

# THE ARMENIAN PROBLEM AND INTERNATIONAL LAW

Gündüz Aktan

## Introduction

A lot was written on the Armenian incidents that had occurred in the Ottoman Empire in the years 1915-1916, that is, during the early part of World War One. Thousands of works tackling this issue were published, mainly by Armenians. These authors, mostly historians, were inclined to describe the incidents as genocide. Turkish authors too, almost without exception, and a number of foreign writers, held in high esteem, approached the issue from a historical standpoint, maintaining in turn that resettlement is not the same as genocide.

Although the strong emotional context of this issue makes a neutral view of history difficult to prevail, there are undoubtedly ample publications available to give adequate information about the history of the incidents. Despite the claims that the archives in Turkey and in Armenia are not fully accessible, one can safely say that enough archival work has been done and published to permit an assessment of the nature of the incidents.

Historical studies are essential to render understandable the incidents that took place in the second decade of the 20th century. However, if a historian lacks education and/or experience in international law, that person cannot judge whether or not these incidents amounted to genocide. Like historians, academics such as sociologists and political scientists who labored on these issues, tend to describe as genocide almost any incident, which involves an Important number of dead.' However, genocide, as an international crime, can be determined only by jurists on the basis of the prescribed legal criteria.

Nevertheless, there are very few works of legal nature on this issue. This outcome is due to a variety of reasons. For one thing, the Turks are not known to be legalists, first and foremost. But the Armenians have deliberately set aside the legal aspect of the issue apparently because that would weaken their genocide claims. Pro-Armenian writers chose to adopt the historical approach to underline the tragic nature of the incidents so that they could make genocide claims more easily. Probably, one of the reasons why the legal approach has not been preferred is the fact that the "Convention on Prevention and Punishment of the Crime of Genocide" (henceforth to be referred to as the Convention), which had been concluded in 1948 and had taken force in 1951, was not used frequently enough until the mid-1990s. As a result, the jurisprudence in this area was not developed sufficiently. Finally, the difficulties involved in retroactively applying the Convention to incidents that occurred some three or more decades ago, before it entered into force, are aft too obvious. The jurists may have failed to display an interest in this issue because it would not be compatible with law to apply legal concepts, "genocide" among them, which did not exist in the pre-Convention period.

This article adopts, on the other hand, a legal approach. To be able to focus adequately on the legality of the issue, it will assume that the reader possesses already an adequate knowledge of the historical background. Chronological data will be referred to only to the extent that jurisdictional assessments require it.

## Law Prior to the Convention

According to the 1648 Westphalian system, state sovereignty was an absolute principle—essential and supreme. The matter of minorities was an internal affair for the states, which applied domestic laws to the incidents that occurred within the country. The concept of "international crime" did not exist. Coming to the Ottoman scene, however, the minorities in the Ottoman Empire became, immediately after the 1839 Tanzimat Edict, the subject of treaties between nations. That was an exceptional situation. It

resulted, on the one hand, from the fact that the Ottoman Empire, a multi-cultural and a multi-national country, found itself in a weaker position in its competition with the predominantly nation-states of the West, and, on the other hand, from another fact, namely that the European governments turned their support of the Christian minorities in the Balkans into an essential element of their foreign policies towards the Ottoman Empire.

When the Armenian relocation began in the first month of 1915, the British, French and Russian Governments, namely the belligerents and the enemies of the Turks in the current war, issued immediately on 24 May 1915, a joint declaration in which they said the following: "In 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". However, the U.S. Secretary of State Robert Lansing, who was clearly not a Turkish sympathizer, is known to have admitted that the Turkish Government had "more or less justifiable" right to deport the Armenians, provided that they lived "within zone of military operations". In an obvious contradiction, a report resulting from an investigation of the war crimes committed by the Christians during the 1912-13 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.<sup>2</sup>

The Hague rules highlighted the crimes a country would commit in war. Those rules had not been envisaged to be applied to the crimes a country would be accused of having committed in its own territories. It is no secret that when, at the Paris Peace Conference (1919), the Greek foreign minister suggested that a new kind of crime against humanity be created and there be a trial for the 'Armenian massacres', President Woodrow Wilson initially objected to that, saying that this would have been an ex post facto law. The United States was against the creation of such a crime. The Versailles Treaty with Germany stated that an international tribunal be set up. That suggestion was unprecedented in history. However, the trial could not take place, since the Netherlands refused to extradite Kaiser Wilhelm II who had sought refuge there.

With the Sevres Treaty signed on 10 August 1920, the Ottoman Empire agreed to a trial to be held in Turkey for the crimes in question (Article 226). Creation of the tribunal was a task left to the victors and the Ottoman side pledged to arrest and deliver to the tribunal the persons wanted. Historians know about the 'Nemrut Mustafa' Martial Court set up in occupied Istanbul at the end of the war, and about the defendants, who were taken to Malta—only to be released by the British crown prosecutor due to lack of evidence. The Sevres Treaty was later replaced by another international agreement, the Lausanne Treaty that was signed on 24 July 1923. The latter included a declaration of amnesty for all crimes committed between 1 August 1914 and 20 November 1922.

It is common knowledge that genocide reached its full dimensions during World War II when Nazi Germany exterminated the Jews, describing it as the "Final Solution". The word 'genocide' was coined by Raphael Lemkin, a Polish Jewish scholar. When Lemkin was a student, he followed closely the trial of the defendants implicated in the Armenian incidents, which he considered genocide. Lemkin's concept of that crime was a very comprehensive one. His definition embraced the political, economic, social, cultural, moral, physical or biological destruction of the minorities. The law, which evolved in more recent times, came to consider 'genocide' not any act committed with the aim of destroying just any group but only certain groups; and only if those groups were destroyed physically or biologically. In other words, the latter greatly narrowed down the scope of the description originally made by Lemkin, simply by excluding from the interpretation of genocide political, economic, social, cultural and moral 'destruction' of groups.

Since, at the time, what the Nazis did to the Jews in the early 1940s had not been fully known, Britain and the United States especially did not favor of having an international tribunal deal with the crimes committed within the borders of Germany. They were, on

the other hand, maintaining that for the crimes committed by that state outside its national borders, that is, in the countries it occupied, the persons responsible should be put on trial. Thus, the respect in the Westphalian system for the sovereignty of the nation-state would continue. The law of war envisaged the officials of a given country to be subject to international adjudication only for crimes committed, inter alia, against civilians in another country in times of war. The concept of crime against humanity, though discussed in doctrine, had not yet become actually part of international law, in a way that would apply to the crimes committed inside the country as well.

As the wide scope of the offences that the Germans had committed against the Jews gradually emerged, the idea that the persons responsible for the crimes committed within the country too should be put on trial started gaining ground. This step, initiated in 1941, reached a new stage with a proposal the United States presented to the London Conference four years later. It invoked the "Martens Clause" of the Hague Conventions. Thus, it envisaged that if a crime had not been clearly defined in advance, "the principles of law of the nations as they result from the usages established among the civilized peoples, from the law of humanity and from the dictates of the public conscience" would be applied to it. However, since the "Martens Clause" is a concept of the law of war, adjudication of the crimes committed within the country itself has been linked to the concept of starting the war. Thus, the reference to war was creating an excuse for intervention in domestic affairs. The minutes of the London Conference indicate how adamant especially the United States was to ensure that the intervention in Germany's domestic affairs would not constitute a precedent which would allow other countries to intervene in American domestic affairs in the future. This understanding eventually helped to formulate the principles of the Nuremberg Court (which came to be known by the same name) that was to try the German war criminals, including those responsible for the Jewish genocide. The principle, specified as "VI", is as follows:

a. Crimes against peace:

- Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;
- 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, ill-treatment or deportation to slave-labor or for any other purpose of civilian population of or in occupied territory, murder or if ; treatment of prisoners of war 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 connexion with any crime against peace or any war crime.

As can be seen from the definition of the crimes against humanity, the crimes committed against the Jews would be a subject for international adjudication even if these were committed inside Germany. The only stipulations were that there should be a link (nexus) between these crimes and the war, and that they should be committed during such hostilities. Thus, the victors could not abandon the principle that in order to be able to intervene in the domestic affairs of a country, one had to be in a state of war with that country. Even the extermination of the Jews and others with a brutality unprecedented in history did not suffice to ensure that the crimes committed in a given country would be automatically subjected to international adjudication. Although the term genocide had been coined by then, the genocide concept was not elaborated among the Nuremberg Principles. The concept of crimes against humanity embodied the crime of genocide. The

latter had not gained, at that time, enough clarity and precision to constitute an independent crime category.

The Nuremberg trials began in October 1945 with the reading out of the indictment against 22 Nazi defendants, and it ended a year later. Of the defendants, 19 were convicted, 12 of whom were executed. During the trials, the prosecutor used the term genocide from time to time but the verdict did not refer to that crime.

### **The U.N. General Assembly Resolution No. 96 (1)**

The first document of a legal nature containing the term genocide was Resolution No. 96 adopted by the United Nations General Assembly in December 1946 soon after the Nuremberg trials ended—in fact, during the first session it held in the wake of the trials. The purpose of that resolution was, as specified in the last paragraph, to demand that the ECOSOC prepare a draft convention on genocide in a year. But, on this occasion, the General Assembly explained what it understood from the word genocide. It was “a denial of the right of existence of entire human groups”. That was likened to homicide as it was “the denial of the right to live of individual human beings”. The reference made to the right to life, later, caused a link to be formed between human rights and genocide. After all, genocide was, basically, the killing of individuals. Genocide caused the loss of the cultural and other kinds of contributions these groups of people would be making to humanity. Thus, the cultural genocide concept, to which Lemkin attached importance, came to be indirectly included in the resolution. The groups that could be subjected to genocide were cited as “racial, religious, political and other” groups. That was an admission of the possibility that virtually any group of people could become genocide victims. The term also meant, not only extermination of a group as a whole, but also in part.

Probably the most important aspect of the resolution is that genocide was considered a crime according to international law. This deliberation aimed at preventing genocide in a country from being considered that country’s domestic affairs on account of the principle of state sovereignty and also to prevent the culprits from evading International penal procedures. The principle thus introduced was that those who committed the crime of genocide should be punished, regardless of their being private citizens or public servants or statesmen. Since the genocide law had not yet developed, adequately as a source, however, the sponsors stressed instead its violation of the ‘moral laws’. In this vein, civilized states were denouncing genocide. The resolution listed “religious, racial, political or any other” reasons as grounds on which genocide could be committed, in association with the groups of people subjected to genocide. In this respect, with the addition of the words “other reasons”, it expanded further the scope of the definition given in the Nuremberg principles (6/c), which pertains to the crimes against humanity.

