷⁵ Kristen Sellars. “Imperfect Justice at Nürnberg and Tokyo”. *The European Journal of International Law*, Volume.21,No.4(2011):1089-1090. 17.09.2015<<http://www.ejil.org/pdfs/21/4/2106.pdf>>.

¹⁷⁶ Cornell University Law School. 17.07.2015<https://www.law.cornell.edu/wex/opinio_juris_international_law>.

¹⁷⁷ John Tasioulas, “Custom, Jus Cogens and Human Rights” (2015):13.17.09.2015<<http://www.law.uchicago.edu/files/files/customjuscogenshrs.pdf>>.

jurisdiction most of the states should come closer to the same solution. Put differently, there should be a common legal ground to move forward. Consequently during the World War I, one was not able to talk about crime against humanity or genocide.

The ambiguity in the definition of genocide and the principle of non-retroactivity were two of the reasons that caused the USA to have shunned the Convention for 40 years.¹⁷⁸ Albeit, the Convention was not retroactive, the policy makers feared it would be used to define the nineteenth century US treatment of Native Americans as genocide.¹⁷⁹ Even after the approval of the Convention the ambiguities in the definition of the crime did not fade hastily and do still continue.

As touched upon briefly earlier, the prosecution of the related war crimes at the Nürnberg Trials have been chastised in terms of the general principles of law. Correspondingly, specifically, two of the principles should be highlighted.¹⁸⁰

1. Nullum crimen sine lege (no crime without law) is the moral principle in criminal law and international criminal law that a person cannot or should not face criminal punishment except for an act that was criminalized by law before he/she performed the act.¹⁸¹

2. Nemo iudex in causa sua (or nemo iudex in sua causa) no man should be judge in his own case.¹⁸²

The General assembly of the UN declared the adoption of the Nürnberg Principles as the principles of international law.¹⁸³

In agreement with the statutes of the aforementioned Tribunals if the case tried by either national or international court and if there is a final verdict, another trial can not be carried out in conformance to the principle of non bis in idem.¹⁸⁴

Non Bis In Idem, This phrase signifies that no one shall be twice tried for the same offence; that is, that when a party accused has been once tried by a

¹⁷⁸ Gunter, "Armenian History," 30.

¹⁷⁹ Human Rights in the US and the International Community. <11.09.2015 http://www.unhumanrights.org/01/0103/0103_01.htm>.

¹⁸⁰ Aslan, "Uluslararası Hukuk," 30.

¹⁸¹ Ibid.

¹⁸² Piotr J. Malysz. "Nemo iudex in causa sua, As the Basis of Law, Justice, and Justification in Luther's Thought". Harvard Theological Review, 100:3, (2007). 11.09.2015 <<http://www.yalelawjournal.org/essay/contra-nemo-iudex-in-sua-causa-the-limits-of-impartiality>>.

¹⁸³ Aslan, "Uluslararası Hukuk," 31.

¹⁸⁴ Ibid., 32.

tribunal in the last resort, and either convicted or acquitted, he shall not again be tried.¹⁸⁵

In this respect, the Malta Trails should be assessed under the above mentioned principles. The British authorities could not find any evidence to charge the Ottoman state with genocide. Thus in terms of the abovementioned principles it was out of question to retry those liables of the relocation of the Armenians.

In the course of the London Conference the victorious states realized that they had been doing similar acts in peace time. Thus they had to refrain from to define crime against humanity in peace time. But later “crime against humanity” like “genocide” codified as crimes in times of peace or war. In this respect, as cited earlier the Nazi atrocities before 1939 have been remained unpunished.¹⁸⁶

At the London Peace Conference the head of the United States delegation, Robert Jackson stated, on 23 July 1945:

It has been a general principle of foreign policy of our Government from time immemorial that the internal affairs of another government are not ordinarily our business; that is to say, the way Germany treats its inhabitants, or any other country treats its inhabitants is not our affair any more than it is the affair of some other government to interpose itself in our problems. The reason that this program of extermination of Jews and destruction of the rights of minorities becomes an international concern is this: it was a part of a plan for making an illegal war. Unless we have a war connection as a basis for reaching them, I would think we have no basis for dealing with atrocities. They were a part of the preparation for war or for the conduct of the war in so far as they occurred inside of Germany and that makes them our concern.¹⁸⁷

Finally, on the 8th August, 1945, the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic, and the Government of the Union of Soviet Socialist Republics reached an agreement constituting the Nürnberg International War Tribunal for the trial of war criminals.¹⁸⁸

¹⁸⁵ Legal Dictionary. 11.09.2015 <<http://legal-dictionary.thefreedictionary.com/Non+bis+in+idem>>

¹⁸⁶ Schabas, “A legal distinction”

¹⁸⁷ Schabas, “Genocide in International Law,” 1092.

¹⁸⁸ International Military Tribunal (Nürnberg). 11.09.2015 <http://crimeofaggression.info/documents/6/1946_Nuremberg_Judgement.pdf>

Pursuant to the principle VI of The Principles of International Law recognized in the Charter of the Nürnberg Tribunal, which was annexed to the above mentioned agreement, the crimes below mentioned defined as punishable crimes under international law.¹⁸⁹

(a) Crimes against peace:

- (i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;
- (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

(b) War crimes:

Violations of the laws or customs of war which include, but are not limited to, murder, illtreatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war, of persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

(c) Crimes against humanity:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.¹⁹⁰

As it can be inferred from the definition of crime against humanity the crimes committed against the Jews even inside Germany could be prosecuted under the said provision of the Charter, unless those crimes were committed in peace time. Thus, as it was the case during the World War I, the victorious powers could not give up the idea of intervening the domestic affairs of the other countries by relating it to the ongoing war as a pretext.¹⁹¹ The crime of genocide did not list in the Nürnberg Charter, hence the crime against humanity was encompassing the term genocide as well. The crime of genocide needed further clarification to be codified.¹⁹²

¹⁸⁹ Aslan, "*Uluslararası Hukuk*," 27.

¹⁹⁰ International Law Commission. 01.06.2015<http://legal.un.org/ilc/texts/instruments/english/draft%20articles/7_1_1950.pdf>

¹⁹¹ Aktan, "The Armenian Problem," 268.

¹⁹² Aslan, "*Uluslararası Hukuk*," 28.

One of the examples of the usage of the term of genocide during the trial can be the speech of the French prosecutor, Champetier: “This is a crime so monstrous, so undreamt of in history through the Christian era up to the birth of Hitlerism, that the term “genocide” had to be coined to define it.”¹⁹³

I think, the remarks of the French prosecutor gives us the clue regarding the history of genocide. It is clear from the speech that the atrocities committed in particular against the Jews had been unprecedented. That’s why he emphasized by saying “up to the birth of Hitlerism”. Thus, defining the relocation of the Armenians in 1915 as genocide is totally unfair as well as unlawful in comparison to the Nazi violence against the Jews. Additionally, even those atrocities could not be defined as genocide legally, due to the lack of codification in international law. Hence, How in 2016 the international community is justifying the usage of the legal term genocide to refer the events of 1915 is beyond the comprehension. It is the evidence of pure propaganda of the Armenian Diaspora as the policy of victimization in order to get the attention of the international community as well as the sustainment of its identity.

Brigadier General Telford Taylor (he was a lawyer), who would later serve as Counsel to the Prosecution at the Nürnberg Tribunals commented on the possible application of the Hague Conventions to the Armenian case, concluding, “[T]he Armenians were citizens of the Ottoman Empire; there was no formal state of war between Turks and Armenians, and so the Hague Conventions were wholly inapplicable.”¹⁹⁴

Natural Law vs Positive Law

Here it has to be determined the distinction between positive law and natural law. In positive law the above mentioned principles should be applied to the cases. In this situation the jurists supporting positive law would criticize the verdict of the Nürnbergs in accordance with the principles of *Nullum crimen sine lege* and *Nemo iudex in causa sua*. In this respect interpreting the Marten Clause of the Hague Conventions of 1907 was a sole breach of the law in terms of positive law. On the other hand, natural law allows to interpret the laws broadly as there is no need of codified rules. What is more, international criminal law should not be mixed up with international law, as the former case

¹⁹³ Schabas, “Genocide in International Law,” 1146.

¹⁹⁴ Telford Taylor. *The Anatomy of the Nuremberg Trials: A Personal Memoir*. (Kindle Edition). New York: Alfred A. Knopf, 1992: 348-349.

the interpretation should be done strictly (as backed by the Vienna Convention), yet in the latter it is allowed.¹⁹⁵

As cited above Martens Clause was important in terms of understanding the very base of the codification of the crimes that had been committed inside Germany. Thus pursuant to the said Clause;

Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience.¹⁹⁶

This clause is a clear example of natural law. One of the handicaps of the natural law is to be very subjective. Thus, arbitrary application of natural law by the powerful states could create an unjust implementation of the law in favour of powerful states. As a lawyer Rupert Ticehurst points out;

The powerful military States have constantly opposed the influence of natural law on the laws of armed conflict even though these same States relied on natural law for the prosecutions at Nümburg. The International Court of Justice (ICJ) in its Advisory Opinion did not clarify the extent to which the Martens Clause permits notions of natural law to influence the development of the laws of armed conflict. Consequently, its correct interpretation remains unclear[...]¹⁹⁷

This Clause is important to illustrate the dubiousness in the interpretation as well as implementation of the rules of the conventions. Even a convention dating back to 1907 still waiting for the clarification.

3.2.4. The Nazi Violence

What the Nazis had done in order to exterminate the Jews could not be compared to what had happened to the Ottoman Armenians. I strongly believe that Bernard Lewis in his book “Notes on a Century” concluded the debate over the issue.

¹⁹⁵ Çakmak, “Soykırım Suçu: Suçun Gerçekleştiği,”

¹⁹⁶ Rupert Ticehurst, “The Martens Clause and The Laws of Armed Conflict” *International Review of the Red*

Cross, No: 317, (1997). 11.09.2015 <<https://www.icrc.org/eng/resources/documents/misc/57jnh.htm>>.

¹⁹⁷ Ibid.

The slaughter of the Jews, first in Germany and then in German occupied Europe, was a different matter. There was no rebellion, armed or otherwise. On the contrary, the German Jews were intensely loyal to their country. The attack on them was defined wholly and solely by their alleged racial identity and included converted Jews and people of partly Jewish descent. It was not local or regional, but was extended to all the Jews under German rule or occupation, and its purpose was to achieve their total annihilation.

When the survivors of the Armenian "deportation" arrived at their destinations in Ottoman-ruled Iraq and Palestine they were welcomed and helped by the local Armenian communities. The German jews deported to Poland by the Nazis received no such help, but joined their Polish coreligionists in a common fate.

