AN INVITATION TO TRUTH, TRANSPARENCY AND ACCOUNTABILITY: TOWARDS "RESPONSIBLE DIALOGUE" ON THE ARMENIAN ISSUE

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Abstract: *This paper is a thorough, objective and factual review of Alfred de Zayas'*[1] *pamphlet entitled "The Genocide against the Armenians 1915-1923 and the Relevance of the 1948 Genocide Convention". It constitutes a wake up call for those who dwell on subjective historical grivences with a view to serve their present distorted agendas, while at the same time accusing a whole nation without any scientific grounds. This paper is also an answer to them based on solid historical and legal facts while inviting them to truth and responsible dialogue.*

Keywords: *Alfred de Zayas, Armenians, Ottoman.*

Main Aim of the Armenian Organizations is Obtaining Compensation

It is widely known that the primary aim of the Armenian diaspora activists, who militate for the international recognition of the genocide, is to obtain compensation for the properties Ottoman Armenians presumably left behind. The Armenian National Revolutionary Federation has already in 2005 made public that they planned a major shift in their decades-long campaign for international recognition of the Armenian genocide. Giro Manoyan, the spokesman of the Federation's Governing Bureau said that "*genocide recognition alone would not restore historic justice and the international community should now hold Turkey accountable*".[2]

1 Mr. Alfred de Zayas has been an international civil servant working for the United Nations. After retiring, he started teaching international law at the Geneva School of Diplomacy. He seems to be a person devoted to the political aims of the Armenian Diaspora and endeavors to build legal arguments supporting their claims. He has written a pamphlet entitled; "The Genocide against the Armenians 1915-1923 and the Relevance of the 1948 Genocide Convention" which was published by the Armenian Hagazian University in Beirut. Alfred De Zayas had already conveyed the same views and proposals in a Memorandum drafted for the "European Armenian Federation for Justice and Democracy". That document had been circulated during a Conference entitled "Ultimate Crime, Ultimate Challenge" organized in Yerevan (2005) and had been posted on the website of the Armenian Foreign Ministry.

2 http://acikgorus.blogspot.com/2005/06 /dasnak-partisi-ermeni-tehciri-iin.html.

"Manoyan indicated that this will be at the heart of a planned adjustment of the activities Dashnaksutyun' (D) lobbying structures in the United States, Europe and elsewhere in the world. The policy change is in tune with one of the main tenets of D. which have never made secret to get Turkey to not only admit to the genocide but also pay material compensation to Armenia and descendants of genocide victims. Earlier this year (D) accused the U .S. of prodding Turkey to recognize the genocide 'without consequences'.(D) leaders also want Yerevan to keep the door open for future territorial and financial claims to Ankara".

The pamphlet under review and the views contained therein have been commanded by the Armenian National Revolutionary Federation to Mr. Alfred de Zayas with the aim of fabricating legal arguments to back their financial demands. This political pamphlet by Mr. de Zayas contains also some advice to the Armenian Government. Certain chapters of the document aim to distort the wording of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.[3] Furthermore, Mr. de Zayas has somehow chosen to ignore the existence of the 1923 Treaty of Lausanne which terminated the First World War for Turkey as well as of the Treaties of Moscow and Kars which concluded the war between Armenia and Turkey while preparing his work. Throughout, this paper will present, based on objective historical and legal facts the intentions behind all the views put forth in the pamphlet written by Mr. De Zayas.

They think that by exercising international pressure to Turkey, they will be able to force the great majority of Turks to abide and to accept their dogma.

The Armenians are not Willing to Learn the Reasons of the Turkish Refusal to Recognize the Accusation of Genocide

Mr. Alfred de Zayas and the Armenian militants are aware that genocide allegations are rejected by the great majority of the Turks, especially by those whose ancestors have been murdered by the Armenian backstabbers aligning with the occupying powers in Anatolia during and after the First World War.

However, they are not interested to learn the historical and legal reasons behind that refusal. They think that by exercising international pressure to Turkey, they will be able to force the great majority of Turks to abide and to accept their dogma. They believe to retain an immutable historical truth, which will support their claims leading to financial and other rewards.

Bargaining With Turkey in order to Obtain Compensation and Suing the Turkish Republic in American Courts

Some of them are actually in pursuit of finding the ways to bargain with the Turkish authorities in order to obtain financial compensation; as they openly declare that over the years, Armenians have gradually shifted their attention from the recognition of the genocide to the pursuit of legal financial remedies for their alleged losses. This also became clear from a message they tried to transmit to the

3 Hereinafter, "Genocide Convention or 1948 Convention or Convention", 78 U.N.T.S. 277, U.N.G.A. Res. 260, U.N. GAGR, 3.Sess. 179 Plenary. Meeting. At 174, U.N. Doc. A/810 (1948).

