

Master Thesis

**A legal analysis of the mass atrocity crimes perpetrated  
against the ethnic and religious minorities in Anatolia  
during the 20<sup>th</sup> century in light of the Genocide Convention**



by

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## Summary

This thesis is a legal analysis of the crimes committed in the late Ottoman Empire and early 20<sup>th</sup> century Turkey against the minorities of the empire, namely the Greek, Assyrian, Yazidis and to some extent, the Jews. In this analysis, I provide an answer to the question of whether the crimes committed against the ethnic and religious minorities in the Ottoman Empire and continued in the newly established Turkish State amount to genocide.

The inaction to prevent and to punish the culpable for the Armenian genocide has been considered as a precedent to the Holocaust.<sup>1</sup> This is an excerpt from a speech of Hitler: “I have sent my Death’s Head units to the East with the order to kill without mercy men, women and children of the Polish race or language. Only in such a way will we win the lebensraum that we need. *Who, after all, speaks today of the annihilation of the Armenians?*”<sup>2</sup> (emphasis added).

This speech proves that our political action -or our inaction- can affect the course of the historical events. For the prevention of future atrocities, it is the responsibility of every state to acknowledge genocides as such.

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<sup>1</sup> This kind of reasoning has been proposed by scholars with regard to the Armenian genocide, but could actually refer to all the cases of genocide in Anatolia. See Vahakn N. Dadrian, Genocide as a Problem of National and International Law: The World War I Armenian Case and Its Contemporary Legal Ramifications, *The Yale Journal of International Law*, Vol. 14, Number 2, Summer 1989, 225.

<sup>2</sup> Nicole Rafter, *The Crime of All Crimes, Toward a Criminology of Genocide*, New York University Press, 2016 2016, 9: Adolf Hitler, August 22, 1939.

## Introduction

The Armenian genocide has been characterized as “the forgotten genocide”, because it took seventy years until its international recognition.<sup>3</sup> Travis argues that some cases of genocides may be *hidden* because of “national security dogmas, historical amnesia, politicized interpretations of the concept of genocide, and global power politics.”<sup>4</sup> In this thesis, I will present the crimes committed against the ethnic and religious groups of Turkey. I will limit my research to the cases of the Greeks, the Assyrians, the Jews and the Yazidis, because they have not been acknowledged yet as genocide, compared to the Armenian case. The cases have differences and similarities. For instance, although the severity of the acts committed in each case might differ, I will examine the cases as one, because they were carried out during the same timeframe with the Armenian genocide and were committed for the same reasons and by the same perpetrators, but have been overlooked by both the Armenian scholars and the international community. Therefore, it is justified to call these cases of genocide, *the hidden genocides*.

The scholars agree that among the persecuted, deported and massacred, were Greeks, Syrian Orthodox, Assyrians (Nestorians), Chaldeans and Jews of Palestine.<sup>5</sup> I will have a special focus on the cases of the Greeks and the Assyrians and elucidated the crimes committed against them, two cases that been underrepresented in history. A legal opinion on the issue is necessary, since even nowadays, historical publications of prominent scholars, continue to misrepresent the genocides of the Greeks and the Assyrians.<sup>6</sup> It is important to provide an answer through a legal

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<sup>3</sup> Dadrian 1989, *supra* note 1, 229.

<sup>4</sup> Hannibal Travis, Constructing the "Armenian Genocide": How Scholars Unremembered the Assyrian and Greek Genocides in the Ottoman Empire, in: Thomas La Pointe, Douglas Irvin-Erickson, Thomas La Pointe (eds.), 2013, 170.

<sup>5</sup> Daniel Marc Segesser, *Dissolve or punish? The international debate amongst jurists and publicists on the consequences of the Armenian genocide for the Ottoman Empire, 1915-23*, in: Dominik J. Schaller and Jurgen Zimmerer (ed.), *Late Ottoman Genocides, The dissolution of the Ottoman Empire and Young Turkish population and extermination policies*, 2009, 95.

<sup>6</sup> See for example, Eugene Rogan’s interpretation in his 2015 book about the genocides. Rogan does refer to the case of the Armenians as a genocide but does not acknowledge the Greek and Assyrian cases as genocide. For the Greek genocide, he writes: ‘Greek Orthodox Christian villagers in western Anatolia, far from the troubled Balkans, resisted the State’s efforts to uproot them. Gendarmes rounded the villagers, beat the men, threatened to kidnap women, and even killed Ottoman Greeks who resisted deportation. Foreign consuls, appalled by the violence against Christian civilians, reported dozens killed in some villages. Yet the expulsion of the Ottoman Greeks could be carried out with relatively low levels of killing because there was a Greek state to which they could be deported. [...]’ and that: ‘[...] Whereas the population exchanges with Greece were achieved with relatively little killing, hundreds of thousands of Armenians and Assyrians died in the deportations that began in 1915’. Eugene Rogan, *The Fall of the*

analysis to the question of whether the events examined constitute a genocide in order to establish the historical truth.

On the same time an answer to the question will assist in the prevention of future atrocities of similar nature. The Armenian genocide is indeed considered by many as a precursor to the holocaust. Adolf Hitler has repeatedly referred to Turkey as a role model for him and to Atatürk as “his star in the darkness.” In 1938, in an interview Hitler said: “Atatürk was a teacher; Mussolini was his first and I his second student.”<sup>7</sup> It is reasonable to wonder what would the historical course of the events be, had the perpetrators of the crimes against the minorities of Turkey been punished for their actions.

The worst massacres and atrocities in the history of humanity have occurred when the boundaries between criminal behavior and military policy fell apart, in cases of collective violence against defenseless minority groups or even worse, when violence is viewed as progress.<sup>8</sup> This is also true for the cases that will be discussed. The crimes examined were committed before, during and after WWI. However, the purpose of this thesis is to examine whether a *genocide* was committed. For this reason, any crimes that fall out of the scope of genocide, will not be discussed, e.g., acts of war between the Allies and Turkey.

Naimark argues that the Turkish policy of massacres and ethnic cleansing were a result of the Greek leadership’s mistakes during the Greco-Turkish war: “[*the Greeks*] viewed the collapse of the Ottoman Empire as an opportunity to pursue the [...] creation of a Greater Greece [...] [*and*] the burning and looting of Turkish villages” and torturing Turks, “a systematic plan of destruction and extinction of the Moslem population [...] being carried out by Greek and Armenian hands, which appear to operate under Greek instruction and sometimes even with the assistance of

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*Ottomans, The Great War in the Middle East, 1914-1920*, 2015, 163, 183. See comment 17 on page 424 in his book for the acknowledgement of the Armenian genocide. Rogan is Professor of Modern Middle Eastern History at the University of Oxford.

<sup>7</sup> ‘Mustafa Kemal Atatürk (1881-1938)’, Greek Genocide Resource Center (available at: <http://greek-genocide.net/index.php/overview/perpetrators/261-mustafa-kemal-ataturk>): [Atatürk in the Nazi Imagination](#), Stefan Ihrig. Belknap Press, 2014. Page 116.

<sup>8</sup> Waller James, How ordinary people commit genocide and mass killing, *Becoming evil*, Second Edition, Oxford University Press preface xv.

detachments of regular troops,” which after the retreatment of the Greek army from Turkey, caused the Turkish counterattack, the ethnic cleansing<sup>9</sup> and the deportations.<sup>10</sup>

The different ethnicities in the Ottoman empire, Bulgarians, Greeks, Serbians, Rumanian, Jews, “had been maltreated and massacred for centuries by the Turks [...]”<sup>11</sup> and indeed, some of the Anatolian Greeks joined the Greek army in his military campaign in Turkey hoping to gain their independence. However, the counter-attacks and the crimes committed during the war between Greece and Turkey cannot be used as a justification for the crimes perpetrated. There are numerous examples of the contemporaneous diplomatic communication that support this argument. The American Consul’s, Horton, testimony, is an example: “[...] The Greek peasants of Asia Minor were [...] in nowise responsible for the acts of the Hellenic government. Very few enlisted voluntarily in its armies and they used every influence and subterfuge imaginable to avoid fighting. Had the Greeks of Asia Minor been a stout warlike race and had they cooperated strongly with the Greeks of the mainland they could have kept the Turks at bay. [...]”<sup>12</sup>

Bjørnlund argues that the cases were an example of “demographic engineering”, a policy with ‘planned, interconnected and proactive elements’, against, before the war, the Greeks, and during WWI the Assyrians the Chaldeans, the Syrians, and the Armenians”.<sup>13</sup> The case of the Greeks and the Assyrians have not yet been acknowledged as a genocide<sup>14</sup> but during the last years

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<sup>9</sup> Norman M., Naimark *Fires of Hatred, Ethnic Cleansing in the Twentieth-Century Europe*, Cambridge, Massachusetts: Harvard University Press, 2001, 47.

<sup>10</sup> Naimark 2001, *supra* note 9, 53-54.

<sup>11</sup> Henry Morgenthau, *Ambassador Morgenthau’s Story*, 1926, 13.

<sup>12</sup> Tessa Hofmann, *Γενοκτονία εν ποή: Cumulative Genocide, The massacres and deportations of the Greek population of the Ottoman Empire (1912-1923)*, in: Tessa Hofmann, Matthias Bjørnlund, Vasileios Meichanetsidis (ed.), *The genocide of the Ottoman Greeks, Studies on the State-Sponsored Campaign of Extermination of the Christians of Asia Minor (1912-1922) and its Aftermath: History, Law, Memory*, 2011, 90.

<sup>13</sup> Matthias Bjørnlund, *The 1914 cleansing of Aegean Greeks as a case of violent Turkification*, in: Dominik J. Schaller and Jurgen Zimmerer (ed.), *Late Ottoman Genocides, The dissolution of the Ottoman Empire and Young Turkish population and extermination policies*, 2009, 35.

<sup>14</sup> For instance, Adalian presents the case of the Greeks of Thrace and of the Aegean littoral as an enforced emigration, an ‘expulsion’, an ‘exodus of Greeks in Thrace,’ rather than genocide, analyzing excerpts of the reports of Morris, Vice-Consul General of Horton: ‘[...] enforced emigration of the Greek population and the substitution for them of Macedonian Mohamedan refugees’ including ‘sporadic killings.’ Rouben Paul Adalian, *Comparative policy and differential practice in the treatment of minorities in wartime: The United States archival evidence on the Armenians and Greeks in the Ottoman Empire*, *Journal of Genocide Research*, 3:1, 31-48, (2001) DOI:10.1080/14623520120037699, (available at <http://dx.doi.org/10.1080/14623520120037699>), 34, 36.

more scholars agree that the genocides in the Ottoman Empire should not be treated as isolated events distinct from each other.<sup>15</sup>

Before attempting to answer whether the crimes against the minorities of the Ottoman Empire constitute genocide according to the definition of the UN Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter, the ‘Genocide Convention’), I will first have to provide an answer to the question whether the Genocide Convention can be applied retroactively.

Apart from the issue of retroactivity, we will also examine the mental element of the crime of genocide, the *mens rea*. The crime of genocide has a special character because in order to be considered that a genocide was carried out, it must be proven that the perpetrator had the *intention* to destroy the group. Schabas proposes a new interpretation of the *intent* to commit genocide. For a state to be considered to have the intent to perpetrate genocide against a group, it must have a genocidal *policy*. Individuals could be accused of genocide against a group, if they only had the *knowledge* of that policy.<sup>16</sup>

The legal analysis in this thesis was done with the purpose to create a comprehensive profile of the genocide in Anatolia by shedding light to forgotten and hidden cases and compliment the research done for the case of the Armenian genocide. I wish with my analysis to offer a new insight to the events during the late Ottoman and early Turkish state and contribute to the consolidation of the Armenian genocide, as such, by providing a comprehensive historical course and an inclusive narrative of the events that occurred during this period.

## 1. Methodology

This thesis is an interdisciplinary analysis on law, politics and diplomatic history aimed at discussing the events that occurred before, during and after WWI in Turkey, in order to elucidate

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<sup>15</sup> E.g. Schaller, Dominik J., & Zimmerer, Jurgen, *Late Ottoman genocides: the dissolution of the Ottoman Empire and Young Turkish population and extermination policies – introduction*, in: Dominik J. Schaller and Jurgen Zimmerer (ed.), *Late Ottoman Genocides, The dissolution of the Ottoman Empire and Young Turkish population and extermination policies* Schaller & Zimmerer 2009, 2.

<sup>16</sup> William A. Schabas, *Genocide in International Law, The Crime of Crimes*, 2<sup>nd</sup> edition, 2009 Cambridge University Press, 2009, xiv.

the critical question of whether genocides were committed by the Ottoman Empire and Turkey against its minorities.

For this legal analysis, I will apply the rules of general international law on treaty interpretation and the sources of international law, codified in article 38 of the Statute of the International Court of Justice: '[...] a. international conventions [...] b. international custom [...] c. the general principles of law recognized by civilized nations; d. [...] judicial decisions and the teachings of the most highly qualified publicists [...].'<sup>17</sup>

This thesis consulted the survivors' testimonies, narratives of the Greeks and Assyrians survivors of the events that occurred during that period. This discourse will be presented as illustrative examples and analyzed under the relevant law provisions of the primary sources. The same process will be used in the chapter of the legal analysis in light of the Genocide Convention. In that chapter, I will present and discuss the Genocide Convention and the issue of retroactivity regarding the Convention. Then, I will analyze relevant case law in light of the crimes committed.

The thesis consulted also official state documents, local and international media articles, political figures' speeches, the diplomatic record of the time, mostly the American, the Danish/Swedish and the Greek and the *Greek-Genocide Resource Center's* material. The communications of the Danish Consuls in Turkey during the genocide, albeit the contemporaneous Turkish censorship, provide an important source of the discourse on the genocide.<sup>18</sup>

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<sup>17</sup> Statute of the International Court of Justice, signed June 26 1945, (available at <http://www.icj-cij.org/documents/?p1=4&p2=2>); The para. c. 'general principles of law' has been taken to mean general principles of the international system and principles of national legal systems that can be used by the international legal system.

<sup>18</sup> For example, Alfred van der Zee could not report everything about the 1915 Smyrna persecutions, since all his reports to Constantinople had to be send unciphered. Attilio Sassi, the Danish vice-consul at Trabzon (Pontus), hardly reported to Constantinople even in times when his communication was not cut off. Matthias Bjørnlund, *Danish sources on the destruction of the Ottoman Greeks, 1914-1916*, in: Tessa Hofmann, Matthias Bjørnlund, Vasileios Meichanetsidis (ed.), *The genocide of the Ottoman Greeks, Studies on the State-Sponsored Campaign of Extermination of the Christians of Asia Minor (1912-1922) and its Aftermath: History, Law, Memory* Bjørnlund 2011, 176-177: UM, Gr. 2-0355, 'Konstantinople/Istanbul, diplomatisk repræsentation. 1822-1920. Korrespondencesager vedr. Danske konsulater i Levanten 1864-1918.' Pk. 27, Upplysningar om danska konsulstjänstmän och om d. vicekonsulars 1911.'

Many diplomatic official communications regarding the genocide were published lately, which probably means that more historical archives remain to become available to the public. During my research, I did not come across any Turkish diplomatic reports referring to the events.

## 2. The Legal Framework

### 2.1. The Genocide Convention

Schabas describes the efforts of Lemkin to establish the crime of genocide, a process that took many years. Lemkin was disappointed, because if he had succeeded, the Major War Criminals in the Nuremberg Trials would have been sentenced for genocide and not for crimes against humanity.<sup>19</sup> *The New York Times* wrote on 5 January 1947: ‘If the members of the United Nations pass appropriate legislation such incidents as the pogroms of Czarist Russia and the massacres of Armenians and Greeks by Turkey would be punishable as genocide’<sup>20</sup> an indicative that the events were considered as genocide as early as the years prior to the adoption of the Genocide Convention.

After Cuba’s, India’s and Panama’s proposal for a draft resolution to declare genocide as an international crime,<sup>21</sup> resolution 96(I) was adopted in 11 December 1946 by the General Assembly.<sup>22</sup> In that resolution, the GA “Affirms that *genocide is a crime under international law* which the civilized world condemns, and for the commission of which principals and accomplices [...] are punishable; [...]” It also “*Recommends* that international co-operation be organized between States with a view to facilitating the speedy prevention and *punishment of the crime of genocide* [...]”<sup>23</sup> (emphasis added).

It was on this resolution that the International Military Tribunal based its judgement to convict the perpetrators in *The United States of America vs. Altstötter*. In the judgment, it is stated that: “*The General Assembly is not an international legislature, but it is the most authoritative organ in existence for the interpretation of world opinion.* Its recognition of genocide as an

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<sup>19</sup> Schabas 2009, *supra* note 16, 31.

<sup>20</sup> Tessa Hofmann, Bjørnlund, Matthias, Meichanetsidis, Vasileios, *Introduction*, in: Tessa Hofmann, Matthias Bjørnlund, Vasileios Meichanetsidis (ed.), *The genocide of the Ottoman Greeks, Studies on the State-Sponsored Campaign of Extermination of the Christians of Asia Minor (1912-1922) and its Aftermath: History, Law, Memory*, 17.

<sup>21</sup> Schabas 2009, *supra* note 16, 53.

<sup>22</sup> Schabas 2009, *supra* note 16, 55.

<sup>23</sup> UN General Assembly, Resolution 96(1), 11 December 1946 (“*The Crime of Genocide*”).

*international crime* is persuasive evidence of the fact. *We approve and adopt its conclusions.* Whether *the crime against humanity* is the product of statute or of common international law, or, as we believe, *of both*, we find no injustice to persons tried for such crimes. *They are chargeable with knowledge that such acts were wrong and were punishable when committed.*” (emphasis added).<sup>24</sup> The judgement recognizes genocide as a crime against humanity, acknowledges the role of the UN General Assembly regarding the interpretation of world opinion and convicts the major war criminals of the European Axis for the crime against humanity under the Control Council Law No. 10<sup>25</sup> and the GA Resolution.

The crime of genocide has been regarded as a crime against humanity also in the “Fourth report on the draft code of offences against the peace and security of mankind”, by Special Rapporteur Thiam.<sup>26</sup>

### **2.1.1. *Nullum crimen sine lege*: An analysis on the retroactivity of the Genocide Convention**

Article 28 of the Vienna Convention on the Law of Treaties (“VCLT”) sets forth the principle of the non-retroactivity of treaties: “Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.”<sup>27</sup>

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<sup>24</sup> ‘The Justice Case’, Trials of War Criminal before the Nuremberg Military Tribunals, October 1946-April 1949, 983; Cf. Alfred de Zayas, *The Genocide against the Armenians 1915-1923 and the relevance of the 1948 Genocide Convention*, Second Edition, 2010, Haigazian University, 45-46.

<sup>25</sup> Nuremberg Trials Final Report Appendix D: Control Council Law No. 10, Punishment of persons guilty of war crimes, Crimes against peace and against humanity, Article II paragraph 1(c).

<sup>26</sup> *Fourth report on the draft code of offences against the peace and security of mankind*, by Mr. Doudou Thiam, Special Rapporteur, Document: A/CN.4/398 and Corr. 1-3. Topic: Draft code of crimes against the peace and security of mankind (Part II)- including the draft statute for an international criminal court. Extract from the Yearbook of the International Law Commission, 1986, Vol. II(1), Article 12 paragraph 1, 85-86.

<sup>27</sup> Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Article 28; This principle is considered to have customary law status; by some sources consider it as a general principle of law. On the customary status of Article 28, *see* Frederic Dopagne, *Article 28*, in: *The Vienna Conventions on the Law of Treaties, A Commentary*, Olivier Corten and Pierre Klein (eds.), Volume I, 718-730, 719-720.

The Genocide Convention was adopted by the UN General Assembly on 9 December 1948.<sup>28</sup> The crimes in Anatolia were committed before the adoption of the Convention and therefore the application of the Convention to these cases appears problematic because of the legal principle of *nullum crimen sine lege*, that prohibits the retroactive application of law for the punishment of individuals.

Professor H. Lauterpacht argued that the Genocide Convention fails to be “an effective instrument of [...] prevention or repression” of the crime of genocide but only a “registration of protest against past misdeed of individual or collective savagery”<sup>29</sup> and that if these atrocities are perpetrated with due obedience to the national law, they will remain unpunished, unless a retroactive law comes into effect later.<sup>30</sup> Indeed, the Genocide Convention fails to expressly grant a retroactive effect on the legal act of the crime of genocide. However, International Law does provide for such an effect implicitly, as the discussion below will show.

Both paragraph 2 of Article 11 of the Universal Declaration of Human Rights and paragraph 1 of Article 15 of the International Covenant on Civil and Political Rights (“ICCPR”) stipulate regarding the principle of non-retroactivity: “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. [...]’”. This provision although reaffirming the legal principle, on the same time it does provide for the *ex post facto* punishment in case the offense was indeed accepted as criminal under national or international law in the time of the commission of the crime.<sup>31</sup>

The retroactivity of law is provided in paragraph 2 of Article 15 of the ICCPR, and paragraph 2 of Article 7 of the European Convention on Human Rights establish, both stipulating that the trial and punishment of individuals shall not be prejudiced: “[...] for any act or omission

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<sup>28</sup> Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Resolution 260 A (III) of 9 December 1948, entry into force 12 January 1951.

<sup>29</sup> Zayas, *supra* note 24, 37

<sup>30</sup> Zayas, *supra* note 24, 38

<sup>31</sup> Zayas has also suggested that with regard to the provision in the Universal Declaration of Human Rights. Alfred de Zayas, *The Ottoman genocide of the Greeks and the other Christian Minorities in Light of the Genocide Convention*, in: Tessa Hofmann, Matthias Bjørnlund, Vasileios Meichanetsidis (ed.), *The genocide of the Ottoman Greeks, Studies on the State-Sponsored Campaign of Extermination of the Christians of Asia Minor (1912-1922) and its Aftermath: History, Law, Memory*, 2011, 323.

which, at the time when it was committed, was criminal *according to the general principles of law recognized by the community of nations*.”<sup>32</sup> (emphasis added).

Article 28 of the VCLT reads as follows: “Unless a different intention appears from the treaty or is otherwise established [...]”. The article suggests that very *object* of the treaty should be considered as an exception to the legal rule, which means that a treaty can be considered to have a retroactive character, when in the adoption of the treaty the parties *intended* to give it a retroactive effect.<sup>33</sup> In addition, in paragraph 1 of Article 31 of the VCLT it is stated: “A Treaty shall be interpreted in good faith *in accordance with the ordinary meaning* to be given to the terms of the treaty in their context and *in the light of its object and purpose*”.<sup>34</sup> (emphasis added). This is the primary rule of interpretation of treaties. Commentators of the VCLT also stressed that the intention of the treaty is the “decisive factor as regards the retroactivity of the treaty”. Such an intention can be specified explicitly or *implicitly* in the treaty.<sup>35</sup>

The Genocide Convention has indeed a special intent, as it can be seen in its object and purpose. The object of the Convention is the prevention and *punishment* of the crime of genocide: “The contracting Parties confirm that genocide [...] is a crime under international law which they undertake to prevent and to *punish*.”<sup>36</sup> (emphasis added). The ICJ defined further the object and purpose of the Convention, as having “a *purely humanitarian and civilizing purpose*. [...] [i]ts object on the one hand is to *safeguard the very existence of certain human groups* and on the other to *confirm and endorse the most elementary principles of morality* [...] [T]he contracting States [...] have [...] a common interest, namely, the accomplishment of those *high purposes* which are the *raison d’etre* of the convention [...]”.<sup>37</sup> (emphasis added).

Zayas, also suggested that the retroactive application of the Convention is compatible with its object and purpose. He underlines that, the object and purpose of the Convention is the

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<sup>32</sup> *International Covenant on Civil and Political Rights*, Adopted by the General Assembly of the United Nations on 19 December 1966, United Nations, Treaty Series 1976ICCP, Art 15 para. 2. Appears also in Art. 22 of the ICC Statute.

<sup>33</sup> Dopagne, *supra* note 27, 718-730, 726-727.

<sup>34</sup> Vienna Convention on the Law of Treaties, *supra* note 27, article 31.

<sup>35</sup> Dopagne, *supra* note 27, 718-730, 725-726.

<sup>36</sup> Genocide Convention, *supra* note 28, Art. 1. Also, in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, Preliminary Objections, Judgment, International Court of Justice. Reports 1996, 595, Article 31.

<sup>37</sup> *Reservations to the Convention on the Prevention and Punishment of Genocide*, Advisory Opinion, International Court of Justice, Reports 28 May 1951, 12.

prevention of future acts of genocide. Therefore, by applying the Convention retroactively, and condemning past acts of genocide that have been unaccountable for years, the preventive purpose of the Convention is enforced.<sup>38</sup>

The 1968 UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity strengthens the retroactive application of the Genocide Convention, too: “[...] *no statutory limitation shall apply to war crimes and crimes against humanity, irrespective of the date of their commission*” classifying the “the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide” to the crimes against humanity.<sup>39</sup> (emphasis added).

The ICJ found in its 1996 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections, Judgment* that the Genocide Convention “[...] does not contain any clause the object or effect of which is to limit in such manner the scope of its jurisdiction *ratione temporis*, and nor did the Parties themselves make any reservation to that end [...]”<sup>40</sup>, clarifying the retroactive effect of the Convention.

According to article 53 of the VCLT, a peremptory norm of general international law (a rule of *jus cogens* character) “[...] is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted [...]”<sup>41</sup> The principle of non-retroactivity of treaties is not a peremptory norm.<sup>42</sup> On the contrary, the norm against genocide has been proposed as such. The ILC suggested that the norm against genocide is an example of a peremptory norm of general international law.<sup>43</sup> Some years earlier the ICJ had opined that the principles “underlying the Convention are principles which are recognized by civilized nations as binding on States, *even without any conventional obligation*” and that the

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<sup>38</sup> Zayas 2011, *supra* note 31, 312.

<sup>39</sup> Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, Adopted and opened for signature, ratification and accession by General Assembly resolution 2391 (XXIII) of 26 November 1968. Entry into force: 11 November 1970, in accordance with article VIII Article I.

<sup>40</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections, Judgment, I. C. J. Reports 1996, 595, Article 34.*

<sup>41</sup> Vienna Convention on the Law of Treaties, 1969, Art. 53.

<sup>42</sup> Zayas 2011, *supra* note 31, 334.

<sup>43</sup> However, the Commission did not provide an explicit list with *jus cogens* rules. International Law Commission, Draft Articles on the Law of Treaties with commentaries, 1966, Art. 50, para. 3.

convention has a *universal character*, and a purely humanitarian and civilizing purpose.<sup>44</sup> (emphasis added). In 2006, the ICJ reaffirmed that the norm prohibiting genocide, “assuredly” has a *jus cogens* character.<sup>45</sup> The *jus cogens* character of the Convention strengthens the retroactive nature of the Convention.

The crime of genocide imposes responsibilities *erga omnes* to the international community too.<sup>46</sup> The ICJ in its Judgement on the 1970 *Barcelona Traction, Light and Power company, limited case*, affirmed that genocide has an *erga omnes* obligation and is included in the general body of international law: “[...] an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature, the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*. Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection *have entered into the body of general international law* [...]”<sup>47</sup> (emphasis added). Exactly because of its *erga omnes* obligations, the responsibilities arising from the Convention do not lapse with time.<sup>48</sup>

For our discussion, the fact that the VCLT has been applied retroactively is highly relevant. Although Article 4 of the VCLT prohibits the retroactive application of the convention itself, yet, the VCLT has been applied retroactively by international tribunals, under the justification that its provisions are declarative of pre-existing law.<sup>49</sup>

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<sup>44</sup> *Reservations to the Convention on the Prevention and Punishment of Genocide*, Advisory Opinion: ICJ Reports 1951, 12; International Law Commission, Draft Articles on the Law of Treaties with commentaries, 1966, Commentaries on Art. 16 and 17.

<sup>45</sup> *Armed Activities on the Territory of the Congo (New Application: 2002)*, (*Democratic Republic of the Congo v. Rwanda*), Jurisdiction and Admissibility, Judgment, International Court of Justice, Reports 2006, p. 6, para. 64.

<sup>46</sup> Zayas 2011, *supra* note 31, 327.

<sup>47</sup> *Barcelona Traction, Light and Power Company, Limited*, Judgment, International Court of Justice, Reports 1970, paras. 33-34.

<sup>48</sup> Zayas has also suggested that, referring to the state responsibilities for reparations, but here could be included all kind of responsibilities arising from the Convention, for example the main responsibilities to prevent and to punish. Zayas 2011, *supra* note 31, 322.

<sup>49</sup> Zayas 2011, *supra* note 31, 337.

Scholars suggest that the non-retroactivity principle is a legal norm proposed with the purpose to protect individuals from criminal responsibility for acts committed of which their criminal nature they could not be aware of. However, this principle of law cannot be applicable in cases of heinous crimes, because such crimes are contrary to the essence of law.<sup>50</sup> In *Norman Case*, the University of Toronto International Human Rights Law Clinic that was summoned as *amici curiae* set out that: “The principle of *nullum crimen sine lege* is meant to protect the innocent who in good faith believed their acts were lawful. The Accused could not reasonably have believed that his acts were lawful at the time they were committed and so cannot rely on *nullum crimen sine lege* in his defence”.<sup>51</sup> The court further asserted that: “The principle of *nullum crimen sine lege* should not be rigidly applied to an act universally regarded as abhorrent. The question is whether it was foreseeable and accessible to a possible perpetrator that the conduct was punishable”.<sup>52</sup>

In his dissenting opinion in the *Norman* case Justice Robertson asserted that the principle of non-retroactivity is a fundamental principle of international law that applies to all kinds of criminal conduct and he added that: “In every case, the question is whether the defendant, at the time of conduct which was not clearly outlawed by national law in the place of its commission, could have ascertained through competent legal advice that it was contrary to international criminal law”.<sup>53</sup> The commission of acts that constitute crimes that may amount to the crime of genocide have always been considered contrary to international criminal law.

Tams *et al.* are among the advocates of non-retroactivity of the Convention.<sup>54</sup> They argue that in the title and in article I of the Convention it is used the wording “prevention” and that prevention can only refer to a future act. Tams *et al.* also argue that in article I of the Convention, it is the crime that is “confirmed”, but the treaty obligations have a future character. However, the title and article I include also the wordings ‘punishment’ and ‘punish’ which do suggest a

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<sup>50</sup> Lyal S. Sunga, *Individual Responsibility in International Law for Serious Human Rights Violations*, Martinus Nijhoff Publishers, 1992, 36.

<sup>51</sup> *Prosecutor v. Norman*, Appeals Chamber, (Case No. SCSL-04-14-AR72(E)), Special Court for Sierra Leone, 31 May 2004, 6(g).

<sup>52</sup> *Prosecutor v. Norman*, *supra* note 51, para. 2(d).

<sup>53</sup> *Prosecutor v. Norman*, Dissenting Opinion of Judge G. Robertson, Special Court for Sierra Leone (SCSL-04-14-AR72(E)), 31 May 2004, para. 13.

<sup>54</sup> Tams, Christian, Lars Berster and Bjorn Schiffbauer, *Convention on the Prevention and the Punishment of the Crime of Genocide, A Commentary*, C.H. Beck, Hart, Nomos, 2014, 24-27.

retroactive character. Punishment can refer to acts that took place prior to the Convention. The Convention does not pose legal limitations regarding the date of the acts committed.