The preamble of the resolution stated that ‘political groups’ could be the victim of genocide. If the civilians who were part of groups engaged in political struggle (for example, resorting to arms with leftist revolutionary ideological aims or waging a struggle for independence) came to be massacred even in part (not as the entire group but in significant numbers) that alternative would still be considered genocide. The concept of genocide embodied in this resolution became almost totally identical with the concept of crimes against humanity, as defined in the Nuremberg Principles while severing the link between genocide and war. In other words, it admitted that genocide could take place in times of peace as well. It acknowledged also that genocide could be committed, not only in the territories a given country occupies in war, but also within the national borders of that country itself.

Thus, this resolution recognized any killing of a large number of people, i.e., en masse, as genocide regardless of the kind of the group grounds, time or place.

## **The Convention**

The Genocide Convention was adopted on 9 December 1948, and it took effect on 12 December 1951. The crime of genocide is described in Article 2 of the Convention as follows:

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

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group;
- Forcibly transferring children of the group to another group".

The Convention was debated -on the basis of a draft presented by the U.N. Secretariat- by the Ad hoc Committee and the General Assembly's Sixth Committee dealing with legal affairs. Since the Armenian incidents will be reviewed later in this paper within the framework of the Convention, it will be useful to make a brief assessment at this stage of the Convention in general and of Article 2 in particular.

## **Protected Groups**

The groups to be protected under the Convention mentioned in Article 2 are limited to four types, that is, national, ethnical, racial and religious groups. Lemkin, who had defended the inclusion of the political groups, suggested himself during the deliberations on the draft text that the political groups be left outside the scope of the Convention. Unlike Resolution No. 96 (1), neither the 'political groups' nor the 'other groups' found their way into the Convention text. This modification constitutes a highly important difference because history shows that the most frequently seen struggles and the ones that claim the largest number of civilian lives- take place between groups with political aims. Accordingly, for example, the massacres committed in Cambodia by the Pol Pot regime causing the deaths of nearly two million civilians did not fall within the scope of the genocide definition given by the Convention. Similarly, the deaths that occurred in the framework of the October Revolution (1917) cannot be considered genocide. In line with many verdicts of the International Criminal Tribunal for former Yugoslavia, save perhaps some exceptional acts which will be judged in the future trials as genocidal, even the extensive Serbian ethnic cleansing in Bosnia-Herzegovina does not correspond to the definition of the crime of genocide.

The term 'political group' covers civilians along with the members of the group engaging in politics or waging an armed struggle. At first glance, this inevitably causes confusion. There are those who question why destruction of civilians affiliated with a group described as political should not be considered genocide. But this is a semantic problem that arises from the 'definition'. A group comes to be called a 'political group' when an attempt is made to destroy it with political aims. In other words, if there is a political struggle between two groups and if, in the course of that struggle, one of these groups commits against the other group acts such as murder, injury, massacre or deportation, the injured party comes to be called a political group. Killing civilians in the course of a political struggle continues to be a crime. But that crime is not genocide.

The phrase about a group's cultural contribution to humanity as embodied in Resolution 96 (1) is not included in the Convention. This indicates that the concept of 'cultural genocide' has also been left outside the scope of the Convention.

The fact that the Convention does not consider genocide the acts perpetrated against political groups and the obliteration of the minority cultures through forced 'assimilation

has significantly narrowed down the scope of the Convention when it came to implementation. For this reason, from 1951, when the Convention was adopted, to 1992 it could not be implemented with a few not so-significant exceptions. This has drawn strong criticism. Some say that the Convention has not served any useful purpose. On the other hand, many historians, sociologists and thinkers tended to interpret genocide in a broader manner than the definition in the Convention allows. If and when they found out that a significant number of civilians had died in a case they studied, they claimed that this was genocide. Another group of academics, meanwhile, suggested new definitions of genocide in order to expand the scope of Article 2 of the Convention. Both sides ignored the fact that extermination of those groups, which remain outside the four groups protected by the Convention, was already punishable within the framework of "crimes against humanity". Attempts to expand the concept of genocide to cover also crimes against humanity, seemingly, result from the fact that the international community, which was so sensitive to genocide, failed to display as much awareness toward the crimes against humanity. Indeed, for a long time, the international community was not prepared to set up Nuremberg-type international tribunals to protect the victims of the crimes against humanity. Moreover, these groups could not be protected effectively under human rights law in times of peace or under humanitarian law or the law of war in times of war. Consequently, the definition of genocide was broadened by some commentators to embrace all serious crimes committed under the laws of war and human rights.

That situation changed to a great extent, thanks to the activities of the two international criminal tribunals set up following the incidents in Bosnia-Herzegovina and Rwanda. Those who commit crimes against humanity and war crimes began to be punished. Further, the Statute of Rome related to the International Criminal Court has eliminated all the loopholes in the law. In addition to inter-state wars, 'crimes against humanity' can now be committed in times of peace, and together with other war crimes they can be committed in internal conflicts as well. The Statute of Rome took Article 2 of the Convention without any change and made it its Article 6. On the other hand, Article 7 of the Statute of Rome, which is the reformulated version of the Nuremberg Principles paragraph 6(c) on crimes against humanity, as well as the relevant articles of the statutes of the International tribunals set up for former Yugoslavia and Rwanda, covered the crimes of extermination, persecution, deportation and the like committed against "other groups" not protected by the Convention.

### **Intent**

A crime consists of two parts. One is the mental or subjective element (*mens rea*). This component refers to the intention, aim and will to commit a crime. The other is the act of crime itself, the material or objective element (*actus reus*). In Article 2 of the Convention the phrase "with intent to destroy" represents the mental element. The acts committed with such an intent are listed from (a) to (e).

One of the most important characteristics of the Convention is that for the crime of genocide to exist, acts must have been committed only with the intent to destroy one of the four afore-mentioned groups. The intent to destroy a group must be in the form of 'special intent'. In other words, it must be fully evident, i.e., beyond any doubt. If the intent to destroy gets declared openly by those who commit the act of genocide or by those who ensure its commission, then there is no controversy. If there is no such oral or written statement, then the presence of genocide becomes debatable. Some jurists stress that at this point one has to look at the consequences of the actions, and they consider it enough, if a significant number of deaths occurred, as a result of these actions.

However, the concept of 'general intent' is valid for ordinary crimes, that is, the short-cut interpretation that the person who committed the act is considered of having an intention commensurate with the consequence of the act. The same concept is simply inadequate in the identification of the acts of genocide. On the other hand, those who commit

genocide generally do not declare their intent to destroy. If no clear evidence of an oral or written kind can be found in order to prove genocide, some other elements must be taken into consideration along with the 'significant number of deaths'. As the crime of genocide mostly gets committed by the states or other large-scale organizations of a similar kind, one tries to determine whether the crime was committed by an "organized force" to find out whether there was 'special intent'. Since genocide is destruction of a large number of people, that is, members of a group, it is important to determine whether that organization had prepared a 'plan' well in advance. Also, that organization must have organized a force to implement its plan and carried it out in a coordinated, systematic and massive manner.

From the standpoint of its organization, its implementation and its consequences, the Jewish genocide may be, as an exceptional example, incomparable with the other cases. The decision to introduce a "final solution" for the Jewish genocide was taken at the Wannsee meeting in 1942, and the crime was confessed during the Nuremberg trials. But even if the intent to destroy had not been revealed clearly like that, one could take into account the discriminatory laws passed against the Jews, the "pogrom" type attacks including the "Crystal Night" of 1938, and the way the Jews had been driven out of the society and forced to live in the ghettos where they could not meet normal human needs as the preliminaries heralding a genocide. Besides, the virulent anti-Semitism had begun as a movement no less than fifteen years prior to the genocide, and the words and writings of Hitler and the other Nazi ideologues in the framework of that movement, make it all too clear the intention to destroy the Jews. Similarly, among the Serbs, having an ethnically homogeneous homeland had been a widely-used rhetoric since 1918. In fact, the 'ethnic cleansing' as a concept was allegedly invented by V. Seselj, one of the Serbian paramilitary leaders.

To prove the presence of the intent to destroy, which must be ascertained to show that a given incident was genocide, one has to look at the period preceding the perpetration of the acts of genocide, and investigate whether that kind of intent had begun to take shape. The presence of a state-like organization, a plan and its implementation by an organized force are being considered as factors leading to a presumption of the presence of the intent to destroy.

### **Motive**

Not only the intent with which the crime is committed, but also the reason or the grounds for that intent are vitally important. This urge is set forth as motive, described in the Nuremberg Principles 6 (c) involving the crimes against humanity, as "murder, extermination, enslavement, deportation and other inhuman acts done to any civilian population, or persecution on political, racial or religious grounds". Resolution 96 (1), on the other hand, stated that the crime of genocide may have been committed "on religious, racial, political or any other grounds". According to Resolution 96 (1), the motive for genocide was more comprehensive than even the motive for the crimes against humanity as embodied in the

Nuremberg Principles. Expressed differently, in an armed clash with a group triggered by an existing religious, political or any other kind of dispute, leading to the deaths of a significant number of civilians, could be both genocide and a crime against humanity.

The Convention created quite a different situation. Article 2, not only limits the "intent" to the destruction of only the four groups, but it also narrows down greatly, as we shall see below, the grounds for destruction compared to the bases cited in the two aforementioned documents.

During the debates on the Convention, the issue of grounds to destroy triggered lengthy discussions. The representatives of many countries argued that proving the presence of motive would be very hard. If such a requirement were to be stipulated, that would make it impossible for the courts to deliver genocide verdicts. The important thing was to prove that the act was perpetrated with intent to destroy. However, during debates at the Ad

hoc Committee, the Lebanese representative stressed the importance of the motive, saying that genocide was destroying a group "with racial hatred". Later, during debates at the Sixth Committee, despite the objections of the British and American delegates, the phrase "as such" which meant that only acts aimed at destroying members of one of the four groups due to no other reason than his or her belonging to that specific group, was inserted in Article 2 of the Convention. This was achieved with the insistence of the Soviet Union that was leading the "Anti-Fascist Front" with the support of the majority. This phrase can escape attention at first glance. It does not have its Turkish equivalent and needs to be translated in an explanatory manner. Probably because of that difficulty, it has always been neglected by historians.