The first difference was thus that some of the Armenians were involved in an armed rebellion; the Jews were not, but attacked because of their identity. A second difference was that the persecution of the Armenians mostly confined to endangered areas, while the Armenian populations in other parts of the Ottoman Empire, notably in big cities, were left more or less unharmed. I say "more or less" because there were some attacks on individual Armenians accused of anti-Ottoman acts, but the Armenian populations in general were not persecuted.¹⁹⁸

3.3.The Convention On Genocide

The ECOSOC with the mandate given by the resolution to the preparation of the Convention on Genocide closed out the proceedings and the Convention came into existence by being legislated in the General Assembly in 1948,yet put into effect in 1951.¹⁹⁹The ICJ in 1951 avouched that "the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation".²⁰⁰(Jus cogens)

It was the first human rights treaty approbated by the Assembly.²⁰¹In the articles 2,3, and 4 of the convention genocide is construed followingly:

Art. 2. 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 measures intended to prevent births within the group;

¹⁹⁸ Lewis. *Notes On A Century-Reflections of A Middle East Historian*. Britain: CPI Group,2012:287-288.

¹⁹⁹ Aslan, "*Uluslararası Hukuk*," 30.

²⁰⁰ Schabas, "Genocide in International Law,"1436.

²⁰¹Eugenics Archives.
11.09.2015<<http://eugenicsarchive.ca/discover/connections/532360a0132156674b000256.>>

(e) Forcibly transferring children of the group to another group.

Art. 3. The following acts shall be punishable:

(a) Genocide;

(b) Conspiracy to commit genocide;

(c) Direct and public incitement to commit genocide;

(d) Attempt to commit genocide;

(e) Complicity in genocide.

Art. 4. Persons committing genocide or any of the other acts enumerated in Article 3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.²⁰²

The equivocalness in the term of Genocide can be found in The UN Convention of 1948 as well. Thus and so, unlike the UN Resolution 96, neither the “political groups” nor “the other” groups embodied in the Convention text. That is to say, the political groups excluded from the first resolution.²⁰³ “The exclusion of political groups had done for political reasons rather than in principle”, as stated by William Schabas.²⁰⁴

As already cited, the Convention legally covers only “national, racial, ethnic, and religious groups” not those defined “politically, economically, or culturally”. Along these lines, Jacques Semelin rightly questions: “To what extent is it legitimate to adopt an international legal norm resulting from a political compromise between states?”.²⁰⁵

By the same token, the retroactive usage of the term has gained acceleration, by calling the incidents in the very distant history, such as the French Revolution in 1793, the fate of the native Americans (Indians) of North America. Cynically, in the 2008 collision, the Russian and the Georgian sides denounced each other of attempting Genocide.²⁰⁶

Yet, it should be depurated that, whereas politically motivated crimes are still crime, they can not be labeled as Genocide under the UN Convention.²⁰⁷ But it should not be misreclected that those crimes, which are out of the scope of the

²⁰²Convention on the Prevention and the Punishment of the Crime of Genocide. 11.09.2015<<http://www.fordham.edu/halsall/mod/UN-GENO.asp>>.

²⁰³ Aktan, “The Armenian Problem,”

²⁰⁴ Schabas, “Genocide in International Law,” 2290.

²⁰⁵ Gunter, “Armenian History,” 30.

²⁰⁶ Ibid.

²⁰⁷ Aktan, “The Armenian Problem,”

Convention, are still crimes in the framework of “crime against humanity”.²⁰⁸In short, the ICC is accountable of conducting trials regarding the uncovered crimes by the Convention.²⁰⁹

3.3.1.The Elements of The Crime Of Genocide

A crime is composed of the mental(subjective/mens rea/will to commit a crime) and material(objective/actus reus/the act of crime itself) elements. Hence, the concept of “with intent to destroy” in the article 2 of the Convention illustrates the mental element. It can be inferred that the term of “the intent of genocide” also adds further complexity to the definition.²¹⁰In other words, it is really hard to determine the tacit aim of the perpetrators.

Material Elements(physical element or actus reus)

Protected Groups

In conformance to the Convention on Genocide only four categories of groups are listed in the scope of the provision. These are national, religious, racial and ethnic groups. Yet the classification of a group is not an easy task. It has subjective and objective features to be considered.²¹¹If we look at the judgements of the Tribunals we see the complexity in depicting a group as national, religious, racial and ethnic. We see that in some cases the judgement of the court was incompatible with the principle of nullum crimen sine lege(no penalty without a law).²¹²

Here is a reference to the Akayesu decision of the Rwanda Tribunal would be fruitful to see the objective approach in terms of classifying the target group. In the judgement, the Tribunal, having hard times determining the Tutsi and Hutu groups decided that “Tutsi did not constitute a group explicitly included in the definition of genocide.” Actually, by doing this the court acted against the principle of nullum crimen sine lege(no penalty without a law).²¹³

On the other hand, the same Tribunal made a more subjective approach in the Kayishema and Ruzindana judgement.

²⁰⁸ Aktan, “The Armenian Problem,”

²⁰⁹ Ibid.

²¹⁰ Gunter, “*Armenian History*,” 30.

²¹¹ Gerhard Werle. *Principles of International Criminal Law*. Netherlands: T.M.C. Asser Press, 2009:258.

²¹² Werle, “*Principles of International Criminal Law*,” 272.

²¹³ Ibid.

An ethnic group is one whose members share a common language and culture; or, a group which distinguishes itself, as such (self identification); or a group identified as such by others, including perpetrators of the crimes (identification of others).²¹⁴

If we try to depict the Armenians of the Ottoman State we could say that those Armenians were part of a political group rather than ethnic, religious, racial or national. As they had been revolting against the state for some time, moreover they were in connection with the enemy during the war.

Therefore, the Ottoman Armenians constituted a political group (even an enemy) as the perception of the Ottoman state during the war. Consequently, those Armenians fell out of the scope of the Convention on Genocide as expressed by Gündüz Aktan as well.²¹⁵

Political groups are not included in the Convention. For, they do not constitute a stable structure. As William Schabas clarifies “Generally, it is the perpetrator of genocide who defines the individual victim’s status as a member of a group protected by the Convention.”²¹⁶ In terms of defining the target group a case-by-case approach should be followed, including both subjective and objective criteria. Even though in practice the subjective criterion is mostly implemented, “a combined subjective-objective approach” also accepted by the ICJ.²¹⁷

Punishable Acts of Genocide

Article II of the 1948 Genocide Convention, and its counterparts in the statutes of the ICTY and ICTR as well as the ICC statute five punishable acts of genocide are enumerated. The list is exhaustive and each act should be interpreted with its own mental element.²¹⁸

As stated in the Convention on Genocide and in the ICC statute, the material elements of the crime of genocide are as follows:

- (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;

²¹⁴ Ibid.

²¹⁵ Aktan, “The Armenian Problem,” 284.

²¹⁶ Schabas, “Genocide in International Law,” 4089.

²¹⁷ Ibid. 4140.

²¹⁸ Schabas, “The UN International Criminal Tribunals,” 172.

- (f) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.²¹⁹

Killing

The prosecutor must prove that the death of a person resulted from the actions or omissions of the accused. To establish the mens rea or mental element of the offence, there must be evidence that the accused had the intent to kill.²²⁰

In fact the crime of genocide includes double intents. One is as mentioned by William Schabas the intent to kill which does exist in intentional homicide as well. Thus the ulterior intent(intent to destroy the group) should be looked for.

In the Armenian case there has been no archival evidence proven the intentional killings of the relocated Armenians by the state officials, excepting fabricated information on the issue. The killings were the result of the attacks of the local tribes, such as, the Kurds and the Arabs or some other ordinary reasons. Furthermore, those responsible for the attacks had been captured and were tried and sentenced.²²¹

Deliberately inflicting conditions of life calculated to destroy the group.

Several indictments have suggested that article 4(2)(c) of the ICTY Statute was breached by conditions in detention camps, where inmates were deprived of proper food and medical care and generally subjected to conditions calculated to bring about the physical destruction of the detainees, with the intent to destroy part of the Bosnian Muslim and Bosnian Croat groups, as such. In Sikirica, for example, the Prosecutor argued that the detainees in Keraterm had been systematically expelled from their homes and had been forced to endure a subsistence diet. The medical care that they received if any was below the minimal standards to ensure their physical well-being. In short, the living conditions were totally insufficient. But none of the detention camp cases has resulted in a conviction.²²²

Even in the case of Bosnia the court could not find a punishable act regarding the state of the camps. One should not show as an evidence the conditions of the

²¹⁹Convention on the Prevention and Punishment of the crime of Genocide. 11.09.2015<<https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-I-1021-English.pdf>>.

²²⁰ Schabas, "The UN International Criminal Tribunals," 173.

²²¹ Aktan, "The Armenian Problem,"

²²² Schabas, "The UN International Criminal Tribunals," 176-177.

Armenians during the relocation. As explained by Yusuf Halaçoğlu²²³ as well as Kemal Çiçek the Armenians were given allowances²²⁴, and the harsh weather conditions and the conditions of the roads as well as the war itself affected not only the Armenians but also all subjects of the Ottoman state. Furthermore, there was a sort of refugee camps in the Armenian case. In the light of those evidences and the example of the ICTY the events of 1915 could not constitute a punishable act of genocide.

Mental Elements (the mens rea)

Intent

In essence, the crime of genocide embodies two mental elements, a general intent and an ulterior intent with regard to the ultimate aim of the destruction of the group.²²⁵ Deliberately breaching the related law or conducting those acts listed in the Article II of the Genocide Convention or Article IV of the ICC Statute constitutes the general intent of the crime. If one designedly commits the related crimes with the aim of destroying the group, this constitutes the special intent (*dolus specialis*). To clarify, as emphasized earlier those acts without intent to destroy are still crime, yet can not be classified as genocide, could be crime against humanity or any other ordinary crime.²²⁶

The mental element of the crime of genocide is very crucial to distinguish it from the crimes that are committed in the course of wars or revolts. The number of the victims gain importance, if only the total number of the victims illustrates an evidence of the intent to destroy the group.²²⁷ In this respect it is understandable that why the Armenians have been trying to increase the number of the Armenians, who had deceased during the relocation due to mainly harsh weather conditions etc., by falsifying the historical facts.

Proving the mental element of the special intent is a quite difficult task, unless the perpetrators plead guilty to committing the crime explicitly. Yet, in most

²²³Yusuf Halaçoğlu. “Ermeni Tehciri ve Gerçekler”. 30.09.2015<<http://www.tarihtarih.com/?Syf=26&Syz=292366>>.

²²⁴Çiçek, “Relocation of the Ottoman Armenians,”

²²⁵Kai Ambos. “What does Intent to Destroy in Genocide mean?”. *International Review of the Red Cross*, Volume 91, Number 876, (2009). 11.09.2015<http://www.genocidewatch.org/images/Articles_What_does_intent_to_destroy_in_genocide_mean.pdf>.

