

THEOFANIS MALKIDIS

THE CRIME OF GENOCIDE AND THE ARMENIAN GENOCIDE

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1. *The Armenian Genocide and the International Situation*

The notion “Crimes against Humanity” is recorded for the first time in Rovers pier’s speech at the “National Council of the French Revolution”, during which Luis XVI was implicated.

In his account to the UN Secretariat, the author George Washington Williams, referring to Leopold’s II tyrannical regime in Congo – the number of aborigines in Congo decreased 25% between 1880 and 1920 used the notion “The King is responsible for crimes against humanity”¹.

The matter of massive crimes in the Ottoman State detained the International community. On 24th May 1915 the countries of “Entente” were holding members of the Ottoman government personally responsible for ordering the killing of the Armenian people, assuming at the same duty and the right to indict them to justice.

Lord Curzon talking in the Council of Entente’s Ministers (11/20/1918) suggested establishing an International Court which would penalize anyone responsible for the crimes committed during the war. Lloyd George claimed that “a war, as a fact, is a crime against humanity” and he demanded that the authorities of Germany and the Ottoman Empire would be judged for the crimes they committed during World War I².

The Ottoman government was engaged to deliver the accused and give any kind of information, the allied powers would keep the right to indicate which courts would judge the cases and the Turkish government would assume responsibility to recognize these courts.

The Turkish government official undertakes the task to greatly facilitate the returning to their homes and make full restitution of the Turk subjects of no Turkish race that have been viciously expelled from the 1st January 1914. Also, it recognizes that any movable or immovable property belonging to Turk subjects or to their

¹ Godwin Rapando Murunga, *King Leopold’s Ghost: A story of Greed, Terror and Heroism // Colonial Africa*, History Department, Kenyatta University, Nairobi, 1999.

² **Aksam T.**, *A Shameful Act – The Armenian Genocide and the Question of Turkish Responsibility*, New York, 2006, p. 348, **Trumpener U.**, *Germany and the Ottoman Empire 1914-1918*, Princeton, 1968, p. 210.

communities that can be retrieved must be compensated as soon as possible, to any beneficiary.

The Turkish government agrees that the arbitration committees will be appointed by the League of Nations council wherever it is necessary. These arbitration committees will listen to all claims covered in this article and then they are going to decide with summary procedures". During the talking to the Responsibility Committee the notion "transgression of the war and humanity laws and customs" is used¹. Greece was represented by the Minister of Foreign Affairs N. Politis, who suggested using the notions "Crimes against the Laws of War" and "Crimes against the Laws of Humanity". These efforts, despite being supported by the representatives of the USA and of Japan, ended in failure. The British authorities (from 1918-1919) proceed to legal actions, as we have mentioned before, in order for the war criminals to be tried, but the movement of Mustafa Kemal, the difficulty in finding evidence, the argument on which law would be applied, which authority would be in charge in addition to other allies misgivings led to the cease of process in November 1921.

Damad Ferid Pasha's government which was elected in the same year in Turkey formed a "research committee" under the command of Mazhar Pasha to lead those responsible for the massive crimes. Finally, death penalties were imposed on Ministers and other people who had fled, whereas two officers, who were not the ring-leaders, were executed.

Kemalist movement stopped the procedure in January in 1921 and two years later the Lausanne treaty recognized the sell out of the authorities that were announced in 1915 and 1920 regarding the punishment of Crimes against humanity. Moreover, Higher Officials imprisoned in Malta, who should have been sentenced for crimes against humanity², were granted amnesty according to the Lausanne treaty. As a result, although the International Community had signed the Sevres treaty and had recognized the crimes against Greeks, Armenians, and Assyrians and there was impunity since the Allies didn't guarantee its appliance.

The failure was imputed to the increasing international political disorder after World War I, the rise of the USSR and the agreement with the Kemalists, the withdrawal of British military presence, the weakening of the Ottoman government and the rise of Kemalism, the policy of isolating the USA. Although the American diplomats had condemned the genocide since 1915, the Government of the USA didn't take any measures to restore the injustice after World War I. The American ambassador Henry Morgenthau had named the Slaughtery "murdering races" and that on 10th July 1915 he sent a telegram to Washington with the following words: "*The persecutions of Armenians have spread quickly. The reports from the widely scattered regions show the systematic efforts on the first hand to uproot the peaceful Armenian populations and on the order hand to bring their destruction and elimination, though arbitrary arrests, terrible tortures, massive expulsions and exiles from one end of the empire to the other, which were often followed by rapes, sacks and murders turned to slaughter.*"

¹ Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties // American Journal of International Law, Vol. 14, New York, 1920.

² Schabas W., Genocide // International Law, Cambridge University Press, 2002, p. 20-22.

*These measures were not the answer to the popular or fanatical people's request but completely arbitrary and guided from Constantinople on the name of military needs, usually in regions where no military operation was possible to take place*¹.

As a result the Lausanne treaty was the means of cleansing Kemalist Turkey which had been exculpated from its crimes. This was the case to which Hitler referred when he said: "Who remembers the Armenians"? This was the way Greeks and other Christian nations disappeared from their age long hearths and their living ground became Turkish².