One has to take into consideration whether, in the perpetration of the crime of genocide, the motive was collective or individual. When an individual kills a member of the target group, this may not necessarily stem from the fact that the victim was a member of that specific group. The motive may have been something else. For instance, it may be a matter of revenge or a desire to confiscate the victim's money or other possessions or a mere act of political ambitions. Genocide, on the other hand, is a collective crime. The organizers and planners of genocide must have acted with a racial motive not with a political, religious or any other reason. If they acted against the target group with motives other than racial hatred, the acts of genocide cannot possibly be perpetrated, for under those circumstances there would be no way to have an intent to destroy a group "as such". Only could a murderously intensive racial hatred towards a group give rise to such a deadly intent. As a result, to prosecute the crime of genocide successfully, one has to prove that the defendants felt racial hatred towards the target group to the extent that they became determined to destroy that group 'as a group'. Punishment of genocide applies only to this kind of crime. In that context, the Jewish genocide of the Nazis and the Rwanda genocide of the Hutus can be considered classical cases of genocide.<sup>3</sup>

Sociologically and psychologically, the intent to destroy a group due to its group character, emerges only in racism, or, to put it more correctly, in the most intensive stage of racism. Racial hatred is quite different from the ordinary animosity laced with anger parties engaged in a substantial dispute may feel towards one another. Racial hatred is a deeply pathological feeling or a complicated fanaticism the causes of which cannot be explained easily. It is an emotional state such as the racist movements in Western Europe, i.e., anti-Semitism, have harboured and peaked on and off for two thousand years and, more actively, in the past millennium. It is a malignant form of prejudice. The Nazis were the product of that culture under exceptionally difficult socio-economic conditions of the inter-war period and the Great Crash of the 1930s. To understand how different that feeling is, it would suffice to read a few of the publications that fill the libraries.<sup>4</sup> Meanwhile, the Rwanda International Criminal Tribunal documents on the Akayesu case provide information about the history of the racial relations between the farmer Hutus of the Bantu race and the Nilo-Hamitic Tutsis, the shepherds coming from the north eastern parts of the continent probably in the 16th century.

Racial feelings, which exist everywhere in the world, can disturb the target group to varying degrees. However, racism that reaches the stage of actually destroying the target group, has been seen predominantly, even exclusively in the western half of Europe and its white colonies in North America, South Africa and Australia.<sup>5</sup> In this context, one could list the Cathars being subjected to genocide in France in the 1206-48 period, the Jews in Spain through the 14th century to 1492, the genocide of the indigenous peoples who created the Inca, Aztec and Maya civilizations by the Spaniards in the 16th and 17th centuries, and the so-called Red Indians, by the Americans in the 18th and 19th centuries. Also, there was the Dutch Boers' apartheid regime in the Union (later, Republic) of South Africa in the 19th and 20th centuries and, during the same time, the Australian aborigines were subjected to some genocidal acts by the white Australians.

Some societies that created other civilizations too persecuted the civilian populations they consider to be the enemy. However, in those cases, no presence of "racial hatred" leading to the intent to destroy those people as a group can be determined. In the

Islamic and Turkish civilizations especially, genocide has never been committed. Otherwise, it would have been impossible for those civilizations to found many multi-ethnic and multi-religious empires that survived for centuries. It must not be forgotten that despite their great technological superiority, the colonial empires set up by the powerful countries of the Western civilization managed to survive only a little more than a century on the average.

The fact that the definition of genocide in the Convention became limited to acts perpetrated with the intent of destroying a group as a group leaves out the persecution of civilian societies with other reasons. This loophole, as I stressed earlier, was eliminated with the definition of the crimes against humanity given in the Nuremberg Principles (Article 6/c), a definition which covers those kinds of crimes. The articles on crimes against humanity in the statutes of the International Criminal Tribunals for Rwanda and former Yugoslavia, and, finally, in the International Criminal Court's Statute of Rome, fulfill this function.<sup>6</sup>

Briefly, the crime of genocide has been taken out of the persecution category of the crimes against humanity as defined in the Nuremberg Principles, confined to four groups, based on 'intent to destroy' those groups 'as such' and given the highest or the lowest rank in the hierarchy of crimes.

### **In Whole or in Part**

In Article 2 of the Convention, acts perpetrated with the intent to destroy a group, "in whole or in part", are called genocide. In other words, one does not have to destroy a given group in whole for those acts to constitute genocide. There seems to be a contradiction here. Would the kind of racial hatred that creates the will to destroy a group as a group, satisfy itself with destroying only part of that group?

Even the Nazis could not exterminate all the Jews. Until the year in which the war began, they made life for the Jews extremely hard and thus ensured some of them to leave Germany. After the war began, they prevented even those who wanted to flee, from leaving the country, and exterminated all Jews inside Germany. Finally, they subjected to genocide the Jews living in the countries they occupied, rather than expelling them.

Two conclusions can be deduced from all this. Either even for the Nazis, the motive for destroying a group as a group attained the critical intensity only under war conditions or, in reality, the German reach to the Jews was more limited than it looked, and they exterminated those whom they could lay hands on, without permitting them to escape.

With this provision, those who made the Convention probably aimed to ensure that the international community should reach the conclusion that genocide has been committed without waiting for the destruction of a group in whole and to prevent the genocide envisaged in Article 1 and punish it on time.

### **Application of the Law to the Armenian Incidents**

At a hearing of a U.S. House of Representatives subcommittee on 21 September 2000, the Armenian apologists said that they no longer needed the opening up of the Turkish archives and that on the basis of the existing information a consensus was achieved to the effect that the Armenians had been subjected to genocide. Half of their arguments were right in a way. However, the concluding statement was exactly the opposite of what they argued. The existing archival material was adequate to prove that no genocide had been committed. Hence, it was not possible for the new archival material to contradict the existing information.

The assessment below is made with the assumption that the readers have adequate historical information about the Armenian incidents. Still, it may be useful to take a brief look at the historical context in which the incidents took place. Since the beginning of the 19th century the Russian advance in the Crimea and the Caucasus uprooted the Muslim populations, mostly the Turkish, and drove them towards Anatolia in successive waves of

migration during which large numbers of them perished. The Armenians in the Caucasus helped the Russian armies in return for which they were settled in regions which had been ethnically cleansed from the Turks and the other Muslim peoples of the Caucasus. This process of expulsion and resettlement eventually led to the founding of the Armenian state in the early 20th century. In the course of its expansion the Russian forces entered the north-eastern corner of Anatolia during the wars of 1827-29, 1854-56 and 1877-78. On each occasion, the Armenians sided with the Russians, thus sowing the seeds of future ethnic conflict.

During the Balkan Wars (1912-13), the Ottomans lost all their European territories with the exception of Eastern Thrace. In most of those territories, they had constituted the majority, although sometimes slim, of the population. Turks and other Muslims such as Albanians and Pomaks lost their lives in great numbers. Consequently, large civilian groups were uprooted from their homes and driven towards Anatolia. World War I, which began a year later, was to seal the fate of the empire. The Ottomans were fighting with the armies of Tsarist Russia in the east, with the British and French navies at Gallipoli, and with the latter's armies on the Egyptian, Syrian and Iraqi fronts in the south.

At the start of World War I, the Armenians constituted an estimated 1,3 million and the Greeks about 1,4 million, with the Turks and Muslims making up the rest of the total 17,5 million population of Anatolia.<sup>7</sup> It is known that unlike the Catholic and Protestant churches, the Greek Orthodox and the Gregorian Armenian Churches did not keep population records. For that reason, the exaggerated statistics put forth by the Armenians do not rely on a sound source. The Ottoman statistics are considered closest to the truth, for those statistics could have never been manipulated with the assumption that the country would one day be dismembered and the distribution of the land would be based on statistical data. On the contrary, the sound population statistics were necessary for tax administration and military conscription. Quite naturally, the statistics originating from European sources are not far from the Ottoman ones. Though the first director of the census administration, which was set up in Istanbul in 1892, was a Turk, the department later operated under a Jew named Fethi Franco between the years 1893-1903, subsequently an Armenian named Migirdich Shinopian, and, as of 1908, an American.

### **Armenian Aims and Their Struggle**

In order to prove that the 1915-16 incidents were genocide, that is, that the Armenians were subjected to genocide, not as a political group but as an ethnic or religious group, most of the Armenian apologists either refer only briefly or do not refer at all to the politically-aimed Armenian activities including terrorism. Some of them assert that the Ottoman administration was oppressive, and that the Armenians engaged in political activities to defend themselves against it or to gain their rights. They condone, as legitimate defense against a 'big and cruel power', the way the Armenians resorted to terrorist violence, as in the cases of the 'komitaci', hajduk, klepsos or chetniks of the Christian peoples of the Balkans.<sup>8</sup>

Historically speaking, the states do not start ethnic struggles except in the case of racist assaults on target groups. But, as I have explained earlier, there was no racism in the Ottoman Empire. It is all the more logical that the ethnic groups initiate struggles for independence in disintegrating empires. That is what happened in the late Ottoman period.

In order to reach their political objectives, the Armenians embraced the Balkan liberation struggle model. Just like the Balkan Christian peoples, they got organized and engaged in political activities. This is, in fact, not so strange. In the aftermath of the French Revolution, the idea of nation-state prevailed, and independence struggles against the multi-religious and multi-national empires were considered legitimate. The Armenians clearly engaged in this kind of activity with the blessing, and often with the material support, of the Great Powers. There was no way some Armenians thought that this kind of struggle could be successful without resorting to violence. The use of violence would

have to comply with the rules of the law of war. However, the Christian peoples of the empire almost always violated the law in the course of their armed struggle.

The Balkan-type use of violence constituted a model in that the terrorist groups would attack the civilian Muslim population to provoke them to retaliate. If the Muslims retaliated or if the administration took military action, there would be loud cries of persecution and calls on Europe to intervene. The great Christian Powers would impose on the Ottomans reforms favoring the Christian population. Those reforms started with local administration rights and extended towards autonomy. After some time, Ottoman sovereignty in certain parts of the empire became nominal. With the first armed conflict, those regions gained independence with foreign intervention and assistance.

In the 1880s, the Hinchags announced, as the goal of their armed struggle, that they established an (Imaginary) Armenia in a region called "Vfrâyât-i Sitte", that is, the six provinces in eastern Anatolia, namely, Erzurum, Van, Elazığ, Diyarbakır, Bitlis and Sivas. According to today's administrative division that region covered also the provinces now called Erzincan, Ağrı, Muş, Siirt, Hakkâri, Bingöl, Malatya, Mardin, Amasya, Tokat, Giresun, Ordu and Trabzon.

Armenians did not prove successful in that struggle. Therefore, they may compare their lot with that of the luckier Christian peoples of the Balkans and feel unfortunate or injured. However, in order to defend the genocide thesis they cannot simply claim that the Turks subjected them to 'death marches' out of their cruelty, that they were too innocent even to nourish political aspirations, not to mention armed struggle, and that, in view of the above, what they were subjected to was genocide by Turks in the sense of Article 2 of the Convention.

Historical research clearly shows, on the other hand, that the Armenians constituted a political group par excellence that engaged in armed political activities for independence. Opting for relocation in the course of a defensive struggle against a local political group that joined hands with the enemy, i.e., Russian occupiers, and resorted to arms as well as systematic terrorist actions amounting to grave breaches of the law of war, does not constitute genocide in accordance with the definition of that crime. Further, the crimes committed, if any, in the course of this type of struggle would not amount to genocide either.