²²⁶Aslan, “*Uluslararası Hukuk*,” 40.

²²⁷Ibid.

of the cases the perpetrators negate the accusations and the legal challenge begins at this point. The number of the victims is not adequate to prove the existence of the intent to destroy the group. Subsequently, one should look at the period before the crime conducted. If there is a premeditation, a plan or an organized act, then those would be the proof of the intent.²²⁸ That is to say, the crime should be evaluated by the relation to any onrganized structure, such as a state plan. By the same token, the relocation of the Armenians can not be put into this category. As the decission of the relocation taken by the government without malice aforethought, it was just a hasty decission in order to clear the war zones, as the certain Armenians had been in colloboration with the enemy.

There is a disposition to enlarge the implementation of the intent to destroy. But I believe this contradicts with the principles found in Article 22(2) of the ICC Statute, it says "...the crimes should be interpreted strictly and that, in case of ambiguity, interpretation should favour the person being invastigated..."²²⁹ (Nullum crimen sine lege-in dubio pro reo- If there is a doubt about guiltiness, the judgement has to be in favour of the accused).Both the ICTY and the ICTR applied the principle of in dubio pro reo in the cases of Tadic and Akayesu respectively.²³⁰ Thus, one should take into consideration of general principles that are listed in the Statute of ICC before judging Turkey as well as the Ottoman State in an unfair manner.

If we look at the Goran Jelusic's Trail, the court acquitted him of genocide by saying there was no adequate evidince of dolus specialis.

The events giving rise to the case have occurred in the municipality of Brčko in the north-eastern part of Bosnia and Herzegovina. Serb forces obtained control over the area from about 30 April 1992. As a consequence, the Croat and Muslim residents were expelled from their homes and held at collection centres where many were killed, beaten or otherwise mistreated. On 1 May 1992, radio broadcasts ordered the non-Serb population to surrender their weapons. Jelisić was part of the Bosnian Serb forces that took part in the operation against the non-Serb civilians. From May until July 1992, the Serb forces detained non-Serbs at the Luka camp, a facility outside the town of Brčko (Bosnia and Herzegovina). The detainees were subjected to inhumane conditions, killings, and

²²⁸ Aslan, "Uluslararası Hukuk," 41.

²²⁹ Werle, "Principles of International Criminal Law," 272.

²³⁰ Stylianos Malliaris. "Assessing the ICTY Jurisprudence in Defining the Elements of the Crime of Genocide: The need for a Plan". *Review of International Law and Politics*, Volume:5, No:20(2009):121.

mistreatments. Jelisić regularly entered the Luka camp, selected detainees for interrogation, during which he beat, and often shot and killed them.²³¹

As it is understood by the Jelisić case genocide differs from the crime of persecution, as in the case of persecution there could be no intent to destroy the group just because of its identity.²³²

By comparison, I am of the opinion that it is right to elucidate that the Armenians that had died on the way to the new location because of the small scale attacks by the local tribes does not mean that there was an intent to destroy whole group. Those acts should be evaluated as individual revenges. As it is cited above even the crime of persecution merely not adequate to determine the crime as genocide.

Accordingly, the latest judgement on Croatia vs Serbia in February 2015 of the ICJ actually puts an end to the discussions regarding the forced displacement. Briefly it says:

Having found that the *actus reus* of genocide is established, the Court then addresses the question of whether the acts perpetrated reflect a genocidal intent. In the absence of direct evidence of such intent (for an example an express policy to that effect), it considers whether a pattern of conduct has been established from which the only reasonable inference to be drawn is an intent on the part of the perpetrators of those acts to destroy a substantial part of the group of ethnic Croats. The Court concludes, however, that this is not the case. It notes in particular that the crimes committed against ethnic Croats appears to have been aimed at the forced displacement of the majority of the Croat population from the regions concerned, and not at its physical or biological destruction. In the absence of proof of the necessary intent, the Court finds that Croatia has failed to substantiate its allegation that genocide or other breaches of the Convention were committed.²³³

²³¹International Crimes Database.
11.09.2015<<http://www.internationalcrimesdatabase.org/Case/83/Jelisi%C4%87/>>.

²³² The Trail of Jelisić. 11.09.2015.<<http://icty.org/x/cases/jelisić/tjug/en/jel-tj991214e.pdf>>.

²³³International Court of Justice Press Release. 11.09.2015<<http://www.icj-cij.org/docket/files/118/18448.pdf>>.

Forced Displacement

In accordance with the Article 49 of the Geneva Convention: “[...]the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. [...]”²³⁴

Additionally, according to the additional protocol to the Geneva Conventions of 1949(about internal conflicts): “[...]The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand.[...]”²³⁵

Hence, even if the Armenians were to be accepted as the enemy during the war, it could be quite right to convey that the relocation of the Ottoman Armenians would be totally lawful in connexion with the above cited regulations. Besides, the incidents could not be concluded as crime against humanity, as there had been no widespread or systematic attack against the Armenians.²³⁶ The ICC Statute while listing deportation and forcible transfer of the population among the punishable acts (For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack) it further explains in article7/2(d) that “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law[.]”²³⁷

It is obvious that the phrase “without grounds permitted under international law” is related to the articles of Geneva Convention of 1949. Thus, the military imperatives should be excluded, as it is not a crime under the current regulations.

²³⁴The Geneva Conventions of 12 August 1949.11.09.2015<http://www.loc.gov/rr/frd/Military_Law/pdf/GC_1949-IV.pdf>.

²³⁵Convention (IV) Relative to the Protection of Civilian Persons in Time of War. 11.09.2015<<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument>>.

²³⁶ Aktan, “The Armenian Problem,”273.

²³⁷Rome Statute Of The International Criminal Court.11.09.2015<http://Legal.Un.Org/Icc/Statute/99_Corr/Cstatute.Htm>.

Additionally, according to the article 8/2(a) of the ICC Statute “war crimes” listed as follows:

Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (i) Wilful killing;
- (ii) Torture or inhuman treatment, including biological experiments;
- (iii) Wilfully causing great suffering, or serious injury to body or health;
- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (vii) Unlawful deportation or transfer or unlawful confinement;
- (viii) Taking of hostages.²³⁸

Therefore, it says “unlawful deportation or transfer or unlawful confinement”. In the case of the relocation of the Armenians, as it was the military necessities pushed the Ottoman State take the decision, it is not contrary to the Geneva Conventions of 1949. Therefore, no breach would have been materialized. It can be concluded that the relocation was not a war crime either. On the other hand as it can be inferred from the article that constituting concentration camps are lawful. One can only assert the conditions of the camp not the camp itself. As already mentioned during the Trials of the ICTY, many incidents regarding the conditions of the concentration camps put forward by the prosecutors, but not resulted in conviction.

Motive

Beside the intent, the reason of the crime is also essential for the crime of genocide. It is called motive.²³⁹ Even though the UN Resolution of 96 referred to the motive of the crime of genocide in the Convention then it was excluded after long discussions among the states.²⁴⁰

By the unwillingness of the states to enumerate the motives, it was included quite implicitly in the Convention. The word “as such” actually put into the convention to identify the motive without enumeration. On the other hand, referring

²³⁸ Rome Statute Of The International Criminal Court. 09.09.2015 <http://legal.un.org/icc/statute/99_corr/cstatute.htm>.

²³⁹ Aslan, “*Uluslararası Hukuk*,” 41.

²⁴⁰ Schabas, “Genocide in International Law,” 9106-9343.

to these debates during the adoption of the Convention, the Appeals Chamber of the International Criminal Tribunal for Rwanda declared that:²⁴¹

The words 'as such', however, constitute an important element of genocide, the 'crime of crimes'. It was deliberately included by the authors of the Genocide Convention in order to reconcile the two diverging approaches in favour of and against including a motivational component as an additional element of the crime. The term 'as such' has the effect of drawing a clear distinction between mass murder and crimes in which the perpetrator targets a specific group because of its nationality, race, ethnicity or religion. In other words, the term 'as such' clarifies the specific intent requirement.²⁴²

There has not been a consensus on the interpretation of the words "such as". Consequently, it can be interpreted broadly or narrowly. In this case one has to take into account the principle that is cited in the Statute of the ICC article 22. Here it is clear that a sort of loophole or ambiguity exists and the decision should be in favour of the accused and also law should be applied strictly. It should be also noted that if there is a disagreement between the parties of the convention in terms of interpretation they can appeal to the ICJ. If we apply this rule to the relocated Armenians of the Ottoman state, we can say that there was no threat/hatred against the Armenians solely because of such membership. There had been political upheavals in advance.

Also, article 31 of the Vienna Convention of Law of the Treaties says:

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.[...]
4. A special meaning shall be given to a term if it is established that the parties so intended.²⁴³

Thus the words "as such" shall be given the meaning of racial hatred as a genocidal motive during the trial of the cases. In the case of Armenian relocation there had been no racial hatred towards the Ottoman Armenians unlike in the Nazi Germany or Rwanda.²⁴⁴

²⁴¹ Schabas, "Genocide in International Law," 9106-9343.

²⁴² Ibid.

²⁴³ V Scott. *International Law-Key Documents*. The USA: Lynne Rienner Publishers, 2006: 67.

²⁴⁴ Aktan, "The Armenian Problem," 285.

I reckon that William Schabas clearly expresses the importance of the words “as such”:

[...]For the purposes of analysis, it may be helpful here to distinguish between what might be called the collective motive and the individual or personal motive. Genocide is, by nature, a collective crime, committed with the cooperation of many participants. It is, moreover, an offence generally directed by the State. The organizers and planners must necessarily have a racist or discriminatory motive, that is, a genocidal motive, taken as a whole. Where this is lacking, the crime cannot be genocide.[...]The crime must, in other words, be motivated by hatred of the group. The purpose of criminalizing genocide was to punish crimes of this nature, not crimes of collective murder prompted by other motives. In the classic cases of genocide – Nazi Germany and Rwanda – the existence of motive cannot be gainsaid.²⁴⁵

As I emphasized earlier, even the discriminatory manner can not be enough for the crime of genocide as in the case of Jalesic. It should be conducted in coordination, a systematic and aggregative(collective) way in order to amount to the crime of genocide.

As pointed out by Gündüz Aktan as well, even though William Schabas refers so called “Armenian Genocide” in his study, refrains from describing it as one of the classic cases of genocide. I believe that this is worth taking into consideration. Actually, William Schabas has began to suggest crime against humanity instead of genocide for the qualification of the events of 1915. Additionally, He criticizes the conviction of genocide concerning the Srebrenica case.²⁴⁶

State Plan

The Appeals Chamber of the ICTY has held that there is no need to establish a plan to commit genocide. This means that it is possible to establish genocide without any evidence of state involvement, or of that of an organized state-like entity.[...]This broadening of the scope of genocide[...] has apparently not been well received by many states, and contextual elements requiring a plan or policy are part of the law of the International Criminal Court (ICC).²⁴⁷
[...]The term “in the context of” would include the initial acts in an emerging pattern[.]²⁴⁸

²⁴⁵ Schabas, “Genocide in International Law,”9106-9343.