The Genocide Convention did not invent a new crime but it was drafted with the purpose of strengthening and defining more precisely the framework for the prevention of already existing crimes under general international law.<sup>55</sup> This can be seen in the preamble of the Convention where it is stated: “Recognizing that at all periods of history genocide *has inflicted* great losses on humanity [...]” and in its article 1, where it is stated that: “The contracting Parties *confirm* that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish” (emphasis added).<sup>56</sup> The district court of Israel in the *Israel v. Eichmann* also affirmed the customary status of the crime.<sup>57</sup> This affirm that the crime of genocide has been a crime under general international law already before its codification to a treaty, and therefore, the crime has a customary character.<sup>58</sup> In addition, leading legal publicists agree that the Convention was a codification of the prohibition of massacres, declaratory of a pre-existing crime, and not constitutive of a new offense.<sup>59</sup>

Tams *et al.* argue that although the crime of genocide has a customary law status, the ICJ held that “[...] even if two norms belonging to two sources of international law appear identical in content, and even if the States in question are bound by these rules both on the level of treaty-law and on that of customary international law, these norms retain a separate existence. [...]”<sup>60</sup> and that “customary international law continues to exist and to apply, separately from international treaty law, even where the two categories of law have an identical content”<sup>61</sup> thus, the general international law character should not be related to the treaty provisions. However, the ICJ concluded that the Genocide Convention “[...] does not contain any clause the object or effect of which is to limit in such manner the scope of its jurisdiction *ratione temporis*, and nor did the

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<sup>55</sup> Zayas 2010, *supra* note 24, 13; Zayas 2011, *supra* note 31, 336: The Convention is ‘declarative of pre-existing international law.’

<sup>56</sup> Genocide Convention; Cf. Zayas 2010, *supra* note 24, 38.

<sup>57</sup> *Israel v. Eichmann*, Judgement, District Court of Jerusalem, 1968, para. 22.

<sup>58</sup> Tams, Berster and Schiffbauer, *supra* note 54, 24-27.

<sup>59</sup> Zayas, *supra* note 24, 39; Zayas 2011, *supra* note 31, 321.

<sup>60</sup> *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* (Merits, Judgment, I.C.J. Reports 1986, pp. 62-64), Judgment, 27 June 1986, para. 178.

<sup>61</sup> *Nicaragua Judgement*, ICJ Reports 1986, *supra* note 60, para. 179.

Parties themselves make any reservation to that end [...]”<sup>62</sup>, giving, thus, a retroactive effect to the Convention, a judgement which shed some light on the issue.

Lastly, Tams *et al.* stress that the non-retroactivity of the Convention has probably been the condition for universal participation. The German government has stated that the Convention “does not possess retroactive effect”. On that I will argue that the object of the Convention is universal in nature, leaving no place for individualistic gains. The ICJ opinioned on the matter: “[...] In such a convention the contracting States do not have any interests of their own; they merely have, one and all. A common interest, namely, the accomplishment of those high purposes which are the *raison d’être* of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties. *The high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions*”.<sup>63</sup>

## **2.2. The applicable law during the commission of the atrocity crimes**

The events discussed in this thesis cover the historical period before and during the WWI. During the last quarter of the 19<sup>th</sup> century Germany emerged as a new power through the development of its industry and its military. The Austro-Hungarian Empire had aspirations to the Balkan peninsula and, thus, was not satisfied with the resulting treaty of the Second Balkan Wars, the August 1913 Bucharest Treaty, that conceded the port of Thessaloniki to Greece and was looking forward to a war to achieve its expansionist intentions. With the assassination of Archduke Ferdinand by Serbs Austro-Hungary had its *causa belli* and declared war against Serbia in 28<sup>th</sup> of July, 1914. Russia mobilized its forces to assist Serbia. Germany declared war against Russia and attacked France. Great Britain joins the war to assist France. The Young Turks join secretly Germany. Austro-Hungary declared war against Russia, Serbia declared war against Germany, and Russia declared war against Turkey. With the British forces involved in the Persian Gulf, the war

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<sup>62</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections, Judgment, I. C. J. Reports 1996*, p. 595, *supra* note 36, Article 34.

<sup>63</sup> *Reservations to the Convention on the Prevention and Punishment of Genocide, Advisory Opinion: ICJ Reports 1951, supra* note 37, p. 12.

spread in Turkey and Mesopotamia.<sup>64</sup> There was little applicable law during the commission of the crimes. Of the treaties being in existence before the events discussed are the 1907 Hague Regulations.

An important issue should be noted here. An argument suggested by the individuals denying the genocides committed is the argument of “innocence”, i.e., that the victims must be innocent for the killings to be considered genocide. This is argued regarding the region of Pontus in Anatolia where some civilians formed guerillas. In the Holocaust case, Jews served in military and paramilitary units during WWI. Nonetheless, this has not been considered relevant in the establishment of the Jewish Holocaust.<sup>65</sup> The Herero genocide (1904-1908) is a similar case to the Pontian case: when the victim group was suffering of a slow death, because of the measures that lead the group to extinction, the victims were the ones that initiated the war against the -later to become- perpetrators. Still, the crimes against the initial attackers (Herero) will amount to genocide.<sup>66</sup> Like the Herero, who chose rebellion to a slow death,<sup>67</sup> some of the Pontians rebelled against the Turks by forming guerilla groups. The genocide against the Pontians and the Herero, can be identified as a ‘victim-precipitated genocide’,<sup>68</sup> because the victim group chose to go to war, having knowledge of its destruction, instead of choosing a slow death. More scholars have argued that neither the Balkan wars and the WWI nor the Greek military intervention in Asia Minor can be considered relevant in the genocide discussion.<sup>69</sup>

### 3. Historical summary

The year 1071 the Turkish tribes succeeded in conquering the Anatolian plateau in Asia Minor and the domination of the Turkish dynasties started against the Christian ethnic groups,

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<sup>64</sup> Vlasis Agtzidis, *Μικρά Ασία, Ένας Οδυνηρός μετασχηματισμός* (1908-1923), [Asia Minor, A painful transformation (1908-1923)], Publications Papadopoulos, Athens, 2015, 51-52; Jack S. Levy and John A. Vasquez, *Introduction: historians, political scientists, and the causes of the First World War*, in: *The Outbreak of the First World War, Structure, Politics, and Decision-Making*, Jack S. Levy and John A. Vasquez (eds.), 2014, 3-29, 41, 45.

<sup>65</sup> Hofmann, Bjørnlund & Meichanetsidis 2011, *supra* note 20, 6.

<sup>66</sup> Rafter 2016, *supra* note 2, 21; Andrew R. Basso, *Towards a Theory of Displacement Atrocities: The Cherokee Trail of Tears, The Herero Genocide, and The Pontic Greek Genocide,* *Genocide Studies and Prevention: An International Journal*: Vol. 10: Iss. 1: 5-29, 2016.

<sup>67</sup> Rafter 2016, *supra* note 2, 30.

<sup>68</sup> A term coined by criminologists. See Rafter 2016, *supra* note 2, 58, 65.

<sup>69</sup> Hofmann, Bjørnlund & Meichanetsidis 2011, *supra* note 20, 7.

Armenians, Assyrians and Greeks.<sup>70</sup> The East, from the Balkans till Bagdad were inhabited by “peaceful and prosperous nations”. All this came to an end after the Turks came from the East, “wild and marauding horsemen”. They “plundered” and turned the subject peoples to slaves.<sup>71</sup> The Turks erected Greeks and Armenians into separate millets because they “disqualified for membership in the Ottoman Empire”. The Christians had no right to ride a horse and the Turks had the right to kill them without any specific reason. The Turks could take the female daughters to the harems and the male infants to turn them to Turkish soldiers. The Christians lived under terrible oppression for 500 years.<sup>72</sup> Mesopotamia, as any country under this 500 years’ Turkish rule, lost its “flourishing civilization” and “turned to a dreary, desolate waste, without cities and towns or life of any kind”.<sup>73</sup>

The last Turkish dynasty was the Ottoman dynasty, that managed to sustain a multi-ethnic and multi-religious empire that reached its peak between 16<sup>th</sup> and 17<sup>th</sup> centuries. The non-Islamic citizens were downgraded to second-class citizens in the empire, but nonetheless, they managed to keep their autonomy under the Turkish rule and were being granted many economic privileges. However, during the first years of the 20<sup>th</sup> century, the Ottoman Empire started to fall apart. Because of their attempts to become a modern state, ethnic nationalism emerged in the empire and the ethnic Christian minorities in the empire became the target of the new Turkish leadership.<sup>74</sup>

The economic reasons that led to the genocide, as Clay demonstrates in his article, were not scattered events, but a consequence of the living and working conditions in Anatolia starting the 19<sup>th</sup> century. Unemployment, low salaries and waves of workers in search for a seasonal job in Istanbul, the biggest city of the empire, were common phenomenon. The result was hatred from the unemployed Kurds, towards the Armenians and Greeks that were prevailing in all kind of posts in the Empire. The number of persons travelling from the eastern parts of the Ottoman empire to Istanbul were striking, reaching the 70.000 to 75.000 every year.<sup>75</sup> The increased need for laborers to work in the gathering of crops in the Izmir region was covered by immigrants coming from the

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<sup>70</sup> Waller 2007, *supra* note 8, 54.

<sup>71</sup> Morgenthau 1926, *supra* note 11, 278.

<sup>72</sup> Morgenthau 1926, *supra* note 11, 280.

<sup>73</sup> Morgenthau 1926, *supra* note 11, 308.

<sup>74</sup> Waller 2007, *supra* note 8, 54.

<sup>75</sup> Christopher Clay, Labour migration and economic conditions in nineteenth century Anatolia, *Middle Eastern Studies*, 34(4), pp. 1-32, (1998) DOI:10.1080/00263209808701241 (available at <http://dx.doi.org/10.1080/00263209808701241>), 11.

Aegean.<sup>76</sup> The Ottoman Empire was heading towards its modern new self, Turkey, but the entrance of the empire into the new world economy was proved to cause more harm than advantages.<sup>77</sup>

On the same time, the number of births in the empire was increasing, causing even more poverty and search for job abroad, among the population.<sup>78</sup> High taxes were imposed to the population and a cutback in the value of remittances of the individuals that were employed outside eastern Anatolia. Lastly, a famine spread after 1878.<sup>79</sup> In the meantime, the life conditions of the Kurds were deteriorating.<sup>80</sup>

Istanbul was the biggest city of the empire and was growing fast at that point, although the low levels of life-expectancy and the insufficient conditions of public health, probably due to the influx of immigrants.<sup>81</sup> The total number of individuals travelling by sea to the capital is estimated to reach the 70.000-75.000 every year starting some years earlier from 1867.<sup>82</sup>

The growth in the Russian Transcaucasia provided some job opportunities for the population of the eastern provinces of the empire on the first place, but not enough to support them during these years of unemployment. The references of laborers of the peak years between 1860-1870, cease to exist in the years that followed.<sup>83</sup> The reason for the decrease in laborers seeking job in Transcaucasia, might have been the decision of Ottoman authorities to not let individuals who crossed the borders to return to Anatolia. This decision was taken based on counter-terrorism, as a preventing measure for the many Armenians that had joined the Russian forces.<sup>84</sup>

Ambassador Morgenthau reported that the coast of Asia Minor was inhabited by people of Hellenic origin and more than half the population of Smyrna was Greek, too.<sup>85</sup> In 1914 it is estimated that the Greeks in Asia Minor were around 2.200.000 of a total population of 10 million. In 1912 the Greeks owned the 46% of the 18.063 businesses in the Ottoman Empire, the Armenians the 23% and the Muslims the 15%. In 1914, the Ottoman Greeks owned the 49% of the 6.507

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<sup>76</sup> Clay, *supra* note 75, 12.

<sup>77</sup> Clay, *supra* note 75, 1.

<sup>78</sup> Clay, *supra* note 75, 3.

<sup>79</sup> Clay, *supra* note 75, 3.

<sup>80</sup> Clay, *supra* note 75, 4.

<sup>81</sup> Clay, *supra* note 75, 5.

<sup>82</sup> Clay, *supra* note 75, 11.

<sup>83</sup> Clay, *supra* note 75, 24.

<sup>84</sup> Clay, *supra* note 75, 25.

<sup>85</sup> Ambassador Morgenthau refers to them as *Greeks*. Morgenthau 1926, *supra* note 11, 48.

manufacturing industries.<sup>86</sup> Ambassador Morgenthau confirms that the Armenians and the Greeks constituted “the economic strength of the empire”.<sup>87</sup>

A new party emerged, the Young Turks, liberal and egalitarian, that aspired to create a modern state in contrast to the suppressive and autocratic regime of the Sultan Abdul Hamid II.<sup>88</sup> The Young Turks party had democratic aspirations, proposed modern reforms, and suggested the idea of a Turkey where there would be equality between the ethnic and religious minorities and the Turks.<sup>89</sup> They got the support of the Armenians, as they promised better conditions for them.

The minorities were always suppressed groups in the Ottoman Empire. During the year before the commencement of the genocides, a more intense process of radicalization and reframing of the groups’ identities as the ‘other’ initiated.<sup>90</sup> During this period, there was a general mistrust against the Greeks and the Armenians being supportive to Russia. In the meantime, the leadership of the new regime was taken over by Enver, Talaat and Jemal, who supported an ethnic nationalism, the Pan-Turkism, a race supremacy ideology,<sup>91</sup> that aimed in a culturally and linguistically pure empire.<sup>92</sup>

Ambassador Morgenthau argued that the Young Turks “were not a government; they were really an irresponsible party, a kind of secret society, which, by intrigue, intimidation, and assassination, had obtained most of the offices of the state”.<sup>93</sup> Ambassador Morgenthau described Enver as “a savage, bloodthirsty Turk”<sup>94</sup> and CUP (Committee for Union and Progress, *Ittihad ve Terakki Cemiyeti* in Turkish)<sup>95</sup> as a party with a Pan-Turkish vision of Turan<sup>96</sup> along with a policy

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<sup>86</sup> Agtzidis 2015, *supra* note 64, 26.

<sup>87</sup> Morgenthau 1926, *supra* note 11, 287.

<sup>88</sup> Waller 2007, p. 55.

<sup>89</sup> Robertson 97.

<sup>90</sup> A process that Rafter describes as one of the stages before genocide. Rafter 2016.

<sup>91</sup> Robertson 97.

<sup>92</sup> Waller 2007, *supra* note 8, 55.

<sup>93</sup> Morgenthau 1926, *supra* note 11, 11.

<sup>94</sup> Morgenthau 1926, *supra* note 11, 251.

<sup>95</sup> Tessa Hofmann, *The Genocide against the Christians in the Late Ottoman Period, 1912-1922*, in: George N. Shirinian (ed.), *The Asia Minor Catastrophe and the Ottoman Greek Genocide, Essays on Asia Minor, Pontos, and Eastern Thrace, 1912-1923*, 2012, 46.

<sup>96</sup> Morgenthau 1926, *supra* note 11, 282-284; Matthias Bjørnlund, “When the cannons talk, the diplomats must be silent”: A Danish diplomat in Constantinople during the Armenian Genocide, *Genocide Studies and Prevention: An International Journal*, International Association of Genocide Scholars, Vol. 1, Iss. 2: Article 8, (available at: <http://scholarcommons.usf.edu/gsp/vol1/iss2/8>) 2006, 203.

of Turkification of the empire “by massacring the non-Moslem elements.”<sup>97</sup> Ambassador Morgenthau confirmed how the ideology of pan-Turkism was becoming very powerful and was being expressed with a contempt against the subject peoples of the Ottoman empire: Arabs, Greeks, Armenians, Circassians and Jews.<sup>98</sup> CUP established the Special Organization (*Teskilat i Mahsusa* in Turkish), Ittihat’s (*Ittihat ve Terraki*, i.e. Union and Progress) paramilitary unit.

The violent Turkification policy was not instituted on the same time against Armenians and Greeks. Germany did not want Greece to enter the war but remain neutral. The Greeks of Anatolia were under the protection of Greece. Thus, in order to not provoke Greece, Germany stopped the deportations against the Anatolian Greeks and instead initiated deportations against the Armenians.<sup>99</sup> That is also the reason that the persecutions against the Greeks of the Aegean littoral were only implemented in full force after the entrance of Greece to WWI.<sup>100</sup>

With the 1918 Mudros Armistice at the end of WWI, it was granted to the Allies the right to intervene to the Ottoman Empire. The Greek invasion in Smyrna was part of this settlement.<sup>101</sup> The Treaty of Sevres stipulated in its articles 70-71 that: “The Greek Government will be responsible for the administration of the city of Smyrna and the territory defined in Article 66 [...]” and that “[...] it shall be entitled to maintain in the city of Smyrna and the territory defined in Article 66 the military forces required for the maintenance of order and public security”.<sup>102</sup>

In 1918 the Greek government, inspired by the invasions of the newly established Armenian state, decided to occupy a part of the Aegean coast, which they successfully did with the support of the British. The oppressions that the Turkish population suffered during this occupation caused though greater animosity and provoked to a greater extend the nationalism in Anatolia. The American High Commissioner in Istanbul, characteristically said: “[...] the Hellene is persistent in his oppressions of a petty nature, which in the end, are more effective than the brutal

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<sup>97</sup> Morgenthau 1926, *supra* note 11, 286.

<sup>98</sup> Morgenthau 1926, *supra* note 11, 174.

<sup>99</sup> Basso 2016, *supra* note 66, 14; Matthias Bjørnlund, *The Persecution of Greeks and Armenians in Smyrna, 1914-1916: A Special Case in the Course of the Late Ottoman Genocides*, in: George N. Shirinian (ed.), *The Asia Minor Catastrophe and the Ottoman Greek Genocide*, Essays on Asia Minor, Pontos, and Eastern Thrace, 1912-1923, 2012, 116.

<sup>100</sup> Bjørnlund 2011, *supra* note 18, 169.

<sup>101</sup> Sarah Shields, *The Greek-Turkish population exchange, internationally administered ethnic cleansing*, *Middle East Research and Information Project*, Vol. 43, Issue 2, 2013.

<sup>102</sup> The Peace Treaty of Sevres, August 10, 1920, articles 70-71.

methods of the Turk. The Hellene causes voluntary deportations; whereas the Turk does it violently, forcefully and with massacres".<sup>103</sup> During the previous years, the Greek population have been disarmed, under the orders of the Allied High Commissioner.<sup>104</sup>

The seven top Young Turk leaders managed to escape Istanbul on November 1918 aboard a German destroyer.<sup>105</sup> In January 1919 under the pressure by the Allies, the Turkish authorities arrested some of the Ittihad's Committee's members, but on May 21, under public pressure, 41 of them were released. On May 28, the British intervened and transferred 12 detainees to Mudros and 55 to Malta. By August 1920, there were 118 detainees in Malta. At the end, the British arranged a prisoner exchange agreement with Turkey and the detainees in Malta were released. In the meantime, the rise of Kemal made it impossible to proceed with the prosecution plans in Turkey.<sup>106</sup>

Symbolic trials were conducted throughout the country during 1919-1922 but the genocide acts continued until 1923.<sup>107</sup> In 11 July 1913 in Constantinople, the 'Three Pashas' or the 'Triumvirate', Mehmed Talaat, Ismail Enver and Admed Djemal<sup>108</sup> were condemned to death by a Turkish court-martial.<sup>109</sup> The rest of the Ittihadists were sentenced of 15 years of hard labor. However, all three escaped or were released with the 1923 Treaty of Lausanne.<sup>110</sup> In 13 July 1919, *The New York Times* reported that the death sentences given to the three Young Turks leaders by the Turkish court martial were 'the climax of a long series of prosecutions undertaken by the officials of the new regime [...] for the Armenian, Greek and Syrian atrocities and deportations.'<sup>111</sup>

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<sup>103</sup> Waller 2007, *supra* note 8, 44.

<sup>104</sup> Hofmann 2011, *supra* note 12, 87.

<sup>105</sup> Dadrian 1989, *supra* note 1, 282.

<sup>106</sup> Schabas 2009, *supra* note 16, 25-26; Dadrian 1989, *supra* note 1, 284-285.

<sup>107</sup> Van Coufoudakis, *From Lausanne (1923) to Cyprus (2009): Turkey's Violations of International Law and the Destruction of Historic Hellenic Communities*, in: George N. Shirinian (ed.), *The Asia Minor Catastrophe and the Ottoman Greek Genocide, Essays on Asia Minor, Pontos, and Eastern Thrace, 1912-1923*, 2012, 259.

<sup>108</sup> Basso 2016, *supra* note 66, 21.

<sup>109</sup> "13 Jul 1919: Turkey condemns war leaders, New York Times", *Greek Genocide Resource Center* (<http://greek-genocide.net/index.php/bibliography/newspapers/138-11-jul-1919-turkey-condemns-war-leaders>); They were later assassinated by Armenians between 1921-1922 after fleeing Turkey. Dr. Nazim returned in Turkey to escape from the assassins. The deal was to accept the new Kemalist regime. Nonetheless, he was hanged in Turkey in 1926 under the charge of conspiracy against Kemal. Dadrian 1989, *supra* note 1, 310.

<sup>110</sup> Dadrian 1989, *supra* note 1, 307, 309.

<sup>111</sup> Djavid Bey and Alusa Metssa got 15 years of hard labor. "13 Jul 1919: Turkey condemns war leaders, New York Times" *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/bibliography/newspapers/138-11-jul-1919-turkey-condemns-war-leaders>).

Under the Kemalist regime, the Greeks, Armenians and Jews were forced brutally to adopt Turkish surnames and speak the Turkish language.<sup>112</sup>

Opposing to the request of the Greeks of Pontus for the creation of an independent state, Venizelos, on the December 1918 Parish Peace Conference suggested the integration of Pontus in Armenia, a decision that disappointed the Pontians. One year later and after pressure from the Pontian organizations all over the world, Venizelos accepted partially the will of the Pontian people and sent a colonel in Pontus, Katheriotis, to monitor the situation. He also proposed the creation of a special trained charter in the Greek army, with the purpose to be send to Pontus in case of need.<sup>113</sup>

However, the British opposed in the suggestion of a Pontian army, and Venizelos returned on his first proposal. Katheriotis suggested the invasion of the Pontian Battalion, that had been created as a part of the Greek army, in Trabzon, with the purpose to protect the Greeks of Russia that had been persecuted by Bolsheviks and also to support the Armenian army against the Turks. The British denied again the suggestion and the party of Venizelos in order to appease the British denies to send troops to support the Pontian guerillas. Venizelos, in the summer of 1920, after receiving one more report by general Katherioti proposing intervention, decides after all, to assist the Pontian Greeks and informs the British that he will indeed support the matter of Pontus. However, it was too late. In 14<sup>th</sup> of November of 1920 Venizelos loses the elections to the monarch party and the matter of the recognition of Pontus was abandoned.<sup>114</sup>

A law was adopted that banned the exodus of the Greeks and the Armenians of Pontus, abandoning them thus, to the Kemalist troops. The Pontians requested one more time the recognition of a State of Pontus. The Greek government in response to the request sent some vessels to Pontus and bombarded Kemalist military warehouses of trivial importance, which resulted in the second wave of genocide acts by Kemal.<sup>115</sup>

During 1922 the Greek government decided to forbid the Hellenic population to depart Asia Minor and enacted the law 2870/1922, which envisaged disciplinary and financial penalties in cases ships attempted to carry the population to Greece. On the 26<sup>th</sup> of August, the Greek forces

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<sup>112</sup> Agtzidis 2015, *supra* note 64, 97.

<sup>113</sup> Agtzidis 2015, *supra* note 64, 150-156.

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

retreated but there was no plan for the defense of Smyrna. On the contrary, the Greek authorities attempted to hide the news of retreatment from the population to prevent their departure.<sup>116</sup> The law 2870/1922 was adopted under the government of Protopapadaki, probably because they knew that the Greeks of the coast of Asia Minor supported Venizelos, the opponent of the government, and their entrance in Greece would change the course of the political events. Thus, they knowingly left the Greeks of Asia Minor to be massacred.<sup>117</sup>

*The New York Times* reported in 7 June 1922 of a “deliberate campaign of extermination”, referring to the deportations of the Pontians to the interior of Anatolia, a genocidal policy that the American NER workers had already reported. The ICRC was assigned by the Allied powers an investigation on the issue that was finally aborted.<sup>118</sup>

The Greek Army withdrew from Asia Minor, and the minorities were deserted to the Turks.<sup>119</sup> In 30 January, 1923 it was signed in Lausanne between Greece and Turkey the *Convention concerning the Exchange of Greek and Turkish Populations*, envisaging the conditions of a forceful emigration.<sup>120</sup> The Treaty of Lausanne included the 190.000 Greeks that had remained in Turkey and 355.635 Muslim residents of Greece. From the population exchange, there were excluded the approximately 125.000 Greeks of Istanbul, the approximately 6.000 Greeks of the islands of Imbros and Tenedos and 110.000 Muslims in two municipalities in Greece. The states were taking control of the organization of the deserted properties. It was estimated that the properties of the Greeks in Asia Minor were ten times bigger of the Muslim ones.<sup>121</sup> The Treaty of Lausanne was sealing the permanent expulsion of the Christian populations from Asia Minor, while the region was transforming into the Turkish state as we know it today.<sup>122</sup>

It is estimated that the population in Asia Minor was amounting the 1.700.000 people, and in East-Thrace and Istanbul the 400.000. Approximately 1.500.000 refugees in total arrived in

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<sup>116</sup> Agtzidis 2015, *supra* note 64, 110.

<sup>117</sup> Agtzidis 2015, *supra* note 64, 299.

<sup>118</sup> Hofmann, Bjørnlund & Meichanetsidis 2011, *supra* note 20, 16.

<sup>119</sup> Agtzidis 2015, *supra* note 64, 197.

<sup>120</sup> *Convention concerning the exchange of Greek and Turkish populations, and protocol, signed at Lausanne, January 30, 1923*, League of Nations, Treaty Series, Publication of Treaties and International Engagements Registered with the Secretariat of the League of Nations, Vol. XXXII, 1925, Numbers 1,2,3 and 4 (available at: <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%2032/v32.pdf>).

<sup>121</sup> Agtzidis 2015, *supra* note 64, 196.

<sup>122</sup> Agtzidis 2015, *supra* note 64, 198.

Greece.<sup>123</sup> 1.221.849 in total were the refugees that arrived in Greece, according to the 1928 census, from Asia Minor, Thrace, Pontus, Istanbul, Bulgaria, Caucasus, Russia and Serbia (excluding the 75.000 deaths upon arrival and 66.000 who emigrated elsewhere).<sup>124</sup> Approximately 400.000 of them were from Pontus, Caucasus and South Russia, 250.000 from Eastern Thrace and the surroundings of Istanbul, and 850.000 from the rest of Asia Minor.<sup>125</sup>

Makronisos, the infamous Greek island where many Greeks were sent to exile during the Greek Civil war, was also used as the first destination for the refugees from Pontus.<sup>126</sup> The island “didn’t have a house, not even some water to drink [...], or even a tree [...] Why didn’t they choose a place in Greece that would at least offer some water [...] for their thirsty and sick people? [...] The name of the island brings us memories of horror and same” recounts a survivor.<sup>127</sup> The Greeks of Greece adopted very soon an extremely hostile and racist attitude against the Anatolian Greeks that evolved to a greater dislike and pure hate. For the Anatolian Greeks, this was a traumatic

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<sup>123</sup> Agtzidis 2015, *supra* note 64, 249.

<sup>124</sup> Alexander Kitroeff 2012, *Asia Minor Refugees in Greece: A History of Identity and Memory, 1920s-1980s*, in: George N. Shirinian (ed.), *The Asia Minor Catastrophe and the Ottoman Greek Genocide, Essays on Asia Minor, Pontos, and Eastern Thrace, 1912-1923*, 2012, 235.

<sup>125</sup> Agtzidis 2015, *supra* note 64, 249.

<sup>126</sup> Agtzidis 2015, *supra* note 64, 199.

<sup>127</sup> Agtzidis 2015, *supra* note 64, 202 (my translation); A survivor narrates: ‘Our illnesses started on our stay to Makronisos. We were constantly dirty, thirsty and hungry. There was not even a single drop of water on the island. A ship brought some water from Laurio but it was not enough and not of good quality. The food consisted of bad quality pasta, olives with worms, bad herrings, and thus people got sick from typhus. And there was nowhere water to be found. Sometimes the ship that was transporting water was three days delayed. In the meantime, people were fainting from thirst. The food consisted of bad, salty, herrings [...]. People got typhus because of the quality of the food that these contractors brought to us. The administration knew about all these but didn’t say anything, neither arrest the criminal food contractors. They got rich against thousands of people [...] Sometimes merchants with their sailing vessels were approaching the island and were selling us illegally bread [...] A bread was being sold for a golden crown, a golden ring or a watch.’ Agtzidis 2015, *supra* note 64, 204 (my translation). There were six infamous places in Greece for the refugees from Asia Minor, like Makronisos, Thousands of people died in these camps. Agtzidis 2015, *supra* note 64, 206; In Cyprus, the British denied the debarkation of the refugees. They finally gave in to the pressure of the Greeks of Cyprus, but they demanded huge amounts of money to be paid by the Greeks of Cyprus for the accommodation and maintenance of the refugees. A possible reason for this unwillingness of the British to accept the refugees on the island and finally surrender under the terms of these absurd amounts of money provided by the Cyprus Greeks, probably have been their policy of controlling the influx of Greeks on the island, to avoid the question of unity of the island with the mainland Greece. Agtzidis 2015, *supra* note 64, 230-231.

experience.<sup>128</sup> Until 1930, many refugees managed to settle down and normalize their everyday life conditions.<sup>129</sup>

## **4. Legal analysis in light of the Genocide Convention**

### **4.1. Article II of the Genocide Convention**

#### **4.1.1. Paragraph (a): Killing members of the group<sup>130</sup>**

As early as April 1909, *The New York Times* reported that Greeks and Syrians were slaughtered along with the Armenians in the Adana province: “The slaughter was unsparing. Greeks and Syrians were struck down with the Armenians. Entire families were burned to death in their homes. Hundreds of girls and women were maltreated and carried off to the harems, where the women were separated from the men”.<sup>131</sup>

George Horton, the U.S. Consul in Thessalonica, reported the ‘Turkification’ process in Macedonia: “From the extermination of notables, the program extended to people of less importance. Bevvies of despairing peasant women who had come to visit the *vali* and demand news of their husbands, sons, or brothers appeared on the streets of Salonica. The answers were usually sardonic: ‘He has probably run away and left you,’ or, ‘He has probably gone to America’ were favourite replies. The truth, however, could not long be hidden as shepherds and others were soon reporting corpses found in ravines and gullies in the mountains and wounds [...] The next step was the so-called disarming. This meant, as always, the disarming of the Christian element and the furnishing of weapons to the Turks. [...]”<sup>132</sup>

The operation of deporting the Christian population of Eastern Thrace took place during the first stages of the genocide. Of its 350.000 Greeks, 15.690 were massacred, 100.000 were exiled to central Anatolia, where one out of two deportees died, and 232.000 were deported to Greece.<sup>133</sup>

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<sup>128</sup> Agtzidis 2015, *supra* note 64, 40-41.

<sup>129</sup> Agtzidis 2015, *supra* note 64, 223.

<sup>130</sup> This act requires the killing of at least two members of the group. Christian Tams, Lars Berster and Bjorn Schiffbauer 2014, *supra* note 54, 164.

<sup>131</sup> Hofmann 2011, *supra* note 12, 41: “Details of Slaughter Received,” *The New York Times*, 5 May 1909.

<sup>132</sup> Hofmann 2011, *supra* note 12, 49.

<sup>133</sup> Hofmann 2012, *supra* note 95, 48-49.