### **Motive**

A political group entertaining political aspirations and pursuing activities to serve such purposes may also be a national, racial, religious or ethnic group. Some political groups too, as in the case of the Armenians, may well be described, on the basis of some other characteristics they have, as an ethnic or religious group or simply "other" group. However, being a political group indicates that the incidents in which group gets involved stem from political reasons, first and foremost.

When evidence points at the fact that a given group has engaged in political and armed activities, there is no way that a particular group cannot be considered as falling under the protective clauses of the Convention which deals only with genocide. As it is explained briefly in the last few paragraphs, the

'parties' or organizations such as Dashnag and Hinchak, as well as the Armenian Patriarchate acting in the name of and supported by the Armenians, aimed as a first step at reforms which envisaged a broad political autonomy, and eventually, secession and independence. To this end, they zealously engaged themselves in the politics of ethnic struggle, openly advocating and resorting to force including terrorism. Due to these distinctive and well documented characteristics, the Armenians constituted a political group well before the relocation began.

Furthermore, as already explained earlier in this article while elaborating on the law pertaining to genocide, the intent to destroy a given group emerges only when the racial hatred harboured against that group reaches a certain intensity. It is a well-known fact

that in the Ottoman Empire no racial hatred was ever nurtured by the Muslim majority towards the Armenians. In fact, the kind of racial hatred similar to anti-Semitism in the West was never observed in the history of the Islamic and Turkish societies.

A brief comparison may be useful with the Holocaust at this point. The German Jews neither engaged in a struggle for independence, nor did they ever chase after territorial claims. No one can deny that they did not resort to terrorism massacring innocent German civilians. It is common knowledge that they did not join hands with the armies of Germany's enemies in war. They did not stab the German armies on the back by blocking the strategic roads and logistic lines. The Jews of Germany and Europe constituted a totafry innocent group with respect to politics. A peaceful, civilized and successful group, which then won eleven of the forty Nobel prizes, a group which had become fufry integrated into the German society, was destroyed with a virulent racist hatred called anti-Semitism in an exceptionally efficient and systematic manner, planned in advance and implemented with a massive organizational drive, for no other reason than being a group. .

Starting with Hitler, countless authors expressed for many years a profound enmity towards the Jews. Anti-Semitism, which rose dangerously flfteen years prior to the Holocaust, was a movement that had been continuing" actively since the beginning of the second millenium In Western Europe In general and In Germany In particular, there had been innumerable cases of attacks on the Jews in the aftermath of epidemics such as plague, natural disasters such as floods or earthquakes or defeats sufièred in wars. In the course of these attacks, members of the Jewish community were killed, and their assets were plundered. In other words, the Christian communities blamed the Jews for the disasters that struck them. They accused the Jews of deicide or killing Jesus Christ, for which they were considered to be 'Anti Christ'. There exist thousands of documents and publications cataloging various aspects of anti-Semitism. There were anti Semites even among the Renaissance writers whom one should expect to be rational thinkers. Anti-Semitism can be discerned ffrequently also in some of the romantic writers of the age of Enlightenment. It is no secret that to a certain extent Heidegger and even Jung, a leading philosopher and a psychiatrist of the last century, were anti-Semites.

In Ottoman history, on the other hand,, there had never been a similar 'anti-Armenianism'. There was no biologically motivated super-race theory for the Muslims to debase the Armenians, portraying them as a subhuman race, or a Social Darwinism that would complement this attitude. Since Islam considered the Christians to be a "people of the book", that is, believers in monotheism, the Muslims never directed against the Christians the kind of accusations the Christians leveled at the Jews. In natural or man-made disasters, the Armenians or the other Christian groups were never turned into a scapegoat. On the contrary, the Armenians came to be called "the loyal people". They were active in the realm of public service. They became civil servants, some of them serving at the highest ranks of the central administration as governors, paşas or provincial governors, representing their state as ambassadors—even serving as the country's foreign minister. Since they had the opportunity to be trained at the schools opened by the missionaries in the Ottoman Empire. as of the beginning of the 19th century, they quickly flourished and came to dominate the empire's economy. Unlike the Jews in Europe, they were not banned from practicing certain professions. They were not forced to live In ghettos. Though they were the most affluent class, they were not subjected to "pogroms" out of envy or grudge. Therefore, it cannot be said that the Armenians were destroyed out of racial hatred directed at their group. `

Under the circumstances, the determination of the nature of the motive behind the relocation gains importance. If that motive arises from a reason other than the Armenians being Armenians, that is, for example, from a military, political or some other kind of reason, then this cannot accommodate itself with the definition of genocide.

A brief glance at recent history may prove useful to apprehend what has really happened with respect to the Armenians. According to the San Stefano Treaty, signed at the end of the 1877-78 Ottoman-Russian War, 'greater Bulgaria', which, in the Balkans, had

coastlines bordering both the Aegean and the Black Seas and which included parts of Macedonia, was to become an independent country. That country attained a more homogeneous population when 260,000 Turkish civilians died during the war, and 515,000 others were driven out of the country. Similarly, the 70,000 Turks and Muslims of the Caucasus fleeing from the Russian armies which had advanced aft the way to Erzurum, took refuge in eastern Anatolia. The exact number of civilians who died in that region is not known.<sup>13</sup> The treaty also envisaged "reforms" for the Armenians living in the Ottoman lands. A certain article involving reforms was included in the treaty In line with the demand made by the Armenian Patriarch Nerses II during a visit to the Russian Grand Duke Nicholas who had arrived in Yeşilköy, next door to İstanbul. Thus, the Armenians placed themselves under Russia's protection in an internationally binding document. The reforms sought under the Tanzimat and Islahat edicts until then had been envisaged for aft Christian subjects of the Ottoman Empire. But this time, reforms were being asked for only one particular group, and Russia was going to supervise its implementation.

When the other Great Powers did not endorse these concessions obtained by Russia on its own initiative, the Berlin Congress was held, and it was there that the dimensions of Bulgaria were trimmed down. However, the return of those Turks, who had been forced to leave their homelands, could not even be attempted. The reforms envisaged for the Armenians were confirmed, on the other hand, but this time under the supervision of aft the Great Powers.

During the years 1912-13, the Balkan Wars took place between the Ottôman Empire on one side, and Greece, Bulgaria and Serbia on the other. In those fuft-scale armed hostilities, 1,450,000 Turkish, Albanian and Pomak civilians died. Another

410,000 were exiled towards Anatolia, fleeing from the attacking armies, under bombardment, leaving behind their destroyed or burnt homes. Thus, in many places that the Turks had known as their homeland for five centuries, including vast areas where they constituted the majority, the Turkish and Muslim existence was brought to an abrupt end. Cultural assets, the legacy of so many years, were torn down. World War I began only a year after hundreds of thousands of those refugees had arrived in the remaining parts of the Ottoman Empire.

The Ottoman Government, whose leaders held a crucial meeting with the Dashnag representatives in August 1914, obtained a pledge from the Armenians to the effect that they would act ilke loyal Ottoman citizens in the Great War. However, at a secret Dashnag meeting held in Erzurum two months prior to that, a decision had been taken to start a wide-scale Armenian rebellion against the Ottomans to benefit from the opportunity provided by the war. The Armenians failed to honour their promise. And they saw their interests served better In serving the Russian interests <sup>14</sup>

The Russian Armenians too took their places in the Russian armies, which prepared to attack the Ottomans. Etchmiadzin Catholicos (the highest Armenian religious figure in Russia) assured the Russian Governor General for the Caucasus that "the

'Armenians would unconditionally support the Russian war efforts in return for Russia's ensuring that reforms be made for the Ottoman Arrnenians"<sup>15</sup> Later, when he was received by the Russian Tsar Nicholas II in Tbilisi, the Catholicos told the autocrat: "Armenian liberation will result in an autonomous Armenia in Anatolia outside the realm of Turkish sovereignty, and this will be achieved with Russia's help".<sup>16</sup>

In March 1915, the Russian forces moved towards Van.

Armenian insurgency, which started in Van, turned into a fullscale rebellion on April 11, during which the Armenian armed groups attacked the Muslim population killing and expelling many. Ten days later, the Tsar sent a telegram to the Van Armenian Revolutionary Committee arid thanked them 'Tor their services to the Russians". Gochnak, an Armenian newspaper published in the United States, gave in its 24 May 1915 issue the 'good news' that "only 1,500 Turks" had been left in Van.

The Armenian forces inside the Russian army that crossed the Ottoman border were under the command of a former Ottoman deputy named Gareguine Pasdermadjian who had adopted 'the revolutionary name of Armen Garo'. Another former deputy, Hambartsum Boyajian, code-named 'Murat', was at the head of the guerrilla force attacking the Turkish villages and massacring the civilian population. Yet another former deputy from Van, Y. Papazian, was the leader of the guerrillas fighting in the Van, Bitlis and Muş region.

After issuing yet another warning, though in vain, to the Armenian Patriarch, the Ottoman administration started on April 24 arresting the leaders of the 'komitacis' in İstanbul whom the Armenians chose to portray as their 'Intefrectuals'. One can clearly see from these developments the reason for the relocation decision. The Armenian cooperation with the Russian army, their rebellion in Van, and their guerrilla activity in ethnic cleansing in the neighbouring provinces were, for the Ottomans, a re enactment of an old story with which they were all too familiar. Just as the Balkan Christians had done in the Balkans in cooperation with the Russians, now the Armenians, moving together with the Russian armies, were starting to subject the Turks and Muslims in eastern Anatolia to ethnic cleansing, killing them and burning their houses. A decision was taken to transfer the Armenians to another part of the empire mainly far from the eastern and also the southern fronts to prevent the Armenians from continuing with these military activities and from attaining their political goals.

### **The Intent to Destroy**

According to Article 2 of the Convention, perpetration of one of the five cited acts was a necessary condition for genocide, provided that it be committed with the Intent to destroy one of the four groups 'as a group'. However, the Armenian apologists focused their efforts to prove that the Ottoman administration had the intent to destroy the Armenians. Since no evidence of the existence of 'the intent to destroy' could be found, they did not refrain from what should be called falsification.<sup>7</sup> An Armenian named Aram Andonian published so-called "telegrams" in which Talât Paşa was supposedly "ordering the extermination". Though soon enough these were foiled as fakes, they continued to use them as propaganda material.

Nevertheless, after some time, the failure to find any official documents, which could corroborate the 'intent to destroy', pushed the pro-Armenian circles to adopt a new strategy. Obviously, what mattered was to achieve pre-determined results. They started claiming that 1,5 million Armenians had died during the 'deportation'. Such an unduly high figure was being cited beside its propaganda effect, to prove indirectly the presence of the intent to destroy by way of 'deporting', and thus to prove that genocide had been committed. For that reason, the pre-transfer Armenian population had to be revised upwards. One falsification led to another. History was being distorted to make it coincide with the requirements of the law.