The massive murders are followed by destructions of monuments, of churches and houses, of architectural inscriptions and renaming of regions. The new kemalist state was built on the ruins and the lives of Greeks, Armenians, Assyrians³.

The states of Entente, despite its first intention, didn't deal with the massive crimes and especially those committed by the Ottoman state and Kemalist Turkey, due to its weakness and internal problems. As a result this matter was brought up again after World War II to the newly established UN. On the 25th October 1941, Churchill declared that punishment for the war crimes should then on be considered as one of the main purpose of war⁴. In January 1942, during a meeting of the nine exiled governments in London, it was mentioned that Germany should face its responsibilities for the crimes they had committed. The declaration was adopted by Great Britain, the USA and the USSR.

2. The Term Genocide

The term "Genocide" was firstly expressed in 1944 by the Raphael Lemkin⁵, and was made known just before the trial of Nuremberg⁶ for the ones responsible for the extermination of the Jews by the Nazi in many "Pogroms"⁷.

¹ **Power S.**, A Problem from Hell. America and the Age of Genocide, New York, 2002, p. 6.

² **Schabas W.**, op. cit., p. 20-22.

³ **Mandelstam A.**, La société des nations et les puissances devant le problème arménien, Paris, 1970.

⁴ **Helmreich P.**, From Paris to Sevres, Columbus, 1974, p. 131.

⁵ The professor of law school of the University of Yale, Rafael Lemkin, introduced the term 'genocide' // 1944. The term of Lemkin has been the base of the terminology the United Nations have used to make the 'Treaty for Genocide' of December 9th 1948. At that time the specific crime was coded and there were even set punishments for the criminals, but that hasn't stopped the forcing of violence against a group of people different from their persecutors. About the term genocide and especially in the area of today's Turkish state. See **Lemkin R.**, Axis Rule in Europe. Laws of Occupation. Analysis of Government. Proposals for readers. Carnegie Endowment for International Peace. Division of International Law, Washington, 1944 ; *idem*: 'Le génocide' // Revue internationale de droit penal, 1946.

⁶ Tribunal Militaire International de Nuremberg, Procès des grands criminels de guerre, Nuremberg, p. 46, Επίσης **Ginsburgs G.-Kudriavtsev V.** (eds), The Nuremberg Trials and International Law, Dordrecht, 1990.

⁷ "Pogrom" is a term that is usually used in order to be reported the Semitics disturbances in Russia, particularly in 1881-1882, in 1903, in 1905 in the Odessa, Kiev, Chisinau. **Klier J.**, Pogrom // **Shelton D.** (ed.), Genocide and Crimes against Humanity, London Macmillan, 2004, p. 812-815. Also crime against the humanity is the "Night of Crystals" (Kristallnacht) of 9^{is} -10^{is} November 1938.

The legal conception of “Genocide” was applied at the Trial of Nuremberg and of Tokyo and had to do with a particular kind of war crime which had been almost unimportant up to then and as it was exactly stated in the first legally recorded act of it: the systematic extermination of some inferior nations in Europe by the Nazis. This crime which was legally stated as genocide had racism as a beginning and constituted its logical and fatal consequence when such a nation became able to develop literately, as happened in Germany.

The practice and the whole idea of genocide were based on the following arbitrary maxims: “hierarchy of cultures, that is to say that there are some superior and some inferior cultures and that only one of them can climb up to the top.

There could have been a problem with the trial since without a law in force there would be no punishment. Since the term “genocide” didn’t exist in those times, the punishment and the persecution would be in a question. The penal Law, in order to assure the fair treatment for the accused, couldn’t have a retrospective effect. It was declared that there was no punishment for murder in all the legal frameworks. After all, some of the committed crimes were so cruel that nobody could have imagined a control mechanism in advance, in order to make laws for them.

The “Genocide” is the most serious crime according to the International Law for which there had been no prescription. Whoever commits genocide does not just exterminate a group for what they have done but for what they are. The genocide can be executed by a series of murders of groups, of all or almost all members of a race or by its systematic decline (with various means) until its gradual obliteration. We have to mention here that the general meeting of the UN¹ ratified the resolution 50/192, which examined the systematic practicing of rapes during the armed fights constitute war crimes and that under specific circumstances they constitute a crime against humanity and an act of genocide as it is defined in the treaty related to the prevention and punishment of the crime of genocide”².

Turkey itself took part in the treaty for the Civil rights on 15th September 2003, where the article 6 protects the right to live, the article 20 prohibits the encouragement of race hatred and violence, the article 26 prohibits the discrimination and the article 27 guarantees the rights of minorities. A series of prohibitory measures against national, religious, language, moral, historic or other Kinds of tradition are included in the violent means used to commit the crime of genocide, because these cause a differentiation or distortion of the group with the consequent loss of national and racial characteristics. However, the rendering of the term for a concrete organized act implicates subjective criteria and, recently, has caused divergence of views.

¹ The Economic and Social Council is one of the main organs of the United Nations. It can ‘...make or cause introductions on the international issues in the areas of economy, social matters, spirit culture and education, public health and other relevant and can make recommendations on these issues in the General Council...’ (art. 62 of the chart of the United Nations) and it ‘forms committees’ (art. 68) among which is the committee for human rights. The committee for human rights was created by the Economical and Social Council in 1946. It conducts studies, prepares recommendations and works on programmes of international organs that concern the human rights. It also takes up special duties that are entrusted to it by the General Council or the Economical and Social Council. It is composed by its countries-members that are elected by the council for three years, the committee calls yearly meetings of a duration of five to six weeks. **Attarian V.**, *The Armenian Genocide in United Nations*, Athens, 2001 (in Greek).