²⁴⁶ Aktan, “The Armenian Problem,”276.

²⁴⁷ Schabas, “*The UN International Criminal Tribunals*”171-172.

²⁴⁸Elements of Crimes. 09.09.201<5<http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>>.

Accordingly, as there has been no concrete evidence of a state plan in order to destroy the Ottoman Armenians, one can not draw a conclusion of genocide. Moreover, we should deem that even the verdicts of the courts as in the case of the ICTY can be revised in due course.

3.4.State Responsibility And The Role Of The International Court Of Justice(ICJ)

Pursuant to the Article IX of the Genocide Convention:

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.²⁴⁹

According to the Convention on Genocide, although a state can be liable for committing genocide, there is no explicit declaration in the Convention. In fact, without state involvement one can hardly think of genocide. In accordance with the ICJ judgement on Bosnia vs Serbia in February 2007 states can be held responsible for genocide²⁵⁰ yet there has been no clear-cut judgement on the state liability since the adoption of the convention. Thus, the issue of state responsibility needs further clarification. Furthermore, in the Congo vs Rwanda case the ICJ rejected to hold the case by declaring that it had no jurisdiction on Rwanda, as Rwanda had submitted a reservation to Article IX of the Convention.²⁵¹ Therefore, even in the current cases the ambiguity in the responsibility of a state could not be clarified. In this respect blaming Turkey for what happened in 1915 is just ironic.

William Schabas cites that the case in Srebrenica should have been qualified as crime against humanity rather than genocide. In fact, the lack of any state plan in the incidents led to the ICJ to reject Serbia's responsibility in the incidents.²⁵²

²⁴⁹ Christine Van den Wyngaert. *International Criminal Law*. Boston:Martinus Nijhoff Publishers,2005:515-516.

²⁵⁰ Schabas, "Genocide in International Law,"44.

²⁵¹Marko Milanovic. "State Responsibility for Genocide".*The European Journal of International Law*, V. 17 no.3,(2006):567. 09.09.2015<<http://www.ejil.org/pdfs/17/3/204.pdf>>.

²⁵²Schabas, "*The UN International Criminal Tribunals*," 171-172

According to the Article 13 of the International Law Commission (hereinafter the ILC) report : “[...]An act of a state does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs.”²⁵³

Article 21

Self-defence

The wrongfulness of an act of a State is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations.²⁵⁴

Article 55

Lex specialis

These articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of a State are governed by special rules of international law.

Article 11

Conduct acknowledged and adopted by a State as its own

Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.²⁵⁵

According to The UN Human Rights declaration:

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.²⁵⁶

All in all, the above mentioned articles pointing the fact that the relocation of the Ottoman Armenians was a necessary measurement taken by the Ottoman State and under the current international law it would be exclusively illicit to accuse the state of Turkey.

²⁵³The ICJ Judgement of 3 February 2015. 09.09.2015<<http://www.icj-cij.org/docket/files/118/18422.pdf>>.

²⁵⁴International Law Commission. 01.06.2015<http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf>.

²⁵⁵International Law Commission Report. 09.09.2015<<https://www.icrc.org/casebook/doc/case-study/ilc-state-responsability-case-study.htm>>.

²⁵⁶The Universal Declaration of Human Rights. 09.09.2015<<http://www.un.org/en/documents/udhr/>>.

3.5.Retroactivity Problem

A legal analysis to the applicability of the genocide convention to the events of 1915 conducted by an independent legal counsel for the International Center for Transitional Justice (hereinafter the ICTJ) in 2003. The request was made by the Turkish Armenian Reconciliation Commission (hereinafter the TARC).²⁵⁷ (TARC was established in 2001 and dissolved in 2004) They reached the below mentioned conclusion:

The Genocide Convention does not give rise to individual criminal or state responsibility for events which occurred during the early twentieth century or at any time prior to January 12, 1951.²⁵⁸

Even they were not asked for the application of the convention, they found appropriate to use the term genocide to the qualification of the events of 1915.²⁵⁹ It can be said that the ICTJ was planning a formula which was based on the recognition of the events of 1915 as genocide by Turkey, on the other hand, persuading the Armenians not to demand land or compensation.²⁶⁰

Article 28 of the Vienna Convention on the Law of Treaties provides that:

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.²⁶¹

As it is clear from the article that the retroactive implementation of the treaties prohibited. The principle of non-retroactivity is in the scope of customary law. Additionally, in the Statute of the ICC is explicitly stated that the principle of non-retroactivity. Accordingly, no more discussions regarding the applicability of the genocide convention needed.

It seems that the ICTJ based its conclusion on a flaw assessment. As to prove special intent, the knowledge of the context of genocidal acts or acceptance of the

²⁵⁷Gunter, "Armenian History," 123-124.

²⁵⁸ICTJ Legal Analysis on Applicability of UN Convention on Genocides prior to January 12, 1951.09.09.2015< <http://groong.usc.edu/ICTJ-analysis.html>>.

²⁵⁹Ömer Engin Lütem. "Olaylar ve Yorumlar".*Ermeni Araştırmaları*,(2006). 09.09.2015<<http://www.eraren.org/index.php?Lisan=tr&Page=DergiIcerik&IcerikNo=394>>.

²⁶⁰Ibid.

²⁶¹Vienna Convention on the Law of the Treaties.09.09.2015<<https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>>.

likely consequence of the destruction of the Armenian population was determined as suffice for labeling the incidents.²⁶²

In 2005, a commission was created in order to investigate “whether or not acts of genocide have occurred in Darfur. Focusing on the state policy rather than examining acts of individual offenders, the international commission closed the case by reporting that

However, one crucial element appears to be missing, at least as far as the central Government authorities are concerned: genocidal intent. Generally speaking the policy of attacking, killing and forcibly displacing members of some tribes does not evince a specific intent to annihilate, in whole or in part, a group distinguished on racial, ethnic, national or religious grounds. Rather, it would seem that those who planned and organized attacks on villages pursued the intent to drive the victims from their homes, primarily for purposes of counter-insurgency warfare.²⁶³

3.6.Ethnic Cleansing

In spite of the fact that in the media the term ethnic cleansing and genocide being used alternatively, simply ethnic cleansing is not a legal term. The term first used in order to describe the acts in the Yugoslav war.²⁶⁴ In this respect, The United Nations Security Council Commission of Experts on violations of humanitarian law affirmed that “[E]thnic cleansing means rendering an area ethnically homogenous by using force and intimidation to remove persons of given groups from the area.”²⁶⁵

In the Srebrenica case, one should bear in mind that the conviction of genocide was not solely related to the forced displacement of the Bosnian Muslims, the migration was the part of the atrocities committed against the Bosnian Muslims in Srebrenica. Moreover, the Bosnian Muslims had constituted the majority of the area²⁶⁶, as well as, an independent Bosnian state did exist. On the other hand, in the case of Armenian relocation, there had not been an independent Armenian state, and the Armenians had been revolting against the Ottoman state, even during the War. Ethnic cleansing should be carried out with the aim of giving the other ethnic group the dominance over the disputed area. In that case, even ethnic cleansing would be a

²⁶² Malliaris, “Assessing the ICTY Jurisprudence,” 125.

²⁶³ Malliaris, “Assessing the ICTY Jurisprudence,” 112-113.

²⁶⁴ Micol Sirkin, “Expanding the Crime of Genocide to Include Ethnic Cleansing: A Return to Established Principles in Light of Contemporary Interpretations”, 09.09.2015 <<http://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1984&context=sulr>>.

²⁶⁵ Drazen Petrovic, “Ethnic Cleansing-An Attempt at Methodology”, 09.09.2015 <<http://www.ejil.org/pdfs/5/1/1247.pdf>>.

²⁶⁶ BBC, 09.09.2015 <<http://www.bbc.com/news/world-europe-28313285>>.

falsified description for the relocation of the Ottoman Armenians, as Justin McCharty states Armenians unlike the Greeks, had never constituted the majority of the population where they had lived.²⁶⁷

3.7.Can “Tehcir” Be Defined As Genocide?

Hijre (emigration) is the root of the Arabic word “tehcir”.²⁶⁸ Thus, “Tehcir” should be equated with the English word of relocation or forced migration instead of deportation. For, the word deportation means the exile of the population to outside of the country. However, the word relocation refers to the transportation of the population from one region to the another inside the country.²⁶⁹ To highlight the terminological realities are of great importance as the most of the Western scholars tend to use the word “deportation” in order to define the forced migration of the Armenians. The person, who is deported, lives in a specific place, such as a camp, fortress.²⁷⁰ Those intentional mistakes have been made by the writers due to dramatize the issue.²⁷¹ Here one should recall that during the world war II, the Nazis deported the Jews of Germany, not relocated, and put them in the concentration camps.

Here I have to emphasize the latest judgement of the ICJ regarding the case of Croatia versus Serbia. According to the judgement of the ICJ on 3 February 2015 “the displacement of the Croats does not constitute genocide, as the element of special intent can not be found in the acts of the Serbs.” Accordingly, the ICJ actually repeated to some extent its rule of 2007 (Bosnia versus Serbia):

[N]either the intent, as a matter of policy, to render an area ‘ethnically homogeneous’, nor the operations that may be carried out to implement such policy, can *as such* be designated as genocide: the intent that characterizes genocide is ‘to destroy, in whole or in part’ a particular group, and deportation or displacement of the members of a group, even if effected by force, is not necessarily equivalent to destruction of that group, nor is such destruction an automatic consequence of the displacement²⁷²

In the present case, as emerges in particular from the findings of the ICTY,

²⁶⁷ <http://www.austlii.edu.au/au/journals/MurUEJL/2003/22.html>

²⁶⁸ Kamuran Gürün. “*The Armenian File*,” 257.

²⁶⁹ Halaçoğlu, “*The Story of 1915*,” 31.

²⁷⁰ Gürün, “*The Armenian File*,” 257.

²⁷¹ Aslan, “*Uluslararası Hukuk*,” 138-139.

²⁷² The ICJ Judgement of 3 February 2015. 09.09.2015 <<http://www.icj-cij.org/docket/files/118/18422.pdf>>.