From the Turkish standpoint, Armenian engagement in political and armed struggle for the sake of independence suffices to refute the thesis that members of the group were killed because they were affiliated with that group, and to prove that relocation was not genocide. However, systematic and massive killing of a civilian population, even with political aims, may constitute a crime against humanity.<sup>8</sup> Furthermore, the Armenian genocide claim is now being based on Paragraph (c) of Article 2 of the Convention, namely "Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part".

This claim is presented along the following lines: Since the Ottomans were wary of openly destroying the Armenians, they used the 'deportation' as an opportunity to impose on the Armenians the kind of living conditions that would cause them to perish. Through an 'omission' of their duty to protect the Armenians from attacks during the 'deportation', to ensure safe transportation, no less than to provide food, medicine, medical treatment and shelter, they accelerated the deaths. The Armenian authors accused the Teşkilât-ı Mahsusa, the Ottoman intelligence services, of having actually

organized the massacres committed by the criminals released from prisons. These are the claims. It must not be forgotten that along with acts such as murder which has a direct impact, causing deaths deliberately through omission, can also be considered genocide.

Therefore, it is important to focus on whether the deaths resulted in the course of relocation from an intent to destroy a specific group, hence whether the relocation was a covert genocide. I recounted earlier in this article that the relocation decision was aimed at preventing the Armenians from collaborating with the Russian armies and, at the same time, from saving the Turks living in the areas specified by the Hinchag's map from being subjected to ethnic cleansing as in the case of the Turks in the Balkans. The Armenians had formed their own units inside the Russian military forces and were fighting the Ottoman armies along the eastern front. Ethnic Armenian soldiers were deserting the Ottoman armies fighting on other fronts, joining guerrilla bands inside the country, attacking the Ottomans from behind and cutting their logistic supply lines. The Van rebellion constituted the first step of these activities.

Having seen that any hope of reaching an agreement with the Armenians had been lost, and that the warnings it had issued via the Patriarch were not being heeded, the Ottoman Government was left with no workable alternative but to decide to transfer the Armenians to a region in Syria and northern Iraq, which were then both Ottoman lands. In a telegram sent to Talât Paşa, the Minister of Interior, on 2 May 1915, the Deputy Commander-in-Chief Enver Paşa reported that the Russians were driving the Muslims in Russia towards the Ottoman border, and that these people were in a pitiful state. He referred to the Armenian rebellion in the vicinity of Van and suggested that the Armenians should either be driven towards the Russian border or dispersed towards some other areas. As a result, Talât Paşa personally assumed responsibility to initiate the removal of the Armenians to other parts of the empire instead of pushing them towards the Russian border, and eventually to Russia. After a while, to share the responsibility, he ensured the passing of an interim law (30 May) relevant to the issue. The commanders were authorized to instantly deal with those persons who disrupted law and order, staged attacks or put up resistance, and to relocate one by one or en masse the population of those villages or towns that engaged in espionage and committed high treason. Thus, the relocation task was handed over to the army.<sup>9</sup>

It should be obvious that it was out of the question for a decision to have been made well in advance for the Armenian relocation. No advance planning had been made prior to that decision, and the organizational preparations needed had not been done either. A top military commander concerned about the grave situation on the eastern front demanded urgent action, and the government wanted to respond to that demand immediately. It is so clear that no pre-arrangements had been made in advance that Talât Paşa himself initiated the population transfer without even having a law passed to this effect. He was so anxious to ensure that there would be no more delay. The law came after action. Under the circumstances, everything points to the fact that no plan was made ready, and no organization set up to implement it with intent to destroy the Armenians.

The text of the law in question envisages, moreover, every effort to ensure the security of the Armenians during the transfer, i.e., inter alia, the safety of their lives and their assets. It states that the food to be provided for them be financed from the "migration fund", that they be allocated plots of land at their destinations and houses be built for the needy, that the farmers among them be supplied with seeds and equipment, that they receive money for the assets they left behind, and that if anybody were settled in the real estate left behind by them, the value of the real estate should be calculated and the sum in question be forwarded to the former owner.

Furthermore, with regulations issued on 10 June 1915, the properties of the resettled Armenians were placed under protection. They were extended aid in cash and in kind to facilitate them to resettle at their destinations. The real estate left behind was sold at auctions by the government on their behalf, and a commission founded for this purpose

made due payments to the Armenians who demanded them. With an order issued to the Anatolian provinces on 25 November 1915, relocation was suspended. The activity that took place beyond that date was of a local scope only. Finally, at the beginning of 1916, the whole operation was actually brought to an end. After the war the Armenians were permitted to return to the places of their choice as much as possible. Some steps were taken, not very successfully, to make it easier for them to get back the property held in trust for them by the commissions or sold at auctions.<sup>22</sup> All these measures could not be taken to conceal a genocidal attempt.

In the communications that took place between the capital city and its provincial administration on the movement of population, there is no reference at all that could create the suspicion that there was any intention to destroy the Armenians. On the contrary, one sees in these documents that mutual requests were made to ensure that they be transferred in a safe manner. Most interesting communications were exchanged between the Erzurum Governor's Office and Talât Paşa. Since that province was situated on the Russian border, the region assumed priority. The provincial officials were instructed that the Armenians living there be permitted to take along with them all of their movable personal belongings. In these documents, it was also stated that there was no need to transfer the Armenians living in Diyarbakır, Harput and Sivas. But after the Russian threat grew in the direction of central Anatolia as well, that decision was altered. When some Kurdish citizens attacked a 100-strong group set off from Erzurum while the convoy was traveling between Erzincan and Erzurum, the officials in Diyarbakır, Elazığ and Bitlis were told to punish, in a severe manner, any raiders who might attack the Armenians in the villages and towns situated on their path. Similarly, when Dersim highwaymen attacked the Armenians coming from Erzurum, the Elazığ Governor's Office was ordered to take urgent measures. The Erzurum Governor obviously suspended the operation after seeing that the Armenians could not be fully protected during the transfer. He received a message telling him that a postponement was not possible, on account of military reasons. Putting aside that instruction, transfers from Erzurum were halted from time to time for the same reason.

Despite all these measures, some Armenian civilians undoubtedly died during the relocation. But it is obvious that these deaths did not result from the deliberate neglect of state duties. The 65,000-strong Ottoman army, fighting along the eastern front, was also frozen to death in Sarıkamış. The harsh climate and the rough terrain, the inadequacy of the military units charged with protecting the Armenian convoys, lack of adequate food and medicine and epidemics caused natural deaths. The weaknesses of a state experiencing the final days of its dissolution cannot be considered a deliberate neglect of duty, i.e., omission.

It seems that the British High Commissioner in İstanbul had access to the Ottoman archives. The original text of a secret order dispatched by Talât Paşa was found in the British archives.<sup>24</sup> The last article of the order says: "...Because this order concerns the disbanding of the Committees [terrorist bodies] it is necessary that it be implemented in a way that would prevent the Armenian and Muslim elements from massacring each other". In his memorandum about this order, D. G. Osborne of the British Foreign Office says: "...[T]he last article of the order states that one must refrain from measures which might cause massacre".<sup>25</sup> The evidences above indicate that the relocation was not arranged with the aim of destroying the Armenians.

Some pro-Armenian writers claim that the Ottoman archives being opened up with a delay (due to the need for classification) was a ploy on the part of the government to eliminate the kind of documents that would prove the Ottoman Government's decision to exterminate. They argue that in the aftermath of the war the İttihatçıs (members of the Union and Progress Party) corrected and destroyed the documents implicating them. Yet, in the Ottoman recording system all incoming and outgoing documents would be filed into logs. Once a document was filed into the records, there was no way to destroy it. Besides, the large numbers of communications sent out by the Sublime Porte (Prime Ministry) arrived in various provincial centers throughout the empire. A great part of

these were the circulars sent from the capital city to more than one governor office. So, even if we were to assume that the copies kept in the capital city were destroyed, it would be practically impossible to collect and destroy the multitude of their originals kept at various centers.

There is another piece of clear evidence indicating that the government of the time had no intention of exterminating the Armenians. Members of the gangs that attacked the Armenian convoys and those officials who exploited the Armenian plight, neglected their duties or abused their powers were court martlalled and punished. Until 1918, that is, until the Mondros Armistice, 1,397 persons received various kinds of sentences in this context, with more than half of them being executed during the tenure of the Union and Progress Government.<sup>26</sup> Obviously, the Nazi SS, SA and the Gestapo officers, responsible for the Jewish genocide, were punished only for not carrying out the genocide effectively, and not for the kind of reasons mentioned above.

### **Acts of Genocide**

Most of the acts perpetrated in the Jewish genocide committed by the Nazis were "the killing of persons belonging in the group", that is, the act described in Article 2(a) of the Convention. These massacres took place in the gassing to death of the Jews after they were transported, that is, deported to the camps where they were kept under conditions they would not be able to survive for long. In other words, the deportation itself was not an act of genocide causing deaths. On the other hand, the living conditions at the camps were acts that fit the description made in Article 2(c) of the Convention. The Nazis committed these acts after advanced planning. They got organized and then implemented the plan in a systematic and massive manner.

The fact that the Ottoman forces did not stage planned attacks on the Armenian population or settlements during the relocation shows that the acts described in Article 2 (a) and (b) were not committed. Since the relocation lacked that basic element of ethnic cleansing, pro-Armenian writers who are adamant to portray the relocation as genocide claim that the "deportation" was used deliberately to deteriorate the group's living conditions to ensure physical extermination of the Armenians in an indirect manner, and that Article 2(c) would apply to that situation. In other words, they assert that although the Ottomans did not openly and directly exterminate the Armenians, they adjusted the "deportation" conditions to ensure that the Armenians would die anyway. The Armenian genocide thesis came to be based almost entirely on this argument.

There is no evidence to prove that relocation was planned to commit genocide in an indirect way. It is not possible to come across statements or instructions that would indicate the presence of the intent to destroy through relocation, which must be done to prove genocide. On the contrary, the entire archival material pertains to the implementation of the resettlement decision with as little harm to the Armenians as possible.

To distort these facts, the Armenian apologists take two different tracks to explain the situation. They report in an extremely inflated manner the number of people who died as a result of the relocation. To that end, they first inflate the overall population figures and then the ratio of the casualties. Thus, they try to prove that the aim had been murder rather than relocation. The second path they try is that of "oral history". They want to prove that there had been intent to destroy by gathering the personal accounts of the events related by the people who had survived the transfer or by their children. One could say that in almost all of the books written by Armenian historians, genocide is supposedly "proven" with these methods.

No one doubts that a great number of families and individuals experienced personal tragedies during the relocation. Even population exchanges cause similar tragedies, albeit less dramatic. However, this does not show that the group in question was subjected to genocide. The oral history approach, not only does not carry any legal weight, but also is

problematic when it comes to writing down history. It is a twilight zone between history and memoirs.