On 25 June 1914, Alfred van der Zee, the Danish consul in Smyrna, reports to the Danish Ambassador in Constantinople Wandel, killings committed by the Special Organization in the Vilayet of Aidin: “The bands of bashibozouks, who had gone south of Menemen after looting all the villages on their way, attacked Phocaea on the night of the 12<sup>th</sup> June on three sides and ably assisted by the Cretans [Muslim refugees from Crete] [...]”<sup>134</sup>

In May and June 1914, massacres were organized in the towns of the Aegean littoral, especially in Phocaea and Erithrea,<sup>135</sup> conducted by armed irregulars (the *chettes*) in collaboration with the local police.<sup>136</sup> In 12 June 1914, it is reported that 100 Greeks were massacred in Phocaea, a town of 8-9.000 Greeks and 400 Turks, by the *chettes*.<sup>137</sup>

Felix Sartiaux, an eyewitness of the Phocaea massacres reported: “[...] I cannot describe all the horrible scenes we saw. Our neighborhood is close to the sea [...] the area is quite open and is easy to escape from the murderers. I wonder what happened in the maze-like alleys, that all the people were hidden? [...]”<sup>138</sup>

In addition, 600 persons were reportedly massacred by the Kemalists (Nationalists) outside of the city of Balya, famous for its metallurgist organization: “[...] the Christians, along with the high-level metallurgists of Balya are gathered allegedly to head inland. When they were 5 km outside of the city, all the Christians, approximately 600, were stabbed by the bayonets and killed next to some ditches that were prepared from the day before. Next, they burned the bodies and the soldiers stayed in the area for two-three days more to make sure that everything was burnt”.<sup>139</sup>

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<sup>134</sup> Racho Donef, *The role of Teskilat-I Mahsusa (Special Organization) in the Genocide of 1915*, in: Tessa Hofmann, Matthias Bjørnlund, Vasileios Meichanetsidis (ed.), *The genocide of the Ottoman Greeks, Studies on the State-Sponsored Campaign of Extermination of the Christians of Asia Minor (1912-1922) and its Aftermath: History, Law, Memory*, 2011, 187: Rigsarkivet, Udenrigsministeriets Arkiver (UM), 2-0355, ‘Konstantinopel/Istanbul, diplomatisk repræsentation,’ ‘Noter og indberetninger om den politiske udvikling, 1914-1922,’ ‘Verdenskrigen. Rapporter fra Smyrna. Nov. 1914-marts 1916,’ Alfred Van der Zee til Carl Ellis Wandel, 25/6 1914; Racho Donef, ‘The Hellenic Genocide in the Danish Archives,’ 2004, (Letter 2, paragraphs 2 and 3).

<sup>135</sup> Hofmann 2012, *supra* note 95, 49.

<sup>136</sup> Hofmann 2011, *supra* note 12, 52.

<sup>137</sup> Bjørnlund 2011, *supra* note 18, 152-153.

<sup>138</sup> Agtzidis 2015, *supra* note 64, 63 (my translation).

<sup>139</sup> Agtzidis 2015, *supra* note 64, 124.

Massacres in Bithynia, in north-west Turkey, were also reported.<sup>140</sup> The first period of persecution against the Christian minorities was directed by the Young Turks from 1914 until 1918. The second period took place during the rule of Kemal. The Kemalist forces turned against the Christians, the Jewish and the hostile to the Kemalists' Muslims, which included Circassians, and Abkhazians.<sup>141</sup>

Kostantinos Faltaits, journalist and correspondent for an Athenian newspaper, describes what he saw in the surroundings of Nicomedia (capital of Bithynia, today Izmit): “60.000 people, Greeks, Armenians, Circassians, Albanians, Persians, and even Turks were fleeing together with the Greek Army, taking with them only their souls, as the Kemalist Turks were approaching and were trying to find asylum in the liberated from the Turks Greece [...] From the region of Nicomedia, a region with at least 45 Greek, 40 Armenian, and many more Circassian states and villages, there is nothing left than ashes, debris, *the 100.000 persons being slaughtered with the most forceful manner in the human history*, and the endless pile of human bones, scattered in the mountains, the plains, the forests and the cliffs of Nicomedia”.<sup>142</sup> (emphasis added).

According to the memorandum of the Turkish atrocities by the British diplomat, Sir. Rendel<sup>143</sup> by August 1920: “[...] the whole Greek population of Iznik [*ancient Nicaea*] has been massacred. [...] All the bodies I saw had been mutilated, apparently they had first had their hands and feet cut off, after they were either burnt alive in the cave or had their throats cut [...] Djemal Bey is said to be responsible for these massacres. [...]”<sup>144</sup>

Officials reported massacres and deportations in Ionia in 1920 by Kemalists and local bands, in Samsun and Trapezund in Pontus in June 1921, by irregulars under Topal Osman (Osman

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<sup>140</sup> The region was multicultural during the beginning of the 20<sup>th</sup> century, with people of Hellenic, Armenian, and Jewish descent, as well as Levantine and Muslim. The peaceful coexistence came to an end with the establishment in the region of Muslim refugees from Bosnia and Herzegovina. In a great extent, these refugees would man the Young Turks, and later the Kemalists. Agtzidis 2015, *supra* note 64, 83-84 (my translation).

<sup>141</sup> *Ibid.*

<sup>142</sup> Agtzidis 2015, *supra* note 64, 86-87 (my translation).

<sup>143</sup> “Memorandum by Mr. Rendel on Turkish Massacres and Persecutions of Minorities since the Armistice” *Greek Genocide Resource Center* (available at <http://www.greek-genocide.net/index.php/bibliography/books/280-memorandum-by-mr-rendel-on-turkish-massacres-and-persecutions-of-minorities-since-the-armistice/>).

<sup>144</sup> Hofmann 2011, *supra* note 12, 69-70: Rendel, ‘Memorandum,’ 3.

Aga Feridunoglu, mayor of Giresun and senior officer of Kemal), and in the 394 neighboring Greek villages of Samsun in July, August and September.<sup>145</sup>

The massacres of Greeks and Armenians by the Kemalist troops and irregulars in Asia Minor and especially in Pontus intensified in spring 1920. The *Black Book* of the Ecumenical Patriarchate provides numerous descriptions of the crimes committed in the region of Pontus. In a Greek village near Yozgat they: “[...] caused all the villagers, 280 in number and all Greek, to gather in the church. Then, after violating beastly all the women and girls in the presence of their fathers, husbands and brothers, he [*Cemil Bey*] killed them. Then he killed all males, not excepting small babies. [...] From this terrible slaughter only 24 people could escape, having run away before the arrival of the troops. As the Kemalist army had the intention to invade and massacre all the surrounding villages, the poor inhabitants were obliged to leave their homes and to go to the mountains, where many of them perished”.<sup>146</sup>

Stanley E. Hopkins, a Near East Relief worker reported with regard to the second deportations of the population of Samsun (1921): “[...] I was given an account by someone in Samsoun of the way in which a large number of Samsoun men, said to be fifteen hundred, were treated near Kavak. Kavak is about half way between Samsoun and Marsovan on the main road. The road out of the town toward the south descends a valley, crosses a bridge, and ascends the hill on the other side. The valley is that of a stream which flows down from the west. These fifteen hundred men were marched out of Samsoun on August 15th, and as they left Kavak were diverted up the valley and shot down by fire of Turkish troops. It was stated that of the fifteen hundred, thirteen hundred were killed in two and a half hours. [...]”<sup>147</sup> *The New York Times* reported on the 14<sup>th</sup> of June 1922 of the massacre of 15.000 men, women and children in the district of Rhodopolis, in the state of Trebizond by the Kemalists.<sup>148</sup>

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<sup>145</sup> Hofmann 2011, *supra* note 12, 70-72.

<sup>146</sup> Hofmann 2011, *supra* note 12, 69: Ecumenical Patriarchate, *The Black Book*, 38.

<sup>147</sup> ‘Stanley E. Hopkins, Near East Relief Worker’, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/quotes/testimonies/214-stanley-e-hopkins>): ‘Report on conditions in the interior of Anatolia under the Turkish Nationalist government’, 16 November 1921.

<sup>148</sup> ‘Mustafa Kemal Atatürk (1881-1938)’, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/perpetrators/261-mustafa-kemal-ataturk>): ‘Turks massacre 15.000 more Greeks; So the Athens government reports to its legation in Washington. Deportations the pretext, Kemalist troops employed in systematic campaign of murder and starvation’, *The New York Times* (available at:

Among the methods used, were lethal injections under a forced vaccination program to the conscripted in the labor battalions Pontian men,<sup>149</sup> and mass drowning of the women, children and the older men.<sup>150</sup> Another common method of killing was locking people in churches to burn them alive.<sup>151</sup> A Danish railway engineer, Olaf A. Rygaard, reported in his memoirs of the holocaust of Girsun: “[...] The churches are in ruins and are used as stables and prisons. [...] Gruesome massacres of Greek and Armenian women and children have taken place in these churches where these unfortunates, according to what the Turks themselves told me, were burnt. [...]”<sup>152</sup> By 1920, approximately 12.000 Greeks from Pontus have been massacred by the Nationalists. The cities of Amisos, Mpafra and Arba had ‘completely disappeared’, the villages of Pontus burned down and their residents massacred or died later during the deportations.<sup>153</sup>

Kemal established in Pontus tribunals that issued arbitrary executions for the intellectual and political elite, with hangings of a daily rate of 60 in September 1921.<sup>154</sup> In Kavac region, near

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[http://query.nytimes.com/gst/abstract.html?res=9D0DE4DE1539EF3ABC4C52DFB0668389639EDE&le\\_gacy=true](http://query.nytimes.com/gst/abstract.html?res=9D0DE4DE1539EF3ABC4C52DFB0668389639EDE&le_gacy=true)).

<sup>149</sup> The appeal reads: “[...] the Turks had murdered by injecting poison, whilst professing to vaccinate him. They have murdered in this way thousands of young Greeks from the Pontus, after enrolling them in those terrible "labour battalions" [...]”.<sup>26 Oct 1922: Turkish Atrocities, Western Mail” *Greek Genocide Resource Center* (available at <http://greek-genocide.net/index.php/bibliography/newspapers/192-26-oct-1922-turkish-atrocities>).</sup>

<sup>150</sup> A survivor testified that: ‘Our women and children and the older men were placed temporarily in homes and orphanages until the opportunity offered to dispose of them in the approved Turco-Teuton fashion, which in this instance turned out to be by wholesale drowning. "The unfortunate survivors of deportations were towed out for several miles into the Black sea and then calmly dumped overboard just like so much garbage. None of them survived. German efficiency has simply organised the natural brutality of the Turk and made it many times more effective than ever before. I should think that at the most conservative estimate at least 1,000,000 of my fellow countrymen have perished miserably through the organised cruelty of this Turco-Teutonic alliance. The only hope of the future lies in America." “1 Jan 1918: 1,000,000 Greeks Are Put To Death By Turko-Teuton Forces, The Washington Post”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/bibliography/newspapers/132-1-jan-1918-1-000-000-greeks-are-put-to-death-by-turko-teuton-forces>).

<sup>151</sup> “Comparing Genocide: Jews and Ottoman Greeks” *Greek Genocide Resource Center* (available at <http://greek-genocide.net/index.php/overview/miscellaneous/201-comparing-genocide-jews-and-ottoman-greeks>).

<sup>152</sup> Hofmann 2011, *supra* note 12, 60-61: Olaf A. Rygaard, *Mellem Tyrker og Kurder. En Dansk Ingeniørs Oplevelser i Lilleasien*, Copenhagen: Gyldendal, 1935, 172. (Translated from Danish by Matthias Bjørnlund).

<sup>153</sup> Hannibal Travis, *Genocide in the Middle East. The Ottoman Empire, Iraq, and Sudan*, Carolina Academic Press 2010, 289: Reported in 1921 by the Vice Admiral, Head of British Naval Mission of Athens to the British Foreign Office on the Condition of the Greeks in Pontus.

<sup>154</sup> Hofmann 2011, *supra* note 12, 74-75: Yeghiayan, *British Reports on Ethnic Cleansing in Anatolia*, 228. In 1921 200 Pontian notables were summarily tried and executed for treason; Harry J. Psomiades,

Samsun, 1.300 Greeks were shot in a day in August 1921 in about two and a half hours. Public hangings were another method used where “[...] the victims were given three days notice of their fate; they were hanged naked and in batches, all the condemned having to undergo the terrible ordeal of standing by and witnessing the executions until their turn arrived”.<sup>155</sup>

In 2 October 1922, under the title ‘Smyrna under fire,’ the newspaper *Sydney Morning Herald* published the following article: “[...] All the city disappeared in the fire apart from the dreary Turkish neighborhood. The banks, the businesses and the inhabited areas along the harbor and the building blocks of the foreign habitants, are turned into ashes. The fire covered an area of two square meter miles. [...] the British counselor stated that all the foreign consulates were burned down, except from the Belgian, the Norwegian and the Danish, because they are 3 miles far from the city center. Testimonials from the American citizens affirm that the soldiers of the Turkish army, systematically set the city on fire, as a retaliation for the destruction committed by the Greek army on their retreatment and the Turks by setting the fire, *they wanted to cover the massacres they inflicted when entering the city*. American witnesses estimate that *a great number of people lost their lives in the fire*. [...]”<sup>156</sup> (emphasis added).

Captain Powell, the senior commanding U.S. naval officer in Smyrna, reported on September 21, 1922 with regard to the evacuation of the Christian refugees from Smyrna: “[...] Unless we can proceed rapidly with the evacuation, I believe that in a very short time there will be very few to evacuate”.<sup>157</sup> The American consul Horton, describes the killings during the Smyrna

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*Greece in Asia Minor: The Greek Naval Bombardment of Samsun [Amisos], June 7, 1922*, in: George N. Shirinian (ed.), *The Asia Minor Catastrophe and the Ottoman Greek Genocide, Essays on Asia Minor, Pontos, and Eastern Thrace, 1912-1923*, 2012, 142.

<sup>155</sup> Hofmann 2011, *supra* note 12, 74-75; Yeghiayan, *British Reports on Ethnic Cleansing in Anatolia*, 228.

<sup>156</sup> Agtzidis 2015, *supra* note 64, 105-106 (my translation).

<sup>157</sup> Constantine Hatzidimitriou 2012, *The Destruction of Smyrna in 1922: American Sources and Turkish Responsibility*, in: George N. Shirinian (ed.), *The Asia Minor Catastrophe and the Ottoman Greek Genocide, Essays on Asia Minor, Pontos, and Eastern Thrace, 1912-1923*, 184; According to a report by Lord Curzon, British Foreign Secretary, Nurettin Pasa, Governor of Smyrna, declared that refugees remaining in the city after September 30 would be massacred. Harry J. Psomiades, *The American Near East Relief (NER) and the megale katastrope in 1922*, in: Tessa Hofmann, Matthias Bjørnlund, Vasileios Meichanetsidis (ed.), *The genocide of the Ottoman Greeks, Studies on the State-Sponsored Campaign of Extermination of the Christians of Asia Minor (1912-1922) and its Aftermath: History, Law, Memory*, 2011, 266; The authorities in Greece were hesitant in sending the Greek ships to evacuate the remaining refugees, being afraid of a Turkish counter-attack to their ships. The Turkish authorities ordered that the ships could sail under American flag. The systematic evacuation of the surviving population finally commenced by the Greek ships on September 24. Psomiades 2011, 267. Also, Matthew Stewart, *The*

holocaust: ‘the victorious Turkish army [...] instead of protecting the helpless people which it had in its power, deliberately set about massacring and outraging it’.<sup>158</sup> “[...] [S]ystematic looting and slaughter had been quietly carried out during the night by troops of the regular Turkish army”.<sup>159</sup>

Dr. Esther Lovejoy of the American Red Cross described as well the holocaust: “[...] what I saw there [*in France*] during the Great War seems a love feast beside the horrors of Smyrna. When I arrived at Smyrna there was massed on the quays 250.000 people -wretched, suffering and screaming- with women beaten and with their clothes torn off them [...] Three quarters of the crowd were women and children [...] The flight and the conditions brought on many premature births, and on the quay with scarcely room to lie down and without aid most of the children were born. In the five days I was there more than 200 such confinements occurred”. She also described how the men, were being deported again and the women taken away: “[...] To rob the men another method was used; men of military age were permitted to pass through all the barriers till the last by giving bribes. At the last barrier, they were turned back to be deported [...] On Sept. 28 the Turks drove the crowds from the quays, where the searchlights of the allied warships played on them, into the side streets. All that night the screams of women and girls were heard, and it was declared next day that many were taken for slaves”.<sup>160</sup>

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*Immediate context of the Smyrna catastrophe: The Peace Treaties and the aftermath of the Greco-Turkish war of 1919-1922*, in: Tessa Hofmann, Matthias Bjørnlund, Vasileios Meichanetsidis (ed.), *The genocide of the Ottoman Greeks, Studies on the State-Sponsored Campaign of Extermination of the Christians of Asia Minor (1912-1922) and its Aftermath: History, Law, Memory*, 2011, 258.

<sup>158</sup> Hatzidimitriou 2012, *supra* note 157, 166.

<sup>159</sup> Hatzidimitriou 2012, *supra* note 157, 168.

<sup>160</sup> Hofmann 2011, *supra* note 12, 89: ‘Woman pictures Smyrna horrors: Dr. Esther Lovejoy, an eyewitness, tells of terrible scenes on the Quay; she assails neutrality; declares it a crime for the world to lack the means to prevent such outrages,’ *The New York Times*, 9 October 1922, 3; After the fire broke out in Smyrna, on September 13, the conditions were horrendous for the ones that survived the holocaust. On the quay, there were gathered around 300.000 persons: ‘[o]ne could not lie done without being crushed to death – women gave birth to still-born babies and sheltered them against their dried-up breasts, for lack of a burial place [...] waiting for a momentary pathway to open up for them to lay their burdens in the all-receiving sea.’ Psomiades 2011, *supra* note 157, 266; Melville Charter, “History’s Greatest Trek,” *The National Geographic Magazine*, XLVIII, 5 (November, 1925): 539; Another record of the Smyrna holocaust is written by Charles James Howes, Chief Petty Officer of the British destroyer depot ship H.M.S. Diligence: ‘Rape and looting was now the order of the day in Smyrna [...] the harbor was littered with dead bodies. [...] With the approach of night, the panic increased and so did the fire and by midnight 200.000 souls were between the blazing Hades and the deep sea. Turkish cavalry was stationed to each end of the front so that escape was an impossibility. The people were cut down right and left by the soulless devils, who had broken their promise, and the scene can only be described as worse than hell. [...] Now and again a cavalryman would take a fancy to a young girl of fifteen or sixteen, drag her away and then a ghastly scream would tell its own story. [...] all the while the people in the rear were being

The French historian Driault, reported about the Smyrna holocaust: ‘Thousands of unfortunate people crowding along the waterfront fell into the sea. A great part of the port has been filled with hundreds of corpses that one could walk on them. Those floating on water were finished off by the Turks with swords and woods [*clubs*] [...]’<sup>161</sup>

A copy to the Washington State department of a September 14 wire dispatch, sent to Admiral Bristol, the U.S. High Commissioner in Istanbul by his naval intelligence officer in Smyrna, along with two other U.S. State department documents, suggests that the Turkish authorities were indeed responsible for the Smyrna holocaust: “[...] [I a]m convinced Turks burned Smyrna except Turkish section conforming with definite plan to solve Christian minority problem by forcing allies evacuate Christian minorities [...]”<sup>162</sup>

Numerous sources are in accord that the first killings against Assyrians took place as early as 1840 by joint Ottoman and Kurdish forces. 10.000 Assyrians were massacred, women and children were enslaved and their villages destroyed. Other sources establish that the perpetrators’ intentions were to “exterminate” them all from the Hakkari mountains where they had made their home from before the coming of Islam.’<sup>163</sup> *The Times* of London reported in January 5, 1844 of an unexpected attack, where the united Ottomans and Kurds “put the male inhabitants to the sword,

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massacred. [...] Then came the blinded led by instinct mostly gasping and choking with fumes. And even, the Turkish murderers carried on their nefarious blood spilling. Feeding the flames were the bodies of tiny children and women alike. The shock brought on premature births and little bodies were actually born amidst this medley of fire, murder, and rape [...] If hell is only a fierce demotion it is heaven like to this inferno. [...] think of the old time torture, add to them the modern appliances for the destruction of mankind, exaggerate it as much as you like and you will not realise half the horrors of the evacuation of Smyrna.’ Hlamides 2011, 201-211: Smyrna September 1922 memoir of Charles J. Howes, 86/14/1, Department of Documents, Imperial War Museum, London; A survivor reported of the massacres in Smyrna too: ‘We walked a little but further outside and we saw horrendous things! We came close to a big open ditch. Around the ditch there were human bodies wriggling around, and the ditch was full of their heads. Each person caught was taken at the edge of the ditch, cut his head and throw it in the ditch, and they let the bodies wriggling all around. It was horrendous. The persons that saw this went crazy. The mental hospital was filled with patients. On this place, at that ditch, we lost my father [...]’. Agtzidis 2015, *supra* note 64, 89 (my translation).

<sup>161</sup> Hofmann 2011, *supra* note 12, 88: Quoted from Χρήστος Εμ. Αγγελομάτης, *Χρονικόν Μεγάλης Τραγωδίας: Το έπος της Μικράς Ασίας*, Athens, Βιβλιοπωλείον της Εστίας, 1963, 243-244, 248-249.

<sup>162</sup> Hatzidimitriou 2012, *supra* note 157, 161.

<sup>163</sup> Travis 2010, *supra* note 153, 239: F.O. 195/204 Mosul July 20, 1843, Rassam to Taylor; F.O. 195/228 Mosul July 29, 1843, Rassam to Canning, *quoted* in Aboona, Assyrians, Kurds, and Ottomans, at 197-198; Henry Layard, *Nineveh and its remains 188-189* (London, 1850), *quoted* in Aboona, Assyrians, Kurds, and Ottomans, at 209-210; Henry Layard, *A popular account of discoveries at Nineveh* 112, *quoted* in Aboona, Assyrians, Kurds, and Ottomans; Abraham Yohannan, *The death of a nation*, at 2-3, 111-112.

carried off the women and children into captivity, and returned with a rich booty [...]” and “the rest of the women and younger children were reduced to slavery”.<sup>164</sup>

An Ottoman official told the British that Hilmi Bey and another officer invaded Persia (Urmia region was inhabited by Christians) and “massacred a great part of the population without distinction of race or religion”. The Iranian foreign minister accused the Ottomans of attacks on “villages inhabited by Christians, where the population has been violated and mercilessly massacred”.<sup>165</sup> A missionary physician from the US reported that Turks and Kurds “were determined to wipe them out [*the Assyrians*]” and had received “orders [...] for the extermination of the Nestorian Christians”.<sup>166</sup>

Attacks on Assyrian villages by the joint Turkish and Kurdish forces were conducted, where: “[...] troops were sent out [...] in every direction to destroy the surrounding villages. [...] The Kurds passed from place to place, slaying the people and burning the houses at their leisure, generally without even a shadow of resistance [...] Infants were taken from their mothers’ arm and dashed against the rocks when carrying them prevented their keeping up with the rest [...]”.<sup>167</sup>

The Special Organization carried out killings against the Assyrians too as described in this excerpt: “[...] Many Christian caravans arrived at Midyat, and they were filled with women and children. They were taken to the mosque’s yard. The yard would become overcrowded. To reduce the number of hostages, the Turkish forces gathered the boys, around 500-600. They told them to lie down, face down. Then they took some thick sticks and beat them on the head. Then some 40 to 50 Turkish soldiers riding horses rode back and forth over the boys’ heads until they died”.<sup>168</sup>

James Bryce, the British ambassador to the U.S. said about the Assyrian massacres: “The bloodstained annals of the East contain no record of massacres more unprovoked, more widespread or more terrible than those perpetrated by the Turkish government upon the Christians of Anatolia and Armenia in 1915. [...] the Nestorian and Assyro-Chaldean churches, were equally the victims

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<sup>164</sup> Travis 2010, *supra* note 153, 240: Nestorian Christians-Kurdistan, The Times (U.K.), Jan. 5, 1844.

<sup>165</sup> Travis 2013, *supra* note 4, 176.

<sup>166</sup> Travis 2013, *supra* note 4, 178.

<sup>167</sup> Travis 2010, *supra* note 153, 240.

<sup>168</sup> One of the numerous examples of the Assyrian genocide provided by Professor David Gaunt. Donef 2011, *supra* note 134, 184.

of the plan for exterminating Christianity, root and brunch, although the Turks had never ventured to allege that these communities had given any ground of offence. [...]”<sup>169</sup>

Attacks similar to the Assyrian ones were directed against the Yazidis in the Mergawar district near Persia, where along with the other Christians “[...] The Yezidees [sic], especially, were mercilessly slain [...]”. The Yazidis were ‘mercilessly slaughtered’ in the 1840s by Turks and Kurds, and while the massacres continued in the 1890s and 1910s, during the 19<sup>th</sup> century “Yearly expeditions have been made [...] [where] the men and women were slaughtered without mercy, the children of both sexes were carried off, and exposed for sale [...]”.<sup>170</sup>

#### **4.1.2. Paragraph (b): Causing serious bodily or mental harm to members of the group**

The Trial Chamber in *Krstic* established the threshold for ‘serious bodily or mental harm’: “The Trial Chamber finds that serious bodily or mental harm for purposes of Article 4 *actus reus* is an intentional act or omission causing serious bodily or mental suffering. The gravity of the suffering must be assessed on a case by case basis and with due regard for the particular circumstances. In line with the *Akayesu* Judgement, the Trial Chamber states that serious harm need not cause permanent and irremediable harm, but it must involve harm that goes beyond temporary unhappiness, embarrassment or humiliation. It must be harm that results in a grave and long-term disadvantage to a person’s ability to lead a normal and constructive life. In subscribing to the above case-law, the Chamber holds that *inhuman treatment, torture, rape, sexual abuse and*

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<sup>169</sup> Travis 2010, *supra* note 153, 253; The last part of the Assyrian genocide took place in Iraq. After the WWI, the British took over the territories of Iraq from the Ottoman Empire because of the profits from its rich oil deposits. The British used brutal methods to control the local population’s uprisings. In order to control the local population, they recruited some of the survivors of the Assyrian genocide, that appealed for an autonomous region at that point and they promised them a homeland. The British Royal Air Force attacked the locals from the air and ‘wiped out’ whole villages with aerial bombardments, employing new weapons, such as phosphorous bombs, liquid fire and man-killing shrapnel. Churchill ordered the use of poison mustard gas declaring: ‘I do not understand the squeamishness about the use of gas. I am strongly in favour of using poisonous gas against uncivilized tribes.’ After establishing oil rights and air bases the British did not mind to settle the Assyrians, who experienced a backlash by the Iraqi army and local Kurd tribesmen. ‘[...] They were shot, hanged, burned, driven across the borders to stagnate in a pestiferous valley in Syria.’ The massacres against the Assyrians continued and led thousands of them to flee to Syria. Some survived in League of Nations camps close to Mosul until 1939. Travis 2010, *supra* note 153, 295-298, 319.

<sup>170</sup> Travis 2010, *supra* note 153, 242-243.

*deportation* are among the acts which may cause serious bodily or mental injury”.<sup>171</sup> The TC in *Rutaganda* interpreted the wording as including “[...] *acts of bodily or mental torture, inhumane or degrading treatment, rape, sexual violence, and persecution. [...]*”.<sup>172</sup> (emphasis added).

Tams *et al.*, suggest that the crime can take the forms of physical injury “to the external or internal organs or to the senses”, disfigurement, injuring a person’s health by impairing his/her physical conditions, or physical suffering and pain, by “torture, inhumane or degrading treatment, sexual violence [...], interrogations combined with beatings, threats of death, and harm that damages health or causes disfigurement or injury”.<sup>173</sup> The highest standards with regard to the harm inflicted are suggested by the ILC: “the bodily harm or the mental harm inflicted on members of a group must be of such serious nature as to threaten its destruction in whole or in part”.<sup>174</sup> The ILC defined the ‘mental harm’ as “involving some type of impairment of mental faculties”<sup>175</sup> and in the *Akayesu* Trial Chamber this could be caused by acts of torture, inhumane or degrading treatment, and persecution.<sup>176</sup> The ICC-Elements of Crimes define that the mental harm in paragraph (b) “may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment”.<sup>177</sup> Lastly, there is a threshold that the harm should be inflicted to at least two persons.<sup>178</sup>

The Trial Chamber in *Akayesu* found that rape and sexual violence “[...] constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such. [...]”<sup>179</sup> With regard to the

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<sup>171</sup> *Prosecutor v. Krstić*, Judgement, Trial Chamber, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991, 2 August 2001, para. 513.

<sup>172</sup> *Prosecutor v. Rutaganda*, Judgement and Sentence, International Criminal Tribunal for Rwanda, 6 December 1999, para. 51; Antonio Cassese, *Genocide*, in: Antonio Cassese (ed.), *The Oxford companion to International Criminal Justice*, 2009, p. 333.

<sup>173</sup> Tams, Christian, Lars Berster and Bjorn Schiffbauer 2014, *supra* note 54, 118.

<sup>174</sup> *Ibid.*

<sup>175</sup> Tams, Christian, Lars Berster and Bjorn Schiffbauer 2014, *supra* note 54, 119.

<sup>176</sup> Tams, Christian, Lars Berster and Bjorn Schiffbauer 2014, *supra* note 54, 120.

<sup>177</sup> *Ibid.*

<sup>178</sup> Tams, Christian, Lars Berster and Bjorn Schiffbauer 2014, *supra* note 54, 121.

<sup>179</sup> *Prosecutor v. Akayesu*, Trial Judgment, 2 September 1998, para. 731; ‘They came to destroy’: ISIS Crimes Against the Yazidis, Human Rights Council, 15 June 2016, 22: Similarly, rape and sexual violence were found to be acts of genocide in *Prosecutor v. Stakić*, Trial Judgment, 31 July 2003 (“*Stakić* Trial Judgment”) para. 516; *Rutaganda* Trial Judgment, para. 51, *Musema* Trial Judgment, para. 156, *Gacumbitsi* Trial Judgment, paras. 291-292; and *Muhimana* Trial Judgment, para. 502.

definition of sexual violence, the ICTY stated that international criminal law “punish not only rape but also any serious sexual assault [...] the prohibition embraces all serious abuses of a sexual nature inflicted upon the physical and moral integrity of a person by means of coercion, threat of force or intimidation in a way that is degrading and humiliating for the victim’s dignity. [...]”<sup>180</sup>

National courts found that rape is an act of genocide. The Bosnian state court indicted 13 individuals for genocide because of acts of rape and a U.S. federal appellate court recognized that ‘brutal acts of rape’ were part of a genocidal campaign’ in Bosnia and Herzegovina.<sup>181</sup> In the following section I will present crimes committed during the period we examine by the Ottoman and Turkish authorities, that fall under this paragraph.

Ambassador Morgenthau reported that “House to house searches for hidden weapons” were carried out against the Greeks and the people were ‘beaten and tortured’.<sup>182</sup> In June 1914, during the expulsion of the Hellenes from the Aydin province it was reported that: “[...] A good many girls are in the hospitals at Aivali in consequence of their treatment by the moharjis [Turkish emigrants] [...]”<sup>183</sup> Dr. Harry Stürmer, correspondent for the *Kölnische Zeitung*, described the crimes in Aydin in 1914: “At the time of the Sarajevo murder I happened to be in the Aydin vilayet, in Smyrna and its hinterland. There I have witnessed with my own eyes vile deeds which must make everybody blush in anger against the Turkish government, which tolerates and supports these crimes, starting with old women, raped one after the other by a dozen of *muhacirs* and wayward soldiers, up to the smouldering ruins of Phokaia”.<sup>184</sup>

The British diplomat Sir Rendel, reported that “the persecutions of 1921 were on a larger scale and more atrocious than those of 1920”, for instance, the Merzivan massacre near Amasya by Topal Osman, where young girls were gathered and were all violated.<sup>185</sup> Moreover, in an

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<sup>180</sup> *Prosecutor v. Furundzija*, Judgement, Trial Chamber, ICTY, 10 December 1998, para. 186.