[F]orced displacement was the instrument of a policy aimed at establishing an ethnically homogeneous Serb State. In that context, the expulsion of the Croats was brought about by the creation of a coercive atmosphere, generated by the commission of acts including some that constitute the *actus reus* of genocide within the meaning of Article II (a) and (b) of the Convention. Those acts had an objective, namely the forced displacement of the Croats, which did not entail their physical destruction.[...] The Court finds that the acts committed by[...]Serb forces essentially had the effect of making the Croat population flee the territories concerned. It was not a question of systematically destroying that population, but of forcing it to leave the areas controlled by these armed forces.²⁷³

If one appraises all the information, the act of the Ottoman State concerning the Armenians should not be qualified as Genocide. As in the case of war, the state had to evacuate the war zone to fight against the enemy. It was the military necessities brought about the decision of the relocation. Also one should keep in mind that both the Nazi case and the Former Yugoslavia case there had been concentration camps whereas in the Ottoman State there had been refugee camps. In fact the relocated Armenians were allowed to come back at the end of the war.

3.8.Examples of The Forced Migration as a Way of Self-Defence

In the course of the World War II due to the security concerns of the USA, the Japanese citizens of the USA forced to migrate to the deserts of Wyoming, Colorado, Arkansas and California. As Kemal Çiçek rightly puts in his book “Ermenilerin Zorunlu Göçü” “The legality of the migration of the Japanese citizens are much less justifiable than the legality of the forced migration of the Armenians as in the situation of the Armenians one has to take into consideration of the nearly 30-year organized activities of the Armenians.” In other words, the Japanese citizens of the USA did not revolt against the government or collaborated with the enemy (Japan), yet the USA acted with a military necessity in order to protect the country in advance from any possible threat.²⁷⁴

During the relocation of the Japanese citizens of the USA, Fred Korematsu refused to be removed and claimed that the rule of the relocation was contradicting with the fifth amendment of the constitution. Then he was detained. Here is the final verdict of the Supreme Court regarding the Korematsu case:²⁷⁵

²⁷³The ICJ Judgement of 3 February 2015. 09.09.2015<<http://www.icj-cij.org/docket/files/118/18422.pdf>>.

²⁷⁴Çiçek, *Ermenilerin Zorunlu Göçü (1915-1917)*. Ankara: Türk Tarih Kurumu, 2012:5.

²⁷⁵ Palabıyık, “1915 Olaylarını Anlamak” 72-73.

In Korematsu's case, the Court accepted the U.S. military's argument that the loyalties of some Japanese Americans resided not with the United States but with their ancestral country, and that because separating "the disloyal from the loyal" was a logistical impossibility, the internment order had to apply to all Japanese Americans within the restricted area. Balancing the country's stake in the war and national security against the "suspect" curtailment of the rights of a particular racial group, the Court decided that the nation's security concerns outweighed the Constitution's promise of equal rights.²⁷⁶

What Edward J. Erickson is saying about the counterinsurgency policy worth noting as well:

At the dawn of the twentieth century, counterinsurgency policies based on the relocation of civilian populations emerged as viable and acceptable practices in warfare. Three wars, in particular, set important precedents for the Western world in the way in which militaries dealt with guerrillas and irregular insurgents. These wars involved Spain in Cuba (1893), the United States in the Philippines (1900–1902) and Britain in South Africa (1899–1901) and all three saw the evolution of similar strategic, operational and tactical practices by the Great Powers.²⁷⁷

The examples are of utmost importance, as those states were accusing the Ottoman State of exterminating the Armenians. The imperialistic interests caused to death of many innocent people. They were the occupying forces. In the Armenians case, the Ottoman State was under occupation and she had nothing to do with the imperialistic desires, only to save the country.

3.8.1. The First Genocide of 20th Century

Here is also crucial to cite the first genocide of the 20th century which took place in present-day Namibia. The Herero and Nama people revolted against the German colonial rule (1904–1907). Yet, the suppression of the Germans was very harsh. The people of Namibia sent to the concentration camps.²⁷⁸ Later on the skulls scrutinized by the Germans in order to prove they were of an inferior race.²⁷⁹ It is clear that in this situation we see racial hatred in the acts of the Germans.

²⁷⁶The Supreme Court.
09.09.2015<http://www.pbs.org/wnet/supremecourt/personality/landmark_korematsu.html>.

²⁷⁷Erickson, "The Armenian Relocations,"

²⁷⁸Peace Pledge Union Information Genocide.
<09.09.2015http://www.ppu.org.uk/genocide/g_namibia2.html>.

²⁷⁹ Michael Van Duisen. "The German Genocide Campaign In Namibia". *KnowledgeNuts*.
09.09.2015<
<http://knowledgenuts.com/2013/08/10/the-german-genocide-campaign-in-namibia/>>.

Henceforward, describing the relocation of 1915 as the first genocide of the 20th century is not admissible at all.

3.9. A Brief History of Genocide in Rwanda

As a small African state Rwanda consisted of three different ethnic groups: the Hutus, who made up approximately %85 of the 7 million population²⁸⁰, the Tutsi 14% and the Twa only 1% by 1994.²⁸¹In fact in the case of Rwanda there is no clear distinction among the aforementioned groups in order to classify them based on nation, ethnicity, religion or race. In essence, beside the clan system, the socio economic status of the people was the distinguishing feature of the groups. In this respect, Tutsis were the wealthy part of the society whereas Hutus the poor. Social-mobility was also possible. Moreover the intermerriages were common. But throughout Rwandan history it was the reason of ethnicity that brought about the discrimination.²⁸²In the course of the colonial era the Tutsis had been the privileged by the Belgians. Then politically motivated ethnic strifes began to take place in 1959. When the colonial rule leaving the country, they left the power to the Hutus for the compensation. But this did not resolve the problems. At the end of the ethnic violence the military regime taken over the power. The president Habyarimana who established his party namely the Mouvement Revolutionnaire National pour le Developement (hereinafter the MRND). The 21 year oppressive rule of Habyarimana caused in the 1990 the invasion of Tutsi rebel group, the Rwandan Patriotic Front(hereinafter the RPF) from Uganda. It was the mainly Tutsi refugees that had fled Rwanda consisted of the said group. They wanted to resettle, yet the entrance to the Rwanda banned by the regime. Those developments brought about the civil war in Rwanda. Even though the peace negotiations resulted in a truce between the parties, the radical part of the MRND opposed the decision of the party in order not to share the power with the Tutsis. In this respect they began to act in more propagandistic way by publishing the Hutu Ten Commandments in 1990.²⁸³

²⁸⁰United Human Rights Council.
09.09.2015<http://www.unitedhumanrights.org/genocide/genocide_in_rwanda.htm>.

²⁸¹The United Nations.
01.06.2015<<http://www.un.org/en/preventgenocide/rwanda/education/rwandagenocide.shtml>>.

²⁸²Smeulers, "International Crimes," 192-193.

²⁸³Smeulers, "International Crimes," 192-193.

In 1994 shooting down the plane of the president Habyarimana made the already tense situation worse. This was the beginning of the systematic killing of both the moderate Hutus as well as the Tutsis.²⁸⁴ An estimated number of as many as 1 million people (according to other sources 800,000²⁸⁵) were killed as well as 150,000 to 250,000 women were also raped. The clashes continued till 4 July 1994 as the RPF presided over the military control in Rwanda.²⁸⁶

During the clashes beside the moderate Hutus, approximately 75% of the Tutsis were murdered.²⁸⁷

On 8 November 1994, the Security Council set up the International Criminal Tribunal as an ad-hoc Tribunal for Rwanda. Basically "The Trial Chamber found that genocide targeting the Tutsi as a group in Rwanda was committed in 1994."²⁸⁸ It was the first ad-hoc tribunal that rape defined as a way of genocide.

3.10. Srebrenica Genocide

After the collapse of The Social Federal Republic of Yugoslavia (hereinafter the SFRY) in 1991, Bosnia-Herzegovina formally declared its independence from the SFRY following the referendum on March 1, 1992 and the referendum vote recognized by the USA, the UN as well as the EU. On the other hand, the Serb members of the Parliament established a separate parliament for the Serb people of the country and then, on August 12, 1992, proclaimed its independence from Bosnia-Herzegovina. (The Republica Srpska)²⁸⁹

Eventhough in the Bosnian town of Srebrenica, in the vicinity of Serbia, the majority of the population was the Bosnian Muslims, the Serbs desired to conquer the area in order to create a territorially contiguous political entity of Republika

²⁸⁴ Ibid.

²⁸⁵ United Human Rights Council.
09.09.2015 <http://www.unitedhumanrights.org/genocide/genocide_in_rwanda.htm>.

²⁸⁶ The United Nations.
01.06.2015 <<http://www.un.org/en/preventgenocide/rwanda/education/rwandagenocide.shtml>>.

²⁸⁷ United Human Rights Council.
09.09.2015 <http://www.unitedhumanrights.org/genocide/genocide_in_rwanda.htm>.

²⁸⁸ The Stop Violence Against Women. 09.09.2015 <http://www.stopvaw.org/ad_hoc_international_tribunals>.

²⁸⁹ Ademola Abass. "Proving State Responsibility for Genocide: The ICJ in Bosnia v. Serbia and the International Commission of Inquiry for Darfur" *Fordham International Law Journal*, Volume 31, Issue 4, (2007). 09.09.2015 <<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2105&context=ilj>>.

Srpska.²⁹⁰ In this respect, although the area had been determined as a safe zone by the UN, the atrocities continued.²⁹¹ Srebrenica was under the protection of the Dutch peacekeepers. In July the buses arrived in the city and took the refugees out side of the Serb-controlled areas. In 30 hours approximately 23.000 women and children were sent away. Around 8000 Bosnian Muslims, mostly men, were killed by the army of the Republica Srpska led by General Ratko Mladić.²⁹²

Those who were not killed during the first attack of the army of the republica Srpska were sent to the consantration camps ans they forced to live under vey harsh conditions. Moreover rape was used as a weapon of war.²⁹³

The ICJ came to the conclusion in 2007 regarding the case Bosnia vs. Serbia that “Serbia could and should have prevented genocide and punished those who committed it”²⁹⁴. Eventhough the Court qualified the incidents in Srebrenica as genocide, Serbia as a state was not declared guilty of the genocide by the court.²⁹⁵

²⁹⁰ Holocaust Memorial Day Trust.09.09.2015< <http://hmd.org.uk/genocides/genocide-srebrenica>>.

²⁹¹ Anastasia Konokhovic.”The Srebrenica Genocide” .*International Youth Conference Tyumen Model UN 2012* Historical Security Council.09.09.2015<<http://tmun.utmn.ru/wp-content/uploads/Srebrenica.pdf>>.

²⁹² Holocaust Memorial Day Trust.09.09.2015< <http://hmd.org.uk/genocides/genocide-srebrenica>>.

²⁹³ World Without Genocide.09.09.2015<<http://worldwithoutgenocide.org/genocides-and-conflicts/bosnian-genocide>>.

²⁹⁴ History.09.09.2015<<http://www.history.com/topics/bosnian-genocide>>.

²⁹⁵ Ibid.