As stated above, the relocation decision was taken officially after Enver Paşa reported in writing to Talât Paşa on 2 May 1915, that the Russians had sent across our borders on 20 April 1915, a multitude of Muslim civilians who were in a wretched state. At more or less the same time, the Armenians rebelled in Van, and operations began against armed Armenian groups. Therefore, the arrest of 235 Armenians on 24 April 1915, was neither the beginning of the relocation nor were they prominent intellectuals of the Armenian community, for they were "komitacis" or terrorists, to use the contemporary jargon. In other words, the claim that the "deportation" that started with the arrest of the Armenian intellectuals constituted genocide is not valid.

The Ottoman Government could have opted for the second alternative suggested by Enver Paşa. As the Russians had done to the Muslims, it could have openly driven the Armenians towards the Russian border which would have caused by far the higher casualty figures than the relocation brought about. The Balkan countries had done that to Turkish and Muslim populations much bigger than the Armenian population. An empire that was locked in a life and death war with the British and the French had no reason to fear the potential reaction of the British or the French public. It had no reason to hide behind a "deportation" process. In other words, offering the Armenians the same treatment the Balkan Turks and Muslims had been given was not so difficult for the Young Turks, as some seem to believe. The Ottoman Government chose the relocation option not to get the Armenians killed indirectly but to have them transported to a safer part of the realm, a place less hazardous with respect to national security during the war.

Let us come to the issue of the Armenian population at that time. In the pre-World War I Western sources, that figure varies from 1,056,000 (London, Annual Register) to 1,555,000 (The French Yellow Book). In recent publications, however, this figure sometimes rises up to 3 million. François Rocheblolne, the rapporteur on whose account dated 15 January 2001, the French 'National Assembly's genocide bill was based, gives the figure of 1,8 million. The 'Rocheblolne report', says in an unprecedented way, that 1,2 million Armenians died (600,000 of them where they were and another 600,000 during the deportation), and that 200,000 others fled to the Caucasus with the Russian armies, 100,000 were supposedly abducted (?), 150,000 survived the deportation and that another 150,000 fled before they could be deported. This must be a feat of Imagination! The casualty figures too have climbed continually over the years. The 1918 edition of the Encyclopedia Britannica says that 600,000 Armenians had died. In the 1968 edition of the same publication, this figure rose to 1,5 million.

It would be sounder, on the other hand, to take the Ottoman statistics as a basis, and accept that the Armenian population figure was 1,295,000, simply because the Ottomans had reasons of taxation and conscription to keep correct statistics. This figure is, in fact, also the average of the figures provided by two Western sources of that period as mentioned above.

To calculate the number of the dead, we should first find out the number of the Armenians who reached Syria and Iraq, safe and sound. In its 7 December 1916 report, the Ottoman Interior Ministry states that 702,900 persons were transferred, and specifies the overall sum spent for the relocation.<sup>27</sup> The Migrations Commission of the League of Nations gives the number of Armenians passing from Turkey into Russia throughout World War I as somewhere in the 400,000-420,000 range.<sup>28</sup> Considering that the number of Armenians living in İstanbul, Kütahya, Edirne, and Aydın (including İzmir), areas where they were not transferred, was around 200,000, one concludes that the number of Armenians who died due to relocations, could not have been high at all, with due respect for the dead of the two sides.

According to the information the İstanbul Armenian Patriarchate provided to the British prior to the Sèvres negotiations, the Armenian population that remained within the Ottoman borders following the 1920 Mondros Armistice amounted to 625,000 people. If

one adds to that figure the number of Armenians who went to the Caucasus, the total would reach

1,045,000. Since the pre-war Armenian population amounted to 1,3 million, the number of the dead, whatever the causes may be, turns out to be no more than 265,000.

Boghos Nubar Paşa, who attended the Paris Peace Conference as the head of the Armenian National Committee, declared that 6-700,000 Armenians migrated to other countries and that 280,000 Armenians were living within the Turkish borders. If one would add up these two figures and then deduct the total from the 1,3 million, one would get 220,000-320,000 as the number of Armenian deaths, again caused by a number of reasons. However, he himself claimed that over one million Armenians had been killed. For that to be true, the pre-war Armenian population should have been over 2 million. The person in question claimed that the pre-war Armenian population had been 4,5 million. Thus, he provided the first example to the subsequent generations of the practice of "bidding higher and higher", as if at an auction.

Arnold J. Toynbee, who was, among others, responsible for war propaganda, said in his "Blue Book" that 600,000 Armenians had died.<sup>29</sup> Later this figure was quoted by the Encyclopaedia Britannica. On the other hand, Toynbee said, in footnote no. 38, that the number of deportees reaching Zor, Damascus and Aleppo, as of 5 April 1916, was 500,000. Along with the 200,000 who were not subjected to deportation and the 400,000 that went to the Caucasus, that brings the Armenian population up to 1.7 million, which is higher than the British figures for the Armenian population. If, on the other hand, the population figure is put at 1,3 million, the number of the dead has to decline from 600,000 to 200,000.

The figures above indicate that, depending on the various estimates about the overall Armenian population, the Armenian losses vary between a couple of hundred thousand to 600,000. Obviously, all the statistics that put the losses over 300,000 happen to inflate grossly the pre-war Armenian population figure. One should never lose sight of the fact that, despite the deaths that occurred during the relocation, those who safely arrived at their destination, even according to Toynbee, were around half a million. This proves that the relocation was not genocide in disguise, for, had it been genocide, there would be no reason for the Ottomans to let them survive.

Considerable number of people may have died. On the other hand, it must not be forgotten that not all (not even most) deaths occurred during the transfers. In the wars of the time, those fleeing from the enemy armies too were in a state of migration vulnerable to many dangers. After the Russian army's operation which began around Van in May 1915, the Ottoman army took back the places it had lost. Then, a much bigger Russian attack began and reached aft the way close to Elaziğ. After the 1917 October Revolution the Russian armies retreated, and the Ottomans advanced once again. While the armies thus advanced and retreated, both the Turks and the Armenians, who found themselves on the path of these armies, had to move back and forth. For example, an estimated 900,000 Turks had to be displaced from eastern Anatolia towards the central parts of the country. In a region with an extremely rough terrain, people tried to travel in carriages, on horseback and mostly on foot, braving cold weather and the attacks of the gangs of brigands who did not discriminate between Muslims and Christians. In a few days, their food would finish and the children and the elderly especially, would be weakened by fatigue and lack of adequate water, and typhoid fever or typhus epidemics would cause the number of deaths soar aft of a sudden.

One can even assert that an orderly relocation, which took place in the same region under similar physical conditions, was safer and caused less health hazards than the haphazard movements of populations mentioned above. For example, some 5,000 Armenians left with the French who evacuated Maraş. during the Turkish War of Independence. In the course of their

10-24 February journey, 2-3,000 of these Armenians died on account of the harsh traveling conditions, though they did not come under any attack from outsiders.<sup>8'</sup>

Due to all these reasons, Boghos Nubar Paşa, referring to a German report, said at the Paris Peace Conference that the Turks lost more people than the Armenians did, that the entire Turkish losses during the war amounted to 2,5 million, that this occurred from "war, epidemics, scarcity of food and inadequacy of drugs and hospital personnel", that at least half of these deaths occurred among those Turks who were "in the Armenian provinces occupied by the Russian and Armenian armies". This means that a minimum of 1,25 million Muslims must have perished in eastern Anatolia. '

Indeed, population research done later confirmed the validity of this figure to a great extent. The Ottoman war zone losses in World War I were in the 500,000-550,000 range, and the civilian losses amounted to some two million. Since the war zone was eastern Anatolia, it is only natural that more than half of the overall civilian deaths occurred in that region. Indeed, McCarthy estimates that 1,19 million Muslim civilians perished in the region between 1914-1921.

Finally, the Turkish and Armenian civilians, who died in clashes with one another, called 'mukatele' in old Turkish, that is, mutual killings, are included in those casualty figures, though the definite number is not known. According to the findings reported in the course of the Şüheda (Martyrs) Project launched in the early 1980s, mass graves abound in eastern Anatolia. Anthropological research determines scientifically to which group each mass grave belongs. Although it is early to make a general assessment, one sees that the mass graves belonging to Turks are more numerous. These grave sites indicate that the people's tales of Armenians persecuting Muslims are not a myth. The Muslims who took part in the war did not desert the army until the very end of the armed hostilities. Soldiers of Armenian origin, on the other hand, deserted in large numbers. They formed armed groups which attacked the Muslim towns and villages where there would hardly be men at fighting age able to protect them. So, these peoples could not defend themselves effectively. This is why the Muslim deaths were more numerous than the Armenian ones.

There is a difference between the fates of those Armenians who were transferred from western Anatolia and those from eastern Anatolia. The partial relocation carried out in the west caused considerably fewer deaths, because of the availability of railways. A greater number of them returned to their homes in the western parts after the war ended. In the east, Armenian deaths were more numerous because of the rough terrain, lack of railways and the fact that only small gendarmerie units that were spared from the war front were available to protect them.

Still, the number of Armenian deaths were a lot less than claimed. The fact that many of these deaths occurred outside the relocation process indicates that the relocation was not an act of genocide hiding the intent to destroy. Otherwise, we would be faced with a strange, hard-to-explain kind of genocide in which the "genocide-committing" Turks lost much more people than the "genocide victim" Armenians did.

### **In Whole or in Part**

For a case to be considered genocide certain acts must have been committed with the intent to destroy a group in whole or in part. Since members of a group get destroyed in genocide, because they belong to that group, that is, out of racial hatred, it is logical to say that the intent to destroy must be directed against the whole of the group. In genocide cases survival of some of the group members results, not because there was no intent to destroy the group in whole, but either because those group members had simply been inaccessible or because the organization committing the genocide did not have time to complete its job. That is what happened in the Jewish genocide committed by the Nazis.

Only Gregorian Armenians were subjected to relocation. Catholic and Protestant Armenians were left outside this process. The fact that only one of these groups were transferred shows that the Ottomans did not feel racial hatred against the Armenians as a whole, including the Gregorian Armenians. Considering the fact that Islam perceives all

three religions merely as different branches of Christianity, this is aptly evident enough. It is common knowledge that in the Ottoman Empire there was no religious dispute between the Muslims and Christians, a dispute which could lead to forced displacements. It is obvious that the desire to prevent the Gregorian Armenians, who embraced the similar creed as the Orthodox Russians, from engaging in ethnic cleansing with the help of the Russians or the Muslims in the region, played an important part in the relocation decision. This biggest group of Armenians were situated on the path of the advancing Russian army, and the terrorists and guerrillas that came out of that group were hitting the Ottoman army from behind, cutting the logistic lines and staging massacres at Muslim settlements. After these murderous actions rendered the relocation imperative from the military standpoint. This shows that the reason behind the decision was security concern of the highest order as well as the need to protect the Muslims of the region.