<sup>181</sup> Travis 2010, *supra* note 153, 74.

<sup>182</sup> Morgenthau 1926, *supra* note 11, 323-324.

<sup>183</sup> Hofmann 2011, *supra* note 12, 53: ‘Why the Greeks fled: Organized Persecution in Asia Minor.’ *The Manchester Guardian*, 29 June 1914.

<sup>184</sup> Hofmann 2011, *supra* note 12, 55-56: Harry Stürmer, *Zwei Kriegsjahre in Konstantinopel: Skizzen deutsch-jungtürkischer Moral und Politik*, (Lausanne: Payot, 1917), 150-151.

<sup>185</sup> Hofmann 2011, *supra* note 12, 76-77: Rendel, ‘Memorandum,’ 4-5.

official U.S. document it was reported that 2.500 girls deported from the Samsun region were assaulted “so badly [...] they could hardly walk [...]”.<sup>186</sup>

Consul Horton also reported that after the Smyrna holocaust: “[...] Many thousands of Christian women and girls still remain[ed] in their [*the Turks*]’ hands to satisfy their lusts or to work as slaves. A report submitted to the League of Nations gives the number as ‘upward of fifty thousand’, but this seems a very conservative estimate. [...]”<sup>187</sup>

Numerous more cases of rape have been documented. Apart from the rape cases during the deportations, rape was also reported being used against the eastern Thrace Jews in 1934, during the 1955 pogrom in Istanbul and systematically against Cypriot women of 12 until 71 years old in order to force them to leave their ancestral homes.<sup>188</sup>

#### **4.1.3. Paragraph (c): Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part**

The Trial Chamber in *Akayesu* established that the act under paragraph (c) of article II “[...] include, inter alia, subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirement”.<sup>189</sup> The Trial Chamber in *Kayishema and Ruzindana* suggested that ‘inflicting conditions of life’ should be interpreted to include “methods of destruction which do not immediately lead to the death of members of the group. [...]” and confirmed that “Therefore, the conditions of life envisaged include rape, the starving of a group of people, reducing required medical services below a minimum, and withholding sufficient living accommodation for a reasonable period, provided the above would lead to the destruction of the group in whole or in part”.<sup>190</sup> “Circumstances which will lead to a slow death, for example, lack of proper housing, clothing, hygiene and medical care

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<sup>186</sup> Travis 2010, *supra* note 153, 290: It was confirmed in a document by an U.S. naval officer, in Lieut. Murray, *Report from the USS Overton* [stationed off coast of Turkey] (28 August 1921) [Declassified by U.S. State Department 5 May 1958].

<sup>187</sup> Hofmann 2011, *supra* note 12, 90: Horton, *Blight of Asia*.

<sup>188</sup> Coufoudakis 2012, *supra* note 107, 262-263.

<sup>189</sup> *Prosecutor v. Akayesu*, Judgment, 2 September 1998, para. 506. Reiterated in the jurisprudence of the ICTR in *Rutaganda* Trial Judgment, *supra* note 172, para. 52 and *Prosecutor v. Musema*, Judgment and Sentence, International Criminal Tribunal for Rwanda, 27 January 2000, para. 157.

<sup>190</sup> *Prosecutor v. Kayishema and Ruzindana*, Judgment, Trial Chamber, International Criminal Tribunal for Rwanda, 21 May 1999, para. 116.

or excessive work or physical exertion” are also considered to meet the threshold under this paragraph on the Judgment.<sup>191</sup> The Trial Chamber further established that the crime “[...] applies to situations likely to cause death regardless of whether death actually occurs and [...] the infliction of substandard conditions of life which, if left to run their course, could bring about the physical destruction of the group. [...]”<sup>192</sup>

National courts found that deportations of members of a group constitute an act of genocide.<sup>193</sup> Deportations, conducted in such a way as to deliberately inflict on the group conditions of life calculated to bring about its physical destruction in whole or in part, can constitute an act of genocide.<sup>194</sup> Basso suggests the term *Displacement Atrocity* crimes (DA) to describe this crime. He argues that the genocides against the Cherokees, Herero and Pontians are examples of genocides perpetrated using this killing pattern. He suggests that the ‘conditions of life’ clause under paragraph (c) of article II should include the enforced displacements.<sup>195</sup>

Tams *et al.* argue that the ‘conditions of life’ clause can include any “measures of slow death”<sup>196</sup> and that it is sufficient with regard to the threshold targeting only a part of the group.<sup>197</sup> They further argue that the preferable interpretation of “calculated” has been the one of being “capable” to bring about its destruction, with “capable” implying “probability”, “likely to cause death” or “circumstances which will lead to a slow death”.<sup>198</sup> They interpret “physical destruction”, as “killing its members to the point that the group no longer exists”, either in cases where, according to Berster’s interpretation, “the total number of remaining members falls below the

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<sup>191</sup> *Prosecutor v. Kayishema and Ruzindana*, Judgement, Trial Chamber, International Criminal Tribunal for Rwanda, 21 May 1999, para. 115.

<sup>192</sup> *Prosecutor v. Kayishema & Ruzindana*, Judgment, Trial Chamber, International Criminal Tribunal for Rwanda, 21 May 1999, paras. 114-115.

<sup>193</sup> Travis 2010, *supra* note 153, 53: Cases of *Israel v. Eichmann*, and *Farbtuhs v. Latvia*.

<sup>194</sup> The Armenian deportations e.g. have been broadly acknowledged as an act of genocide, exactly because of the way they were conducted: marches through difficult terrain without water, food and shelter that lead to mass deaths. Marco Milanovic, State responsibility for genocide, *The European Journal of International Law*, Vol. 17, No. 3, 2006, 593.

<sup>195</sup> Naimark *supra* note 9, suggested the term ethnic cleansing for the Greek genocide. Basso differentiates the DA crimes from ethnic cleansing: DA crimes focus on killing the population, whereas ethnic cleansing aims in cleansing the area without necessarily killing the population. Basso states that the Pontian genocide was an example of DA crimes, because displacements were used as a killing pattern. Basso 2016, *supra* note 66, 7.

<sup>196</sup> Tams, Christian, Lars Berster and Bjorn Schiffbauer 2014, *supra* note 54, 121.

<sup>197</sup> Tams, Christian, Lars Berster and Bjorn Schiffbauer 2014, *supra* note 54, 122.

<sup>198</sup> Tams, Christian, Lars Berster and Bjorn Schiffbauer 2014, *supra* note 54, 123-124.

required minimum”, or in cases where “physical elimination of members so damages the social bonds between the remaining persons, that the minimum social or cultural requirements of national, ethnical, racial or religious groups can no longer be established”.<sup>199</sup> They provide also a broader interpretation of the “physical destruction”, suggesting the inclusion of “the infliction of serious bodily or mental harm”.<sup>200</sup> In addition, they point-out that rape has been accepted as a crime under this paragraph, in circumstances where it is a lethal, permanent and group-oriented mean, where it is “committed on such a large scale as to drive a substantial part of the group to commit suicide; [...]”<sup>201</sup> In the following section I will present crimes that fall under paragraph (c).

Ambassador Morgenthau gives a detailed description of the ‘martyrdom’ of the Greeks, as he calls the crimes committed against them by the CUP and confirms that the same methods used against the Armenians, were also used against the Greeks. Prior to the WWI, 100.000 of the Greeks of the seacoast of Asia Minor were deported to the Greek islands and the interior of Turkey. During the WWI, the Greeks of Thrace, the Sea of Marmora, the Dardanelles, the Bosphorus, and the coast of the Black Sea, were sent to the interior, were conscripted to labor battalions, where they died from ‘cold, hunger and other deprivations.’<sup>202</sup>

Persecutions were carried out by the C.U.P. against the Greeks of Eastern Thrace before and during the WWI.<sup>203</sup> During the spring of 1913 started the forcible deportations of the Greeks from Eastern Thrace. Their systematic cleansing started in the 6<sup>th</sup> of April of 1914. Many villages were attacked. The CUP declared that it did not have knowledge of the attacks. The population was forced to leave their houses and all the male were conscripted to labor battalions. Lastly, their businesses were confiscated and transferred to Muslims.<sup>204</sup> During and after the Balkan Wars the population was forced to death marches. From the 100.000 deportees, only half of them returned in 1918: “The conditions [...] were brutal and inhuman. They were expelled from the urban centers at the coast of the Propontis and the Black Sea under threat and panic as well as continuous terror

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<sup>199</sup> Tams, Christian, Lars Berster and Bjorn Schiffbauer 2014, *supra* note 54, 124.

<sup>200</sup> Tams, Christian, Lars Berster and Bjorn Schiffbauer 2014, *supra* note 54, 125.

<sup>201</sup> Tams, Christian, Lars Berster and Bjorn Schiffbauer 2014, *supra* note 54, 126.

<sup>202</sup> Morgenthau 1926, *supra* note 11, 323-324.

<sup>203</sup> “Eastern Thrace”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/documentation/318-genocide-eastern-thrace>).

<sup>204</sup> Agtzidis 2015, *supra* note 64, 54.

and murder. Not one day passed without casualties [...]”<sup>205</sup> From January 1914 until July 1915, 60.926 people were persecuted from eastern Thrace by the Special Organization. The modes of persecution included killings, massacres, deportations and conscription in the labor battalions.<sup>206</sup> Harry Stürmer reported with regard to the first round of persecutions and killings (1914-1916): “I would like to say here a word about these Greek persecutions in Thrace and Western Anatolia that have become notorious throughout the whole of Europe. They took place just before the outbreak of war, and cost thousands of peaceful Greeks – men, women and children – their lives, and reduced to ashes dozens of flourishing villages and towns”.<sup>207</sup>

Lewis Einstein, the U.S. diplomat at Istanbul, reports in July 28, 1915, with regard to the Greeks of Dardanelles: “The persecution of the Greeks is assuming unexpected proportions. Only a fortnight ago they were reassured and told that the measures taken against the Greek villages in the Marmora were temporary and not comparable with those against the Armenians. Now it looks as if there is to be equality in suffering, and the intention existed to uproot and destroy both peaceful communities. The poor Greeks are obliged to leave their homes, often without any notice compelled to march night and day without food or water, and when they cry for this, their Turkish guards point to the mosque and tell them the highroad to the comforts of life lies in Islam. [...]”<sup>208</sup>

Among the policies used during the Aegean littoral cleansing in 1914 were attacks by the Special Organization, conscription of military-age men to labor battalions, forced deportations to Greece and Anatolia, and a limited number of killings.<sup>209</sup> Frank W. Jackson, the chairman of the

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<sup>205</sup> Hofmann 2011, *supra* note 12, 50: Konstantinos A. Vakalopoulos, ‘Vertreibung und Genozid an den Griechen Ost Thrakiens’, in *Verfolgung, Vertreibung und Vernichtung der Christen im Osmanischen Reich 1912-1922*, Tessa Hofmann, ed. (Münster: Lit-Verlag, 2004), 129.

<sup>206</sup> John Mourellos, *The 1914 persecutions of Greeks in the Ottoman Empire and the first attempt at an exchange of minorities between Greece and Turkey*, in: Tessa Hofmann, Matthias Bjørnlund, Vasileios Meichanetsidis (ed.), *The genocide of the Ottoman Greeks, Studies on the State-Sponsored Campaign of Extermination of the Christians of Asia Minor (1912-1922) and its Aftermath: History, Law, Memory* 116-117.

<sup>207</sup> “Eastern Thrace”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/documentation/318-genocide-eastern-thrace>): Stürmer, H 1917, *Two War Years in Constantinople*, George H. Doran and Co, New York. 169.

<sup>208</sup> Bjørnlund 2012, *supra* note 99, 117.

<sup>209</sup> Taner Akcam, *The Greek Deportations and Massacres of 1913-1914: A trial Run for the Armenian Genocide*, in: George N. Shirinian (ed.), *The Asia Minor Catastrophe and the Ottoman Greek Genocide, Essays on Asia Minor, Pontos, and Eastern Thrace, 1912-1923*, 2012, 73-74; Taner Akcam, *The Young Turks and the plans for the ethnic homogenization of Anatolia*, in: Bartov, Omer, and Eric D. Weitz (eds.), *Shatterzone of Empires: Coexistence and Violence in the German, Habsburg, Russian, and Ottoman Borderlands*, Indiana University Press, 2013, 272.

U.S. Relief Committee for Greeks of Asia Minor, reported in October 1917 that: “[...] more than 700.000 Greeks have fallen victim to persecution in the form of death, suffering, or deportation. [...] the same treatment is being meted out to the Greeks as to the Armenians and Syrians. [...] There were some two or three million Greeks in Asia Minor at the outbreak of the war in 1914 [...] some *seven to eight hundred thousand have been deported*, mainly from the coast regions to the interior of Asia Minor. [...] Along the Aegean coast, Aivalik stands out as the worst sufferer. According to one report, some 70.000 Greeks have been deported towards Konya and beyond. At least 7.000 have been slaughtered. The Greek Bishop of Aivalik committed suicide in despair.”<sup>210</sup> (emphasis added). George Horton, the U.S. Counsel in Smyrna, affirms in his memoirs that during 1915, the Greeks outside Smyrna were “massacred, robbed, driven out of their homes, ravished, or drafted into the army, and set to digging trenches and other work of that nature, without food or clothing, until many of them died of starvation or exposure.”<sup>211</sup>

The German Ambassador Radowitz, reported in October 1916 to Berlin of a list of 38.000 Greeks made by the Turkish authorities, that were about to be deported from Istanbul and that “a massive expulsion with all the known consequences is approaching.”<sup>212</sup> The Austro-Hungarian ambassador to Constantinople denounced a year later in 1917 that: “The situation of the deported [*Greeks*] is for despair. Death awaits them all.”<sup>213</sup> The British Legation in Switzerland reported in December 1917 in the “Memorandum concerning the abominable ill-treatment of the Greeks in Turkey”: “Greeks are being cleared out of Constantinople and its surroundings and taken to the interior of the country. Their property is seized and their belongings sold by auction. The women and girls are distributed between the German officials and the Moslems of importance. [...]”<sup>214</sup>

A young girl from Phocaea, that survived the deportations by the Kemalist army and later fled to Greece, gave this shocking testimony: “[...] The Turkish army was approaching. [...] They [*the Turks*] gathered the people. They killed some, and they hit others with riffles. [...] They gathered the men. They took my father and my brother. We heard machine guns. [...] We never

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<sup>210</sup> Hofmann 2011, *supra* note 12, 63: ‘Greek persecution in Turkey,’ *The Scotsman*, 6 November 1917, 7.

<sup>211</sup> Bjørnlund 2012, *supra* note 99, 118.

<sup>212</sup> Hofmann 2011, *supra* note 12, 59: Fotiadis, *Der Genozid an den Pontosgriechen*, 131-132.

<sup>213</sup> Travis 2013, *supra* note 4, 176.

<sup>214</sup> Hofmann 2011, *supra* note 12, 59: Public Record Office, London, Foreign Office, Reference FO 286/677.

saw them again. The same night they took my sister to the mountains. They took the girls. My sister was taken by four. She had long braids. Two men took her from the braids and the other two by her feet. [...] The next day they made us walk through the mountains and not the roads. They had taken our shoes in the meantime and the mountains were full of thorns. It was impossible to walk. [...] We approached a Greek village. [...] For all of us to fit in, they killed two kids and a woman. [...] The same night they also took my mother. [...] She had a baby and when they took her she was holding it. They took it from her and they threw it in a reed area that was a lake. [...] They took us to a vineyard and they were cutting the leaves and putting them in the peoples' mouths and if someone was not chewing them they were rubbing his face to the ground. A woman didn't accept that and they put her dress on fire and they burnt her alive and didn't let no one to come close to her. The things these people did, no state ever did before".<sup>215</sup>

The conditions of the men conscripted to the labor battalions (*amele taburu*) were horrendous. From the 3.000 deportees of Aivalik, only 23 survived.<sup>216</sup> The following is documented in the testimony of a Pontian survivor: "[...] He was caught by the gendarmerie and was sent to do hard labour or *amele taburu* as it was called. Everyone knew that if you were sent to do the *amele taburu* you would never come back. Only Greeks were made to do it. Almost always, it would result in death because the men were forced to do hard work somewhere in the interior of Turkey under horrendous conditions. The men were made to break rocks to prepare for the building of railroads for the Ottoman Empire. It was a death camp for Greeks. [...]"<sup>217</sup> During the WWI, the Greek metallurgists of Mpalia were also conscripted in the death squads.<sup>218</sup>

In Pontus, all men between 15 and 45 were conscripted in labor battalions, mostly between Sebastia and Van, for road construction. The Austrian Ministry of Foreign Affairs reported to Berlin about the situation in Pontus: "The Turkish policy is characterized by the determination to expulse completely the Greeks from the region with the purpose of their complete extinction/enforced disappearance under the excuse that the Greeks consist a danger against the state, a method that has been previously applied against the Armenians. The Turks do not

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<sup>215</sup> Agtzidis 2015, *supra* note 64, 115 (my translation).

<sup>216</sup> Hofmann 2011, *supra* note 12, 92; Venezis, quoted from Vryonis, 'Greek Labor Battalions in Asia Minor,' 288.

<sup>217</sup> "ARISTIDIS TSILFIDIS", *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/quotes/testimonies/194-aristidis-tsilfidis>).

<sup>218</sup> Agtzidis 2015, *supra* note 64, 124.

distinguish between the population and do not leave any possibility for survival, using the pretext of transfer from the coast to the interior, abandoning them in tragic, inhuman conditions, in hunger, that lead to death [...] The policy measures that were adapted for the Armenians, are now also applied against Pontus.”<sup>219</sup>

The U.S. consul in the Ottoman Empire also reported: “In January 1916, the Greek deportation from the Black Sea began. These Greeks came [...] by thousands, walking for the most part the three days’ journey through the snow and mud and slush of the winter weather. Thousands fell by the wayside from exhaustion and others came into the city of Marsovan in groups of fifty, one hundred and five hundred, always under escort of Turkish gendarmes. Next morning these poor refugees were started on the road and *destruction by this treatment was even more radical than a straight massacre such as the Armenians suffered before*”.<sup>220</sup> (emphasis added). In 1922 the British ambassador also denounced the existence of ‘a deliberate plan to get rid of minorities’ as the “whole Greek male population from the age of 15 upwards on Trebizond and its hinterland is being deported apparently to labour battalions [...]”<sup>221</sup>

The death marches of the Pontians were being carried out during the winter and “in an indescribable condition of dirt and distress”. The American Near East Relief (“NER”) workers were prevented from helping them. Boys under 15 were separated and sent to ‘work’ on the roads, only to die from the winter weather, as they did not have shelter. When the sick reached outside Sivas they were “thrown into the Armenian church [...] whose windows are boarded up and where it is dark and damp”. There were “carried and dumped pell-mell cases of all kinds of the horrible diseases. The Americans are not allowed to do anything for these people. They all perish. None can possibly be saved. Their bodies are not removed”.<sup>222</sup>

Wilford Washburn Fuller, an American NER worker, was an eyewitness of the July 1921 deportations of the population of Samsun. He stated that five parties of Greek men were deported but from the first two parties, numbering 900, only 200 arrived at Sivas “naked, robbed, sun blistered, the gold having been forced out of their teeth” who reported that the rest have been

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<sup>219</sup> Agtzidis 2015, *supra* note 64, 68, 172-173 (my translation).

<sup>220</sup> Travis 2010, *supra* note 153, 286-287.

<sup>221</sup> Travis 2013, *supra* note 4, 179.

<sup>222</sup> Hofmann 2011, *supra* note 12, 83: Gibbons, ‘Near East Relief prevented from helping Greeks.’

massacred.<sup>223</sup> Stanley E. Hopkins, a Near East Relief worker, reported in his ‘Report on Conditions in the Interior of Anatolia under the Turkish Nationalist Government’, forwarded to the U.S. Secretary of State by Charles W. Fowle, foreign secretary of the Near East Relief: “[...] About September 1st 1921 I started on a trip by automobile from Harpoot to Samsoun. On the roads between Harpoot and Malatia I passed a large number of Greeks being deported from the south coast region of the Black Sea to the east. I estimated them to be about twelve thousand persons. They consisted of entire families and villages that have been uprooted and started on the road with whatever property they could carry on their backs and ox-carts. They were guarded by Turkish gendarmes, and they were moved slowly so that they would be unable to reach any point where they could settle before the winter snow would come. [...] After leaving Samsoun on my return to Harpoot I passed the old men of Samsoun, Greeks, who were being deported. Many of these men were feeble with age, but in spite of that fact they were being pressed forward at the rate of thirty miles a day and there was no transport available for those who were weak or ill. There was no food allowance for them, and any food that they could obtain had to be procured by money or sale of small articles that they could carry with them. On the trip, I passed many corpses of Greeks lying by the road side where they had died from exposure. Many of these were the corpses of women and girls with their faces toward the sky, covered with flies.<sup>224</sup> [...] About October 1st I started from Harpoot toward Samsoun being accompanied by Miss. Bailey and McClellan, all of us planning to return to America. On this trip we passed what I estimated to be about ten thousand Greeks. I remember one group of about two thousand, being women alone, most of them with no shoes, many of them carrying babies on their backs and in their arms. A driving cold rain was falling at the time I passed them and they had no protection whatsoever and their only place to sleep was the wet ground. [...] Harpoot seems to be a gathering and forwarding center for these Greek refugees. There are between fifteen and twenty thousand Greeks in Harpoot from all regions to the west and north. They are absolutely without help, and in the nature of the case large numbers of them are dying. They are allowed to stay in Harpoot a short time and are then sent forward to

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<sup>223</sup> “The Samsun deportations of 1916-1917 and 1921”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/documentation/311-the-samsun-deportations-1916-17-and-1921>).

<sup>224</sup> Travis 2010, *supra* note 153, 290: Stanley E. Hopkins (Near East Relief), *Report on Conditions in the Interior of Anatolia under the Turkish Nationalist Government* (16 November 1921), declassified 1961; “Stanley E. Hopkins, Near East Relief Worker”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/quotes/testimonies/214-stanley-e-hopkins>).

the east where their fate is not known. The Near East Relief is not allowed by the Turkish Government in any of its centers in Anatolia, so far as I know, either to hire Greeks or to help them by giving food, clothing or money. In Sivas the Americans of the Near East Relief were not even allowed to go and see the conditions in which the Greek refugees were. [...] These are conditions and incidents all of which except the last I witnessed. They seem to indicate that the Greeks of Anatolia are suffering the same or a worse fate than did the Armenians in the massacres of the Great War. The deportation of the Greeks is not limited to the Black Sea Coast but is being carried out throughout the whole country governed by the Nationalists. Greek villages are deported entire, the few Turkish or Armenian inhabitants are forced to leave, and the villages are burned. The purpose is unquestionably to destroy all Greeks in that territory and to leave Turkey for the Turks. These deportations are, of course, accompanied by cruelties of every form, just as was true in the case of the Armenian deportations five and six years ago [...].”<sup>225</sup>

*The New York Times* reported on the 10<sup>th</sup> of July 1921 that the population of the villages surrounding Samsun were all massacred during the deportation: “[...] The Turkish authorities prohibited the use of the waters of the river contaminated by the bodies. Other villages, having refused to comply with the deportation order, were set on fire by the Turks, and the inhabitants, regardless of age and sex were killed”.<sup>226</sup>

An Armenian survivor was also eyewitness of the 1921 deportation of the Greeks of Pontus as they reached Harput: “[...] Even though they were wretched and sick, the Government was only concerned with driving them on. To furnish them food? Don’t ask! Their attitude was: ‘They’re a part of your own race. You help them! [...]’”<sup>227</sup> Later on, being marched to labor battalions he ‘encountered more corpses’ of the Greek deportees, ‘large and small, being devoured by ravenous

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<sup>225</sup> “Stanley E. Hopkins, Near East Relief Worker”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/quotes/testimonies/214-stanley-e-hopkins>).

<sup>226</sup> “700.000 Greeks victims of Turks”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/bibliography/newspapers/141-10-july-1921-700-000-greeks-victims-of-turks-new-york-times>): “700.000 Greeks victims of Turks; Charge made by Washington Legation, which puts dead at that figure. Killings and deportations, These, with famine, said to have been responsible for the tragedy in Asia Minor”, *The New York Times* (available at: <http://query.nytimes.com/gst/abstract.html?res=9D07EFDF173EEE3ABC4852DFB166838A639EDE&legacy=true>).

<sup>227</sup> Hofmann 2011, *supra* note 12, 72-73; Varteres Mikael Garougian, *Destiny of the Dzidzernag*, (Princeton and London: Gomidas Institute 2005, 134-135.

vultures. [...]”<sup>228</sup> On 21<sup>st</sup> October 1921, the *South Australian Daily Herald* reported under the title ‘Atrocities by the Kemalists’: “[...] 420 out of 720 prosperous Greek villages in the Black Sea district of Samsun and Bafra have been completely destroyed in the past few months. The male inhabitants were either massacred or deported and the women were removed to the interior. [...]”<sup>229</sup> *The New York Times* also reported the continuation of the persecutions against the Greeks of the Trebizond area.<sup>230</sup>

The death marches of the Greeks of Pontus camouflaged as deportations continued during 1922.<sup>231</sup> The Nationalists forbid the Near East Relief to help the deportees by providing them food, clothes, or money and ordered the director to leave the country, while they seized many of the facilities. According to the NER, from the 30.000 deportees from the Black Sea coast in 1922, about half of them died, as the Nationalists drove them through “severe snow storms” and “did practically everything within its power to prevent any relief to [them].”<sup>232</sup> *The New York Times* reported also that: “At least one-half of the Greek population has been deported from the cities and hamlets on the coast of Asia Minor from the Black Sea to the eastern end of Cilicia, or around three-fourths of the coast of this peninsula. [...] The deportation of 700.000 Greeks [...] means slavery and death to the deported.”<sup>233</sup> By the spring of 1922 most of the Pontus population was deported to the interior.<sup>234</sup>

After the American women pleaded with them repeatedly for helping the Pontians, the ‘Commissioner for Deportees,’ Dr. Djevdet Bey and his assistant, Dr. Sherifeddin Bey, agreed to

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<sup>228</sup> Hofmann 2011, *supra* note 12, 72-73: Varteres Mikael Garougian, *Destiny of the Dzidzernag*, (Princeton and London: Gomidas Institute 2005, 142-143.

<sup>229</sup> “The Samsun deportations of 1916-1917 and 1921”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/documentation/311-the-samsun-deportations-1916-17-and-1921>).

<sup>230</sup> “Mustafa Kemal Atatürk (1881-1938)”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/perpetrators/261-mustafa-kemal-ataturk>): “Turks massacre 15.000 more Greeks; So the Athens government reports to its legation in Washington. Deportations the pretext, Kemalist troops employed in systematic campaign of murder and starvation”, *The New York Times* (available at: [http://query.nytimes.com/gst/abstract.html?res=9D0DE4DE1539EF3ABC4C52DFB0668389639EDE&le\\_gacy=true](http://query.nytimes.com/gst/abstract.html?res=9D0DE4DE1539EF3ABC4C52DFB0668389639EDE&le_gacy=true)).

<sup>231</sup> Hofmann 2011, *supra* note 12, 77.

<sup>232</sup> Travis 2010, *supra* note 153, 290-291: Mark H. Ward & F.D. Yewell, *Letter to American Consul Jesse B. Jackson* (1922).

<sup>233</sup> Travis 2010, *supra* note 153, 286: Reported in *New York Times* in 1915 by Talcott Williams, director of the Pulitzer School of Journalism at Columbia University.

<sup>234</sup> Psomiades 2012, *supra* note 154, 142.

remove the bodies from this ‘hospital.’ NER managed also to open 8 houses for the women and girls. The bureaucracy to enter them though was purposefully high and “very many of them perished in this last effort to get to the asylum of unnecessary cruelty – the way we should never treat a suffering dog or horse. Moreover, Dr. Djevdet and his assistant took forcibly from the Near East homes certain picked girls [...]”.<sup>235</sup>

In 5 April 1922, Dr. Mark H. Ward and Dr. F. D. Yowell, directors of the NER in Harput, reported the condition of the deported Greeks of the Black Sea region (i.e. Pontus): “[...] conditions of the Greek minorities are even worse than those of the Armenians. [...] In Harput district our relief has been to give these needy people in opposition to the wishes of the Turks who did everything in their power to prevent our doing so. We were not allowed [...] to take any orphan children, left by dying Greek deportees, into our orphanages. Sick Greeks could not be received into our hospital except on the written order of the Turkish Commissioner. Two thirds of the Greek deportees are women and children. All along the route where these deportees have travelled Turks are permitted to visit refugee groups and select women and girls whom they desire for any purpose [...] The chief causes of death are starvation, dysentery, typhus. Turkish authorities frankly state that it is their deliberate intention to exterminate the Greeks, and all their actions support this statement”.<sup>236</sup>

In the NER in Malatya, half of the deported children died soon after their arrival, as “their constitution was too greatly undermined by the journey from the coast. [...] starvation, exposure, exhaustion did their work before these deportees arrived in Malatia. They came to me in the last stages”, narrates a NER worker. She adds, that “deportation is worse than a sentence of execution. [...] it is difficult to believe that such monstrous cruelty and barbarity exist in this world. Making women and children suffer that way until they drop and expire seems incredible. [...]” On her way to Samsun from Malatia she was “passing women and children” and “bodies lay along the roadside and in the fields everywhere. [...]”<sup>237</sup> After the October 1922 armistice of Mudanya and prior the 1923 population exchange, all the remaining Greeks, but the Greek men, had been ordered to exit

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<sup>235</sup> Hofmann 2011, *supra* note 12, 83: Gibbons, ‘Near East Relief prevented from helping Greeks.’

<sup>236</sup> Israel W. Charny, *The integrity and courage to recognize all the victims of a genocide*, in: Tessa Hofmann, Matthias Bjørnlund, Vasileios Meichanetsidis (ed.), *The genocide of the Ottoman Greeks, Studies on the State-Sponsored Campaign of Extermination of the Christians of Asia Minor (1912-1922) and its Aftermath: History, Law, Memory* 2011, 35.

<sup>237</sup> Hofmann 2011, *supra* note 12, 84: Gibbons, ‘Near East Relief prevented from helping Greeks.’

the country, while the remaining men were sent in the labor battalions, as prisoners of war.<sup>238</sup> With regard to the Greeks, the 1955 pogrom against the Greeks of Istanbul also falls under this article and was organized and conducted by the Turkish state.<sup>239</sup>

Similarly, orders for the deportation of the Assyrians from Van were given in 1914, assaults in June 1915 and further massacres in Seert and Bitlis in the Ottoman Empire, and the region of Urmia, in Persia.<sup>240</sup> Thousands of Jews were also ordered to be exiled from Palestine by the Young Turks regime. Other groups that suffered from relocations and massacres were Jews from northern Iraq, Druze from today's Syria and Iranian Shiites in Mesopotamia.<sup>241</sup>

#### **4.1.4. Paragraph (d): Imposing measures intended to prevent births within the group**

In June 1915, the leadership of the Young Turks adopted a resolution that envisioned “the Turkification of the Greek element by force through the establishment of mixed communities [...] [and by] compelling mixed marriages”.<sup>242</sup> This measure intended to prevent marriages of the members of the Greek community, thus preventing births that would come for these marriages. It is a measure targeting the ethnic group of Anatolian Greeks and therefore, a crime under this paragraph.