CONCLUSIONS

I strongly believe that while labeling some events as genocide, qualifying the others as lawful should be related to our perceptions on the victims. In other words, there are worthy and unworthy victims, as stated by Noam Chomsky and Edward S. Herman.²⁹⁶ Consequently, we incline not to name those as the liables of the crime of genocide, for the victims are unworthy. Accordingly, why Turkey is still being blamed as the liable of the incidents that took place a hundred years ago should be evaluated in this respect as well. For, the Turks are the unworthy victims, whereas the Armenians are worthy.

An excerpt from the book “The Politics of Genocide” written by Edward S. Herman and David Peterson should be pointed here as well:

When we ourselves commit mass-atrocity crimes, the atrocities are Constructive, our victims are unworthy of our attention and indignation, and never suffer genocide at our hands[...]. But when the perpetrator of mass-atrocity crimes is our enemy or a state targeted by us for destabilization and attack, the converse is true.²⁹⁷

The term of genocide is a legal term, thus the term should be associated with a crime. Yet, arbitrary usage of the term particularly by the politicians and journalists just cause a confusion in the minds of public. Propagandistic aims make harder to reach reliable information. To make people believe their thesis and also get the attention of the international community some of the Armenian scholars deceive people by spreading falsified information, simply for the maintenance of the would-be 3-R policy.²⁹⁸ Subsequently, Turkey always seems to be defending itself to disprove all those bogus information. It is obvious that the Armenian Diaspora instead of finding a solution, trying to keep busy of the international arena to have a place in the world.

²⁹⁶Edward S Herman. “The Propaganda Model Revisited” *Monthly Review*, July, (1996).09.09.2015<
<http://www.chomsky.info/onchomsky/199607--.htm>> .

²⁹⁷Edward S. Herman and David Peterson. *The Politics of Genocide*. New York: Monthly Review Press, 2010:103.

²⁹⁸Çiçek, “Relocation of the Ottoman Armenians,”

Thus, in today's world defining the events of 1915 as genocide seems to me quite ironic in particular taking into consideration of Nazi violence against mainly the Jews. It is just another feature of Armenian Diaspora's propagandistic attempts to get attention from the international community, to survival of its nationhood. As it is known in today's world victimization is the best and easiest way of taking advantage in political aims. The Armenians need to be classified as the victims for the very survival of their existence and identity. The victimhood is the binding element for the Armenians.²⁹⁹

I would like to conclude this study by listing the key outcomes:

- Basically, the Armenians of the Ottoman State were the pawns of the Great Powers, namely the USA, Britain, France and Russia. It follows that, in the course of World War I the Armenians of the Ottoman State could have been qualified as part of the enemy rather than the citizens of the State as accepted by Boghos Nubar Pasha.

- When the decision of the relocation taken, the revolts of the Armenians had already started on the contrary to the Armenian claims.

- The Ottoman Government opposed those Armenians who were involved in terrorist activities. That is why the regulations regarding the order of the reallocation did not encompass all the Armenian subjects. Mainly the Orthodox Armenians were subjected to the relocation.

- The insurrections were taking place in the supply chain of the Ottoman army. Thus, the Armenians acting on behalf of the Russian armies had to be removed in order to save the State during the war. It was a way of self-defence.

- The Ottoman State planned everything in advance to safe removal of the Armenians, not for the destroying as a group. The instructions should be the key evidence of this intent. Moreover, the officials acted against the government instructions prosecuted by the Martial Courts in 1916 even before the Malta Trials. Therefore, according to the Convention on Genocide the perpetrators have to have

²⁹⁹Sevinç Göral. "Turkish - Armenian Issue: Victimization And Large-Group Identity".*Review Of Armenian Studies*, Volume 3 Number 9, (2005).09.09.2015 <<http://www.eraren.org/index.php?Lisan=en&Page=DergiIcerik&IcerikNo=382>>.

the special intent. In this case, as there was no intent to kill all the Armenians one can not qualify the incidents as genocide.

- Basically, military necessities forced the Ottoman State took the decision of the relocation. On the other hand, pursuant to the Ottoman Penal Code, revolting against the government was a crime called “bağy”. As a matter of fact, the insurrections of the Armenians should be assessed in this context as well.

- The number of the casualties do not matter in terms of the ICTY case law. Accordingly, the attempt of increasing the number of deceased Armenians is just futile.

- In that era the Westphalian System did exist. Thus the minorities were the domestic affairs of the state. Hence, the other states should have not involved in the issues related to the Armenians living in the Ottoman State.

- The principle of *lex specialis* should be bare in mind while evaluating the incidents, as with the Kars and Moscow treaties even before the Lausanne, a general amnesty accepted for both sides. Therefore, Turkey can not be pushed to get the responsibility of the Ottoman State even if Turkey is the successor state of the Ottoman Empire. To be able to accuse Turkey, first of all Turkey should accept the wrong-doings of the Ottoman State in spite of the respective treaties.

- Disputes over the implementation of the state responsibility concerning the relocation of the Ottoman Armenians should be finalized by the ICJ as in the Genocide Convention there is a clause pertaining to the state responsibility referring it to the ICJ. Furthermore, even in the case of Srebrenica, the ICJ refrained from directly pointing Serbia as responsible for genocide.

- The ICC, which is assigned to prosecute the individuals, has nothing to do with the incidents that took place 100 years ago, for finding people nearly impossible.

- In the case of the reallocation of the Ottoman Armenians, the ICJ would have to determine the retroactive application of the Genocide Convention as well. Yet, in 2002 with the ICC Statute, this obstacle also came to an end, since in the statute non-retroactivity listed in the main principles.

- International Criminal Law was born with the Nürnberg Charter, prior incidents should be out of question as well as the issues of the relocation of the Armenians.

- In the course of the Malta Trails, the British authorities could not obtain any evidence pertaining to the intentional atrocities directed to the Armenians. Therefore, the case concluded. A new trail would be against the principle of non bis in idem.

- Comparing the relocation of the Armenians with the slaughter of the Jews is not logical, as both incidents have different structures. There was no Jewish rebellion in Germany and the hatred towards the Jews was the clear policy of the German State. In the case of the Armenians, they were revolting and there was no hatred towards the Armenians in the Ottoman State. Moreover, the Jews were “deported”, whereas the Armenians “relocated”, in other words stayed in the Ottoman soil.

- Pursuant to the Genocide Convention political groups are exempt from the list. Therefore, the Ottoman Armenians could be titled as a political group rather than racial, religious or ethnic.

- As it is cristal clear, “the intention to destroy the group” has to be proved in a competent court in order to accuse Turkey of genocide. Yet, so far there has been no concrete evidence came out, illustrating that intent, excepting fabricated infromation.

- Since the relocation of the Orthodox Armenians materialized because of the military concerns as a way of self-defence, this act does not constitute a crime in accordance with the international law. The Geneva Convention mentions the unlawful deportation or transfer. In this case the relocation was lawful. Beside this, the consantration camps are legal under the current international regulations. Thus, one has to recall that the Armenians were placed in the sort of “refugee camps” not “consantration camps” as if in the case of Srebrenica or that of the Jews.

- Qualifying the incidents “crime against humanity” instead of genocide would also be inappropriate, as there was no systematic or collective attack towards the Armenians.

- The latest judgement of the ICJ, Croatia vs Serbia, on 3 February 2015 clearly put an end to the discussions of forced displacement. Accordingly, the

relocation of the Ottoman Armenians even if the Genocide Convention were to be implemented, would not constitute the crime of genocide.

●The decisions have been taken by the assemblies of the other states do not have any jurisdiction over Turkey, as the declarations not legally binding. Consequently, those attempts should be assessed as the political aspect of the Armenian Question rather than either historical or judicial. On this account, the latest resolution of the European Parliament on terming the incidents as genocide (15 April 2015), which has been refuted by the EU Commission though,³⁰⁰ is against the notion of separation of powers, as marked by Sina Akşin.

In a nutshell, as Barrack Obama said “The Law is the law. No one person above the law. Not even the president.”³⁰¹

³⁰⁰ Live Leak. 30.09.2015< http://www.liveleak.com/view?i=0da_1429204994>.

³⁰¹ 14.09.2015<<http://int.search.tb.ask.com/search/video.jhtml?searchfor=Barack+Obama+speech+law+is+law+is+above+everything&p2=%5EY6%5Exdm879%5EYYA%5Etr&n=781BD5C2&ss=sub&st=hp&ptb=B04B26CF-53F8-4F59-91E7-8DB28EE2A8EA&si=CLrsu4fd1ccCFQ3jGwodW-cOjA&tpr=sbt&ts=1442238717839>>.

BIBLIOGRAPHY

Books

Akşin, Sina. *Kısa 20. Yüzyıl Tarihi*. İstanbul: Türkiye İş Bankası Kültür Yayınları,2010.

Aslan, Yasin and İlter Aksoylu. *Uluslararası Hukuk Bağlamında Asılsız Soykırım İddiaları*. Ankara: Bilge Yayınevi,2014.

Başbuğ, İlker. *Ermeni Suçlamaları ve Gerçekler*. İstanbul, Remzi Kitabevi,2015.

Bakar, Bülent. *Ermeni Tehciri*. Ankara,Atatürk Kültür,Dil ve Tarih Yüksek Kurumu Atatürk Araştırma Merkezi,2013.

Cengizer, Atalay.*Adil Hafızanın Işığında*.İstanbul,Doğan Kitap,2014.

Çalık, Mustafa. *Ermeni Soykırımı İddiaları*. Ankara,Cedit Neşriyat,2013.

Çiçek, Kemal. *Ermenilerin Zorunlu Göçü (1915-1917)*.Ankara: Türk Tarih Kurumu,2012.

Dilan,Hasan,.*Fransız Diplomatik Belgelerinde Ermeni Olayları 1914-1918*.Ankara,Türk Tarih Kurumu,2005.

Erickson, Edward J. *Ottomans and Armenians-A Study in Counterinsurgency*. The USA: Palgrave Macmillian, 2013.

Gunter, Michael M. *Armenian History and The Question of Genocide*.The U.S.A.:Palgrave Macmillan,2011.

Gürün, Kamuran. *The Armenian File*.İstanbul:Türkiye İş Bankası Kültür Yayınları,2007.

Gürkan, Uluç. *Ermeni Katliamı Suçlaması Yargılama ve Karar*. İstanbul,Kaynak Yayınları,2015.

Halaçoğlu, Yusuf. *Facts of The Relocation of Armenians 1914-1918*. Ankara: Turkish Historical Society Printing House, 2002.

_____, *The Story of 1915*. Ankara, Türk Tarih Kurumu, 2008.

Herman, Edward S. and David Peterson. *The Politics of Genocide*. New York: Monthly Review Press, 2010.

Lewis, Bernard. *The Emergence of Modern Turkey*. New York: Oxford University Press, 2002.

_____, *Notes On A Century-Reflections of A Middle East Historian*. Britain: CPI Group, 2012.

Lewy, Gunter. *The Armenian Massacres in Ottoman Turkey*. The University of Utah Press, 2005.