Meanwhile, the Armenians living in certain cities were left outside the resettlement process regardless of their religious creed. That occurred, for example, in İstanbul, Edirne, Kütahya and Aydın (including İzmir). Almost all of the Armenians transferred from İzmit, Bursa, Kastamonu, Ankara and Konya returned to their homes at the end of the war. The majority of the Kayseri, Harput and Diyarbakır Armenians too returned, but most of them apparently could not go to their villages. Those from Erzurum and Bitlis crossed into Cilicia from northern Syria<sup>32</sup> and fought the Turks on the side of the French during the Turkish War of Independence.

In those provinces, including the capital city of İstanbul, left outside the relocation process, some 200,000 Armenians were living. This has a great symbolic significance. In the Jewish genocide caused by racial hatred, it would be inconceivable to have the Jews, for example, in Berlin or Munich, not to be subjected to deportation and genocide. Even that example alone makes it aptly very clear that the Ottomans did not commit genocide against the Armenians.

## Courts

After İstanbul was occupied at the end of the war, courts were set up to investigate the Armenian incidents in line with the provisions of the Sevres Treaty. The most famous one of these was the Nemrut Mustafa Court. In a cable he sent to London on 24 January 1919, Admiral Calthorpe referred to the Ottoman Prime Minister who had told him that 160-200 people had been arrested. The court had one significant characteristic in that it had been created by the members of the 'Liberty and Agreement' Government which was the deadly enemy of the Union and Progress Party. Another characteristic was that the defendants were denied the right to defend themselves. After a while, realizing that the court would not be able to stage a fair trial -and may be that it would not be able to operate effectively- the British occupation forces transferred the 144 defendants to Malta and asked the crown prosecutor to try them in a move that ran against the judicial rules of the time. Due to the United States' delay in entering the war, the American Embassy and the consulates in Anatolia operating under it had remained open until 1916. The British asked the U.S. Department of State to hand over to them the evidence collected by these American missions. After an expert from the British Embassy in Washington examined the American archives, the following was stated in a cable sent to London by the British Ambassador on 13 July 1921: "...There was nothing therein which could be used as evidence against the Turks who are being detained for trial at Malta.. The reports in the possession of the Department do not appear in any case to contain evidence against these Turks which would be useful even for the purpose of corroborating information already in the possession of His Majesty's Government".<sup>83</sup>

The British Prosecutor General of the Crown said in his report dated 29 July 1921: "...Up to the present no statements have been taken from witnesses who can depose to the truth of the charges made against the prisoners. It is indeed uncertain whether any witnesses can be found.. Until more precise information is available as to the nature of the evidence which will be forthcoming at the trials, the Attorney General does not feel

that he is in a position to express any opinion as to the prospects of success in any of the cases submitted for his consideration".<sup>34</sup>

Under the weight of such evidence, the accusation that the crime of genocide has been committed against the Armenians would be legally unsustainable, not only because it would imply the implementation of a convention retroactively, but also would amount to demanding that the people that could not even be put on trial in the past due to lack of evidence, be judged in the absence of fresh evidence after so many decades.

### **Was Armenian Relocation a Crime against Humanity?**

As explained above in detail, relocation was not genocide, because it did not "deliberately" worsen the Armenian conditions of life calculated to bring about their destruction.<sup>35</sup> Nevertheless, can the losses suffered by a relocated group be covered by the concept of crimes against humanity?

When the Armenian relocation began, the British, French and Russian Governments issued in a joint communiqué on 24 May 1915, speaking about "...crimes of Turkey against humanity and civilization..", and declaring that they would hold the persons concerned responsible. At that time, crimes against humanity was merely an unbinding phrase. It had not yet been adopted as a legal concept. For this reason, no link can be established between the Armenian relocation and crimes against humanity just because of that communiqué.

The concept of crimes against humanity was cited for the first time at the international level in 1946 among the Nuremberg Principles (6/c). That crime was envisaged to be committed during war time. It covered acts such as the persecution of any civilian society on political; racial or religious grounds, murdering or exterminating its members or forcing them to migrate, and the like. .

The definition of genocide given in Article 2 of the Convention was created from the concept of crimes against humanity as embodied in the Nuremberg Principles. As a result of genocide being taken outside the category of crimes against humanity, what was left was incorporated as the modern concept of crime against humanity into Article 7 of the Statute of Rome of the International Criminal Court

Accordingly, the precondition that crimes against humanity would have to be committed during war as provided in the Nuremberg Principles was abandoned. The groups against whom such crimes could be committed were not listed. It was assumed that such crimes could be committed against any civilian population. In the introduction to Article 7 no reference was made to the perpetration of crimes against humanity on "political, racial or religious" grounds. The fact that the reasons for the presence of such a crime were not listed indicate that regardless of the reasons, such perpetration would suffice. On the other hand, in Article 7, the only condition put forth for an act to be considered a crime against humanity was that the acts must have been committed 'as part of a wide-spread and systematic attack directed against any civilian population with knowledge of the attack'. In other words, the eleven acts listed in Article 7(1) from 'a' to 'k' would not constitute a crime against 'humanity, if committed in isolation. Unlike the Nuremberg Principles, "persecution of any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender.. .or other grounds" came to be considered not the general motive for the crime. Accordingly, no special motive is necessary for crimes against humanity.

Although both of them are International crimes subjected to international adjudication, the differences between genocide and crimes against humanity are obvious. Compared with the definition of genocide given in the Introduction to Article 2 of the Convention these differences are as follows: Genocide can be committed against only four kinds of groups, namely, national, racial, ethnic or religious. Acts committed against 'political groups' do not come under the scope of genocide. Crimes against humanity, on the other hand, can be committed against any group. In genocide the enumerated acts must have been committed with the intent to destroy a given group. For the crime against humanity

the presence of this intent is not necessary. A "wide-spread and systematic attack against the group" suffices for that. In genocide the motive for the acts is the intent to destroy the group 'as a group'. 'flits implies the existence of racial hatred. Paragraph 1 of Article 7 of the Statute of Rome, on the other hand, does not specify any general motive for crimes against humanity.

Under the circumstances, some commentators may attempt to use or abuse the acts cited in Article 7, such as murder (a), extermination (b), deportation (d) and persecution (h) in order to define the Armenian-relocation as a crime against humanity. After all, they may assert that some people died as a result of the relocation carried out, albeit without intent to destroy.

As can be deduced from above, the basic condition for crime against humanity is that certain acts must have been committed against a civilian population 'as part of a wide-spread and systematic attack'. For that reason, the characteristics of such an attack must be properly defined. If there is an open military attack on a civilian population, no other proof would be necessary. But the 'attack' in the sense of Article 7 does not necessarily have to be of a military nature. Simultaneous and intensive (i.e., multiple commission of acts) perpetrations against a civilian population of most of the acts cited in Article 7 have to occur. Also stipulated is that such an attack must have been actively developed, directed and encouraged by a state or some other large (sub-state) organization.<sup>36</sup>

It may be useful to examine the 1915-16 Armenian relocation in the light of the acts related to 'deportation' listed in Article 7 Paragraph (1). The acts of killing or causing 'deaths' cited in Article 7 (1/a) have to be part of a wide-spread and systematic attack and must be "known" by the persons who commit the crime.

According to Article 7 (2/b), the 'extermination' must, again, have to be part of a wide-spread and systematic attack directed against the group and include intentional infliction of conditions of life, calculated to bring about the destruction of part of a population. For example, deliberately denying that group food or medicine would come under that heading.

'Deportation and forced transfers' cited in Article 7 (1 / d) and 7 (2/d) also would have to occur as part of a wide-spread and systematic attack and, at the same time, these must be staged without grounds permitted by international law.

'Persecution' cited in Article 7 (1/h), means in accordance with Article 7 (2/g) "the intentional and severe deprivation of fundamental rights contrary to international law by reasons of the identity of the group". Persecution consists of 'multiple commission' of acts that constitute an intensive violation of almost all of the fundamental rights. Those who commit that crime would be motivated by the kind of political, racial, national, ethnic, religious, gender or other grounds not permitted by International law.<sup>37</sup>

Applying the concept of crimes against humanity as enshrined in the Statute of Rome to the 1915-16 Armenian incidents some eight decades after these incidents occurred would not be compatible with common sense, let alone the law. Still, an examination of the issue from this standpoint would reveal the following facts.

For the acts listed in Article 7 Paragraph (1) to constitute crimes against humanity, these acts must be part of a wide

spread and systematic attack on a given civil population. Yet, the Ottoman security forces did not stage any such attack on the Armenians in order to carry out their relocation. In other words, Armenians were not subjected to the multiple commission of the specified acts that make up the concept of "attack" as defined by law.

The Armenians were not persecuted on account of their identity as a group on any grounds. Until World War I when a dangerous situation arose in the eastern front for the survival of the country, they continued to exercise their fundamental rights like everybody else. There was no policy to deprive them of these rights prior to their armed

revolt and the relocation. During the relocation, which necessarily constituted a derogation to a set of rights, their fundamental rights were respected to the extent possible.

The deaths of some group members in circumstances where no wide-spread and systematic attack was underway does not constitute either an element or a part of such an 'attack'. The gang attacks on the Armenians in the course of relocation were basically and exclusively a law and order issue.

While discussing the genocide claims earlier in this article, it was stated that the intent to destroy did not exist. The Armenians claim that the Ottomans used the 'deportation' to impose on them the kind of living conditions that would cause them to perish. The relocation was not carried out as part of a 'wide-spread and systematic attack' on the Armenians. Relocation, which does not constitute any such attack, was not the kind of deportation as defined in Article 7(1/d) and 7(2/d), hence not crime against humanity.

In the genocide section above, it was explained that it was out of the question that the relocation was imposed deliberately in ways that would cause the Armenians to perish. Relocation was initiated in response to the request Enver Paşa made as a result of the developments taking place on the eastern front. It was aimed at eliminating the threats the armed elements inside the Armenian population posed in cooperation with the Russian troops against the security of the Ottoman army. This military requirement constitutes, from the standpoint of international law, permissible grounds for a forced population transfer.

On the other hand, the government of the time did not impose any limitations in food and medicine supply to the Armenians during the relocation. In fact, the Turkish-Muslim population which was also frantically migrating in the same region fleeing the Russian and Armenian invasion forces, suffered the loss of more people due, inter alia, to a lack of food and medicine, as was clearly stated by Boghos Nubar Paşa, the leading Armenian at the Paris Peace Conference.

In the light of the outcome of the Balkan Wars, the relocation also aimed at preventing the Armenian attempts to unite with the invading Russian armies, to conduct an ethnic cleansing of genocidal proportions in the eastern region which had predominantly Turkish and other Muslim populations, and thus to set up their own state. In those days especially, such a common action would constitute a major security concern from the standpoint of international law. The concept of self-preservation accounts for this situation.

Under the circumstances, the Armenian relocation was legitimate. The crimes that occurred, much more limited than generally assumed, in the course of relocation constituted common crimes according to criminal law. Indeed, it is known that 1,397 people who committed such crimes were punished in an extremely severe fashion.