² **Power S.**, *op. cit.*, p. 6.

The detestation and abhorrence caused by the systematically organized Nazi effort to exterminate the Jews, the Gypsies, the Slavs and other groups before and during World War II push the international community – the general meeting of the United Nations – to officially characterize genocide as a crime punished on the basis of international law. This pushed the Armenians to make their first demands for their holocaust despite the problems, the circumstances and the Turkish reactions.

On 8th August 1945 the allies agreed on establishing an International Military

Court which would judge the war criminals and on the principles considered, the basis of the articles of the United Nations concerning human rights and their basic matters (genocide, war crimes).

The term Genocide was the main indictment at the trial of Nuremberg. The international court martial of Nuremberg was set up with the agreement of the four powers which was signed on 8th April 1945 in London. In these laws there are acts which should be considered crimes against humanity. The term genocide is used for the first time on 18th October 1945 in a claimant of universal range: the indictment against German war criminals who were judged in front of the court of Nuremberg. The act of accusation against German war criminals reports that “*they occupied themselves with willful and systematic genocide that is the extermination of racial and national groups among the civilians of particular occupied regions, in order to exterminate particular races or orders of population and national, racial or religious groups*”¹.

A special treaty, which confirmed the general meeting of the United Nations prescribed that the perpetrators of such a crime (either state or military organ and government officials or even citizens) must be personally and individually considered responsible for this crime and must be judged by courts of the country where the crimes had been committed or by the international court.

The court of Nuremberg, with its resolution, emphasized on the principles below²:

- Each person, who commits crimes according to the International Court, is responsible for these actions and the punishment.
- For actions that no punishment is provided for in the International law, the individual is not released from his responsibility according to the international law.
- The action committed by a person, who constitutes crime if it was committed as state command or by an official of the government does not release him from international court responsibility.
- The action committed by individuals under government command or under Head Authorities does not release him from international law responsibilities as well as from moral responsibility.
- Each person accused of committing a crime according to international law deserves a fair trial based on the facts and on the international law.

¹ **Kiratzopoulos V.**, The Unwritten Genocide. The Pogrom against the Greeks of Constantinople, Athens Tsoukatou, 2006, p. 99 (in Greek).

² Tribunal Militaire International de Nuremberg, Procès des grands criminels de guerre, Nuremberg, p. 46. Επίσης **Ginsburgs G. – Kudriavtsev V.** (eds), op. cit. Also see **Stinger R.**, The Trial of Nuremberg, Athens, 1960 (in Greek).

- The sentenced crimes which are punished according to the international law are¹:

a) Crimes against Peace

1. Planning, preparing, initiation or instigation of offensive war in violation of the international treaties, agreements or guarantees.

2. Taking part in a mutual plan or conspiracy for committing the crimes mentioned in the first paragraph.

b) Crimes of War

Defiance's of international war laws and ethics in which we include but we do not fix: assassin nations, maltreatment and violent transportation of civilians to war camps for compulsory community service, murders or maltreatment of war prisoners, executions of prisoners, sacks and unjustified destruction of cities and villages or destructions that are not necessary for military reasons.

c) Crimes against Humanity

Murders, extermination, enslavement, exile and other cruel actions committed against urban populations, deportations for political, racial or religious reasons in connection with any other crime that falls within the competence of the court, in defiance of the law, or not, of the country where they were committed either in times of peace or war.

- Taking part in committing "crimes against peace", "war crimes", "crimes against humanity" as it is stated in the 6th principle, is a crime according to international law.

The general meeting of the United Nations, since its first session in 1946 has been occupied with the matter entitled: "The prevention and control of the crime called genocide" forcing the social and financial council to undertake consideration in new of the preparation of the blueprint. This blueprint of treaty is ready two years later according to a strenuous procedure that caused the intervention, apart from the social and financial council, of the Human Rights Committee, of a particular committee and an experts council, a member of which was professor Lemkin.

The UN voted at the general meeting 12/09/1948 (No Decision 260-III-A)² which came into force on 12th January 1951, the treaty for the prevention and punishment of the crime of genocide, which consists of 19 articles, while in its introduction the following are mentioned: "Recognizing that in all historic periods genocide has caused great humane losses" "For its prevention, international co-operation is needed".

According to the treaty, the term "Genocide" is given by the articles as follows:

Article 2

Genocide is whichever of the following actions committed with the intention to completely or partly destroy a national, ethnic, racial or religious group because of being so

- 2.1. homicide of members of the group
- 2.2. causing severe physical or mental disorder to members of the group

¹ Kiratzopoulos V., op. cit., p. 100.

² Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG). General Assembly Resolution 260 a (III) of 9/12/1948. UNTS, N 1021, vol. 78, 1951, p. 228. It is worth mentioning that many countries that had colonies declared in writing their oppositions, that were partially accepted, and agreed about the matters of the genocide with holdbacks.