_____, *Osmanlı Ermenilerine Ne Oldu?-Çarpıtılan Değiştirilen Tarih*. İstanbul: Timaş Yayınları 2014.

Laçiner, Sedat. *Türkler ve Ermeniler-Bir Uluslararası İlişkiler Çalışması*. Ankara: USAK Yayınları, 2005.

_____, *Hangi Ermeni Sorunu?*. Ankara: USAK Yayınları, 2009.

MacCharty, Justin. *Ölüm ve Sürgün*. Ankara, Türk Tarih Kurumu, 2014.

Öke, Mim Kemal. *The Armenian Question*. Ankara, Turkish Historical Society Printing House, 2001.

Palabıyık, Mustafa. *1915 Olaylarını Anlamak: Türkler ve Ermeniler*. Ankara, Beta, 2015.

Saray, Mehmet. *Principles of Turkish Administration and Their Impact on The Lives of Non-Muslim Peoples: The Armenians as a Case Study*. Ankara: Atatürk Araştırma Merkezi,2005.

Schabas, William. *The UN International Criminal Tribunals*. Cambridge, Cambridge University Press,2006.

Scott, V. *International Law-Key Documents*. The USA: Lynne Rienner Publishers,2006.

Smeulers, Alette and Fred Grünfeld. *International Crimes and Other Gross Human Rights Violations*. Boston: Martinus Nijhoff Publishers,2011.

Sonyel, Salahi. *The Geart War and Tragedy of Anatolia*.Ankara,Turkish Historical Society Printing House,2001.

Şimşir, Bilal. *British Duments on Ottoman Armenians*.Volume IV.Ankara,Türk Tarih Kurumu,2008.

Taylor, Telford. *The Anatomy of the Nuremberg Trials: A Personal Memoir*. (Kindle Edition). New York: Alfred A. Knopf,1992.

Uras, Esat. *The Armenians in History and The Armenian Question*.Istanbul,Belge Yayınları,1988.

Ünal, Şeref. *Uluslararası Hukuk Açısından Ermeni Sorunu*. Ankara,Türk Tarih Kurumu Basımevi,2011

Werle, Gerhard. *Principles of International Criminal Law*. Netherlands: T.M.C. Asser Press,2009.

Schabas, William A. *The UN International Criminal Tribunals-The Former Yugoslavia, Rwanda and Sierra Leone*. New York: Cambridge University Press,2006:171-172.

_____. *Genocide in International Law*. New York, Cambridge University Press, 2009: Kindle Book, Location 779-780.

Wyngaert, Christine Van den. *International Criminal Law*. Boston: Martinus Nijhoff Publishers, 2005.

Periodical Journal Articles

Akşin, Sina. “A General Appraisal of the Armenian Issue”. *Review of Armenian Studies*, Special Issue, No:31, (2015).

Malliaris, Stylianos. “Assessing the ICTY Jurisprudence in Defining the Elements of the Crime of Genocide: The need for a Plan”. *Review of International Law and Politics*, Volume:5, No:20 (2009).

Schabas, William. “Uluslararası Vahşet Suçlarına Dair Bir Paradigma Olarak İnsanlığa Karşı Suçlar.” *Yeni Türkiye Ermeni Meselesi Özel Sayısı IV*, Ankara, Yeni Türkiye Stratejik Araştırma Merkezi, (2014).

Online Articles and Reports

Abass, Ademola. “Proving State Responsibility for Genocide: The ICJ in Bosnia v. Serbia and the International Commission of Inquiry for Darfur” *Fordham International Law Journal*, Volume 31, Issue 4, (2007). 09.09.2015 <<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2105&context=ilj>>.

Aktan, Gündüz. “The Armenian Problem and International Law.” (2001). 01.09.2015 <<http://www.mfa.gov.tr/data/DISPOLITIKA/ErmeniIddialari/gunduz-aktan-the-armenian-problem-and-international-law-2001.pdf>>.

_____. “The Lausanne Peace Treaty and the Armenian Question.” 09.01.2015 <www.eraren.org/bilgibankasi/en/index1_1_2.htm>.

Ambos, Kai. "What does Intent to Destroy in Genocide mean?". *International Review of the Red Cross*, Volume 91, Number 876, (2009). 11.09.2015 <http://www.genocidewatch.org/images/Articles_What_does_intent_to_destroy_in_genocide_mean.pdf>.

Atwood, Valerie H. "The Baghdad Railway." (2013). 01.09.2015. <<http://repositories.lib.utexas.edu/bitstream/handle/2152/22585/ATWOOD-MASTERSREPORT-2013.pdf?sequence=1>>.

Boyadjian, Seto. "A half Truth is a Whole Lie". (2014). 11.09.2015 <<http://asbarez.com/130164/thomas-de-waals-futile-attempt-at-trivializing-the-armenian-genocide/>>.

Çakmak, Diren. "Soykırım Suçu: Suçun Gerçekleştiği Ruanda Örneği ve Suçun Gerçekleşmediği Ermeni Tehciri." (2007). 18.09.2015 <<http://www.ayk.gov.tr/wp-content/uploads/2015/01/%C3%87AKMAK-Diren-SOYKIRIM-SU%C3%87U-SU%C3%87UN-GER%C3%87EKL%C5%9ET%C4%B0%C4%9E%C4%B0-RUANDA-%C3%96RNE%C4%9E%C4%B0-1994-VE-SU%C3%87UN-GER%C3%87EKL%C5%9EMED%C4%B0%C4%9E%C4%B0-ERMEN%C4%B0-TEHC%C4%B0R%C4%B0-1915.pdf>>.

Çiçek, Kemal. "Relocation of the Ottoman Armenians". 01.10.2015 <http://dearmeensekwestie.nl/index.php?option=com_content&view=article&id=157:relocation-of-the-ottoman-armenians-in-1915&catid=13:papers&Itemid=13>.

Demir, Abdullah. "Hukuk Tarihi Açısından 1915 Ermeni Tehciri." *e-Akademi Hukuk, Ekonomi ve Siyasal Bilimler Aylık İnternet Dergisi*. (2008). 02.09.2015 <<http://www.eakademi.org/incele.asp?konu=HUKUK%20TAR%DDH%DD%20A%C7ISINDAN%201915%20ERMEN%DD%20TEHC%DDR%DD&kimlik=-721069565&url=makaleler/ademir-4.htm>>.

Duisen, Michael Van. "The German Genocide Campaign In Namibia". *KnowledgeNuts*. 09.09.2015 <<http://knowledgenuts.com/2013/08/10/the-german-genocide-campaign-in-namibia/>>.

Eracar, Yılmaz. "Armenian Relocation and International Law." 01.09.2015 <<http://www.avim.org.tr/uploads/dergiler/ras-26-pdf.pdf>>.

Erickson, Edward J. "The Armenian Relocations and Ottoman National Security." 01.09.2015. <http://www.mfa.gov.tr/data/DISPOLITIKA/ErmeniIddialari/edward-j_-erickson-the-armenian-relocations-and-ottoman-national-security_-military-necessity-of-excuse-for-genocide.pdf>.

Göral, Sevinç. "Turkish - Armenian Issue: Victimization And Large-Group Identity". *Review Of Armenian Studies*, Volume 3 Number 9, (2005). 09.09.2015 <<http://www.eraren.org/index.php?Lisan=en&Page=DergiIcerik&IcerikNo=382>>.

Halaçoğlu, Yusuf. "Tehcir sırasında 8.500 civarında Ermeni öldü". *Zaman*. 21.04.2013. 01.09.2015 <http://www.zaman.com.tr/pazar_prof-dr-yusuf-halacoglu-tehcir-sirasinda-8500-civarinda-ermeni-oldu-_2080760.html>.

Herman, Edward S. "The Propaganda Model Revisited". *Monthly Review*, July, (1996). 09.09.2015 <<http://www.chomsky.info/onchomsky/199607--.htm>> .

Konokhovic, Anastasia. "The Srebrenica Genocide". *International Youth Conference Tyumen Model UN 2012 Historical Security Council*. 09.09.2015 <<http://tmun.utm.ru/wp-content/uploads/Srebrenica.pdf>>.
Holocaust Memorial Day Trust. 09.09.2015 <<http://hmd.org.uk/genocides/genocide-srebrenica>>.

Tasioulas, John. "Custom, Jus Cogens and Human Rights" (2015): 13. 17.09.2015 <<http://www.law.uchicago.edu/files/files/customjuscogenshrs.pdf>>.

Sellers, Kristen. "Imperfect Justice at Nürnberg and Tokyo". *The European Journal of International Law*, Volume. 21, No. 4 (2011): 1089-1090. 17.09.2015 <<http://www.ejil.org/pdfs/21/4/2106.pdf>>.

MacCarthy, Justin. "Let Historians Decide on So-called Genocide." 11.04.2001: 3. 01.09.2015 <<http://www.tc-america.org/files/news/pdf/mccarthy-historian.pdf>>.

_____, *The Population of the Ottoman Armenians*. 01.09.2015<<http://www.tallarmeniantale.com/PopulationOttomanArmenians.pdf>>.

Malysz, Piotr J. "Nemo iudex in causa sua, As the Basis of Law, Justice, and Justification in Luther's Thought". *Harvard Theological Review*, 100:3, (2007). 11.09.2015<<http://www.yalelawjournal.org/essay/contra-nemo-iudex-in-sua-causa-the-limits-of-impartiality>>.

Milanovic, Marko. "State Responsibility for Genocide". *The European Journal of International Law*, V. 17 no.3, (2006). 09.09.2015<<http://www.ejil.org/pdfs/17/3/204.pdf>>.

Miyoshi, Masahiro. *Sovereignty and International Law*. 02.09.2015<https://www.dur.ac.uk/resources/ibru/conferences/sos/masahiro_miyoshi_paper.pdf>.

Moses, A. Dirk. "Raphael Lemkin, Culture and the Concept of Genocide". *The Oxford handbook of Genocide Studies*, (2012). 11.09.2015<http://www.dirkmoses.com/uploads/7/3/8/2/7382125/moses_lemkin_culture.pdf>.

Petrovic, Drazen. "Ethnic Cleansing-An Attempt at Methodology". 09.09.2015<<http://www.ejil.org/pdfs/5/1/1247.pdf>>.

Rummel, R.J. "Genocide". 11.09.2015<<https://www.hawaii.edu/powerkills/GENOCIDE.ENCY.HTM>>.

Safonova, Sasha. *Relevance of the Westphalian System to the Modern World*. 02.09.2015.<<http://www.articlemyriad.com/relevance-westphalian-system-modern-world-sasha-safonova/>>.

Sayapin, Sergey. "Raphael Lemkin: A Tribute". *European Journal Of International Law*, Volume 20, Issue 4, (2009). 11.09.2015<<http://ejil.oxfordjournals.org/content/20/4/1157.full>>.