A 1918 article from *The New York Times* confirms that during 1915-1918 a “[...] plan was carried out methodically and in a diabolical manner, through the “mixed settlements” of Greeks and Turks, always with a predominance of Mohammedan males and of Greek females in order to compel mixed marriages. [...]”<sup>243</sup>

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<sup>238</sup> Psomiades 2011, *supra* note 157, 272-273.

<sup>239</sup> Coufoudakis 2012, *supra* note 107, 262.

<sup>240</sup> Travis 2010, *supra* note 153, 247.

<sup>241</sup> Schaller & Zimmerer 2009, *supra* note 15, 5.

<sup>242</sup> Travis 2010, *supra* note 153, 286.

<sup>243</sup> “16 Jun 1918: Turkish cruelty bared by Greeks, New York Times” *Greek Genocide Resource Center* (available at <http://greek-genocide.net/index.php/bibliography/newspapers/134-16-jun-1918-turkish-cruelty-bared-by-greeks-new-york-times>): “TURKISH CRUELTY BARED BY GREEKS; Atrocities Like Those Against Armenians Revealed in Documents Translated for Greeks Here”, *The New York Times* available at: <http://query.nytimes.com/gst/abstract.html?res=9C0CE3DF173EE433A25755C1A9609C946996D6CF&legacy=true>); Hoffman 2011, *supra* note 12, 99.

During the WWI, it is estimated that approximately a total of 170.000 Christian women and children were abducted and enslaved.<sup>244</sup> This measure also intended to prevent births within the religious group of Anatolian Christians, by separating the two sexes.

#### **4.1.5. Paragraph (e): Forcibly transferring children of the group to another group**

This is the last crime under article II of the Genocide Convention. With regard to the crime, the ICTR established that the prohibited act of forcibly transferring children of a group to another group, apart from the act of direct transferring “[...] sanction acts of threats or trauma which would lead to the forcible transfer of children from one group to another”.<sup>245</sup> Below there will be presented acts that constitute a crime under paragraph (e).

A 1918 article in *The New York Times* describes measures that fall under this paragraph, committed against the Greek minority during and after the deportations: “[...] The Turkish language was introduced into Greek schools; geography and history had to be taught in Turkish. [...] Forcible conversions to Mohammedanism, long forbidden by law, began to appear again, particularly in the case of Greek girls carried off to Turkish harems [...] One of the most diabolical methods was the institution of the so-called orphan asylums at Panormo. These orphan institutions have in appearance a charitable object, but if one considers that their inmates are Greek boys who became orphans because their parents were murdered, or who were snatched away from their mothers, or left in the streets for want of nourishment, (of which they were deprived by the Turks,) and that these Greek children receive there a purely Turkish education, it will be at once seen that under the cloak of charity there lurks the ‘child collecting’ system instituted in the past by the Turkish conquerors and a new effort to revive the janissary system. The Greek boys were treated in this manner. What happens to the Greek girls? If we review the Consular reports about the persecutions from the year 1915 to 1917 we shall find hardly one of them which does not speak of forcible abductions and conversions to Mohammedanism. [...] this action [...] was decided upon in June, 1915, in order to effect the Turkification of the Hellenic element. [...]”<sup>246</sup> Ambassador

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<sup>244</sup> Travis 2010, *supra* note 153, 287.

<sup>245</sup> Antonio Cassese, *Genocide*, in: Antonio Cassese (ed.), *The Oxford companion to International Criminal Justice*, 2009, p. 333; *Prosecutor v. Akayesu*, Judgement, Trial Chamber, International Criminal Tribunal for Rwanda, 2 September 1998, para. 509.

<sup>246</sup> “16 Jun 1918: Turkish cruelty bared by Greeks, *New York Times*” *Greek Genocide Resource Center* (available at <http://greek-genocide.net/index.php/bibliography/newspapers/134-16-jun-1918-turkish-cruelty-bared-by-greeks-new-york-times>): “The New York Times, TURKISH CRUELTY BARED BY GREEKS; Atrocities Like Those Against Armenians Revealed in Documents Translated for Greeks

Morgenthau also confirmed that Greek girls and boys were abducted and placed in Turkish harems and households.<sup>247</sup> During the Kurdish attacks against the Assyrians, Assyrian children were also kidnapped to be raised as Kurds.<sup>248</sup> This intended assimilation of Greek and Assyrian children to Turkish and Kurdish cultures, constitutes a crime under the Genocide Convention, as serious as the rest of the crimes under article II.

## 4.2. Article III: Punishable Acts

Article III of the Genocide Convention provides for five modes of conduct for criminal liability under the Genocide Convention. The acts enlisted in paragraphs (b), (c) and (d), establish criminal responsibility for individual acts occurring during the first stages of genocide, thus strengthens the preventive character of the Convention.<sup>249</sup> These three are also inchoate crimes, meaning preparatory crimes to other offences<sup>250</sup> and that they are punishable acts even if they did not produce the expected result.<sup>251</sup> In this section, I will address the modes of conduct enlisted in paragraphs (c), (d) and (e).

### 4.2.1. Paragraph (c): Direct and public incitement to commit genocide

The *mens rea* for the crime of incitement: “[...] lies in the intent to directly prompt or provoke another to commit genocide [...]” by a person that himself has “[...] the specific intent to commit genocide [...]”.<sup>252</sup>

Article III(c) of the Genocide Convention provides for the punishment of the act of direct and public incitement to commit genocide. In the Ad Hoc Committee’s draft definition on incitement, we read: “Direct incitement in public or in private to commit genocide whether such incitement be successful or not”.<sup>253</sup> In the *Ruggiu* the Trial Chamber re-affirmed that: “[...] direct

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Here”, available at:

<http://query.nytimes.com/gst/abstract.html?res=9C0CE3DF173EE433A25755C1A9609C946996D6CF&legacy=true>); Hoffman 2011, *supra* note 12, 99.

<sup>247</sup> Morgenthau 1926, *supra* note 11, 323-324.

<sup>248</sup> Travis 2010, *supra* note 153, 243.

<sup>249</sup> Tams, Christian, Lars Berster and Bjorn Schiffbauer 2014, *supra* note 54, 158.

<sup>250</sup> Antonio Cassese, On the use of Criminal Law notions in determining state responsibility for genocide, *Journal of International Criminal Justice*, Oxford University Press, 2007, 880.

<sup>251</sup> Milanovic 2006, *supra* note 194, 571.

<sup>252</sup> *Prosecutor v. Akayesu*, Judgment, Trial Chamber, International Criminal Tribunal for Rwanda, 2 September 1998, para. 560.

<sup>253</sup> Tams, Christian, Lars Berster and Bjorn Schiffbauer 2014, *supra* note 54, 161.

and public incitement to commit genocide must be punished as such, even if the incitement failed to produce the result expected by the perpetrator. [...]”<sup>254</sup>

The *actus reus* consists of the direct and public incitement of a person to commit the crime of genocide.<sup>255</sup> In the Akayesu judgement the Trial Chamber provided the threshold for the act of direct and public incitement as “[...] directly provoking the perpetrator(s) to commit genocide, whether through speeches, *shouting or threats uttered in public places or at public gatherings*, or through the sale or *dissemination*, offer for sale or display or *written material or printed matter in public places or at public gatherings*, or through the public display of placards or posters, or through any other means of audiovisual communication”.<sup>256</sup> (emphasis added).

The incitement must be ‘direct’, which means it must give direct order to commit genocide, and this draws a differentiation line between incitement to commit genocide and hate-speeches.<sup>257</sup> The Trial Chamber in *Kajelijeli* stated that the act should instigate immediate action: “The ‘direct’ element of incitement to commit genocide requires ‘specifically urging another individual to take immediate criminal action rather than merely making a vague or indirect suggestion’”.<sup>258</sup> The Trial Chamber in *Muvunyi* reaffirmed that: “The ‘direct’ element requires more than a vague or indirect suggestion of incitement, and implies that the expression which is alleged to be inciteful *specifically provoke another to engage in criminal conduct*. In considering whether incitement is direct, the specific *context* in which it takes place is important. Cultural and linguistic factors, as well as the kind of audience the message is addressed to, could help determine whether a particular speech qualifies as direct incitement. An important consideration for the Trial Chamber is whether the members of the audience to whom the message was directed immediately understood its implication”.<sup>259</sup> (emphasis added). In the *Nzabonimana* the Trial Chamber reaffirmed that: “In order to satisfy the element that the indictment is “direct,” the incitement must be a direct appeal to commit an act referred to in Article 2(2) of the Statute and must be *more than a vague or indirect suggestion*. Direct and public incitement to commit genocide is *an inchoate crime and is*

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<sup>254</sup> *Prosecutor v. Georges Ruggiu*, Judgement and Sentence, Trial Chamber, Case No. ICTR-97-32-I, International Criminal Tribunal for Rwanda, 1 June 2000, para. 16.

<sup>255</sup> Tams, Christian, Lars Berster and Bjorn Schiffbauer 2014, *supra* note 54, 169.

<sup>256</sup> *Prosecutor v. Akayesu*, Trial Judgment, 2 September 1998, para. 559.

<sup>257</sup> Tams, Christian, Lars Berster and Bjorn Schiffbauer 2014, *supra* note 54, 171.

<sup>258</sup> *Prosecutor v. Kajelijeli*, Trial Judgment, 1 December 2003, para. 852.

<sup>259</sup> *Prosecutor v. Muvunyi*, Trial Judgment, 12 September 2006, para. 502

*punishable even if no act of genocide has resulted from the incitement.* The crime is completed as soon as the discourse in question is uttered. The fact that a speech leads to acts of genocide may be an indication that in that particular context the speech was understood to be an incitement to commit genocide, and that this was indeed the intent of the speaker”.<sup>260</sup> (emphasis added). The Appeals Chamber in *Nahimana et al.* established that: “[...] if the discourse is still ambiguous even when considered in its context, it cannot be found beyond reasonable doubt to constitute direct and public incitement to commit genocide”.<sup>261</sup>

In this section there will be discussed acts of hate propaganda that led to incitement. Badar holds that hate speech plays itself a very important role in the commission of the crime of genocide and that hate propaganda is the step prior to incitement.<sup>262</sup> Propaganda has always been a part of war and a method of warfare. The main tools of propaganda have been brainwashing, distortion and persuasion, all methods of psychological manipulation with the aim “to bring about the active or passive participation in its actions of a mass of individuals”. Propaganda turns to be an extremely dangerous weapon when it is used with the *dolus specialis* of the crime of genocide.<sup>263</sup>

During the years prior to the events we will examine, a process of radicalization commenced. George Horton, the U.S. Consul in Smyrna, reported that: “the Turkish students in the schools are being taught a song, the refrain of which translated in English was: ‘Revenge! Revenge! Revenge! Let us kill, let us cut to pieces, let us swim in blood up to our knees, Revenge! Revenge! Revenge! Let us wipe the stain from our clothes’”.<sup>264</sup> In July 1910, the Turkish journal *Progres de Salonique* attempted to connect the nationalist Japanese and Turkish movements: “[...] at the head of these movements will be found the peoples belonging to the same race-the Mongolians. Each one possesses the unquestionable title to the moral and intellectual supremacy of the great countries over which their influence extends”.<sup>265</sup> These examples of radicalization, fall

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<sup>260</sup> *Prosecutor v. Nzabonimana*, Judgement and Sentence, Trial Chamber, International Criminal Tribunal for Rwanda, 31 May 2012, para. 1752.

<sup>261</sup> *Prosecutor v. Nahimana et al.*, Judgement, Appeals Chamber, 28 November 2007, para. 701.

<sup>262</sup> Mohamed Elewa Badar, *The Road to Genocide: The Propaganda Machine of the Self-declared Islamic State (IS)*, *International Criminal Law Review*, 16, 374, 378.

<sup>263</sup> Badar 2016, *supra* note 262, 362.

<sup>264</sup> Bjørnlund 2012, *supra* note 99, 118.

<sup>265</sup> Bjørnlund 2006 *supra* note 96.

under Badar's categories of propaganda and hate speech but do not constitute acts of genocide under article III.

In 13 October 1913, in the Turkish newspaper of Samsun *Hxo* it was reported: "The holy war is a command from God, and this command we have to obey [...] Brothers, let's prepare to confront with our enemies, to drink their blood."<sup>266</sup> This passage uses the method of generalization, as it puts on the same account all the non-Muslims. This is an example of a discourse provoking another directly to engage in criminal conduct and is an explicit call to take immediate action.<sup>267</sup>

In 1914, the Sultan initiated a *jihad* war against the Christians, by releasing many declarations. In one of these declarations, issued on 1915, it is stated: "Kill them: God will punish them in your hand [...] Attack them from every side. Whenever you meet them, kill them. [...]"<sup>268</sup> A Persian official revealed in October 1914 that the message of holy war by the Ottoman Sultan had been disseminated among the tribes between Turkey and Persia.<sup>269</sup> This excerpt is another example of direct incitement and considering the context in which this incitement took place, qualify these declarations as direct incitement.

The Trial Chamber in *Nahimana et al.* concluded also that: "[...] the context in which the statement is made to be important. A statement of ethnic generalization provoking resentment against members of that ethnicity would have a heightened impact in the context of a genocidal environment. It would be more likely to leads to violence. At the same time the environment would be an indicator that incitement to violence was the intent of the statement."<sup>270</sup> The documents were indeed issued amid turbulent times. The high level of hatred and violence during the issuance of documents, increased the animosity towards the minorities. The documents were issued having knowledge of the genocidal environment and must have expected the resulted violence.

#### **4.2.2. Paragraph (d): Attempt to commit genocide**

With regard to *actus reus* of this act, although the objective commission of the crime is required, single acts or acts that compromise legal principles are included. With regard to the *mens rea* of

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<sup>266</sup> Agtzidis 2015, *supra* note 64, 33 (my translation).

<sup>267</sup> See Badar 2016 *supra* note 262, 402 for her discourse analysis on incitement.

<sup>268</sup> Travis 2010, *supra* note 153, 245-246.

<sup>269</sup> Travis 2013, *supra* note 4, 176.

<sup>270</sup> *Prosecutor v. Nahimana et al.*, Trial Judgment, 3 December 2003, para. 1022

this crime, the specific intent to destroy a group, in whole or in part, is required, as well.<sup>271</sup> An example that falls under this act is the attack in Giresun in 1920. Among his numerous other crimes, Topal Osman, on the night of the 13/14th of August of 1920, arrested all the male population of Giresun, in order to expel them, while his gangs subsequently pillaged the houses.<sup>272</sup> Topal Osman was a notorious killer chief, whose intent can be proved in the numerous crimes he committed in Pontus. The men apparently survived the expulsion, but the act did compromise legal principles. The men of Giresun did not survive after all, as *The Daily Telegraph* reported in September 8, 1920 that Topal Osman ‘carried out a ghastly series of atrocities’ in Giresun, shutting up all males, and executing five of them every evening.<sup>273</sup>

#### 4.2.3. Paragraph (e): Complicity in genocide

The *actus reus* of this mode of participation can be “complicity by instigation, complicity by aiding and abetting, and complicity by procuring means”.<sup>274</sup> The aiding and abetting has a lower requirement for genocidal intent. It consists of aiding and abetting other individuals to commit genocide, having *knowledge* of their genocidal intent, without necessarily sharing the genocidal intent.<sup>275</sup>

The Chamber in the *Akayesu* Judgement opined that an individual aiding and abetting another in committing genocide could be charged for complicity in genocide even though he did not himself “necessarily possess the *dolus specialis* of genocide, namely the specific intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such”.<sup>276</sup> It also established that it is necessary “in order for an accused to be found guilty of complicity in genocide,

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<sup>271</sup> Tams, Christian, Lars Berster and Bjorn Schiffbauer 2014, *supra* note 54, 174.

<sup>272</sup> “Topal Osman Ağa (1883-1923)”, *Greek Genocide Resource Center* (available at <http://greek-genocide.net/index.php/overview/perpetrators/240-topal-osman-aga>): Yeghiayan, V (comp.) 2007, [British Reports on Ethnic Cleansing in Anatolia: 1919-1922](#), *Center for Armenian Remembrance, USA*. pXXXI, p. 170.

<sup>273</sup> “Topal Osman Ağa (1883-1923)”, *Greek Genocide Resource Center* (available at <http://greek-genocide.net/index.php/overview/perpetrators/240-topal-osman-aga>): *Ghastly Atrocities, The Daily Telegraph, Launceston*. 8 Sep 1920, p. 5.

<sup>274</sup> *Prosecutor v. Akayesu*, Judgement, 2 September 1998, International Criminal Tribunal for Rwanda, para. 533. It can also include complicity by covering the evidence. See Milanovic 2006, *supra* note 194, 572.

<sup>275</sup> Milanovic 2006, *supra* note 194, 574.

<sup>276</sup> *Prosecutor v. Akayesu*, Judgement, 2 September 1998, International Criminal Tribunal for Rwanda, para. 540-541.

it must [...] be proven beyond a reasonable doubt that the crime of genocide has, indeed, been committed”.<sup>277</sup>

The Israeli courts in the Eichmann case “support the principle that the *mens rea*, or special intent, required for complicity in genocide is *knowledge* of the genocidal plan, coupled with the *actus reus* of participation in the execution of such plan”.<sup>278</sup>

After the commencement of the WWI and during the genocide, German officers got in command of the Turkish forces, for instance, General Liman von Sanders and General Fritz Bronsart von Schellendorf. Both were responsible, among others, for signing deportation orders.<sup>279</sup> Sanders was also reported as saying, referring to the Greeks of Ayvalik: “Couldn’t they throw these infidels into the sea?”<sup>280</sup> The two Generals might not have shared the genocidal intent of the Turkish authorities, but they did have knowledge of it. Their acts of instigating, aiding and abetting and assisting by procuring means the genocide, charge them for complicity in genocide.

### **4.3. A summary of the *actus reus* and a legal analysis on the *mens rea***

#### **4.3.1. The *actus reus***

The ICJ stated that the massacres in Srebrenica were the only case of genocide in Bosnia & Herzegovina, thus providing the precedent for the crime of genocide in a limited geographical area.<sup>281</sup> The estimations of the total number of deported Greeks rises as high as 1.5 million. Most of the deportees perished and in some cases, for example in Pontus, the casualties were as high as 80 or 90 percent of the deported.<sup>282</sup> Such a high number of mortality during the deportation in

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<sup>277</sup> *Prosecutor v. Akayesu*, Judgement, 2 September 1998, International Criminal Tribunal for Rwanda, para. 530.

<sup>278</sup> *Prosecutor v. Akayesu*, Judgement, 2 September 1998, International Criminal Tribunal for Rwanda, para. 544.

<sup>279</sup> For further information on the two Generals, see the chapter ‘An internationally wrongful act: Responsibility for States assisting Turkey.’

<sup>280</sup> “Otto Liman von Sanders (1855-1929)”, *Greek Genocide Resource Center* (available at <http://greek-genocide.net/index.php/overview/perpetrators/269-otto-liman-von-sanders>).

<sup>281</sup> The Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.) 2007 I.C.J. 91 (Feb. 26), para. 290. The threshold was firstly established in the *Krstic’* and *Blagojevic’* cases.

<sup>282</sup> The definition of the term ‘victim’ varied and with that the death toll estimations. Narrow definitions excluded indirect modes of killing, as were the death marches. Hofmann 2011, *supra* note 12, 102-103.

Pontus, constitute the massacres and the sufferings of the population of Pontus, as a case of genocide.

Some genocide scholars place the total death toll in the genocides to more than 3 million.<sup>283</sup> Ambassador Morgenthau's estimation is "not far from a million".<sup>284</sup> Rudolph Rammel, a genocide statistics' expert, estimates that 384.000 Greeks were killed from 1914-1918 and 264.000 more from 1920-1922. Other scholars estimate that 900.000 Greeks died from massacre, hunger, disease, and exposure.<sup>285</sup> The estimates for the deaths of Greeks from the killings in Smyrna range from 2.000 (as American witnesses assert) to 125.000, as Greek scholars estimate.<sup>286</sup>

There is a consensus that the Greek population of Turkey amounted at least 2.5 million.<sup>287</sup> Hlamides, estimates that approximately 1 million of them died between 1914 and 1923.<sup>288</sup> Approximately 1.500.000 Greeks were deported under conditions that lead to death.<sup>289</sup> On 16 September 1922, *The Times* published an estimation by an American Relief Committee of the Smyrna death-toll of at least 120.000. The U.S. Consul at Smyrna, George Horton estimated that at least 100.000 died by the Turkish extermination policy.<sup>290</sup> 77.000 were the Armenians

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<sup>283</sup> Hoffman 2012, *supra* note 95, 43.

<sup>284</sup> Morgenthau 1926, *supra* note 11, 274.

<sup>285</sup> Travis 2013, *supra* note 4, 180-181.

<sup>286</sup> Naimark 2001, *supra* note 9, 52.

<sup>287</sup> Nikolaos Hlamides, *The Smyrna Holocaust: the final phase of the Greek genocide*, in: Tessa Hofmann, Matthias Bjørnlund, Vasileios Meichanetsidis (ed.), *The genocide of the Ottoman Greeks, Studies on the State-Sponsored Campaign of Extermination of the Christians of Asia Minor (1912-1922) and its Aftermath: History, Law, Memory*, 2011, 225; It can be confusing in the process of estimating the death tolls in the two groups, that Armenians and Greeks were living together in the same cities in the Ottoman empire. There were Armenians that had Greek as their mother language, Greeks who had Armenian as theirs, and there were Greeks and Armenians who had Turkish as their mother language. Georgelin Herve, *Perception of the other's fate: what Greek Orthodox refugees from the Ottoman Empire reported about the destruction of Ottoman Armenians*, in: Dominik J. Schaller and Jurgen Zimmerer (ed.), *Late Ottoman Genocides, The dissolution of the Ottoman Empire and Young Turkish population and extermination policies*, 2009, 53-54.

<sup>288</sup> It is also interesting that only 190.000 out of the 1.104.216 refugees - according to the 1928 census- were transferred to Greece under the 1923 Convention. Hlamides 2011, *supra* note 287, 225.

<sup>289</sup> "16 Jun 1918: Turkish cruelty bared by Greeks, New York Times" *Greek Genocide Resource Center* (available at <http://greek-genocide.net/index.php/bibliography/newspapers/134-16-jun-1918-turkish-cruelty-bared-by-greeks-new-york-times>): *The New York Times*, TURKISH CRUELTY BARED BY GREEKS; Atrocities Like Those Against Armenians Revealed in Documents Translated for Greeks Here, available at: <http://query.nytimes.com/gst/abstract.html?res=9C0CE3DF173EE433A25755C1A9609C946996D6CF&legacy=true>).

<sup>290</sup> Other historians concur with this estimate. See e.g. Stewart 2011, *supra* note 157, 245. Hlamides 2011, *supra* note 287, 220.

survivors of the genocide in Turkey, whereas only 71.000 the Assyrians and Greeks, including Chaldean and Syrian Catholics, Jacobite and Church of the East Orthodox followers, and Greek and Assyrian Protestants.<sup>291</sup>

Consul Horton, while describing the massacres and the suffering of the Armenians in Smyrna, after 30 September 1922, confirmed that the Greeks were also victims of a genocide, but just of one with a slower pace: “[...] But the Greeks, for whom a deeper hatred existed, were reserved for a slower and more leisurely death. [...] Some were shot down or killed off in squads. All were starved and thousands died of disease, fatigue and exposure. [...]”<sup>292</sup>

According to Western travelers, the non-Armenian, non-Greek Christians in Anatolia, Syria and Mesopotamia amounted 400.000 people in 1859.<sup>293</sup> Henry Trotter, the British Vice-Consul in Van, estimated that in 1879 there were 2 million Armenians and up to 500.000 Assyrians. By the end of 1890s, the Assyrian population must have reached the 750.000.<sup>294</sup>

The scholars have estimated that about 70.000 Assyro-Chaldeans died between 1914 and 1918, and the Assyro-Chaldeans estimated that 250.000 Assyrians had been massacred in total, amounting to half of the original population.<sup>295</sup> The international press, the Ambassador Morgenthau and genocide scholars have estimated the Assyrian death toll to reach the 250.000 people.<sup>296</sup>

Hundreds of thousands of Greeks and Assyrians died during their deportations or when Greeks fled to Greece and Assyrians to Russia and Persia. However, in their estimations of the death toll of the Greek and Assyrian genocides, the scholars took into consideration only the number of deaths during ‘discrete massacres’. Contrary to that, regarding the Armenian genocide death toll, the scholars include in their estimations ‘indirect deaths’, such as deaths caused because of hunger or exposure during mass deportations, or even combat deaths. The death toll of murdered Armenians, i.e. deaths caused by ‘discrete massacres’ has been estimated to be around 600.000.

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<sup>291</sup> Travis 2013, *supra* note 4, 180.

<sup>292</sup> Hofmann 2011, *supra* note 12, 90: Horton, *Blight of Asia*.

<sup>293</sup> Travis 2010, *supra* note 153, 272.

<sup>294</sup> Travis 2010, *supra* note 153, 273.

<sup>295</sup> Travis 2010, *supra* note 153, 261.

<sup>296</sup> Travis 2013, *supra* note 4, 178.

Similarly, in the case of the Jewish Holocaust, deaths from hunger, disease, exhaustion or old age are included in the death toll estimations.<sup>297</sup>

There are reasonable grounds to assert that the *actus reus* of the crime of genocide with regard to the crimes committed by two consecutive regimes in the Ottoman Empire and Turkey against the ethnic and religious minorities of Anatolia has been satisfied. It remains to be examined whether the *mens rea* is too.

#### 4.3.2. The *mens rea*

The crime of genocide consists of two elements: the *actus reus* and the *mens rea* (mental element). Article II of the Genocide Convention provides for the mental element of the crime of genocide: “*intent* to destroy, in whole or in part, a national, ethnical, racial or religious group, as such [...]”. The ICTR *Akayesu* Trial Judgement interpreted the *mens rea*: “[...] the victim is chosen not because of his individual identity, but rather on account of his membership of a national, ethnical, racial or religious group. The victim of the act is therefore a member of a group, chosen as such, which, hence, means that the victim of the crime of genocide is the group itself and not only the individual”.<sup>298</sup> The *mens rea* of the crime of genocide is the attribute that distinguishes the crime from ordinary murder.<sup>299</sup> Its *mens rea* is the only necessary element of the crime. According to the legal definition of the crime, genocide could be considered committed, in a specific situation where no killings took place, if only the perpetrators were proven to have the *mens rea*.<sup>300</sup>

As interpreted by the ICJ, paragraphs (c) and (d) of Article II of the Genocide Convention give additional emphasis to the *intent*, with the words ‘deliberately’ and ‘intended’: “[...] (c) *Deliberately* inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures *intended* to prevent births within the group;”<sup>301</sup> (emphasis added).

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<sup>297</sup> Travis 2013, *supra* note 4, 181-182.

<sup>298</sup> *Prosecutor v. Akayesu*, Trial Judgement, 2 September 1998, para 521.

<sup>299</sup> *Prosecutor v. Kayishema & Ruzindana*, Judgment, Trial Chamber, International Criminal Tribunal for Rwanda, 21 May 1999, para. 91.

<sup>300</sup> ‘They came to destroy’: ISIS Crimes Against the Yazidis, Human Rights Council, 15 June 2016, 5.

<sup>301</sup> *The Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.)* 2007 I.C.J. 91 (Feb. 26), para 186.

The Trial Chamber in *Kayishema*, considered as evidence of intent among others “[...] the physical targeting of the group or their property; the use of *derogatory language toward members of the targeted group*; [...]”<sup>302</sup> (emphasis added). ‘*Giaour*’ (infidel) was a common name to refer to the Christians of the Ottoman Empire. Marianthi Karamousa<sup>303</sup> and another survivor<sup>304</sup> of the deportations against the Greeks recall in their testimonies the use of the term.

In *Jelusic* the Appeals Chamber found that: “[...] the existence of a plan or policy is not a legal ingredient of the crime. However, in the context of proving specific intent, the existence of a plan or policy may become an important factor in most cases. [...]”<sup>305</sup> In July 1914, Said Halim, the Ottoman head of government, informed the German ambassador of plans of “total removal of the Greek population from the littoral of Asia Minor”. A year later, on 5 March 1915, he declared that “the littoral of Asia Minor has more or less lost its Greek population”.<sup>306</sup> In June 1914, Van der Zee sent a report to his superior, Carl Ellis Wandel, the Danish diplomat in Constantinople, reporting that the large-scale, systematic and violent expulsion of the Greeks was ordered by the central government.<sup>307</sup> Dr. Sakir, one of the leading members of the Union and Progress Organization, wrote in February 1916 with regard to the Young-Turk’s nationalistic self-image: “There is an urgent need for a solemn Muslim population from Istanbul to India and China, with Syria serving as a connection between the Islamic worlds of Asia and Africa. This huge enterprise will be achieved with the scientific genius and the organizational talent of the Germans and the brave hand of the Turks”.<sup>308</sup> The German Ambassador in Turkey, Radowitz, reported that the ‘cleansing’ of the populations was partly accomplished, by “the expulsion of the Syriac Christians from the Eastern borderlands and of the Greeks from certain districts of Asia Minor and Rumelia”. The deportations were planned already some years earlier but the Turkish and the German

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<sup>302</sup> *Prosecutor v. Kayishema & Ruzindana*, Judgment, Trial Chamber, Case No. ICTR-95-1-T, International Criminal Tribunal for Rwanda, 21 May 1999, para. 93.

<sup>303</sup> “Marianthi Karamousa” *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/quotes/testimonies/317-marianthi-karamousa>).

<sup>304</sup> “Livissi (Kayaköy) & Macri (Fethiye)”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/documentation/211-the-genocide-of-the-greeks-of-livissi-and-macri>).

<sup>305</sup> *Prosecutor v. Goran Jelusic*, Judgment, Appeal Chamber, Judgment, 5 July 2001, para. 48.

<sup>306</sup> Hofmann 2011, *supra* note 12, 53-54: German Embassy of Constantinople, 16 July 1914, PA/AA, R1913, A14975, cited in Gust, *Verständnislose Auswüchse des Militarismus*, 19.

<sup>307</sup> Bjørnlund 2011, *supra* note 18, 142: UM, 2-0355, ‘Konstantinopel/Istanbul, diplomatisk repræsentation,’ ‘Noter og indberetninger om den politiske udvikling, 1914-1922,’ ‘Verdenskrigen. Reporter fra Smyrna. Nov. 1914-Marts 1916,’ 25/6 1914; Horton, *Blight of Asia*, 28-34.

<sup>308</sup> Agtzidis 2015, *supra* note 64, 172 (my translation).

leadership did not deport the Anatolian Greeks wholesale to avoid provoking Greece.<sup>309</sup> The *bashibozuks*, also known as *chettes* (*ceteler*, in Turkish), were the paramilitary groups responsible, along with the Turkish army, for the killings. The creation of *chettes*, that only in the *vilayet* of Aydin amounted around 8-10.000<sup>310</sup> to assist in the commission of the crime of genocide is another proof of a state policy.