- 2.3. implementation of such life conditions that lead to their complete or partial destruction
- 2.4. implementation of measures which aim at preventing birth inside the group
- 2.5. violent transportation of children from the group to another

Additionally, in the following articles of the treaty the following are mentioned:

Article 3

“The criminal actions below are to be punished:

- a) genocide
- b) conspiracy aiming at genocide
- c) direct or indirect instigation of committing genocide
- d) attempt to commit genocide
- e) taking part in genocide

Article 4

Individuals who conspire and act the above in article 3, no matter if they have acted with constitutionality, under public command or individually are to be punished.

Article 6

The individuals who are responsible for genocide actions or any other action as mentioned in article 3 must be tried in the country where the crime has been committed or in some international penal court which will be recognized by the contracting parties¹.

Genocide, according to the Convention, has to do with a crime which, by violent means most of the times, aims at the systematic extermination of a whole race or part of it in a particular place. It is a primary crime, which has no connection with war battles. It is the destruction of a nation or of a national group; it is a coordinated plan of several activities that tend to destroy the substantial foundations of life of these national groups, in order to exterminate these groups.

Genocide in this age is among the “crimes against Humanity” which, according to article 6c of the “Articles” of the court of Nuremberg have to do with a series of particular severe offenses, committed “in relevance” or “in continuity” to crimes against peace or war crimes².

The relation between “crimes against Humanity” and the war crimes or crimes against peace fades away in the treaty for the prevention and the control of the crime of genocide, which was unanimously adopted by the general meeting of United Nations on 9th December 1948. There, the genocide is to be sentenced as an autonomous “crime of the law of Nations” either committed during peace or during war (article 1).

According to article II of the treaty, whose strict phrasing is contrary to the vagueness of the previous one, any of the actions below, which is committed with the intention to destroy, completely or partly, a national, ethnic, racial or religious group is considered to be genocide:

- a) murder of group members,

¹ Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG). General Assembly Resolution 260 a (III) of 9/12/1948. UNTS, No 1021, vol. 78, 1951, p. 228.

² **Kuper L.**, Genocide: Its Political Use in the Twentieth Century, London, 1981, **Fein H.**, Accounting the Genocide, New York, 1979.

- b) severe damage of the physical or mental integrity of members of the group
- c) intentional instigation of the group in such conditions of life that cause the partial or complete destruction of it
- d) measures that aim at preventing birth inside the group
- e) violent transfers of children from one group to another.

The recitation is considered restrictive, which is a fact that excludes the possibility for other acts apart from a-e to be taken into account for the establishment of the crime of genocide.

According to article III, the “the following acts will be punished: 1) genocide, 2) agreement on committing genocide, 3) immediate or public encouragement to commit the crime of genocide, 4) attempt of genocide, 5) cooperation to commit genocide”¹.

According to article 5 “The persons who have committed genocide or any of the other acts mentioned in article 3, will be punished no matter if they are members of the government, civil servants or individuals”. Concerning this point, the authority belongs primarily to State Courts in the place where the crime was committed.

The definitions of genocide are different in terms of the aspiring aims of each analyst focus on the important central role of the state, contrary to the UN definition where any report to the participation of the state in the genocide was excluded. The definitions differ regarding their nature and the kind of acts that are considered to constitute genocide. The most exclusive interpretation has as a pattern the Holocaust where the perpetrator intention was the complete extermination of the victim and the result of it the destruction of the biological base essential for the maintenance of the community. Other definitions are wider and offer a basis for analyzing the massive destruction of racial or religious groups but make the distinction between the genocide and what we could call pogrom or even group slaughter.

The definition of the crime of genocide that the UN support is wide enough to include the genocides of the colonialism the extermination indigenous groups, the destruction of foreign groups which were given the role of the hostage by the host communities, the great scale of slaughtering which were the result of the fight for self-determination secession or gaining power, as well as the holocaust and the genocides committed during wars. The definitions of genocide also include, apart from the UN definition, the premeditated and centrally organized crime committed by the state aiming at the extermination of a racial, national or religious group, the structural and systematic destruction of one of the groups above by the bureaucratic state mechanism, the massive slaughter which is generally committed by the state and whose main purpose is mainly the extermination of a particular group of the social structure and to genocide wholly regards the systematic of a national, racial or religious group.

According to the International declaration of the Rights of Nations (Algiers, 4th July 1976) and the permanent court of nation the genocide holds a central position. The crime of Genocide is the most severe in fringe up on the rights of nations; There is no crime as serious as a premeditated state policy which upon at systematic extermination of a nation because of its special national identity. The first article of the declaration of Algiers states that: “Each nation has the right to exist”. The second

¹ Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG). General Assembly Resolution 260 a (III) of 9/12/1948. UNTS, No 1021, vol. 78, 1951.

article clarifies: “Each nation has the right to be respected in terms of its national and cultural identity”. The article 3 points out: “Each nation has the right to maintain the peaceful possession of its own land and return to it in care of its deportation”¹.

The exact definition with which we could characterize the slaughter of Armenians by the Turks shouldn't cause difficulties apart from the extreme case where an exact equation of this genocide with the Holocaust would be requested.