Schabas, William. "A legal distinction between Genocide, War Crimes and Crime Against Humanity".

11.09.2015<https://www.youtube.com/watch?v=_PMP2ckW6Fw>.

_____, "Genocide in International Law" 02.09.2015<<http://www.javeriana.edu.co/blogs/ildiko/files/Genocide-in-International-Law1.pdf>>.

_____, "The Odious Scourge: Involving Interpretations of the Crime of Genocide." *Genocide Studies and Prevention: An International Journal*. Volume I (2006).<<http://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1241&context=gsj>>.

Schaller, Dominik J. "Raphael Lemkin's view of European Colonial Rule in Africa: between condemnation and admiration". *Journal of Genocide Research*, 7(4), (2005). 11.09.2015<<http://inogs.com/wp-content/uploads/2013/05/INoGS-JGR-Schaller.pdf>>.

Sirkin, Micol. "Expanding the Crime of Genocide to Include Ethnic Cleansing: A Return to Established Principles in Light of Contemporary Interpretations". 09.09.2015<<http://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1984&context=sulr>>.

Stone, Norman. "There is No Armenian Genocide". 13.09.2015<<http://www.genocidereality.com/headlinedetail.asp?id=42>>.

Tacar, Pulat. "State Identity, Continuity, and Responsibility: The Ottoman Empire, the Republic of Turkey and the Armenian Genocide: A Reply to Vahagn Avedian". *The European Journal of International Law* Vol. 23 no. 3. 2012.02.09.2015<<http://www.ejil.org/pdfs/23/3/2308.pdf>>.

Ticehurst, Rupert. "The Martens Clause and The Laws of Armed Conflict". *International Review of the Red Cross*, No: 317, (1997). 11.09.2015<<https://www.icrc.org/eng/resources/documents/misc/57jnh.htm>>.

Turhan, Faruk. "Soykırım Suçunda Bir Grubu Tamamen veya Kısmen Yok Etme Amacı ve Ermeni Tehciri Olayı." 02.09.2015<[http://hukuk.sdu.edu.tr/assets/uploads/sites/65/files/soykirim-sucunda-yok-etme...>](http://hukuk.sdu.edu.tr/assets/uploads/sites/65/files/soykirim-sucunda-yok-etme...).

Halaçoğlu, Yusuf. "Ermeni Tehciri ve Gerçekler". 30.09.2015<[http://www.tarihtarih.com/?Syf=26&Syz=292366>](http://www.tarihtarih.com/?Syf=26&Syz=292366).

Zeidner, Robert F. "Britain and The Launching of the Armenian Question." *Middle East Studies*. (1976). 02.09.2015<http://www.ata.boun.edu.tr/faculty/NadirOzbek/Courses/HTR_311_2013/13_Zeidner_Britain%20and%20the%20Launchign%20of%20the%20Armenian%20Question.pdf>.

Internet Sources

Anadolu Agency. 02.09.2015<<http://www.aa.com.tr/en/politics/497885--historians-call-for-normal-turkish-armenian-relations>>.

Armenian Activities in the Archive Documents 1914-1918 volume I. Ankara. 01.09.2015<http://uyg.tsk.tr/ataturk/arsiv_belgeleri/ermenil.pdf>.

BBC. 09.09.2015<<http://www.bbc.com/news/world-europe-28313285>>.

Cornell University Law School. 17.07.2015<https://www.law.cornell.edu/wex/opinio_juris_international_law>.

Global Law and Justice. 14.09.2015<http://www.nyulawglobal.org/globalex/Darfur_Crisis_Research.htm>.

Holocaust Memorial Day Trust. 09.09.2015<<http://hmd.org.uk/genocides/genocide-srebrenica>>.

The Manifesto of Hovannes Katchznouni. 13.09.2015<<http://louisville.edu/a-s/history/turks/Katchaznouni.pdf>>.

U.S.H.RES. 106.13.09.2015 < <http://www.tc-america.org/UShres106.pdf>>.

World Without Genocide.09.09.2015<<http://worldwithoutgenocide.org/genocides-and-conflicts/bosnian-genocide.>>.

History.09.09.2015<<http://www.history.com/topics/bosnian-genocide.>>.

United Human Rights Council.
09.09.2015<http://www.unitedhumanrights.org/genocide/genocide_in_rwanda.htm.>

The United Nations.
01.06.2015<<http://www.un.org/en/preventgenocide/rwanda/education/rwandagenocide.shtml5.>>.

United Human Rights Council.
09.09.2015<http://www.unitedhumanrights.org/genocide/genocide_in_rwanda.htm.>

The Stop Violence Against Women. 09.09.2015<
http://www.stopvaw.org/ad_hoc_international_tribunals>.

Peace Pledge Union Information Genocide.
<09.09.2015http://www.ppu.org.uk/genocide/g_namibia2.html.>.

The Supreme Court.
09.09.2015<http://www.pbs.org/wnet/supremecourt/personality/landmark_korematsu.html.>

The ICJ Judgement of 3 February 2015. 09.09.2015<<http://www.icj-cij.org/docket/files/118/18422.pdf.>>.

Vienna Convention on the Law of the
Treaties.09.09.2015<<https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf.>>.

The Universal Declaration of Human Rights.
09.09.2015<<http://www.un.org/en/documents/udhr/.>>.

ICTJ Legal Analysis on Applicability of UN Convention on Genocides prior to January 12, 1951. 09.09.2015<<http://groong.usc.edu/ICTJ-analysis.html>>.

The ICJ Judgement of 3 February 2015. 09.09.2015<<http://www.icj-cij.org/docket/files/118/18422.pdf>>.

International Law Commission. 01.06.2015<http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf>.

International Law Commission Report. 09.09.2015<<https://www.icrc.org/casebook/doc/case-study/ilc-state-responsability-case-study.htm>>.

Elements of Crimes. 09.09.2015<<http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>>.

Rome Statute Of The International Criminal Court. 09.09.2015<http://legal.un.org/icc/statute/99_corr/cstatute.htm>.

International Court of Justice Press Release. 11.09.2015<<http://www.icj-cij.org/docket/files/118/18448.pdf>>.

The Geneva Conventions of 12 August 1949. 11.09.2015<http://www.loc.gov/rr/frd/Military_Law/pdf/GC_1949-IV.pdf>.

Convention (IV) Relative to the Protection of Civilian Persons in Time of War. 11.09.2015<<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument>>.

International Crimes Database. 11.09.2015<<http://www.internationalcrimesdatabase.org/Case/83/Jelisi%C4%87/>>.

The Trail of Jelisic. 11.09.2015.<<http://icty.org/x/cases/jelisic/tjug/en/jel-tj991214e.pdf>>.

Eugenics Archives. 11.09.2015<<http://eugenicsarchive.ca/discover/connections/532360a0132156674b000256>>.

International Military Tribunal (Nürnberg).
11.09.2015<http://crimeofaggression.info/documents/6/1946_Nuremberg_Judgement.pdf>

Legal Dictionary.11.09.2015<<http://legal-dictionary.thefreedictionary.com/Non+bis+in+idem>>

Human Rights in the US and the International Community.<11.09.2015http://www.unlhumanrights.org/01/0103/0103_01.htm>.

.
United Nations General Assembly Resolution.
11.9.2015<http://archive.adl.org/education/curriculum_connections/spring_2005/spring_2005_lesson2_resolution.html>

The Charter and Judgement of the Nürnberg Tribunal.
11.09.2015<http://legal.un.org/ilc/documentation/english/a_cn4_5.pdf>.

Holocaust Memorial Day Trust.
11.09.2015<<http://hmd.org.uk/resources/stories/hmd-2016-raphael-lemkin>>.

Prevent Genocide International. 11.09.2015<<http://www.preventgenocide.org/lemkin/AxisRule1944-1.htm>>.

Prevent Genocide International.
11.09.2015<<http://www.preventgenocide.org/genocide/crimewithoutaname.htm>>.

National Assembly of the Republic of Armenia.<02.09.2015<http://www.parliament.am/parliament.php?id=constitution&lang=eng>>.

Franco-Turkish Agreement.02.09.2015.<http://www.hri.org/docs/FT1921/Franco-Turkish_Pact_1921.pdf>.

Responsibility of States for Internationally Wrongful Acts.
02.09.2015.<http://www.eydner.org/dokumente/darsiwa_comm_e.pdf>.

The Tablet. 13.09.2015<<http://archive.thetablet.co.uk/article/20th-july-1878/11/the-treaty-of-berlin>>.

Ministry of Culture and Tourism.01.09.2015<
<http://www.kultur.gov.tr/EN,32704/demographic-information--before-and-after-relocation.html>>.

United Nations Treaty Collections.02.09.2015<
https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml>.

Live Leak. 30.09.2015< http://www.liveleak.com/view?i=0da_1429204994>.

14.09.2015<<http://int.search.tb.ask.com/search/video.jhtml?searchfor=Barack+Obama+speech+law+is+law+is+above+everything&p2=%5EY6%5Exdm879%5EYYA%5Etr&n=781BD5C2&ss=sub&st=hp&ptb=B04B26CF-53F8-4F59-91E7-8DB28EE2A8EA&si=CLrsu4fd1ccCFQ3jGwodW-cOjA&tpr=sbt&ts=1442238717839>>.

CURRICULUM VITAE

Name: Seher Balıkçıoğlu

Education

Degree	Department	University	Year
Bachelor's	Labour Economics and Industrial Relations	Ankara	1993-1999

Last Work Experience

Organization	Job Title	Year
Prime Ministry	Foreign policy analyst	2006-2012

Foreign Languages: Fluent in English

Publications:

Atılım Social Sciences Journal issue 4(1), pages 62-64, 2014, Book Review “China’s Rise: Challenges and Opportunities, Peterson Institute For International Economics Center For Strategic and International Studies, Washington DC, 2008, 269 pages. By C. Fred Bergsten, Charles Freeman, Nicholas R. Lardy and Derek J. Mitchell”

Atılım Eğlenceli Bilim Dergisi, June 2015,issue 17, article “the EU”

Atılım Eğlenceli Bilim Dergisi, February 2015,issue 16, article “the NATO”

Atılım Eğlenceli Bilim Dergisi, October 2014,issue 15,article “the UN”

e-mail: seherbalikcioglu76@gmail.com

Phone:0 532 7281459

Date:11/02/2016

Turnitin Orijinallik Raporu
Tez Seher Balıkçioğlu tarafından
ÖDEV 2 (SBE TEZ 1) den

- 17-Şub-2016 13:14 EET' de işleme konu
- NUMARA: 633072000
- Kelime Sayısı: 32043

Benzerlik Endeksi

%9

Kaynağa göre Benzerlik

Internet Sources:

%7

Yayınlar:

%6

Öğrenci Ödevleri:

%3