The Trial Chamber in the *Akayesu* judgement established that “[...] it is possible to deduce the genocidal intent [...] from the general context of the perpetration of other culpable acts systematically directed against that same group [...]. Other factors, such as the scale of atrocities committed [...] or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group [...] can enable the Chamber to infer the genocidal intent of a particular act.’ The Court also reaffirmed the findings of the ICTY, that intent may be inferred from ‘the general political doctrine which gave rise to the acts [...] or the repetition of destructive and discriminatory acts’.<sup>311</sup> The Trial Chamber in the *Muvunyi* Judgement confirmed that in cases “[...] where it is impossible to adduce direct evidence of the perpetrator’s intent to commit genocide, such intent may be inferred from the surrounding facts and circumstances. [...] the overall context in which the crime occurred, the systematic targeting of the victims on account of their membership in a protected group, the fact that the perpetrator may have targeted the same group during the commission of other criminal acts, the scale and scope of the atrocities committed, the frequency of destructive and discriminatory acts, whether the perpetrator acted on the basis of the victim’s membership in a protected group and whether the perpetrator’s intent was to destroy that group in whole or in part, as such’.<sup>312</sup> Indeed, Greeks, Assyrians and Yazidis of the Ottoman empire had suffered violence, as violence became the norm for the resolution of social and political issues. Examples are the massacre of Greeks in Chios in 1822, in Missolonghi in 1823, the massacre of the Assyrians in Mosul in 1850, of the Christians in Alexandria in 1881 and of the Yazidis in Mosul in 1892.<sup>313</sup> Only during the Greek war of

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<sup>309</sup> Hofmann 2011, *supra* note 12, 59.

<sup>310</sup> Bjørnlund 2011, *supra* note 18, 150.

<sup>311</sup> *Prosecutor v. Jean Paul Akayesu*, Judgement, Trial Chamber, International Criminal Tribunal for Rwanda, 2 September 1998, para. 523-524.

<sup>312</sup> *Prosecutor v. Muvunyi*, Trial Judgment, 12 September 2006, para 480.

<sup>313</sup> George N. Shirinian, *Introduction*, in: George N. Shirinian (ed.), *The Asia Minor Catastrophe and the Ottoman Greek Genocide, Essays on Asia Minor, Pontos, and the Eastern Thrace, 1912-1923*, 2012, The Asia Minor and Pontos Hellenic Research Center, Inc., Bloomington, Illinois, 15.

independence, around 70.000 Greeks died.<sup>314</sup> Evidence of the genocidal intent can also be found in other criminal acts against Greeks, for instance, the 6-7 September 1955 Istanbul Pogrom, and the 1974 invasion in Cyprus.<sup>315</sup>

The Trial Chamber in *Krstic* deconstructed the ‘ethnic cleansing’ as ‘the forced migration of civilians.’<sup>316</sup> The expression ‘ethnic cleansing’ “is in practice used [...] to mean [...] ‘rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area’”. The UN General Assembly has been condemning repeatedly in its resolutions ethnic cleansing as ‘a form of genocide’.<sup>317</sup> The Trial Chamber in *Kupreškic* differentiated between the intent for committing genocide and the intent for crimes against humanity and persecution: “the *mens rea* requirement for persecution is higher than for ordinary crimes against humanity, although lower than for genocide [...]”<sup>318</sup> Judge Lauterpacht in his separate opinion in the *Krstic*

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<sup>314</sup> Travis 2013, *supra* note 4, 173.

<sup>315</sup> Zayas 2011, *supra* note 31, 315: See *Cyprus v. Turkey*, Applications Nos. 6780/74 and 6950/75, Report of 10 July 1976, and Application No. 8007/77, Report of 4 October 1983, Application no. 25781/94.

<sup>316</sup> *Prosecutor v. Krstic*, Judgement, Trial Chamber, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991, IT-98-33-T, 02 August 2001, para. 588.

<sup>317</sup> Travis 2010, *supra* note 153, 68; First mentioned in UN General Assembly resolution 47/121, *The situation in Bosnia and Herzegovina*, A/RES/47/121 (18 December 1992) available at <http://www.un.org/documents/ga/res/47/a47r121.htm>, reiterated in UN General Assembly resolution 48/153, *Situation of human rights in the territory of the former Yugoslavia: violations of human rights in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro)*, A/RES/48/153 (20 December 1993), in UN General Assembly resolution 49/205, *Rape and abuse of women in the areas of armed conflict in the former Yugoslavia*, A/RES/49/205 (23 December 1994), available at <http://www.un.org/documents/ga/res/49/a49r205.htm>, in UN General Assembly resolution 50/192, *Rape and abuse of women in the areas of armed conflict in the former Yugoslavia*, A/RES/50/192 (23 February 1996), available at <http://www.un.org/documents/ga/res/50/ares50-192.htm>, and in UN General Assembly resolution 51/115, *Rape and abuse of women in the areas of armed conflict in the former Yugoslavia*, A/RES/51/115 (7 March 1997), available at <http://www.un.org/documents/ga/res/51/ares51-115.htm>.

<sup>318</sup> “[...] persecution as a crime against humanity is an offence belonging to the same genus as genocide. Both persecution and genocide are crimes perpetrated against persons that belong to a particular group and who are targeted because of such belonging. In both categories, what matters is the intent to discriminate: to attack persons on account of their ethnic, racial, or religious characteristics (as well as, in the case of persecution, on account of their political affiliation). While in the case of persecution the discriminatory intent can take multifarious inhumane forms, and manifest itself in a plurality of actions including murder, in the case of genocide that intent must be accompanied by the intention to destroy, in whole or in part, the group to which the victims of the genocide belong. Thus, it can be said that, from the viewpoint of *mens rea*, genocide is an extreme and most inhuman form of persecution. To put it differently, when persecution escalates to the extreme form of willful and deliberate acts designed to destroy a group or part of a group, it can be held that such persecution amounts to genocide.” *Prosecutor*

opinioned that ethnic cleansing demonstrates intent to destroy all or part of the group.<sup>319</sup> The Appeals Chamber in *Blagojevic*, found that “the forcible transfer operation, the separations, and the mistreatment and murders [...] are relevant considerations in assessing whether the principal perpetrators had genocidal intent”.<sup>320</sup> In its *Bosnia v. Serbia Judgment*, the ICJ established that whether acts of ethnic cleansing can be characterized as genocide: “[...] depends on the presence or absence of acts listed in Article II of the Genocide Convention, and of the intent to destroy the group as such [...]” and that acts of ethnic cleansing occurring in parallel to acts prohibited by Article II “[...] may be significant as indicative of the presence of a specific intent (*dolus specialis*) inspiring those acts”.<sup>321</sup> The crimes of murder, mistreatments and separations in chapter 4.1, were perpetrated along acts prohibited under article II of the Genocide Convention. Thus, the acts of ethnic cleansing against the ethnic and religious minorities constitute proof of the *dolus specialis* and acts of genocide.

The Trial Chamber in *Krstic* case pointed out that: “[...] where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of an intent to physically destroy the group”.<sup>322</sup> Many of the attacks examined in chapter 4, that examined crimes committed that fall under Article II of the Genocide Convention, include a large number of attacks on Christian churches. Looting of churches was reported in 12 December 1914, of the churches in the Aivali islands.<sup>323</sup> Johann Markgraf von Pallavicini, the Austrian

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*v. Kupreškić et al.*, IT-95-16-T, Judgment, 14 January 2000, para. 636; *Bosnia & Herzegovina v. Serbia and Montenegro*, ICJ, para. 188.

<sup>319</sup> *Prosecutor v. Krstic*, Judgement, Trial Chamber, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991, IT-98-33-T, 02 August 2001, para. 588.

<sup>320</sup> *Prosecutor v. Blagojevic and Jokic*, Judgement, Appeals Chamber, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991, 9 May 2007, para. 123.

<sup>321</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, International Court of Justice, Reports 2007, para. 190.

<sup>322</sup> *Prosecutor v. Krstic*, Judgement, Trial Chamber, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991, IT-98-33-T, 02 August 2001, para. 580.

<sup>323</sup> “Aivali and the Moschonisia, The Raids, Deportations and Expulsion of Greeks from Aivali and the Moschonisia (1914-1922)”, Greek Genocide Resource Center: *American Hellenic Society, Persecution of the Greeks in Turkey Since the Beginning of the European War*, Oxford University Press, 1918, 11-12. (available at: <http://greek-genocide.net/index.php/overview/documentation/328-aivali-and-moschonisi>).

Ambassador of Constantinople, reported that during the December 1916 deportation of the population of Samsun “[...] Entire villages including schools and the churches are set on fire. [...]”<sup>324</sup>

The Appeals Chamber in *Krstic* found the genocidal intent in ‘opportunistic killings’: “the *scale of the killing*, combined with the VRS Main Staff’s *awareness of the detrimental consequences* it would have for the Bosnian Muslim community of Srebrenica and with the *other actions* the Main Staff took *to ensure that community’s physical demise*, is a sufficient factual basis for the finding of specific intent”.<sup>325</sup> (emphasis added). Elias Venezis, a survivor of the genocide, reported in his memoir of death marches, gang rapes and mass killings during the deportations of the population of Aivali.<sup>326</sup> Similarly, the persecution of the population of Moschonisi lasted from 1914 to 1922. They were tortured, imprisoned, conscripted to labor battalions and the remaining population was slaughtered and executed *en masse*.<sup>327</sup> Rendel, the British diplomat, in his Foreign Office memorandum of 20 March 1922, reported the massacres and persecutions against the Greeks, among others, the deportation of 500.000 Greeks, prior to the 1918 armistice, which left few survivors and the persecutions and massacres after 1920. He describes the execution of notables, the massacres, the rapes, the deportations and the enforced conscriptions in Pontus as the

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<sup>324</sup> “The Samsun deportations of 1916-1917 and 1921”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/documentation/311-the-samsun-deportations-1916-17-and-1921>): Wien Haus-, Hof- und Staatsarchiv, PA, Türkei XII, Liasse 467 LIV, *Griechenverfolgungen in der Türkei 1916- 1918*, ZI. 97/pol., *Konstantinopel (19.1.1916), (2.1.1917)*.

<sup>325</sup> *Prosecutor v. Krstic*, Judgement, Appeals Chamber, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991, 19 April 2004, para. 35. See also, *Prosecutor v. Blagojevic and Jokic*, Judgement, Appeals Chamber, 9 May 2007, para. 123, “‘opportunistic killings’ [...] assist in placing the mass killings in their proper context’.

<sup>326</sup> “Aivali and the Moschonisia, The Raids, Deportations and Expulsion of Greeks from Aivali and the Moschonisia (1914-1922)”, *Greek Genocide Resource Center: Venezis E, To Noumero 31328, Chapter 18. Athens 2004, 165*. (available at: <http://greek-genocide.net/index.php/overview/documentation/328-aivali-and-moschonisi>).

<sup>327</sup> “Aivali and the Moschonisia, The Raids, Deportations and Expulsion of Greeks from Aivali and the Moschonisia (1914-1922)”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/documentation/328-aivali-and-moschonisi>). Many are the examples of deaths, resulting from the horrendous conditions during the expulsions and deportations of the populations in Asia Minor are documented. See for example: ‘Despina Papantoniou, Region: Macri (SW Asia Minor), Greek Genocide Resource Center (available at: <http://greek-genocide.net/index.php/quotes/testimonies/307-despina-papantoniou-macri>) and ‘The pillage and massacre of the Greeks of Phocaea: 12-13 June 1914, Greek Genocide Resource Center (available at: <http://greek-genocide.net/index.php/overview/documentation/267-the-massacre-of-the-greeks-of-phocaea>).

worst in the region, affecting the whole population.<sup>328</sup> A 10<sup>th</sup> July, 1921 article from *The New York Times* puts the figure of the deaths of the Greeks at 700.000 because of killings, deportations and famine.<sup>329</sup> A 6<sup>th</sup> May, 1922 newspaper article by *The New York Times*, included the report of Major Yowell, Director of the American NER in Harpoot, a testimony on renewed killings: “The condition of the Greek minorities is even worse than that of the Armenians. The sufferings of the Greeks deported from the districts behind the battle front are terrible and still continue. These deportees began to reach Harpoot before my arrival in October. Of 30,000 who left Sivas 5,000 died before reaching Harpoot. One of the American relief workers saw 5,000 bodies on the road to Harpoot. Two thousand died on the roads east of Harpoot.’ ‘The deportations are still in progress. If American aid is withdrawn, all will perish. Their whole route today is strewn with bodies of the dead, being consumed by dogs, wolves and vultures. [...] The chief causes of death are starvation, dysentery and typhus.’ ‘The Turkish authorities frankly state their deliberate intention to exterminate the Greeks, and all their actions support these statements.’ ‘At the present time fresh deportations are starting in all parts of Asia Minor, from the northern seaports to the southern districts’”.<sup>330</sup> These examples, make it reasonable to argue that, the Turkish authorities were indeed aware of the detrimental consequences these killings and the rest of the reported crimes would have for the ethnic and religious minorities.

The *mens rea* is always difficult to be proven because of the destruction of the evidence or the secrecy under which the genocidal policy had been conducted. Robertson argues that along

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<sup>328</sup> “George William Rendel (1889-1979), British diplomat”, *Greek Genocide Resource Center*: G.W. RENDEL March 20, 1922, [Memorandum by Mr. Rendel on Turkish Massacres and Persecutions of Minorities since the Armistice](http://greek-genocide.net/index.php/quotes/testimonies/239-george-william-rendel). British Foreign Office Document: FO 371/7876 (available at: <http://greek-genocide.net/index.php/quotes/testimonies/239-george-william-rendel>).

<sup>329</sup> “700.000 Greeks victims of Turks”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/bibliography/newspapers/141-10-july-1921-700-000-greeks-victims-of-turks-new-york-times>): “700.000 Greeks victims of Turks; Charge made by Washington Legation, which puts dead at that figure. Killings and deportations, These, with famine, said to have been responsible for the tragedy in Asia Minor”, *The New York Times* (available at: <http://query.nytimes.com/gst/abstract.html?res=9D07EFDF173EEE3ABC4852DFB166838A639EDE&legacy=true>).

<sup>330</sup> “Killing by Turks has been renewed”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/bibliography/newspapers/147-5-may-1922-killing-by-turks-has-been-renewed>): “Killing by Turks has been renewed; American says they plan to exterminate the Christians in Asia Minor. Expel Near East Workers, They have deported Major Yowell and associates from Harpoot—Thousands of Greeks killed”, *The New York Times* (available at: <http://query.nytimes.com/gst/abstract.html?res=9901E1DF1439EF3ABC4E53DFB3668389639EDE&legacy=true>).

with public documents and photographic evidence, “evidence that demonstrates malice towards the group”, or lastly, attacks to eliminate the ‘intelligentsia or cultural leadership’ could be considered as proof of intent.<sup>331</sup> It has already been shown how animosity towards the minorities was indeed growing during the war. Ambassador Morgenthau recalls Talaat saying in a discussion he had with him: “We intend to kill three Christians for every Moslem killed!”<sup>332</sup> One of the leading figures during the Aegean cleansing, describes in his memoirs that Talaat, the Interior Minister, “suggested that the country be cleansed of those elements that were seen as capable of betraying the state”.<sup>333</sup> The establishment of the special tribunals by Kemal that sentenced to death the influential Anatolian Greeks during the course of a few months can be considered proof of the intent.<sup>334</sup>

## 5. Accountability achieved after the commission of the crimes

In the 1948 United Nations History, we read that the crimes of the Turkish government against its own nationals, fall into the category of Crimes against Humanity, a category different from the one that contains the violations of the laws and customs of war, committed by the Central Empires and their Allies during the WWI. That was the conclusion of the 1919 Allied Commission, that the Allies decided to create in the Preliminary Peace Conference of Paris, to examine “the responsibilities relating to the war”.<sup>335</sup>

In the analysis in the 1948 History of the United Nations, it is also stated that Article 230 of the Treaty of Sevres: “[...] constitutes [...] a precedent for Articles 6(c) and 5(c) of the Nuremberg and Tokyo Charters, and offers an example of one of the categories of "crimes against humanity" as understood by these enactments”.<sup>336</sup>

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<sup>331</sup> Geoffrey Robertson, ‘Was there an Armenian Genocide?’, *The Opinion of Geoffrey Robertson, QC, UNIV. OF ST. THOMAS JOURNAL OF LA W & PUBLIC POLICY*, Vol. IV, p. 92.

<sup>332</sup> Morgenthau, *supra* note 11, 100.

<sup>333</sup> Akcam 2012, *supra* note 209, 73.

<sup>334</sup> “Mustafa Kemal Atatürk (1881-1938)”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/perpetrators/261-mustafa-kemal-ataturk>): *The Genocide of the Ottoman Greeks*, Tessa Hofmann. Caratzas Publishers, pp74-75.

<sup>335</sup> History of the United Nations War Crimes Commission and the Development of the Laws of War, United Nations, 1948, 32, 35.

<sup>336</sup> History of the United Nations War Crimes Commission and the Development of the Laws of War, United Nations, 1948.

The Treaty of Sevres provided for prosecution of the crimes committed by the Ottoman Empire. In its Article 226 it envisaged “the right of the Allied Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons shall, if found guilty, be sentenced to punishments laid down by law. This provision will apply notwithstanding any proceedings or prosecution before a tribunal in Turkey or in the territory of her allies. [...]”.<sup>337</sup>

Article 230 of the 1920 Treaty of Sevres envisaged the creation of a competent Tribunal which would try the perpetrators: “The Turkish Government undertakes to *hand over* to the Allied Powers the persons whose surrender may be required by the latter as *being responsible for the massacres* committed during the continuance of the *state of war* on territory which formed part of the Turkish Empire on August 1, 1914. The Allied Powers reserve to themselves the right to *designate the tribunal which shall try the persons so accused*, and the Turkish Government undertakes to recognize such tribunal. In the event of the League of Nations having created in sufficient time a tribunal competent to deal with the said massacres, the Allied Powers reserve to themselves the right to bring the accused persons mentioned above before such tribunal, and the Turkish Government undertakes equally to recognize such tribunal”.<sup>338</sup> (emphasis added).

Article 144 further on envisaged the creation of arbitral commissions: “The Turkish government solemnly undertakes to facilitate to the greatest possible extent the return to their homes and re-establishment to their businesses of the Turkish subjects of non-Turkish race who have been forcibly driven from their homes by fear of massacre or any other form of pressure since January 1, 1914. (...) The Turkish Government agrees that arbitral commissions shall be appointed by the Council of the League of Nations wherever found necessary. (...) The arbitral commissions will have power to order: (...) 2) The removal of any person who, after enquiry, shall be recognized as having taken an active part in massacres or deportations or as having provoked them [...]”.<sup>339</sup>

However, the allies’ priority was to prevent Russian expansion and therefore, needed Turkey by their side. Realpolitik prevailed<sup>340</sup> as the treaty of Sevres was never ratified, no

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<sup>337</sup> Treaty of Sevres, *supra* note 102, Article 226.

<sup>338</sup> Treaty of Sevres, *supra* note 102, Article 230

<sup>339</sup> Treaty of Sevres, *supra* note 102, article 144.

<sup>340</sup> Antonio Cassese (ed.), *The Oxford companion to International Criminal Justice*, 2009, 131-142, 134; Cherif Bassiouni, *International criminal justice in historical perspective: The tension between states’ interests and the pursuit of international justice*.

international tribunal, as it was envisaged in Article 230 was established and no arbitral commission was appointed as article 144 provided for. Nonetheless, this remains “a conviction of unlawfulness independent of any subsequent ratification or non-ratification of the Treaty of Sevres”.<sup>341</sup>

Yet, trials took place in Istanbul with regard the crimes committed under the C.U.P. regime, where several leaders of the Ittihadist party, among them Talaat Pasha, Minister of the Interior and Enver Pasha, Minister of War, were tried and convicted *in absentia*. Several trials took place in the rest of the empire resulting in the conviction of many officials and the execution of ‘Mehmed Kemal, county executive of Bogazhyan, Abdullah Avni, of the Erzincan gendarmerie, and Behramzade Nusret, Bayburt county executive, and District Commissioner of Ergani and Urfa (Edessa)’.<sup>342</sup>

Turkey never ratified the Treaty of Sevres. A new treaty was adopted some years later, the Treaty of Lausanne of 24 July 1923.<sup>343</sup> The Treaty of Lausanne was accompanied by a ‘Declaration for Amnesty’ for the crimes committed between 1<sup>st</sup> August, 1914, and 20<sup>th</sup> November 1922.<sup>344</sup>

## **6. Admissibility of the case to the International Court of Justice**

### **6.1. The international legal doctrine of *state succession* and *state continuation***<sup>345</sup>

Another problematic issue with regard to the cases we examine is whether in the case of the Ottoman Empire and Turkey the legal doctrine of state succession or state continuation applies. The law with regard to the two doctrines in international law of state continuation and succession has not yet crystalized and the differences between the two doctrines is not yet clear.

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<sup>341</sup> Zayas, *supra* note 24, 6.

<sup>342</sup> Zayas, *supra* note 24, 32; For the proceedings, See Zayas 2011, *supra* note 31, 318: Osman Selim Kocahanoglu, *Ittihat ve Terakki'nin Sorgulanmasi ve Yargilanmasi*, Istanbul, 1998.

<sup>343</sup> Treaty of Peace with Turkey, signed at Lausanne, July 24, 1923.

<sup>344</sup> History of the United Nations War Crimes Commission and the Development of the Laws of War, United Nations, 1948, 45: ‘Declaration of Amnesty’, and the Protocol attached to it, dated 24<sup>th</sup> July, 1923.

<sup>345</sup> When a state e.g. changes its internal constitutional structure, the rules of state succession and not state continuation will apply. Andreas Zimmermann, Continuity of States, *Max Planck Encyclopedia of Public International Law*, 2006, para. 1.

Müllerson argues that “a new state *de facto* succeeds a predecessor state, and this *de facto* succession is a basis for succession to certain rights and duties of predecessor state.”<sup>346</sup> According to the state continuation doctrine, the continuing state is the recipient of all the rights and obligations of the successor state,<sup>347</sup> whereas a successor state is not bound to such obligations or rights. However, modern state practice suggests that the successor states are, as well, bound to such obligations.<sup>348</sup>

The conclusion of Borel, the arbitrator in the 1925 *Ottoman Debt Arbitration*, was the Turkish Republic is a continuation of the Ottoman Empire and therefore liable for the Ottoman public debt.<sup>349</sup> The 1926 arbitral ruling in the *Roselius & Co vs. Kardten & Turkish Republic* also concludes that in the case of the Empire and the Turkish Republic, the state continuation doctrine is the one that applies.<sup>350</sup> The 1956 *Lighthouse Arbitration* reaffirmed Borel’s conclusion of the thesis of state continuation of the Ottoman Empire.<sup>351</sup>

Among the historical facts that provide for state continuation is e.g., before Talaat fled to Germany, he gave orders that Kemal be accepted as the new leader and that notwithstanding the shift in power, almost all of the war academy staff and military officers kept their positions. The doctrine of state continuation, despite the relevant states’ objections, has applied to the transformation of the Third Reich to the Federal Republic of Germany, of the Tsarist Russia to the Soviet Union and to the Russian Federation and lastly, to the transformation of the French Republic to the Kingdom of France.<sup>352</sup>

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<sup>346</sup> Vahagn Avedian, State identity, continuity, and responsibility: The Ottoman Empire, the Republic of Turkey and the Armenian genocide, *European Journal of International Law*, 23(3), 2012, 3: R. Müllerson, *International Law, Rights and Politics: Developments in Eastern Europe and the CIS* (1994), at 139.

<sup>347</sup> Emre Oktem, Turkey: successor or continuing state of the Ottoman Empire? *Leiden Journal of International Law*, 24(3) 2011, 13.

<sup>348</sup> Avedian 2012, *supra* note 346, 5.

<sup>349</sup> Moritz Holm-Hadulla, Ottoman Debt Arbitration, *Max Planck Encyclopedia of Public International Law*, June 2007, para. 8; He concluded that: territorial losses do not affect the principle that ‘in international law, the Turkish Republic was deemed to continue the international personality of the former Turkish Empire’. Oktem 2011, *supra* note 347, 10.

<sup>350</sup> Vahagn Avedian Recognition, Responsibility and Reconciliation: The Trinity of the Armenian Genocide, *Europa Ethnica* 2013, 82.

<sup>351</sup> Oktem 2011, *supra* note 347, 9.

<sup>352</sup> Oktem 2011, *supra* note 347, 10.

From the above, it can be concluded that the doctrine of state continuation applies in the case of the Ottoman Empire and the state of Turkey. The obligations arising from the Genocide Convention are thus, also obligations of the current state of the Turkish Republic. These are *erga omnes* obligations to the international community.<sup>353</sup>

## 6.2. State responsibility

A state cannot commit genocide itself but the genocidal acts of some of its individuals can be attributed to that state, making thus, the state responsible for the genocide committed.<sup>354</sup> There are two possibilities of attribution of acts to the state according to the ILC draft articles on state responsibility and the ICJ's control test in the *Nicaragua* Judgement.

The first is a combination under Article 4 of the ILC Articles on State Responsibility and the control test in paragraphs 109-110 of the *Nicaragua* Judgement. Article 4 reads: "1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State. 2. An organ *includes* any person or entity which has that status in accordance with the internal law of the State". (emphasis added). The word 'includes' implies that an act of a state or non-state organ, will be considered an act of that State, when that organ "in truth act[s] as one of its' [*the state's*] organs".<sup>355</sup> Paragraphs 109-110 of the *Nicaragua* Judgement provide for the control test to establish the complex issue of state responsibility for acts of non-state organs under Article 4 of the Draft Articles, that of 'complete control'. Namely, in cases of States that want "to escape their international responsibility by choosing to act through persons or entities [...]", an agent can be equated with a State organ, "[...] even if that status does not follow from internal law, if in fact the persons, groups or entities act in 'complete dependence' on the State, of which they are ultimately merely the instrument. [...]"<sup>356</sup> For such a case, thus, it must

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<sup>353</sup> Zayas, *supra* note 24, 12, 18, 41.

<sup>354</sup> Milanovic 2006, *supra* note 194, 567.

<sup>355</sup> Article 4, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, International Law Commission, 2001. See also Commentary 11 to Article 4; Milanovic *supra* note 194, 2006.

<sup>356</sup> The Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.) 2007 I.C.J. 91 (Feb. 26), para 392: Case concerning *Military and Paramilitary*

be proven that the state had the same level of control on its non-state organs, as it did on its state organs (*de jure* organs). Then, the non-state organs become *de facto* organs of the state. When establishing state responsibility under Article 4, it is not necessary to establish state involvement in each operation separately but the state will be held responsible for all acts of its *de jure* and *de facto* organs, even for acts of its *de facto* organs committed *ultra vires* or against the governments instructions. This is established in Article 7 of the Draft Articles, that compliments Article 4, providing for state responsibility of a *de jure* or a *de facto* state organ that acted *ultra vires* or contrary to instructions: “The conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions”<sup>357</sup>.

The criminal conduct of the triumvirate, the C.U.P.’s leadership, *de jure* organs of the state, can reasonably be attributed to the state under article 4. The C.U.P leadership was responsible, among others, for the persecutions of the Greeks of Eastern Thrace before and during the WWI.<sup>358</sup> A Special Organization official affirmed that the Aegean littoral cleansing was an operation planned by the C.U.P. leadership. This conversation took place between Talaat and Rahmi Bey: “What can I do?” asked the *vali* with a smile. ‘We have sent Turkish farmers to colonize the coast, but the Greek peasants simply won’t stay with them and move away of their own free will.’ ‘No, Rahmi,’ said Talaat, ‘the Greeks cannot remain. They are forced to leave. They must go.’ The 12<sup>th</sup> June massacre of the population of Phocaea was a part of this operation.<sup>359</sup> The criminal conduct of Djemal Bey, one of the three members of the triumvirate, thus, also a *de jure* organ of the state, who, according to the memorandum by the British diplomat, Sir. Rendel,<sup>360</sup> dated August

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*Activities in and against Nicaragua (Nicaragua v. United States of America) (Merits, Judgment, I.C.J. Reports 1986, pp. 62-64)*, Judgment, 27 June 1986, para. 109. See Milanovic 2006, *supra* note 194.

<sup>357</sup> Article 7 of the ILC draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, International Law Commission, 2001; Milanovic 2006, *supra* note 194.

<sup>358</sup> “Eastern Thrace”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/documentation/318-genocide-eastern-thrace>): Hofmann, T 2011, *The Genocide of the Ottoman Greeks*, Caratzas USA, 50.

<sup>359</sup> Bjørnlund 2009, *supra* note 13, 40.

<sup>360</sup> “Memorandum by Mr. Rendel on Turkish Massacres and Persecutions of Minorities since the Armistice” *Greek Genocide Resource Center* (available at <http://www.greek-genocide.net/index.php/bibliography/books/280-memorandum-by-mr-rendel-on-turkish-massacres-and-persecutions-of-minorities-since-the-armistice/>).

1920, was responsible for the massacre of the Greek population of Iznik<sup>361</sup> shall be considered an act of the state under article 4.

The criminal conduct of Dr. Nazim, a *de jure* organ of the state too, shall be as well attributed to the state. The Danish consul in Izmir, Alfred van der Zee, had reported the ‘large-scale, systematic and violently punishing’ actions, planned by the government and executed under the command of Dr. Nazim.<sup>362</sup>

The criminal conduct of Rafet Pasha, member of the C.U.P. and an emissary of the Ministry of War and of Vehaedin, special official of the Ministry of the Interior, can also be attributed to the state under article 4. They were responsible for the deportations and destruction during the first deportation (1916-1917) in the region of Samsun.<sup>363</sup> They were both *de jure* organs of the state, therefore, their criminal conduct shall be considered an act of the state under article 4.

Osman Aga, was one of the commanders of the Special Organization.<sup>364</sup> He was later recruited under Mustafa Kemal.<sup>365</sup> The criminal conduct of the chief Osman Aga shall also be attributed to the state under article 4, because he was a *de jure* organ of the state, too. Osman Aga was responsible for numerous crimes of mass murder and deportations in the region of Pontus.<sup>366</sup>

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<sup>361</sup> Hofmann 2011, *supra* note 12, 69-70: Rendel, ‘Memorandum,’ 3.

<sup>362</sup> Akcam 2012, *supra* note 209, 86.

<sup>363</sup> “The Samsun deportations of 1916-1917 and 1921”, Greek Genocide Resource Center (available at: <http://greek-genocide.net/index.php/overview/documentation/311-the-samsun-deportations-1916-17-and-1921>): *Persecution of Greeks in Turkey since the Beginning of the European War. American Hellenic Society, New York, 1918, 52-53.*

<sup>364</sup> Donef 2011, *supra* note 134, 185.

<sup>365</sup> Donef 2011, *supra* note 134, 192.

<sup>366</sup> In the ‘Black Book: The Tragedy of Pontus 1914-1922’ were reported the following atrocities: ‘In July of 1921, after having murdered the greatest part of the notables and robbed them of their fortunes, Osman Ağa deported the male population of Tirebolu (Grk: Tripolis) near Giresun, and Bulancak (Grk: Pulantzaki) to Harput, Mamouret-oul-Azis and Alpistan, while he shared the beautiful women with his fellow partisans. The victims were conveyed into the mountains by the chettes. Women and children who were left unprovided for and completely nude, perished from hunger. Of the 2,500 Greeks in Tirebolu, only 200 women and children remained, and of the 14,000 Greeks of Giresun only 4,000 women and children survived. The Greeks of Fatsa and Ünye (Grk: Oinoe) were also invaded by Osman Ağa and suffered the same atrocities. [...] In the little village of Tzakaly four hours from Samsun, Osman Ağa ordered the women and children (the men having previously been deported) to be locked up in some houses of the village and there they were burnt alive. [...] In the village of Kavak he committed the same crimes; only a single old man of 80 was saved. [...] At Havza (Grk: Kavza) he drove together the women and children on the banks of the river, where they were massacred and thrown into the river. All the Greek villages of the district were laid to ashes. Eighteen brides and girls of the above village were picked out by Osman Ağa for their beauty in order to be distributed to his fellow criminals, who after having

The Turkish army under the command of General Nurettin Pasa, slaughtered, raped and looted the Christian residents of Smyrna for two days.<sup>367</sup> On September 16 in Smyrna, General Nurettin Pasa declared that all Greek and Armenian men between 18 and 45 will be deported and conscripted to labor battalions.<sup>368</sup> It is estimated that 50.000 Greeks were deported.<sup>369</sup> General Nurettin Pasa was a *de jure* organ of the state. Therefore, his conduct can be considered an act of the state.