However the slaughters committed by the Turks against the Christian populations of the Ottoman state are often compared with the holocaust. Writers referred the idea that in the 20th century a new procedure of genocide has been created, the one committed in cold blood as a result of the arbitrary decisions made by the authorities of despotic political systems, where contemporary technology and organization are used. The examples he reported were the genocide of the Armenian people and of the Jews in Europe. Arlen and Fein agreed and Fein included the stutter of the Gypsies of the Europe in the category of premeditated genocides, where as Melson characterizes the extermination of the Armenian people in 1915 and the Jews during World War II as methodical contemporary genocides².

The testimony of the USA ambassadors Morgenthau and Horton³ are of great importance in order to substantiate the genocide of the Christian populations in the Ottoman state, where as the narrations of the survivors and the wiping of geographical and historic presence of Christian populations from their country are the proof, that the crime of genocide has been committed⁴. There has been a systematic procedure of

¹ Permanent Court of Populations. The Crime of Silence. The Armenian Genocide. Athens, 1988 (in Greek).

² **Melson R.**, A Theoretical Inquiry into the Armenian Genocide, New York, 1983.

³ **Morgenthau H.**, The Secrets of Bosphorus, Athens, 1989, **Horton G.**, About Turkey, Athens, 1992 and of the same, The plague of Asia, Athens, 1993. The direct testimony of Morgenthau concerning the matter of the intention is included in the following lines: “When the Turkish authorities gave the order to apply the measure of dislocations they did nothing less than sentence to death an entire nation. The Turks responsible had a full conscience of that fact and didn't try at all to hide it when they discussed with me” (p. 308-309).

⁴ See the request from the head of the Armenian church to the USA, Great Britain and Soviet Union, the gesture from the Armenian Committee to the founding council of the United Nations (San Francisco), the memo of the Armenian organizations in 1947. All these called upon the Treaty of Sevres. See **Attarian V.**, op. cit. Also see **Hovanissian R.**, The Armenian Genocide in Perspective, New Brunswick, 1986. It must also be noted that the Armenian gestures to the United Nations overlooked the conversations that took place about a study of the committee of war crimes. It was a confidential document titled ‘Information about the human rights, that occur from the trials of war criminals’, a document that was written after the demand of the United Nations and was addressed to the Committee of Human Rights. The study placed in a historic perspective the evolution of the right concerning the war crimes and the crimes against humanity and included in the beginning, in a chapter the ‘evolutions during World war A’, a chapter about the massacres of the Armenians in Turkey. The Committee of human rights during the second conference on December 1947, with president F. D. Roosevelt dealt with this document. They made a subcommittee that had the work of giving its recommendations, after studying it (and at the same time study other issues related to human rights). The subcommittee estimating this work to be ‘important’ to the committee of war crimes, recommends its publication (and also the publishing of an additional document on the existing trial against war criminals). The committee of human rights examines it during its 43rd meeting (December 17th 1947) and its report sums up the recommendations of the subcommittee. After the taking up of a tropology – after the court decisions that were used in order to prepare this report – approves it, with ten votes pro and four absent, and delivers it, along with its report about the meeting, in the Economical and Social Council. This Council in a meeting of its 6th convocation

slaughter which stunted by the disarmament and the massive killing of the Greeks, the Armenians and the Assyrians who had been enlisted the Turkish army, extermination of leaders, arrests and slaughters of the physically able may. The banishment of women and old-sick or unable men and children was to follow. However, the conditions, under which this banishment was carried out, were so cruel that the people who finally arrived at their destination were few. As a result the banishments initiate a new means of extermination. These banishments were expanded to the whole country and their application was carefully planned from one region to the other. The representatives of the central government and the branch of the committee “Union and Development” were coordinating the operation. In some regions, the civilians were slaughtered immediately and bluntly. In other, the transfer of civilians looked like a time banishment and there were some possibilities to be rescued only if somebody embraced the Islam. However, the general form of slaughtering and banishment as well as the systematic elimination from their country are the evidence of the existence of intention for the genocide.

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(from February 2nd to March 11th 1948) examines the Committee’s report (February 5th) and, with the lack of antilogous, signs the recommendations in the report and the positive estimations of the part involved. Long after the meeting of the Council (on July 1948), the Turkish representatives in the United Nations make a gesture, protesting against the document of the Committee for war crimes and demand the erase of the chapter on the massacres against the Armenians. The reasons are put in two levels:

1) The report must be only about the evolutions after World War II.

2) The chapter that we speak of is written by a member of the committee for war crimes that is of a Polish origin, ‘which obviously has taken orders from the Soviet government’.

It is revealed that the Polish law expert M. Litawski that has contributed in the writing of the report, is not at all a member of the committee for war crimes, but is a member of the group of experts that work for it and is highly estimated for his abilities. The argumentation of his alleged relation with Russia is obviously made up for the occasion. Besides, the report has been signed after its examination from the Committee for human rights (December 14th 1947) and there is no official question about its alteration or its new examination. On that basis, the Turkish representatives seem to point out that if they wish to bring the case in front of the Economical and Social Council, they face the danger by interfering to bring up again an issue that they want to be forgotten. The chapter that was judged moreover does nothing else but repeat already known documents. During the seventh meeting of the Economical and Social Council (July 19th-August 28th 1948) the Turkish representatives don’t officially interfere in that issue, after the discussion on the report for human rights (August 25th), when it would be possible for the matter to be in the daily discussion programme. See **Attarian V.**, op. cit., p. 61-62.