For a better understanding of the subject at hand, it may be useful to take a brief look at issues such as ethnic cleansing, relocation and population exchange in a comparative manner. Both ethnic cleansing and relocation seem, at first glance, to be aimed at creating a more homogeneous demographic structure on a certain piece of land by driving a given ethnic group from that region. However, a closer look reveals that there are serious differences between the two with regard to motive, method and geography. The ethnic cleansing, which is not a legal concept, began to be used in the 1980s in former Yugoslavia. In fact, it was reportedly coined by a Serbian guerrilla. For this reason, one has to take as a basis the ethnic cleansing in Bosnia-Herzegovina and compare that, first, to the appalling conduct freely exhibited towards the Turks and other Muslims during the Balkan Wars and, then, to the Armenian relocation.

Ethnic cleansing starts with the armed forces of one side attacking the civilian population of the other warring party. Naturally, the civilians, who do not have the capacity to defend themselves, get killed or wounded. Their houses and settlements are destroyed and burned down. Humanitarian convoys bringing food and drugs are not permitted to

enter the region. Men of fighting age get arrested, imprisoned at camps with poor living conditions or killed right away. Women get raped in a systematic and massive manner. The cultural assets of the target group, including temples and libraries, get burned. If they do not leave their homes, they face continual fire or bombardment. The massacre continues after a while, these attacks bear fruit, and masses of people start fleeing in the direction their attackers want them to proceed. They get driven outside the region where the attackers intend to cleanse ethnically, that is, outside the potential borders of the state to be founded. The members of the target group get prevented at a cost from returning to the region. At a certain stage of ethnic cleansing, the attacking group comes to be dominated by a certain feeling similar to racial hatred when dealing with the target group. For example, the Muslim Bosnians came to be called "Turkish seed", and in this way they were dehumanized. These persons get presented with the entire bill for Ottoman sovereignty in the past. Rape gains a new biological meaning, becoming an effort aimed at breeding a new generation dominated by the aggressive race. Even after a region is rendered homogeneous from the ethnic standpoint, civilian men get massacred in large groups and buried into mass graves as in the case of Srebrenica. According to the law in force, the acts constituting ethnic cleansing amount to crime against humanity, and these acts may also be accompanied by acts of genocide that aim to destroy a group 'as such', as in Srebrenica. For these reasons, the prosecutor of the International Criminal Tribunal of former Yugoslavia said in the indictment he prepared for Karadzic and General Mladic that acts of genocide were committed on nine counts..

The crimes inflicted in connection with the Turkish and Muslim populations during the 1877-78 Russian-Turkish War and the 1912-13 Balkan Wars are similar in essence to the ethnic cleansing the Serbs committed in Bosnia-Herzegovina. The only difference is that what had happened to the Turks and Muslims in the Balkan Wars was of a much greater magnitude. The number of Turks and Muslims who died in those two wars amounted to some two million, and nearly one million had been forced to immigrate to Anatolia.

The Armenian relocation too involved a forced migration. But since forcing to migrate did not happen in the form of staging armed attacks against them, there were almost no cases of killing, wounding, starving or keeping under fire during the process of evacuation. Secondly, the relocation did not aim to send Armenians outside the borders of the country and create a homogeneous population within. They were taken to other parts of the Ottoman territory. Therefore, they benefited from certain facilities in cash and in kind to adjust to the new conditions when they were resettled. One could say that after the relocation began, due to the conditions prevailing at that time deaths occurred anyway. This is correct. On the other hand, the relocation led to much fewer deaths than an ethnic cleansing would have caused. Unlike the victims of an ethnic cleansing, they could take along with them a greater amount of personal belongings and assets. They could use horses and carriages. Those assets they left behind were spared to a great extent from being plundered. Their cultural assets remained largely intact. As is obvious from the above, relocation is quite different from ethnic cleansing in that it is much less violent.

If one tried to identify the first case of genocide in the 20th century, one would undoubtedly arrive at the conclusion that the ethnic cleansing committed during the 1912-13 Balkan Wars was the first such instance, not the 1915-16 Armenian relocation. Indeed,, the relocation was carried out in order to prevent the Armenian guerrillas or terrorists, in cooperation with the Russian army, from launching in eastern Anatolia an ethnic cleansing similar to the one done to the Turks of the Balkans. According to the Ottoman statistics, the overall population in the Anatolian regions where the transfer took place, was 5,061,857 of which only 811,085 were Armenians. In other words, Armenians accounted for 16% of the population.. If they had not been relocated and if Russia had not withdrawn its forces at the end of 1917 under the Brest-Litovsk Treaty, one can imagine the dimensions the potential ethnic cleansing of the Turks and Muslims would gain in the region. In fact, this ethnic cleansing had already begun.<sup>88</sup>

One could compare relocation to other kinds of forced migration too. During World War II, the Americans transferred to the east the Japanese living in the western parts of the country. That relocation was prompted by "three minor bombing incidents and certain mysterious radio signals". Four months had passed since the raid on Pearl Harbor. It had been seen that Japan was not going to cross the Pacific and try to invade the United States. Japan had neither such intention nor capacity. It was not as if the American Japanese were going to join hands with the Japanese army and stage anned operations against the United States. However, the U.S. Supreme Court stated briefly in its decision it took on the Korematsu Case on 18 December 1942, that 112,000 men and women of Japanese origin, including children and the elderly, had been transferred to another place on the grounds that "it was impossible to bring about an Immediate segregation of the disloyal from the loyal [citizens]", with military considerations such as "preventing espionage and sabotages". Therefore, the relocation had not been unlawful. It cited as an. excuse that during the war aft Americans had met with hardships. Major General J. L. DeWitt's reports had contained phrases about the Japanese which could be considered racist. The local groups who had "lobbied" for the transfer of the Japanese to the east had also used racist arguments.

After World War II, some 15 million Germans were forced to immigrate to Germany mostly from western Poland under Article 13 of the Potsdam Protocol.<sup>89</sup> With the population exchange made in the wake of the Turkish War of Independence, 900,000 Greeks went from Turkey to Greece, and 430,000 Turks arrived in Turkey from Greece, in addition to those who had taken refuge during the Balkan Wars. Between the years 1914-45, a series of twenty such population exchange agreements were concluded.

Population exchanges were also forced upon the people since their approval has never been sought. Undoubtedly, some deaths occurred, albeit fewer, since these migrations took place In peace time in a much better organized manner and physical conditions, with appropriate transportation. But this does not change the fact that they were forced migrations.

In short, the Armenian relocation was not carried out with the aim of destroying a group as a group or for any other unlawful reason. Its aim was to transfer them to a region in the south far from the war zone of eastern Anatolia where they cooperated with the Invading Russian armies, served as spies and guides for them, instigated rebellions, attacked the Ottoman army and cut the Ottoman army's supply lines, launched terrorist guerrilla attacks on Turkish-Muslim settlements, committing massacres and ethnic cleansing, aft In order to gain their independence and establish their own state where there was a huge Turkish and Muslim majority. This ground for the relocation based on 'imperative military reasons' is in line with international law even today.<sup>4</sup>

Besides, aft signs were pointing to the fact that without relocation the Armenian forces joining with the Russian army were going to eradicate the Turkish and Muslim majority in the region with an ethnic cleansing campaign of genocidal proportions, as in the Balkans. In this context also, the grounds for the relocation were clearly and definitely military within the concept of self-preservation. It aimed at protecting the non-Armenian majority population against destruction.

## **Conclusion**

1. The Armenians constituted a political group since they engaged in armed political activities, first to gain autonomy and then to found an Independent state on the Ottoman lands. For this reason, they were not one of the four groups protected by Article 2 of the Convention.
2. Since the Ottomans did not harbour towards the Armenians an 'anti-Armenianism that is, a racial hatred akin to the anti-Semitism the Nazis displayed towards the Jews, the relocation was not carried out with a motive which could have led to the intent to destroy them as a group. The relocation decision was taken to prevent the military operations the Armenians had initiated together with the invading Russian armies to exterminate the

Turks and Muslims that made up 84% of the population in the eastern Anatolian region through an ethnic cleansing of genocidal proportions, as had been done to the Turks during the Balkan Wars.

3. The Ottoman Government did not have the intent to destroy the Armenians, a condition stated in Article 2 of the Convention. Not only are there no written documents, there are no oral accounts either attesting to the intention to destroy on the part of the administration. After the documents available envisage the protection of Armenian convoys in the course of relocation and their safe resettlement. The number of Armenian deaths, which is grossly exaggerated, is far from proving the presence of genocide. A significant part of the Armenian deaths resulted from reasons not related to the relocation. The Turkish civilian deaths occurring in the same region due to the similar reasons were more numerous than the Armenian loss of life. Therefore, in the context of Article 2 (c) of the Genocide Convention, the relocation was neither a covert genocide nor an indirect one.

4. The Catholic and Protestant Armenians as well as the Gregorian Armenians living in Istanbul, Aydın (including Izmir), Edirne and Kütahya, that is, the western part of Anatolia, were not subjected to relocation. This partial relocation did not stem from the Ottoman administration's weakness. The Gregorian Armenians in other areas were transferred, because they were situated on the path of the advancing Russian armies and, having the same religious faith as the Russians, they were collaborating with them against the Ottoman army and the Muslim population. This clearly shows the military rationale for the relocation.

5. Under the circumstances, the relocation, not only did not constitute genocide according to the Convention, but also did not constitute a crime against humanity, considering the military imperative that prompted it as a permissible ground in international law. On the other hand, the relocation does not meet the conditions cited in Article 7 of the Statute of Rome. This is not a case of "multiple commission of acts" as part of a "wide-spread and systematic attack" that constitute crimes against humanity in accordance with Article 7 (b) of the said Statute. Moreover, the Armenians have never been subjected to persecution on religious or other grounds.

6. Along with the "imperative military reasons", the relocation was aimed at foiling the efforts of the Armenians in collaboration with the invading Russian armies to ethnically cleanse the Turks and Muslims who made up the large majority of the population in the region, as in the case of the Balkan Wars. The Ottomans, who were fighting on three fronts at the same time, could not always protect even the Armenians effectively with the limited number of troops available. The gangs in the region attacked the Armenian convoys, killing some of them and plundering their possessions for their private purposes. The civilian Turks who were forced to migrate under similar conditions of rough terrain, harsh climate, lack of adequate food and medicine in the face of epidemics, lost more people than the Armenians did. This clearly shows that the relocation was not the cause for Armenian casualties.

7. And, finally, those who ordered the relocation came to have feelings of regret due to undesirable incidents, feelings of sympathy for the Armenian victims and resentment towards the persons who had attacked them. The culprits of the robbery and murder cases, which came under the ordinary crimes category, were put on trial before the war ended, and most of them were executed.