Lastly, under article 4, the conduct of Mustafa Kemal (Atatürk), a *de jure* organ of the state and the Kemalists, can also be attributed to the state. Kemal was, among others, responsible for ordering the persecutions and the second deportations of Greeks from the Pontus region.<sup>370</sup> The Kemalists were responsible for, among others, the massacres of the 600 Greeks of Iznik (Nicaea) in 1920,<sup>371</sup> and the persecutions and massacres on July 1920 of the 3400 Greeks of the villages at Foundouklia, where the men were locked in the church, then ordered to come out in fives and 400 were shot, while the rest fled to the mountains.<sup>372</sup> Kemal was also responsible for instituting the

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satisfied their carnal appetites for several days, shut them up in a house and burnt them alive. [...] At Merzifon, Osman Ağa and his companions, after having completely bereaved all the Christians, put fire to the Greek and Armenian quarters. The scenes which took place in the course of the fire were heart appalling. All the exits were barricaded and the unfortunate people trying to escape were either mercilessly killed or thrown back into the fire without distinction of whether they were women, children or old men. In the course of 5 hours, 1800 houses along with their inhabitants were burnt down. It was impossible to describe the orgies committed against virgins and children. While they were performing these cruelties, they shouted at their victims; "Where are the English, the Americans and your Christ to save you?" "Topal Osman Ağa (1883-1923)", *Greek Genocide Resource Center* (available at <http://greek-genocide.net/index.php/overview/perpetrators/240-topal-osman-aga>): [Black Book the Tragedy of Pontus 1914-1922](#). *A few short notes on the Turkish cruelties perpetrated against the Greeks of the Pontus during the months of June, July and August 1921. The Central Council of Pontus. Athens 1922, pp 20-21.*

<sup>367</sup> Hlamides 2011, *supra* note 287, 203.

<sup>368</sup> Hlamides 2011, *supra* note 287, 214.

<sup>369</sup> Hlamides 2011, *supra* note 287, 196.

<sup>370</sup> "The Samsun deportations of 1916-1917 and 1921", *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/documentation/311-the-samsun-deportations-1916-17-and-1921>).

<sup>371</sup> "Mustafa Kemal Atatürk (1881-1938)", *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/perpetrators/261-mustafa-kemal-ataturk>): [British Reports on Ethnic Cleansing in Anatolia 1919-1922: The Armenian-Greek Section](#), Vartkes Yeghiayan. *Centre of Armenian Remembrance*, page 172.

<sup>372</sup> "Mustafa Kemal Atatürk (1881-1938)", *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/perpetrators/261-mustafa-kemal-ataturk>): [British Reports on Ethnic Cleansing in Anatolia 1919-1922: The Armenian-Greek Section](#), Vartkes Yeghiayan. *Centre of Armenian Remembrance*, page 157.

special tribunals that sentenced to death and killed in a few months the influential Anatolian Greeks. Only in Pontus during September 1921, all the intellectuals and the political elite were hanged at a rate of 60 per day.<sup>373</sup> The Kemalists were also responsible for the second round of persecutions against the Greeks of Eastern Thrace (1919-1922).<sup>374</sup>

Under Article 7 fall the acts of the paramilitary groups, of which the government held ‘complete control’, but whose acts, in excess of authority or contrary to instructions, the government later stated that it did not have knowledge. An example of such an act is the killings, sexual violence and rapes against the Greeks and Armenians of Izmir and the fire the Kemalists lit that destroyed the Armenian, Greek and European quarters<sup>375</sup> in September 1922, whose criminal conduct, Kemal did not have the knowledge.

Article 8 of the Draft Articles provides for the second possibility of attribution of conduct to the state. In cases where responsibility could not be attributed to the state under Article 4, because either the perpetrator was not a *de jure* organ of that state or the required degree of control, i.e. ‘complete control’, is not satisfied in order for the perpetrator to be considered a *de facto* organ of the state: “The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct”.<sup>376</sup> The control test is provided again by in paragraph 115 of the *Nicaragua* Judgement. Paragraph 115 establishes that the act of a non-state actor can be attributed to the state if it can be proved that: “[...] that State had *effective control* of the military or paramilitary operations in the course of which the alleged violations were committed”.<sup>377</sup> (emphasis added). The ICJ found that if establishing state

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<sup>373</sup> “Mustafa Kemal Atatürk (1881-1938)”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/perpetrators/261-mustafa-kemal-ataturk>): *The Genocide of the Ottoman Greeks*, Tessa Hofmann. Caratzas Publishers, pp74-75.

<sup>374</sup> “Eastern Thrace”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/documentation/318-genocide-eastern-thrace>): Yeghiayan, V (comp.) 2007, *British Reports on Ethnic Cleansing in Anatolia: 1919-1922*, Center for Armenian Remembrance, USA, 132, 155.

<sup>375</sup> “Mustafa Kemal Atatürk (1881-1938)”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/perpetrators/261-mustafa-kemal-ataturk>).

<sup>376</sup> Article 8, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, International Law Commission, 2001; Milanovic 2006, *supra* note 194.

<sup>377</sup> *The Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.)* 2007 I.C.J. 91 (Feb. 26), para 399; *Nicaragua Judgement*, 1986, para. 115; Milanovic 2006, *supra* note 194.

responsibility under Article 8 it is necessary to prove the state involvement in *each* operation: “It must however be shown that this “effective control” was exercised, or that the State’s instructions were given, in respect of each operation in which the alleged violations occurred, not generally in respect of the overall actions taken by the persons or groups of persons having committed the violations”.<sup>378</sup>

The Special Organization, C.U.P.’s secret army, appears to be founded in 1911 by Enver Pasa, the Minister for War, and established as an official state organ in August 1914.<sup>379</sup> However, some leading members of the government did not know of its existence, as it appears from the 1919 Ittihadists’ trial.<sup>380</sup> Therefore, the members of the Special Organization cannot be considered *de jure* organs of the state and neither can be established that they operated under the ‘complete control’ of the state to be considered ‘*de facto*’ organs of the state. However, responsibility for the operations of the Special Organization could be attributed to the state under article 8 of the ILC Draft Articles and paragraph 115 of the *Nicaragua* Judgement, for all the operations conducted by the Special Organization under the state’s (C.U.P. leadership’s) instructions. The attacks by the Special Organization against the Greeks of Thrace during the spring of 1914<sup>381</sup> can be attributed to the state under article 8. The report refers to attacks with the aid of the police, a state organ, thus, implying that the state had ‘*effective control*’ of the operation. Sartiaux’s testimony further establishes the involvement of the state in the attacks in Phocaea: ‘[...] I observe the people that attack us [...] I recognize some of them. One of our companions recognize more of them. They are all villagers from the nearby Turkish villages [...] that I often visited in search for antiquities. They are neither settlers from Macedonia, nor professional bandits. They are the same people that have offered me several times hospitality, these often so gentle, peaceful and honest people [...]. It is obvious that they are not acting of its own. They admit it themselves: *we got orders, we follow them [...]. The weapons they carry belong to the State [...]* Who supplied them with so many weapons and ammo [...] *It must be the Organization that gives orders to the general governors of*

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<sup>378</sup> *The Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.)* 2007 I.C.J. 91 (Feb. 26), Para 400. Milanovic 2006, *supra* note 194, 577.

<sup>379</sup> Donef 2011, *supra* note 134, 180-181, 187.

<sup>380</sup> Donef 2011, *supra* note 134, 182.

<sup>381</sup> “Eastern Thrace”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/documentation/318-genocide-eastern-thrace>): Archimandrite Alexander Papadopoulos 1919, *Persecutions of the Greeks in Turkey Before the European War*, Oxford University Press, New York, 91.

*the districts*. [...] 3.800 Greeks fled to Thessaloniki with the first ship and around 2.000 more with the second to Piraeus. [...] There are 7.077 Greeks in Old Phocaea according to the statistics.’<sup>382</sup> (emphasis added).

The paramilitary *chettes*, consisted of members of the Special Organization. They were also responsible for the persecutions and killings during the Greek genocide.<sup>383</sup> The operations conducted by the *chettes* under the orders of C.U.P. leadership in many regions of Anatolia and later under the orders of Kemal, especially in the region of Pontus, can be attributed to the state under article 8. The *chettes* were not *de jure* organs of the state (C.U.P. and later the Nationalists). However, their conduct shall be attributed to the state under Article 8 because the C.U.P and later the Kemalists had ‘effective control’ of the paramilitary operations of the *chettes*. Van der Zee reported that the *chettes*, that in the vilayet of Aydin only amounted around 10.000, were organized by the government.<sup>384</sup> Charles Manciet and Felix Sartiaux, two French eyewitnesses of the massacres of the Hellenic population of Phocaea, reported that these attacks were organized and armed by the authorities and executed by its paramilitary groups.<sup>385</sup> On the 13<sup>th</sup> June 1914 Felix Sartiaux reported: “They plunder, they set fire, they kill in cold blood, without feeling any hate, in a way methodically. Their leaders are two persons that many locals recognize as active members of the local Council of ‘Unity and Progress’. They implement a program that has been designed in the name of the higher interests of the Empire and the religion. The plundering, the claiming of property, and the raping are their salary”.<sup>386</sup> Gemal Mousket’s 1921 report, legal advisor of the Sultan, establishes Kemal’s ‘effective control’ of the *chettes*: “The government in Ankara decided that [...] the Greeks of Pontus will be massacred and exterminated. Kemal ordered [...] to burn completely the Greek village near Geiv and kill all its residents. The tragedy lasted for two days. The village with the 12 factories and the nice buildings turn into a dump. Ninety per cent of its population were either murdered or burnt. The few that managed to escape fled to the mountains.

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<sup>382</sup> Agtzidis 2015, *supra* note 64, 63-64 (my translation).

<sup>383</sup> “Ismail Enver Pasha (1881-1922)”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/perpetrators/244-ismail-enver-pasha-1881-1922>).

<sup>384</sup> Bjørnlund 2012, *supra* note 99, 101.

<sup>385</sup> A French steam tugboat transferred 700 Greeks to Mytilene and the authorities in the island sent boats to rescue the rest. Bjørnlund 2011, *supra* note 18, 152-153.

<sup>386</sup> “Felix Sartiaux, Archaeologist”, *Greek Genocide Resource Center* (available at: <http://www.greek-genocide.net/index.php/quotes/testimonies/264-felix-sartiaux>); Agtzidis 2015, *supra* note 64, 61 (my translation).

In order to keep his illegal gangs of bandits [*chettes*], Kemal had to find another place to attack. For that reason, he went to Pontus. The massacres, the plunder and the holocaust lasted from February until August. The displacements and the assassinations were committed with the semi-official participation of the army and the officials [...]”<sup>387</sup>

A lesser standard regarding attribution of acts to the state was established in the *Tadic* Judgment: “[...] it must be proved that the State wields *overall control* over the group, not only by *equipping* and *financing* the group, but also by *coordinating or helping in the general planning of its military activity*. [...] However, it is not necessary that, in addition, the State should also issue, either to the head or to members of the group, instructions for the commission of specific acts contrary to international law”<sup>388</sup> (emphasis added). Under this provision in the *Tadic* Judgement, the operations of the SO and the *chettes* can be attributed to the state. C.U.P. and the Kemalists had indeed overall control over these two groups.

The establishment of state responsibility is meant to have a reparatory and not a punitive character.<sup>389</sup> It is an accepted principle of law, that victims of a legal wrong are entitled to reparations.<sup>390</sup> The obligation breached with the crime of genocide is owed to the international community as a whole. The *erga omnes* obligations of Turkey arising from the crime of genocide impose, among others, responsibilities for reparation. Any state could invoke the responsibility of Turkey for reparations, in the interest of the injured state, i.e. Armenia or in the interest of the beneficiaries of the obligation breached, i.e. the descendants of the survivors of the genocide. This is stipulated in Articles 42 and 48 of the ILC, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries. Article 42 establishes that: “1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if: [...] (b) the obligation breached is owed to the international community as a whole. 2. Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible

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<sup>387</sup> Agtzidis 2015, *supra* note 64, 70.

<sup>388</sup> *Prosecutor v. Tadic*, Judgment, Appeal Chamber, Case No. IT-94-1 -A, 1, July 15, 1999, para. 131.

<sup>389</sup> Milanovic 2006, , *supra* note 194, 561.

<sup>390</sup> Lori Fisler Damrosch, Luis Henkin, Sean D. Murphy, Hans Smit, *International Law, Cases and Materials*, Fifth Edition, 2009, 238.

State: [...] (b) performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached”.<sup>391</sup>

In 10 June 1930, it was signed an agreement between Greece and Turkey which equated the properties of the exchanged populations. The property of the Asia Minor Greeks was estimated at around 100 billion drachmas (the former currency of Greece), whereas the ones that the Muslims of Greece left behind was estimated at around only 12,5 billion drachmas.<sup>392</sup> There are numerous sources that provide details for the property lost. For instance, Sartiaux reported that when he left “in July 1914 from Anatolia, the persecuted amounted to approximately 120.000. I estimated that the profits only from the houses and the herds from this operation amounted to five million”.<sup>393</sup>

Moreover, Article III of the 1907 Hague Convention IV, that is applicable in the existence of an international armed conflict, which Turkey signed in October 1907, provided for compensation in case of violation of the regulations of the convention: “A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces”.<sup>394</sup>

Zayas supports the right of restitution of the survivors of the genocide and their descendants, arguing that “it is an enduring challenge to international morality that Turkey continues to benefit from the cultural heritage, the lands and buildings of the victims of genocide”.<sup>395</sup> He sets forth Article 6 of the UNGA 60/147 of 2005, which stipulates that “[...] statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law”.<sup>396</sup> Moreover, he contends that the argument

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<sup>391</sup> Articles 42 and 48 of the ILC, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries; See also Milanovic 2006, *supra* note 194, 564.

<sup>392</sup> Agtzidis 2015, *supra* note 64, 248-249.

<sup>393</sup> Agtzidis 2015, *supra* note 64, 65 (my translation).

<sup>394</sup> For signatories see: [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp\\_viewStates=XPages\\_NORMStatesSign&xp\\_treatySelected=195](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesSign&xp_treatySelected=195); Zayas 2011, *supra* note 31, 318: Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, Article III.

<sup>395</sup> Zayas 2011, *supra* note 31, 332.

<sup>396</sup> Zayas 2011, *supra* note 31, 329: United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly Resolution 60/147, 16 December 2005.

of Irwin Cotler regarding the restitution claims of survivors of the Holocaust applies also in the case of the genocides in Anatolia. Cotler argued that in the case of genocide, the ‘Nuremberg law’ is the applicable law regarding claims of restitution, a law that “does not recognize the applicability of statutes of limitations, as set forth in the Convention on the Non- Applicability of Statutory limitations to War Crimes and Crimes Against Humanity”.<sup>397</sup>

### **6.3. An internationally wrongful act: Responsibility for states assisting Turkey**

Article 16 provides for attribution of responsibility of a state when assisting another state in the commission of a wrongful act: “A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State.”<sup>398</sup> For attribution to be established, it is also necessary that “[...] the relevant State organ or agency providing aid or assistance must be aware of the circumstances making the conduct of the assisted State internationally wrongful; secondly, the aid or assistance must be given with a view to facilitating the commission of that act, and must actually do so; and thirdly, the completed act must be such that it would have been wrongful had it been committed by the assisting State itself”.<sup>399</sup> Commentary 1 to draft Article 16 further provides for compensation by the assisting state, in cases where the international wrongful act would not have otherwise occurred without its assistance.<sup>400</sup>

Ambassador Morgenthau asserted that Germany did not regard Turkey as its ally but instead were using them to achieve their goals.<sup>401</sup> According to Ambassador Morgenthau the Greeks of Asia Minor “formed a barrier to the Pan-German aspirations [...] a road to the Persian Gulf”. So, in order to deal with this situation, Turkey, “acting under Germany’s prompting” and having the Germans “constantly instigating them”, applied the same principle to the Greeks as

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<sup>397</sup> Zayas 2011, *supra* note 31, 332.

<sup>398</sup> International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts with commentaries, 2001, Article 16.

<sup>399</sup> Article 16 ILC Draft Articles on State responsibility, Commentary 3.

<sup>400</sup> Commentary (1) to ILC Draft Article 16 on State responsibility.

<sup>401</sup> Morgenthau 1926, *supra* note 11, 160.

Germany did to Belgium, Poland and Serbia, since the beginning of the war, i.e., deportations.<sup>402</sup> Ambassador Morgenthau denounced Talaat for handing over the management of the country to the Germans on an attempt “to put [*Turkey*] on its feet with [*Turkey’s*] resources”.<sup>403</sup> This was achieved by distributing to the German officers positions in the Turkish army. For instance, General Liman von Sander’s was appointed Inspector General, “a German general was Chief of Staff [...] [*and*] scores of German officers held commands of the first importance [...]”.<sup>404</sup> He also wrote that the ultimate purpose of Germany was to stir the Muslim world up against the English, Russians, Dutch and other Christians, in order to force them to make peace. For this purpose, the Sultan issued his declaration of a *Holy War* against the Christians<sup>405</sup> an official document which was reprinted in countries with a large number of Muslim population, like India, China, Persia, Egypt, Algeria and Morocco, and was read in the Mosques.<sup>406</sup> On the meantime, a newspaper in Turkey which was owned by Germans, was constantly inciting war against the enemies of the Muslims.<sup>407</sup> Ambassador Morgenthau reported also the existence of another document distributed in the same countries, giving instructions this time on how to conduct the war, inciting racial and religious hatred with the purpose of the assassination of all Christians, except Germans and Austrians.<sup>408</sup> This document provides protection to the Germans, and therefore contains many indications that it was edited by a German who, according to Ambassador Morgenthau, must have been Wangenheim, the German Ambassador in Turkey.<sup>409</sup> Ambassador Morgenthau argues that these documents declaring the *Holy War* resulted in the “intense animosity toward the Christian(s) [...] and thus started passions aflame that afterward spent themselves in the massacres of the Armenians and other subject peoples”.<sup>410</sup>

Morgenthau took great care for the safe exodus of the enemy aliens from Turkey, English, French, Serbians and others. Morgenthau said repeatedly that the Germans were a bad influence for the Turks, attributing to them “well-known ideas of repression and brutality”,<sup>411</sup> by reviving

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<sup>402</sup> Morgenthau 1926, *supra* note 11, 49.

<sup>403</sup> Morgenthau 1926, *supra* note 11, 34.

<sup>404</sup> Morgenthau 1926, *supra* note 11, 42.

<sup>405</sup> Morgenthau 1926, *supra* note 11, 161.

<sup>406</sup> Morgenthau 1926, *supra* note 11, 162.

<sup>407</sup> *Ibid.*

<sup>408</sup> Morgenthau 1926, *supra* note 11, 163-164.

<sup>409</sup> Morgenthau 1926, *supra* note 11, 167.

<sup>410</sup> Morgenthau 1926, *supra* note 11, 170.

<sup>411</sup> Morgenthau 1926, *supra* note 11, 131.

“many principles of ancient and medieval warfare”, for instance, by “placing Belgian women and children at the head of their advancing armies”<sup>412</sup> and trying to persuade Turkey, a “barbarous country [...] attempting to make a civilized warfare and treat their Christian enemies with decency and kindness [...] to revert to barbarism”.<sup>413</sup> Morgenthau was certain that had the Germans not interfered constantly, the Turks would have behaved decently. He mentions how during his efforts to escort out of Constantinople the foreign residents, Von Bronssart, the German Chief of Staff interfered with his work.<sup>414</sup> The Germans insisted that the Turks should not show ‘any leniency’ towards the enemy aliens. Morgenthau, in his attempt to persuade Talaat, to save the enemy aliens of Turkey, reminded him that “the Germans really care nothing for Turkey”<sup>415</sup> and Talaat acknowledged that the Germans treated the Turks ‘with disdain’.<sup>416</sup> The Germans had the sympathy of Bedri Bey, a member of the CUP, who had aspirations to get a place in the Cabinet of the C.U.P. He hated foreigners and ‘in his eyes Turkey was the land exclusively of the Turks’.<sup>417</sup> The pledges Morgenthau managed to get from Talaat and Enver were not enough, as Bedri Bey, frequently disregarded them. So, Morgenthau himself had to make sure that the orders were indeed followed.<sup>418</sup> After Morgenthau’s great diplomatic efforts against the Germans’ will and Bedri Bey’s assistance, the British, French, Serbian and other Christian civilians were successfully transported out of Turkey.

Wandel, the Danish diplomat in Turkey from 1914 to 1925, also deals repeatedly in his reports with the ‘German complicity’.<sup>419</sup> Under the organization *Teskilat-i Mesture* (the ‘Concealed Organization’) Germany contributed to the budget of the Special Organization.<sup>420</sup>

In a book published by the Oxford University Press that includes the communications of the Greek Consuls and Ambassador in Turkey we read: “One who investigates with some attention the second period of the persecutions, from its very start, discovers in its every manifestation German participation and activity. The Turk is a connoisseur in crime; he can kill, he can debauch,

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<sup>412</sup> Morgenthau 1926, *supra* note 11, 132.

<sup>413</sup> Morgenthau 1926, *supra* note 11, 147.

<sup>414</sup> Morgenthau 1926, *supra* note 11, 148.

<sup>415</sup> Morgenthau 1926, *supra* note 11, 143.

<sup>416</sup> Morgenthau 1926, *supra* note 11, 145.

<sup>417</sup> Morgenthau 1926, *supra* note 11, 133.

<sup>418</sup> Morgenthau 1926, *supra* note 11, 149.

<sup>419</sup> Bjørnlund 2006, *supra* note 96, 214.

<sup>420</sup> Donef 2011, *supra* note 134, 183.

but he is incapable of formulating a really scientific system by which the foundations of a nation may be undermined, and under which justificatory reasons for his acts may be found. His cunning does not reach such a point of inventiveness as that exhibited during this period. Even in the persecutions of 1913-1914, the methods of which evidenced the guilt of the Ottoman Government, the German activity appears timidly operative behind the scenes, and although Germany was apparently at that time acting in order to forward the Young Turks schemes, which it thus flattered and adopted, it was, as a matter of fact, working in its own behalf.” The document also affirms that, the German General Liman von Sanders is responsible for the atrocities committed in the town of Cydonia, a city with a population of 30.000 people.<sup>421</sup>

A newspaper article of 1919 reported that the German General Liman von Sanders, was in command of the Turkish forces, which were operating under the direction of Germany and that he was responsible for sanctioning Turkish atrocities against Greeks and Armenians.<sup>422</sup> Otto Liman von Sanders, ordered in April 1917 the “evacuation” of the Greeks from the Ayvalik region, estimated to amount around 12.000-20.000 people.<sup>423</sup> The German Chief Commander at Istanbul, General Fritz Bronsart von Schellendorf, signed a similar deportation order.<sup>424</sup>

Another newspaper article from 1918 included the testimony of a Greek survivor from Trebizond who also confirmed the assistance of Germany to Turkey during the perpetration of the mass atrocity crimes.<sup>425</sup>

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<sup>421</sup> The massacres and atrocities during the Greek genocide were fully reported by the Greek Consuls and Ambassador in Turkey, but these documents were suppressed during the period King Constantine was in power in Greece. During the governance of Venizelos, the documents were released and included in a book by the Oxford University Press. The above excerpt is from the introduction of this book. “16 Jun 1918: Turkish cruelty bared by Greeks, New York Times” *Greek Genocide Resource Center* (available at <http://greek-genocide.net/index.php/bibliography/newspapers/134-16-jun-1918-turkish-cruelty-bared-by-greeks-new-york-times>): The New York Times, TURKISH CRUELTY BARED BY GREEKS; Atrocities Like Those Against Armenians Revealed in Documents Translated for Greeks Here, available at: <http://query.nytimes.com/gst/abstract.html?res=9C0CE3DF173EE433A25755C1A9609C946996D6CF&legacy=true>).

<sup>422</sup> “15 Mar 1919: First Hun Held for Atrocities, The Evening Independent”, *Greek Genocide Resource Center* (available at <http://greek-genocide.net/index.php/bibliography/newspapers/199-15-mar-1919-first-hun-held-for-atrocities>).

<sup>423</sup> Hofmann 2011, *supra* note 12, 58.

<sup>424</sup> Hofmann 2011, *supra* note 12, 59.

<sup>425</sup> The following are reported in the newspaper article: ‘NEW YORK. DEC 31. - At least 1,000,000 Greeks, men, women and children have perished as the result of organised massacres and deportations by the ‘Turco-Teutons’ in Asiatic Turkey, according to a statement by Lazarus George Macrides, son of a leading merchant of Trebizond, made public through the Armenian and Syrian relief committee here

Germany had knowledge of Turkey's genocidal intent and of the mass atrocity crimes being committed against its ethnic and religious minorities, as the communications of the German Consuls with Berlin demonstrate. The acts committed by the C.U.P. and the Kemalists, with the assistance of the German officers and the German state, constitute mass atrocity crimes. Had Germany perpetrated them itself, they would constitute internationally wrongful acts. Therefore, it can be argued that Germany is internationally responsible for assisting Turkey in the perpetration of genocide against its ethnic and religious minorities.

#### **6.4. Establishing admissibility of the case to the ICJ**

The International Court of Justice is the relevant international institution to provide an answer on whether the Genocide Convention has a retroactive character and whether genocide was committed by examining the facts. With regard to the first issue, there are strong indications that indeed, the Genocide Convention can be applied retroactively, as discussed in chapter 2.1.2. The ILC on its commentaries on the draft articles on Responsibility of States for Internationally Wrongful Acts, underscored the retroactive character of the Genocide Convention regarding the obligation to prosecute: "The intertemporal principle does not apply to the Convention, which according to its article I is declaratory. Thus, the obligation to prosecute relates to genocide

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today. Macrides who recently arrived here, says he was one of a party of 2,400 Greeks which was rescued by the Russian fleet that bombarded the town of Ordou late last August and took the refugees aboard. He had been taken to Ordou, he said, when the Turks raided Trebizond and seized his father's store along with those of other Greek merchants. "Those of us who were between the ages of 18 and 60 were drafted into the Turkish army," said Macrides. "Our women and children and the older men were placed temporarily in homes and orphanages until the opportunity offered to dispose of them in the approved Turco-Teuton fashion, which in this instance turned out to be by wholesale drowning." The unfortunate survivors of deportations were towed out for several miles into the Black sea and then calmly dumped overboard just like so much garbage. None of them survived. German efficiency has simply organised the natural brutality of the Turk and made it many times more effective than ever before. I should think that at the most conservative estimate at least 1,000,000 of my fellow countrymen have perished miserably through the organised cruelty of this Turco-Teutonic alliance. The only hope of the future lies in America." "1 Jan 1918: 1,000,000 Greeks Are Put To Death By Turco-Teuton Forces, The Washington Post", *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/bibliography/newspapers/132-1-jan-1918-1-000-000-greeks-are-put-to-death-by-turko-teuton-forces>).

whenever committed”.<sup>426</sup> The ICJ also suggested that the Genocide Convention has a retroactive character,<sup>427</sup> but it did not opinion explicitly on the matter.

The UN Charter provides in its article 96 that: “The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal issue”.<sup>428</sup> However, these are not legally binding.<sup>429</sup> The retroactivity of the Genocide Convention could be established through an advisory opinion on the matter by the ICJ. The General Assembly could submit for this reason the request to the ICJ.<sup>430</sup>

With regard to the second issue, paragraph 1 of Article 93 of the Charter of the United Nations states that: “All members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice”.<sup>431</sup> Thus, Turkey and Greece, by being UN members are automatically parties to the Statute of the Court.

Both Greece and Turkey are also members of the Genocide Convention.<sup>432</sup> Article I of the Genocide Convention states that: “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish”.

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<sup>426</sup> ILC draft articles on Responsibility of States for Internationally Wrongful Acts, Commentary on Article 15: *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, Preliminary Objections, ICJ, p. 617, para. 34.

<sup>427</sup> See, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, Preliminary Objections, Judgment, I. C. J. Reports 1996, p. 595, Article 34.

<sup>428</sup> UN Charter article 96, para. 1; Also, Article 65 of the Statute of the ICJ.

<sup>429</sup> However, there are exceptions to this, as some advisory opinions are to be accepted as binding by the parties, for example, the General Convention on Privileges and Immunities of the United Nations, 13 February 1946, in: Lori Fisler Damrosch, Luis Henkin, Sean D. Murphy, Hans Smit, *International Law, Cases and Materials*, Fifth Edition, 2009, 625.

<sup>430</sup> Zayas, on his short paper, proposes this as a solution too and suggests that Greece, or any other state party to the Genocide Convention, submit a request to the General Assembly under Article VIII of the Genocide Convention ‘to take such action under the Charter of the United Nations as they consider appropriate.’ Zayas 2011, *supra* note 31, 312.

<sup>431</sup> UN Charter, Article 93(1).

<sup>432</sup> Greece ratified the Convention on 8 December 1954 and Turkey acceded to the Convention on 31 July 1950. ICRC, *Treaties, States Parties and Commentaries, Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, available at [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp\\_viewStates=XPages\\_NORMStatesParties&xp\\_treatySelected=357#panelReservation](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=357#panelReservation).

In a most unlikely scenario, the resolution on the question of the perpetration of genocide could be provided in a contentious case under the jurisdiction of the ICJ.<sup>433</sup> First case scenario would be Greece submitting an application to the ICJ pursuant to Article 36, paragraph 1 of the ICJ Statute, instituting legal proceedings against Turkey with a request for a resolution of the dispute pursuant to the *compromissory clause* in Article IX of the Genocide Convention. The Court could establish jurisdiction in this case, as the parties provided for consent by prior agreement expressed in the *compromissory clause*: ‘Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.’<sup>434</sup>

Reciprocity of the parties should also be established in such a case. In a case, pursuant to Article 36, paragraph 1, *reciprocity* can be found in the obligations of the parties under the Genocide Convention.<sup>435</sup> Such obligations can be found in the preamble of the Convention: “Being convinced that, in order to liberate mankind from such an odious scourge, *international co-operation is required*”, in its Article 1: “The Contracting Parties confirm that genocide [...] is a crime [...] *which they undertake to prevent and to punish,*’ and in Article V: ‘The Contracting Parties *undertake* [...] in particular, *to provide effective penalties* for persons guilty of genocide or of any of the other acts enumerated in article III”.

The issue is indeed a ‘legal dispute’, the necessary requirement to establish jurisdiction under Article 36, paragraph 2. However, jurisdiction cannot be established pursuant to Article 36, paragraph 2, because, although Greece did recognize on January 14, 2015 the jurisdiction of the Court as compulsory,<sup>436</sup> there has not been yet an acceptance of the compulsory jurisdiction of the Court by Turkey.

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<sup>433</sup> For a short presentation of the possible ways of establishing the Court’s jurisdiction, see: Basis of the Court’s jurisdiction, International Court of Justice, (available at: <http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=2>).

<sup>434</sup> Genocide Convention, *supra* note 28, art. IX.