3. *The Genocide through Time*

In the course of the time and due to the developments that occurred in the meantime, after the trial of Nuremberg, the legal approach of the concept of genocide had to be broadened because of the following matters:

- a) The legislative regulation which was intended for the sentence of the Nazis, Germany couldn't cover some facts universally. In particular, the colonial wars which convulsed exclusively the third world countries after the World War II would often arouse accusations of "Genocide" against the colonialists although several problems of international politics or the objectionable indifference of the international public opinion blocked the creation of a legal action similar to that of Nuremberg.
- b) The registration in 1948 didn't cover the protection of groups living in countries such as the USSR, Yugoslavia and Turkey.
- c) The legal explanation of the concept of genocide was in the range of prevention but in that in sentence. The new environment that had been created after the cold war needed prevention mechanisms in order to avoid committing massive crimes.

The first gap, which had already been discovered since the trial of Nuremberg, was that the extermination of the "target group" was not immediate but it was committed in the course of time. As a result, after Nuremberg (and Korea), the matter of duration of genocide was introduced as well as the definition of the suffering group. For example in democratic regimes the opposition is a group which is in an unfavorable position in relation to the government. However, this does not make it a "target group", whereas in totalitarian regimes, the opposition, despite being persecuted in various ways, it doesn't mean that it is a group prospective for genocide. In the course of time the group became equal to the national, ethnic, racial and religious group.

Except for the two matters mentioned above which were dealt with after Nuremberg, there was another one introduced the matter of numbers and losses that compose the crime of genocide.

The subcommittee against discrimination measures and minority protection, which was established in 1947¹ and depended on the committee for human rights and consisted of experts taking part as individuals and not as representatives of their countries posed some questions concerning the genocide in 1967. In particular, in the face of taking additional measures in the treaty for genocide (prevention measures, sufficient international legal justice, connection to "Apartheid"), the subcommittee decides to keep this matter in the agenda and ask the definition of a special sponsor who will take up the composition of a relative study.

¹ The subcommittee was created from the committee in 1947, during its first meeting. Its function is as follows: a) has been charged with the uptakes of studies, especially in the light of world declaration of the human rights and the statement compositions in the committee, relevant to the cause against the meters of discrimination of every kind, and the protection of racial, religious and lingual minorities. b) has been relieved of any other functionality that could be trusted to it, by the economical and social meeting or the committee of the human rights. The members of the subcommittee, 26 in number, were elected by the committee in 3 year command. **Attarian V.**, op. cit., p. 56.

After the agreement with the committee and the financial and social council, in the 24th meeting in 1971, an expert was appointed who had to deal with this study. The special sponsor N. Ruhashyankiko (Rwanda) shows a first composition in the 25th meeting in 1972. A part from the matters of method, the preamble outlines the origin of the concept of genocide and its shaping in the frame of the UN, focusing on the fact that “the treaty for genocide hasn’t been an obstacle to prevent committing this crime.

Furthermore, in order to show that Genocide is not a new phenomenon, he quotes about ten examples in paragraph 8 of the composition without any other markings some of which were very old (such as extermination of newborn Jews by Pharaoh and the massacre of St. Bartholomew). During the discussion that followed the presentation of the composition, many members declared that they would prefer examples based on factual historical data to be presented. After all, the subcommittee makes the decision with which asks from the expert to continue his study. Then, he presents an interim proposal at the 26th meeting in 1973, which is dedicated to the analysis of the concept of genocide in the treaty of 1948. The first part is again a historic caused the extermination of humane groups: war, colonialism, racism, religious fanaticism. After paragraph 28 and 29, where the inquisition and slaughter of St. Bartholomew are quoted, in paragraph 30 the composition marks the following:

“During contemporary times, we can highlight the existence of a quite wide documentation of the slaughtering of the Armenians, which we can characterize as the “first genocide of the 20th century”¹, whereas a footnote at the end of the page gives some bibliography. The composition, despite the Turkish reactions, constitutes a special development of the matter of genocide and especially of the genocides that were carried out by the Ottoman state².

¹ E/CN.sub.2/L.583 dd/25 juin 1973.

² During the conversation on 18 and 19 September many members come back on the above mentioned paragraph, to ask, either to erase, or to complete from another point of view, either to remain as is. Similar views are expressed for the paragraphs 28 and 29. At the end of the conversation, the special introducer concludes to the point that the proposal has as a purpose to eliminate the paragraphs 28,29,30 does not stand from the majority and is therefore rejected. A conclusion is voted with all votes, which asks him to continue his work taking under consideration these expressed views. After this Summit of the subcommittee the report provokes a procedure totally unusual. The committee of human rights in the 30th meeting (21 February-8 March 1974) deals with the last intermediate proposal and discusses it in the absence of its editor (the practice imposes that the committee investigates only the final introduction). On 6 March, after the investigation of the report of the meeting of the subcommittee, the Turk representative interferes, in order to judge paragraph 30 of the document, demands its elimination under the pretences that it is based on the “myth” of the Armenian genocide and develops afterwards the Turkish views on this matter. With different alternates, the point of view of the Turk representative is being supported from the delegations of Pakistan, Italy, France, Tunisia, Nigeria, the USA, Austria, Iran and Romania. Most of them dedicate whole interventions to the huge report of the subcommittee for this matter. The representative of Ecuador also asks the elimination of other historical reference and only the representatives to Soviet Union, The Netherlands, The UK and Belarus discuss the other points of the report of the meeting of the subcommittee. The president concludes this conversation by stating, wish that was also stated by other representatives, amongst with the Indian, that the point of views that were expressed will be transported to the special introducer. After the 28th meeting (9 September 1975), the special introducer N. Ruhashyankiko presents his last two intermediate reports, without mentioning the conversations of the committee on March of 1974. While they are discussing over the essence of the reports the members of the subcommittee take, in majority, a stand for the historic chapter and the independence of the special introducer. Many amongst them are expressed in different ways to the maintaining of paragraph 30 (Great