<sup>435</sup> Lori Fisler Damrosch, Luis Henkin, Sean D. Murphy, Hans Smit, International Law, Cases and Materials, Fifth Edition, 2009, p. 587.

<sup>436</sup> Declarations Recognizing the Jurisdiction of the Court as Compulsory, Greece, ICJ, (available at: <http://www.icj-cij.org/jurisdiction/?p1=5&p2=1&p3=3&code=GR>).

Another possible scenario to establish the Court's jurisdiction could be again under Article 36, paragraph 1, pursuant to a special agreement this time, between Greece and Turkey. This could be possible if Greece seeks to establish the Court's jurisdiction upon consent to be given by Turkey specifically for this case.

## 7. The main reasons behind the genocides

New social groups in the sector of trade, craft and industry and a new social labor class will develop during the 19<sup>th</sup> century in Turkey, consisting mostly of Greeks.<sup>437</sup> In 1912, from the 18.063 businesses in the Ottoman empire the Greeks owned 46%, the Armenians 23%, and the Muslims only 15%. In 1914, 49% from the 6.507 industries and craft industries were owned by the Greeks and 46% of the bankers were also Greeks. The creation of the Greek state in 1821, enhanced the procedures of self-determination of the Greeks in Asia Minor, and the understanding of a shared Greek identity, as a product of the evolution of a shared Roman ancestry.<sup>438</sup>

The ethnic cleansing in the Aegean littoral was originally organized with the purpose to establish a Turkish national economy.<sup>439</sup> Van der Zee stated that the region was sparsely populated and there was enough place for the *muhadjir* settlers.<sup>440</sup> In 1916 the Special Organization commences its genocidal crimes in Pontus. From the communications of Pallavicini, the Austro-Hungarian Ambassador in Turkey, we read: "The deportations of the Greeks are not dictated by military reasons but are aiming at ill political ends".<sup>441</sup> Kwiatkowski, the Austrian consul in Samsun, was of the same opinion. In the communication with the Austrian Consul it is stated that: "the Turkish voracity for the rich Greek property" was among the reasons behind the ethnic cleansing.<sup>442</sup>

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<sup>437</sup> Agtzidis 2015, *supra* note 64, 120-122.

<sup>438</sup> Agtzidis 2015, *supra* note 64, 164.

<sup>439</sup> Bjørnlund 2011, *supra* note 18, 148: Caglar Keyder, 'The Consequences of the Exchange of Populations for Turkey,' in Hirsschon, ed., *Crossing the Aegean*, 45.

<sup>440</sup> Bjørnlund 2011, *supra* note 18, 148: UM, 2-0355, 'Konstantinopel/Istanbul, diplomatisk repræsentation,' 'Noter og indberetninger om den politiske udvikling, 1914-1922,' 'Verdenskrigen. Reporter fra Smyrna. Nov. 1914-Marts 1916,' 25/6 1914.

<sup>441</sup> Agtzidis 2015, 34 (my translation).

<sup>442</sup> Agtzidis 2015, 35 (my translation). The communication is saved from unpublished official Austro-Hungarian documents of the Austrian Consul Kwiatkowski.

The *New York Times* reported in 4 December 1922: “The great cultured nations of Western Europe which watch calmly the annihilation of some of the oldest stocks of European culture may be calm because they think they will get a bigger share of the business with resident business men out of the way. [...] [T]he killing off of the races that have done the business hitherto will merely widen the field for [*them*]”.<sup>443</sup>

When the Ecumenical Patriarch Joachim III complained about the ‘murders and violence’ in Kydonies (Ayvalik), the Ottoman Commander in Chief Mahmut Şevket in his respond protested against the Greek associations in Asia Minor: “All agree about this. I speak about the societies and *syllogoi*. No, we cannot stand this situation any longer. We will break your heads; we shall annihilate all of you. Either we shall be lost or you!”<sup>444</sup>

Talaat stated in an interview, that “the cleansure [*of*] the Hellenes from the coast opposite the [*Greek*] islands” was taken with the purpose to minimize the ability of the Greeks to influence a future conflict.<sup>445</sup> The Austro-Hungarian consul in Samsun, Ernst von Kwiatkowski, reported to the foreign minister of Germany that the Anatolian Greeks have been “exterminated (*ausgerottet werden*)”, under the accusation of conducting military operations.<sup>446</sup>

The fanaticism during the reign of Sultan Abdul Hamid II was among the reasons that triggered the conflict.<sup>447</sup> The *Ittihad* Central Committee’s member Abdul Resit stated in the 1912 Rumeli Hisar *Ittihad* club: “If Europe attacks in order to wipe us out, then we will be forced to carry out such a plan of revenge against our subject Christian peoples, that the Europeans will be stupefied and unable to take even a single step against us”.<sup>448</sup> In 6 June 1915 Talaat informed the German embassy in Istanbul that his government intended to: “use the opportunity of the World War thoroughly to eliminate their internal enemies without being disturbed by diplomatic interventions from abroad”.<sup>449</sup>

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<sup>443</sup> Travis 2010, 292: *The Statesmanship of Extermination (Editorial)*, N.Y. Times, December 4, 1922, at 16.

<sup>444</sup> Hofmann 2011, *supra* note 12, 44.

<sup>445</sup> Naimark 2001, *supra* note 9, 44.

<sup>446</sup> Travis 2010, *supra* note 153, 286.

<sup>447</sup> Zayas, *supra* note 24, 24.

<sup>448</sup> Hofmann 2011, *supra* note 12, 46.

<sup>449</sup> Hofmann 2011, *supra* note 12, 49.

Gustave Meyer, the French Vice-consul at Diyarbakir, reported in 9 February 1895: “The state of affairs affects all Christians regardless of race, be they Armenian, Chaldean, Syrian or Greek. It is the result of religious hatred [...]”.<sup>450</sup> Carmichael asserts that religious fanaticism had its share on the perpetration of the genocide, because the Christian, Jewish and Islamic religions, with their religion books full of violence scenes must have ‘prepared the people to expect violence’ and when massacred helped them to reconcile with their perpetrators. She provides this example of female participation in the 1890’s Armenian massacres, provided by the German missionary, Dr. Julius Richter: “The Turkish women stimulated their heroes by raising a guttural shriek of their war cry, the *Zilghit*, and deafening the hopeless despair of their victims by singing their nuptial songs. A kind of wild cannibal humour seized the crowd [...] the savage crew did not even spare the children”.<sup>451</sup>

Ambassador Morgenthau insisted that a well-planned state policy was behind the genocides. He reported that: “Undoubtedly religious fanaticism was an impelling motive with the Turkish and Kurdish rabble who slew Armenians as a service to Allah, but *the men who really conceived the crime had no such motive*. Practically all of them were atheists, with no more respect for Mohammedanism than for Christianity, and with them *the one motive was cold-blooded, calculating state policy*”.<sup>452</sup> (emphasis added).

## 8. Recognition issues

The primary responsibility for raising genocide awareness lies in the hands of the victim states and the descendants of the survivors. Genocide awareness has not been raised in Greece with the same fervor as in Armenia. The Greek politicians never promoted nor included the Greek genocide in their agenda. The 1940-1944 occupation by the Axis and the civil war in Greece, compelled the Greek politicians to create a strong army, where victimization did not have a place. The descendants of the survivors of the Greek genocide did not handle the genocides the way the Armenians did either. The organization of the Pontian Greeks only promoted a Pontian genocide.

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<sup>450</sup> Hofmann 2011, *supra* note 12, 40.

<sup>451</sup> Carmichael 2007, 364.

<sup>452</sup> Cathie Carmichael, Was Religion Important in the Destruction of Ancient Communities in the Balkans, Anatolia and Black Sea Regions, c. 1870–1923?, *Southeast, European and Black Sea Studies*, 7:3, 2007, 366; Morgenthau, *supra* note 11, 322-323.

This hindered the progress of the recognition of the Greek genocide.<sup>453</sup> In 1938, when Kemal died, Ioannis Metaxas, the Greek dictator, re-named a famous street in Thessaloniki after his name, Kemal Ataturk. The street will take its previous name after the *pogrom* of 1955 in Istanbul.<sup>454</sup>

Greece did not provide to the refugees the arranged reparations either. Under the adopted Greek law 2280/1949, the only refugees in Greece arriving from Russia that were compensated for the lost property during the population exchange, were the refugees that arrived until 1937. The ones that arrived later never received the arranged compensation by the Greek state, in contravention to the Treaty of Lausanne.<sup>455</sup> Under the adopted laws 2967/1954 and 547/1970 it was initiated a process where the exchanged properties were forfeited to the municipalities or for the construction of schools and churches, although many refugees or their associations had not yet been compensated.<sup>456</sup>

Turkey has been considered a U.S. ally, among others in the containment of communism, a reason for the U.S. denial of the genocides.<sup>457</sup> The Armenian approach towards the Greek and Assyrian genocides has been another hindrance in the process of acknowledgement. For instance, from the 1985 judgement of the Permanent Peoples' Tribunal on the Armenian Genocide, the 1987 book chapter by Marjories Housepian Dobkin, and the 1995 Vahakn Dadrian book, none mentions the Greek and Assyrian genocides. The denials of the Assyrian and Greek cases continued until 2010.<sup>458</sup> Rafter, in her analysis on the criminology of genocide, presents the Armenian genocide, but only mentions shortly the Greek deportations with no reference to the Assyrian genocide.<sup>459</sup> It is necessary for the scholars to familiarize with the material and rediscover the history behind the events for a holistic understanding of the genocidal events to be possible.

The 1985 UN Sub-Commission on Prevention of Discrimination and Protection of Minorities' report and the 1987 European Parliament (reaffirmed 2004) resolution acknowledged

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<sup>453</sup> Hofmann, Bjørnlund & Meichanetsidis 2011, *supra* note 20, 8-9.

<sup>454</sup> Agtzidis 2015, *supra* note 64, 148.

<sup>455</sup> Agtzidis 2015, *supra* note 64, 250.

<sup>456</sup> Agtzidis 2015, *supra* note 64, 251.

<sup>457</sup> Robert J. Pranger, *U.S. Policy Obstacles in Recognizing the Genocides of Christian Minorities in the Late Ottoman Empire: Challenges and Opportunities*, in: George N. Shirinian (ed.), *The Asia Minor Catastrophe and the Ottoman Greek Genocide, Essays on Asia Minor, Pontos, and Eastern Thrace, 1912-1923*, 2012, 275.

<sup>458</sup> Travis 2013, *supra* note 4, 174-175.

<sup>459</sup> The only to the Greek genocide is on page 196: '[...] its denials of the Armenian (and Greek) deportations [...]'].

the Armenian genocide but not the Assyrian and Greek.<sup>460</sup> The first official recognition of the genocides in Anatolia as a whole was on the December 16, 2007 resolution of the International Genocide Scholars Association (IGS): “[...] it is the conviction of the International Association of Genocide Scholars that the Ottoman campaign against Christian minorities of the Empire between 1914 and 1923 constituted a genocide against Armenians, Assyrians, and Pontian and Anatolian Greeks”.<sup>461</sup> On the press release, it was stated that over 80% of IGS members supported the resolution and IGS former President, Gregory Stanton, considered the resolution as “one more repudiation by the world’s leading genocide scholars of the Turkish government’s ninety-year denial of the Ottoman Empire’s genocides against its Christian populations, including Assyrians, Greeks, and Armenians. The history of these genocides is clear, and there is no more excuse for the current Turkish government, which did not itself commit the crimes, to deny the facts. [...]”.<sup>462</sup> Professor Israel Charney, also former President of the IGS has stated that: “It is believed that in Turkey between 1913 and 1922, under the successive regimes of the Young Turks and of Mustafa Kemal, more than 3.5 million Armenian, Assyrian and Greek Christians were massacred in a state-organized and state-sponsored campaign of destruction and genocide, aiming at wiping out from the emerging Turkish Republic its native Christian populations. This Christian Holocaust is viewed as the precursor to the Jewish Holocaust in the WWII. To this day, the Turkish government ostensibly denies having committed this genocide”.<sup>463</sup>

## 9. “Never again”

According to the report on the *Protection of Civilians in the Non-International Armed Conflict in Iraq*, published by the Human Rights Office of United Nations Assistance Mission for Iraq (UNAMI) in cooperation with Office of the United Nations High Commissioner for Human Rights (OHCHR), examining the period between 1 May to 31 October, numerous violations of

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<sup>460</sup> Travis 2013, *supra* note 4, 172.

<sup>461</sup> Charney 2011, *supra* note 236, 33.

<sup>462</sup> “INTERNATIONAL GENOCIDE SCHOLARS ASSOCIATION OFFICIALLY RECOGNIZES ASSYRIAN, GREEK GENOCIDES”, Press Release, December 16, 2007 *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/recognition/recognitions/145-i-a-g-s-press-release>).

<sup>463</sup> “Notes on the Genocide of Christians of the Ottoman Empire”, *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/overview/recognition/recognitions/144-notes-on-the-genocide-of-christians-of-the-ottoman-empire>).

international human rights and international humanitarian law have occurred by ISIL in the territory of Iraq. The targeted or indiscriminate attacks may amount to war crimes, crimes against humanity, and possibly genocide. ISIL has been attacking civilians and destroying their homes, because they belonged to members of groups targeted by ISIL.<sup>464</sup> The conflict in Iraq has caused massive displacement of civilians. Between January 2014 and 29 September 2015, around 3 million individuals have been internally displaced in Iraq.<sup>465</sup> The internally displaced persons' access to basic needs, such as accommodation, healthcare, clean water and education has been limited.<sup>466</sup> Among the crimes committed by ISIL, are the execution and abductions of civilians.<sup>467</sup> ISIL is holding in slavery around 3.500 persons, mostly Yazidi women and children and from other religious and ethnic minorities.<sup>468</sup> Mass graves have been discovered, which allegedly contain civilians and ISF members killed by ISIL.<sup>469</sup> European Christians and Israeli Jews have died in ISIL terror attacks in Turkey and threats against Christian churches on social media in Turkey have become more intense. Assyrian Christians are once again fleeing Turkey because of terror.<sup>470</sup>

There is strong evidence that ISIL is committing genocide not only to Shia but also to Yazidis and Christians and that genocide is being carried out today once again but the international

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<sup>464</sup> *Report on the Protection of Civilians in the Non-International Armed Conflict in Iraq, 1 May – 31 October 2015*: Human Rights Office of United Nations Assistance Mission for Iraq (UNAMI) in cooperation with Office of the United Nations High Commissioner for Human Rights (OHCHR), summary i.

<sup>465</sup> *Report on the Protection of Civilians in the Non-International Armed Conflict in Iraq, 1 May – 31 October 2015*: Human Rights Office of United Nations Assistance Mission for Iraq (UNAMI) in cooperation with Office of the United Nations High Commissioner for Human Rights (OHCHR), 6.

<sup>466</sup> *Report on the Protection of Civilians in the Non-International Armed Conflict in Iraq, 1 May – 31 October 2015*: Human Rights Office of United Nations Assistance Mission for Iraq (UNAMI) in cooperation with Office of the United Nations High Commissioner for Human Rights (OHCHR), 7.

<sup>467</sup> *Report on the Protection of Civilians in the Non-International Armed Conflict in Iraq, 1 May – 31 October 2015*: Human Rights Office of United Nations Assistance Mission for Iraq (UNAMI) in cooperation with Office of the United Nations High Commissioner for Human Rights (OHCHR), 8.

<sup>468</sup> *Report on the Protection of Civilians in the Non-International Armed Conflict in Iraq, 1 May – 31 October 2015*: Human Rights Office of United Nations Assistance Mission for Iraq (UNAMI) in cooperation with Office of the United Nations High Commissioner for Human Rights (OHCHR), p. 18.

<sup>469</sup> *Report on the Protection of Civilians in the Non-International Armed Conflict in Iraq, 1 May – 31 October 2015*: Human Rights Office of United Nations Assistance Mission for Iraq (UNAMI) in cooperation with Office of the United Nations High Commissioner for Human Rights (OHCHR), p. 30.

<sup>470</sup> Uzay Bulut and Kasim Cindemir, "Christians, Jews in Turkey Growing More Fearful of Islamic Extremism," *VOA News*, September 25, 2016, (available at [http://www.voanews.com/a/christian-jews-in-turkey-growing-more-fearful/3524266.html?utm\\_content=socialflow&utm\\_campaign=en&utm\\_source=voa\\_news&utm\\_medium=twitter](http://www.voanews.com/a/christian-jews-in-turkey-growing-more-fearful/3524266.html?utm_content=socialflow&utm_campaign=en&utm_source=voa_news&utm_medium=twitter)).

community hesitates to name it as such.<sup>471</sup> The targeting of civilians in ISIL controlled territory, like Syria and Iraq has once again led to the displacement of ethnic and religious minorities, mostly Yazidis, Christians and Shi'a Muslims.<sup>472</sup> The numbers of individuals in Iraq between 2014 and 2015 being internally displaced reached the 3.206.736.<sup>473</sup> With the purpose of purifying Islam mass atrocities have been committed against the ethnic group of Yazidis, including forcible conversion to Islam, thousands of men being killed, and widespread and systematic enslavement, rape and sexual slavery against the women.<sup>474</sup> The 15 June, 2016 the UN Human Rights Council reported of an ongoing genocide against the Yazidis by ISIS.<sup>475</sup>

## 10. From inaction to R2P

The international community was aware of the ongoing slaughter of the minorities in Anatolia. The United States President Woodrow Wilson said regarding the Anatolian Greeks: "I am in hearty sympathy with every just effort being made by the people of the United States to alleviate the terrible sufferings of the Greeks of Asia Minor. None have suffered more or more unjustly than they." <sup>476</sup>

James Bryce, the British ambassador to the US also reported that there is "no record of massacres more unprovoked, more widespread or more terrible than those perpetrated by the Turkish government upon the Christians of Anatolia and Armenia in 1915" and the Christians of "the Nestorian and Assyro-Chaldean churches".<sup>477</sup>

*The New York Times*, reported in a 10<sup>th</sup> July, 1921 article the deaths of the Pontian Greeks: "Since the beginning of the war the Turks have exterminated by massacres, deportations and through famine more than 350,000 Greeks of the Pont (Pontus, district of Asia Minor bordering

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<sup>471</sup> Badar 2016, *supra* note 262, 365.

<sup>472</sup> Badar 2016, *supra* note 262, 363.

<sup>473</sup> *Report on the Protection of Civilians in the Non-International Armed Conflict in Iraq: 1 May – 31 October 2015*, Human Rights Office of United Nations Assistance Mission for Iraq (UNAMI) in cooperation with Office of the United Nations High Commissioner for Human Rights (OHCHR)

<sup>474</sup> Badar 2016, *supra* note 262, 364.

<sup>475</sup> 'They came to destroy': ISIS Crimes Against the Yazidis, Human Rights Council, 15 June 2016.

<sup>476</sup> "Quotes," *Greek Genocide Resource Center: NER, Speaker's Handbook of American Committee for the Relief of the Near East (Formerly the Committee for Armenian and Syrian Relief)* (New York: NER, c. 1919), p. 9. (available in: <http://greek-genocide.net/index.php/quotes/quotes>).

<sup>477</sup> Travis 2013, *supra* note 4, 177.

on the Black Sea) and as many other Greeks from the interior of Asia Minor. *This work of extermination of an entire peaceful population is pursued right before the eyes of the civilized world*".<sup>478</sup>

In June 1918, the German Ambassador Metternich reported that the annihilation of the Greeks would follow that of the Armenians as soon as Greece would "turn against Turkey".<sup>479</sup> Ambassador Morgenthau reported that the Ottomans initiated a "devilish scheme to annihilate the Armenian, Greek and Syrian Christians of Turkey" and that they carried out "a violent onslaught on the whole [Greek] race".<sup>480</sup>

The British *charge d'affaires* in Athens reported in July 1922 that "massacres and deportations were threatening with extermination entire Christian population of regions under Kemalists' occupation".<sup>481</sup>

Carl Ellis Wandel, the Danish diplomat in Constantinople from 1914 to 1925, denounced the CUP's mass murder policy against Arab, Armenians and Greeks.<sup>482</sup> H. F. Ulrichsen, his secretary, argued that the CUP and Kemalist "cleansing policy ['Udrensningspolitik'] [...] had as its aim the removal of all the foreign bodies -Christians and Jews- [...]".<sup>483</sup> The British diplomat Sir Rendel reported that: "In no way was there any distinction in the treatment as between Greeks and Armenians [...]".<sup>484</sup>

With regard to the Smyrna holocaust there were 27 battle ships of the Allied Navy outside the harbor of Smyrna. A French source described the massacres in Smyrna: "[...] The most terrible of all is that this orgy of blood, disaster and various other crimes took place under the eyes,

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<sup>478</sup> "700.000 Greeks victims of Turks", *Greek Genocide Resource Center* (available at: <http://greek-genocide.net/index.php/bibliography/newspapers/141-10-july-1921-700-000-greeks-victims-of-turks-new-york-times>): "700.000 Greeks victims of Turks; Charge made by Washington Legation, which puts dead at that figure. Killings and deportations, These, with famine, said to have been responsible for the tragedy in Asia Minor", *The New York Times* (available at: [http://query.nytimes.com/gst/abstract.html?res=9D07EFDF173EEE3ABC4852DFB166838A639EDE&le\\_gacy=true](http://query.nytimes.com/gst/abstract.html?res=9D07EFDF173EEE3ABC4852DFB166838A639EDE&le_gacy=true)).

<sup>479</sup> Hofmann 2011, *supra* note 12, 64: *Der Völkermord an den Armeniern vor Gericht: Der Prozess Talaat Pascha*, third edition, Tessa Hofmann, ed. (Göttingen: Gesellschaft für bedrohte Völker, 1985, 61.

<sup>480</sup> Travis 2013, *supra* note 4, 178.

<sup>481</sup> Travis 2013, *supra* note 4, 179.

<sup>482</sup> Bjørnlund 2009, *supra* note 13, 34; Bjørnlund 2006, *supra* note 96, 198.

<sup>483</sup> Bjørnlund 2009, *supra* note 13, 35.

<sup>484</sup> Hofmann 2011, *supra* note 12, 76-77: Rendel, 'Memorandum,' 4-5.

frequently the spiteful smiles and even the cheers of the crews of the foreign war ships, or the official representatives of the Christian powers [...] the French consul, being ‘invited to dinner, [...] excused himself for his delay of a few minutes with these terrible words: ‘Because’ he said, ‘the motor-launch in which I was on my way from the French war ship hit continuously upon the floating corpses of Greek women.’ The American Consul [*George Horton*] listening to this cynical excuse, spited himself for being a human being. [...]”<sup>485</sup>

Faltaitis, the correspondent sent in Smyrna, reported on the holocaust of Smyrna: “A US warship named *Simpson* brought the message of the great tragedy [*in Athens*]. Everything I had predicted comes true in an even more horrendous and unbelievable way. One of the survivors [*from Smyrna*] in the warship, the Slav named Trivoulic, tells me:

- *This moment we’re talking, there must be more than 30.000 corpses of Christians in Smyrna. All the city is under fire. The Turks set fire everywhere. [...] all the suburbs are on fire, and all the people are gathered in the harbor while being slaughtered by the Turks.*

- *And what about the Christian warships of the great powers? Aren’t they protecting the Christians?*

- *No ship fires back [...]”*<sup>486</sup>

An appeal to the German Foreign Office by a German national in Istanbul on February 1918 provides proof that Germany did have knowledge of the deportations of the Pontian Greeks: “At this occasion I would like to draw your attention to the Turkish actions against the Greeks residing the Black Sea. The Turks proceed in the same way as against the Armenians. Killings and deportation on land over distances of hundreds of kilometers [...] In the Eskisehir such convoys had to camp for days in the most grim coldness. It is the most genuine Christian genocide. [...]”<sup>487</sup>

Abram I. Elkus, successor to the U.S. Ambassador Morgenthau, urged the Danish diplomat, Wandel, to protest against the Pontians’ persecutions. Wandel informed the Danish

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<sup>485</sup> Hofmann 2011, *supra* note 12, 88: Quoted from Χρήστος Εμ. Αγγελομάτης, *Χρονικόν Μεγάλης Τραγωδίας: Το έπος της Μικράς Ασίας*, Athens, Βιβλιοπωλείον της Εστίας, 1963, 243-244, 248-249.

<sup>486</sup> Agtzidis 2015, *supra* note 64, 102-103 (my translation).

<sup>487</sup> Hofmann 2011, *supra* note 12, 62: *Die Armenische Frage und der Genozid an den Armeniern in der Türkei (1913-1919): Dokumente aus dem Politischen Archiv des Deutschen Auswärtigen Amts*, Yerevan: Academy of Sciences of the Republic of Armenia, 2004, 479.

Foreign Ministry but no action was taken and neutrality was sustained.<sup>488</sup> Wandel stated in July 1917 that: “[t]he inborn hatred that the Turks since old times have nurtured against the Greeks, something which they in times of peace only hide it to some extent for political reasons, will surely also break out the day that a state of war is declared between the two countries, which will ensure that the efforts of a neutral legation to protect Greek interests here will be completely hopeless.”<sup>489</sup>

Lewis Einstein, the U.S. diplomat at Istanbul, reported in July 28, 1915 the persecutions of the Greeks of Dardanelles and the inaction of the Greek government: “[...] At the Patriarchate, they are desperate and know not where to turn, for the Gounaris Cabinet at Athens seems more interested in thwarting Venizelos than in the welfare of its nationals here, and is said to have suppressed all the reports from Turkey about Greek persecution”.<sup>490</sup>

Early examples of treaties about humanitarian intervention for the protection of ethnic and religious minorities is for example, the 1829 Treaty of Peace between Russia and Turkey, signed at Adrianople and has as one of its primary goals the protection of the ethnic and religious minorities living in the empire.<sup>491</sup> The treaty of Adrianople and other Treaties like this in the 19<sup>th</sup> century were an example of early humanitarian intervention but in some occasions, there was this resort to the right of intervention to justify military intervention.<sup>492</sup>

Dadrian believes that the Armenian genocide, is an example of the difficulties in uniting states for effective humanitarian intervention and that: “[...] international intervention is unlikely to be successful unless it is either committed to an overriding goal strong enough to counter the entrenched culture of the offending nation state, or is carried out by member-states who are acting to protect their own nationals subject to the offending state’s genocidal acts”.<sup>493</sup> The 2014 and ongoing genocide of the Yazidis, proves that Dadrian was right.

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<sup>488</sup> Bjørnlund 2006, *supra* note 96, 199.

<sup>489</sup> Bjørnlund 2011, *supra* note 18, 176-177: UM, 2-0355, ‘Konstantinopel/Istanbul, diplomatisk repræsentation,’ ‘Kopibog 1914-1921, 1916 03 06 – 1919 09 22’ nr. 137, 7/7 1917.

<sup>490</sup> Bjørnlund 2012, *supra* note 99, 117.

<sup>491</sup> Treaty of Adrianople, 14 September 1829.

<sup>492</sup> William A. Schabas, *Origins of the legal prohibition of genocide*, in: *Genocide in International Law, The Crime of Crimes*, Book DOI: <http://dx.doi.org/10.1017/CBO9780511575556>, Chapter DOI: <http://dx.doi.org/10.1017/CBO9780511575556.004>, Cambridge University Press, 2000, p. 18.

<sup>493</sup> Dadrian 1989, *supra* note 1, 233.

Rafter, in her research on the criminology of genocide, discovered that along with war, the expectation of impunity is the other factor that is mostly associated with genocides,<sup>494</sup> “the confidence that one can commit genocide without punishment”.<sup>495</sup> The Herero genocide was a precedent to impunity.<sup>496</sup> She suggests that the impunity after the Herero genocide by Germany has probably been detrimental in the Armenian genocide and the Nazi genocide thirty years later.<sup>497</sup>

Dr. Esther Lovejoy’s description of the Smyrna Holocaust, is a reminder of why it is necessary to remain committed on the emerging norm of the Responsibility to Protect: “[...] The Smyrna horror is beyond the conception of the imagination and the power of words. It is a crime for which the whole world is responsible in not having through the civilized ages built up some means to prevent such orders as that of the evacuation of a city and the means with which it was carried out. It is a crime for the world to stand by through a sense of neutrality and permit this outrage against 200.000 women. [...]”.<sup>498</sup>

## Conclusion

As established in this analysis, Turkey has breached its legal obligations towards Greece and Armenia and the whole international community under Article II of the Genocide Convention, committing genocide against its ethnic and religious minorities. Estimations of the Greek death toll during the genocide reach over one million, of the Armenian 1.5 million, and 500.000 of the Syriac Orthodox, Assyrian and Chaldean.<sup>499</sup>

Turkey has an obligation recognize the genocides and provide for reparations for the lives and properties lost. The denial of genocide is the final stage of genocide. The denial of the Turkish government to acknowledge the genocide, is the last stage of the genocide committed.

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<sup>494</sup> Rafter 2016, *supra* note 2, 55.

<sup>495</sup> Rafter 2016, *supra* note 2, 65.

<sup>496</sup> Rafter 2016, *supra* note 2, 62.

<sup>497</sup> Rafter 2016, *supra* note 2, 61.

<sup>498</sup> Lovejoy worked on the American Red Cross. Hofmann 2011, *supra* note 12, 89: ‘Woman pictures Smyrna horrors: Dr. Esther Lovejoy, an eyewitness, tells of terrible scenes on the Quay; she assails neutrality; declares it a crime for the world to lack the means to prevent such outrages,’ *The New York Times*, 9 October 1922, 3.

<sup>499</sup> Hofmann 2012, *supra* note 95, 67.

Political measures have not provided for a solution to the impunity of the genocides until now. As the issue is a legal dispute, legal remedies should be considered, e.g., recognition and reparations. The establishment of an international commission for an examination of the historical records has already been applied in the Armenian case. The *Turkish Armenian Reconciliation Commission* (TARC), assigned the ICTJ to examine the case. An independent legal counsel provided a legal analysis to the ICTJ, concluding that: “the Events, viewed collectively, can thus be said to include all of the elements of the crime of genocide as defined in the Convention, and legal scholars as well as historians, politicians, journalists and other people would be justified in continuing to so describe them”.<sup>500</sup> Nonetheless, it seems that the work of the commission has not assisted in the solution of the dispute.

Turkey cannot continue to evade responsibility for the genocides committed. An official apology issued by the Turkish government is the least Turkey can do for a step towards reconciliation. An example of a state official apology was the US ‘Apology Resolution’ of 1993 to the people of Hawaii, acknowledging ‘the 100<sup>th</sup> anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii’ with the purpose to ‘offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii’.<sup>501</sup> An apology was also offered by the Soviets, to the Poles for the Katyn genocide.<sup>502</sup>

Sano Halo (Euthumia Barutimiadou), a survivor of the genocide and author of the book *‘Not even my name, From a death march in Turkey to a new home in America. A young girl’s true story of genocide and survival,’* said in an interview: ‘The Turkish people owe me a big, really big apology, for taking away from me all my beloved ones. Everything I had. We had our land, our animals, our cows, our chickens, our jobs, but still, they made us die in the road. What they did, to destroy families and their fortunes, was monstrous. I want to remember my family. Otherwise, it would be as if I forget my people. I will never do that’.<sup>503</sup>

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<sup>500</sup> Avedian 2013, *supra* note 350, 84.

<sup>501</sup> ‘Apology Resolution,’ Joint Resolution, One Hundred Third Congress of the United States of America, 1993; Zayas also suggests an apology as a remedy: Zayas, 2011, 340. He provides other examples of states issuing such an apology, i.e. Germany, Austria, and Australia.

<sup>502</sup> Rafter 2016, *supra* note 2, 11.

<sup>503</sup> Agtzidis 2015, *supra* note 64, 71.

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