C. The Genocide after the Cold War

After the Cold War the prevention of genocide was stressed and not only its sentence, which, a posteriori, was just of moral importance since the crimes had been committed and there had been victims¹. As a result, although the genocide is a great offence, the competent international organs and especially the treaty for the genocide and the clauses of its appliance, were obviously inactive. The 20th century and particularly the end of it, was marked by reappearing of this scourge-a fact equally alarming with the impunity that had benefited the responsible states or leaders (former Yugoslavia, Rwanda)².

The General Meeting founded the position of High Commissioner of the UN for Human Rights in 1993, who “exercises his duties in the Framework of the Map of the United Nations, the International Declaration of Human Rights and other international organs for Human Rights”. The Security Council founded an international court in the same year “with the purpose to put individuals, who are considered responsible for serious violations of the international humanistic law committed at the grounds of former Yugoslavia” (the court came into operation in 1994) on trial. Additionally it was emphasized that rapes under specific circumstances could constitute a crime of genocide.

Furthermore, it decided to found an international Penal court in 1994 “with the duty to trial individuals who are considered responsible for acts of genocide or other serious violation of the international humanistic law committed at the grounds of Rwanda”.

The UN has elaborated a framework of international organs and constitutes the source of international law concerning the Human Rights. Its organs and especially the Human Rights Committee have at their disposal many clauses and procedures of applying them, in order to prevent the violation of human rights, to reveal them, to evaluate their importance to take measures to stop them and finally, to put the responsible on trial. However many times, interests and state priorities do not allow the truth to shine. As a result, since there was a Turkish reaction against the interventions of the Armenians³.

Additionally, the issue of ethnic cleansing was pointed out with the war at former Yugoslavia⁴. By ethnic cleansing, we mean the isolation of a particular region by a

Britain, Nigeria, Soviet Union, Mexico, Australia). Some others propose to take into consideration the Turkish point of view, in order to avoid new tensions (Tunisia, Egypt, Pakistan, Iraq). The representative of Turkey, country-observatory, repeats the criticisms that have been foretold against paragraph 30, while the representative of the committee of churches for national affairs insists on the significance of a report in the Armenian genocide. **Attarian V.**, op. cit., p. 78.

¹ **Totten S., Charny I., Parsons W.**, Century of Genocide. Eyewitness Accounts and Critical Views, New York, 1997.

² **Horowitz I.**, Taking Lives. Genocide and State Power, New Brunswick, 1980, p. 39.

³ **Chiang H.**, Non Governmental Organizations and the United Nations, Identity, Role and Function, New York, 1981.

⁴ ICTY procedure, Carla Del Ponte releases Background paper on Sexual Violence Investigation and prosecution, The Hague 8 December 1999.

national group without leaving traces¹. The UN² accepted the abhorrent policy of ethnic cleansing as plan of genocide.

The measures of applying ethnic-cleansing are the following:

1. *Government and bureaucratic* (interventions to the legal, elected authorities, discriminations of humanistic goods and rights).
2. *Other non violent measures* (guided negative reports to the media, public address of citizens by their national status, nameless threats against the life of the members of the suffering group).
3. *Terrorist measures* (systematic isolated acts, rapes, robberies massive transfers of members of the suffering group, which are carried out by security forces, go unpunished or are punished symbolically)³.
4. *Military Measures* (assassinations of leaders of the suffering group, politicians, officials, journalists teachers, grabbing of hostages and using them as shield)⁴.

The measures of ethnic cleansing do not have to be applied all at once in a particular region but partly as this policy directs⁵. The application of particular decisions is either short-term or long term, according to the national social classes of the region, in order that the acts of ethno cleansing not to be understood by external factors⁶. Ethnic cleansing is considered to be genocide and there was a special court for the crimes in Former Yugoslavia to punish the ones responsible. In 1948, G.H. Stanton, a professor at Yale University, after the end of the cold war, presented and analyzed the eight phases of genocide as follows:

1) factionalism 2) stigmatizing or symbolism 3) dehumanization 4) organization 5) polarization 6) preparation 7) extermination 8) disclaiming responsibility⁷.

Professor Stanton claims that, according to reports of UN and the non-governmental organizations, the genocide could have been prevented until its fourth phase. He posed another issue as well; It is important to put emphasis not only on who committed the crime but also on whom organized it, because it is considered to be genocide even if the individuals who committed the crimes followed commands or had a relationship with government functionaries, who haven't expensed their views in public. The accusation is extended if there is a para military interference for the committing of the crime.

During the preparation of the genocide the victims are separated from the mass, secret situations are prepared, the would-be victims are aimed and become targets. Properties are confiscated, the movements are limited by creating blocked places,

¹ On 2 August 2001, the International Court of Crimes for former Yugoslavia it decided that the makes in the Semprenitsa of Bosnia - Herzegovina they constituted Genocide.

² UN (47/121- 18/12/1992, 9).

³ **Cipolat U.** The Punishment of Rape under International Humanitarian Law: how to Deal with Perpetrators in the Yugoslav Context, Yale Law School, 1996.

⁴ **Kiratzopoulos V.**, op. cit., p. 44.

⁵ Two basic weaknesses of ICTY it is that it cannot judge affairs for crimes that were committed before the 1 July 2002 and his jurisdiction of is additional that of courts of countries that have ratified the Treaty of Rome. **Kiratzopoulos V.**, op. cit., p. 99.

⁶ **Kuper L.**, op. cit., **Ternon Y.**, L'État criminel. Les génocides au XX^e siècle, Paris, 1995.

⁷ **Stanton G.H.**, The Eight Stages of Genocide, Yale, 1998.

camps are created and house arrest imposed. It is the phase when the foreign powers must intervene in order to avoid outrages, to help organize self-defense and if the UN and the foreign powers cannot prevent the genocide, then the seventh, phase of the genocide begins.

Then, state and paramilitary powers are used, groups which will support the Genocide whereas the last phase is of the great interest for the final outcome of the Genocide since the persecutor, creates massive graves, wipes out elements and terrifies the witnesses, denies that there has been a crime committed, blocks any research until the final destruction of any elements. The persecutors and the mastermind are left un-punished, they declare inability to find those guilty and arrest them and point to the victims as the main responsible for the genocide.

4. *Conclusions*

The international crime of Genocide opposes responsibilities not only on the state which committed it, but also to the whole international community:

- a) For not recognizing a situation created by global crime as legal
- b) For not helping the performance of an international crime to maintain the illegal situation and¹
- c) To help other countries with the application of the obligations above. That is, it imposes on the international community the obligation not to recognize an illegal situation as a result of Genocide².

A universal struggle to ask for and point out the truth will find a lot of nations agreed. In order not to repeat the crimes, the responsible and the reasons that led them have to be found out. The truth must be sought and presented to the international public opinion, which knows how to judge and sentence without self-interest. Nowadays, when other nations suffer genocides from racist states, it is time for the first step to be taken to recognize the Armenian genocide. On the other hand, the contemporary Turkish state has to answer for the Armenian Genocide, without making propaganda and pleads inconsistency as a state in order to be exculpated from the charge. This state, as the creation of Mustafa Kemal, and the Young Turks are responsible for the crime of Genocide. Each nation has the right to intensely demand from the authorities of the crimes and offences committed against it to recognize them. The greater the harm and the longer the facts were hidden, the more intense the desire for such recognition becomes.

Recognition, which is a substantial way to fight against genocide; Recognition which constitutes the confirmation of a nation's right to the respect of its existence according to the international law and the historic truth.

¹ **Shaw M.** // International Law, New York, 2002, p. 481, it marks that the violation of international obligation gives reason for a requirement for the repair.

² **Lauterpacht H.**, Recognition // International Law, Cambridge, 1947, p. 20, **Bassiouni C.**, Crimes against Humanity in International Criminal Law, Martinus Nijhof, Dordrecht, 1992, **Shelton D.** (ed.), Encyclopaedia of Genocide and Crimes against Humanity, MacMillan reference, 2004, **Francillon J.**, Aspects juridiques des crimes contre l'humanité // L'actualité du génocide des Arméniens, Edipol, 1999, p. 397-404.

**Թեոֆանիս Մալկիդիս – Յեղասպանությունը որպես հանցանք և
Հայոց ցեղասպանությունը**

Հոդվածում վերլուծվում է ցեղասպանության հարցը՝ սկսած եզրույթի առաջին հիշատակումից՝ Առաջին համաշխարհային պատերազմից մինչև ՄԱԿ-ի կողմից ցեղասպանության գաղափարի ընդունումը: Հեղինակը տալիս է նաև ցեղասպանություն միջազգային եզրույթի տիպական նկարագիրը, և թե ինչով այն առնչվում հայերի դեմ ուղղված XX դարի առաջին ցեղասպանության:

Բացի այդ, հեղինակը քննարկում է Հայոց ցեղասպանությունը քաղաքական, դիվանագիտական և պատմական համատեքստում և ուսումնասիրում Հայոց ցեղասպանության և դրա միջազգայնորեն ճանաչման համար բացված նոր հեռանկարները:

Теофанис Малкидис – Геноцид как преступление и Геноцид армян

В статье анализируется вопрос геноцида с первого упоминания термина – от Первой мировой войны до принятия идеи геноцида со стороны ООН. Автор дает также типовое определение международного термина геноцид и то, каким образом он связан с первым геноцидом XX века, совершенным против армян.

Кроме этого, автор анализирует Геноцид армян в международном политическом, дипломатическом и историческом контексте и исследует новые перспективы, открывающиеся для признания Геноцида армян.