Turkish authorities through a Turkish journalist, Ms. Ece Temelkuran, who met them in the U.S..[4] Last but not least, a lawyer -Mr. Mark Geragos- from California, who sued the Turkish State in Californian tribunals, declared to a reporter of the Haber Türk Daily Newspaper, Ms. Daphne Barak on 22 December 2010 in Los Angeles that "*What they wanted from Turkey was money"* and added that*; "give us money and as a nice down payment by handing us over the Ararat (Ağrı) Mountain. This will do the business*".

As in the case of Mr. Geragos, some Californian lawyers of Armenian origin sued the Turkish State in Californian courts for alleged damages done to the Ottoman Armenians during the World War I.[5] Their aim is to obtain from an American district court a judgment in order to receive the compensation payment for the Armenians they represent. Their claims have no validity according to international law, and also due to the U.S. Foreign Sovereign Immunity *Act*, and many other legal reasons, which will not be discussed in this paper at length, do not support their action.

Furthermore, on this subject, one should not fail to add that the Turkish Republic paid the totality of Ottoman depth. This includes the sum of 899.338,09 US dollars paid to the United States in accordance with the American-Turkish Claims Settlement under the Agreement of 24 December 1923 concluded between the Turkish Republic and the United States with a view to cover and compensate the losses of the American citizens. This agreement fully discharged Turkey from all claims of the USA or its citizens for once and all. Further details of this Agreement will be put forth throughout this paper where relevant, and readers are further encouraged to see the full text of this legal documents as well.

It must, therefore, be clear that the real purpose of the lawyers representing Armenians is not to obtain compensation for them, but to fill their own bank accounts as they have done it until now. Additionally, they have the intent to damage relations between Turkey and the U.S.A. through artificial tensions they create. What benefit these actions would bring to the Armenians in the Diaspora or to the Republic of Armenia does not concern them at all. They think that even if Armenian militants fail to reach their goal by obtaining a favorable decision from

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4 Ece Temelkuran, "*Ağrı'nın Derinliği*" (Depth of Ararat) Everest Publications, May 2008, pp. 223-250: *"(With a very harsh tone). You will not write my name, you will not write anything I have said. Photos will not be taken. My interlocutors do not go into any detail concerning the 1915 events. They do not even try to explain what they are thinking. They say that they do not want territory, but money. This is the message we persistently try to convey, we will agree on the price, if Turkey agrees, Europe and America will provide that money anyways. Turkey can buy peace. You must convey this message to Turkey, we want a minimal amount for our endless pain. They speak of millions of dollars, our people are calculating the profit and losses for Turkey. According to this calculation, the money spent by Turkey to lobby its policy of denial in America is enough to pay the compensation we will request"*.

5 Descendants of Armenian genocide victims seek 65 million dollars from Turkey for seized land, LA; Yegparian: We'll sue: *The Armenian Weekly,* December 27th, 2010.

US justice, they may continue to occupy the public opinion with the propaganda they will create through these lawsuits.

The Trade of Genocide and Searching Political Support in Order to Pressure Turkey

Actually, Turkey faces a kind of a "trade of genocide"; an attempt of extracting compensation through blackmail.[6] This seemingly is a lucrative business for the lawyers and some other legal advisers. If the income earned from the genocide trade disappears, the funds flowing into their accounts will run dry. That is precisely why those militants and their supporters try to prevent all kind of dialogue between the Turks and Armenians; similarly they also try to block the attempts of common historical research on disputed data and also on the law of genocide. On the other hand, the Armenian militants try to gain political support in some foreign parliaments and local councils for the political recognition of their genocide allegations in order to pressure Turkey. They avoid the legal aspects of the problem by all means; because they know very well that according the *Genocide Convention* their claims can not provide their targeted results**.**

In Quest of an Equitable and Just Memory

Those who defend the view that the tragic events of 1915 should be qualified as genocide do not find it necessary to possess "an equitable and just memory". They reject to discuss[7] details and the conditions of the painful events suffered a hundred years ago by the Ottoman population as a whole. What is expected in Turkey is the restitution of a just memory. As the Turkish Minister of Foreign Affairs declared recently, "We *are ready to understand the sorrows of the Armenians; but we request the same for our sorrows as well".* This is due to the fact that not only the Armenians but also all the Muslim communities have been harmed by the tragedy suffered in that period.[8] Turkish people try to understand with empathy the mutual

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6 Şükrü Server Aya, *Soykırım Tacirleri ve Gerçekler* (The traders of genocide and the truth), Derin Yayınevi, Istanbul, 2009; Şükrü Server Aya, *The Genocide of Truth*, Istanbul Commerce University Publication: No.23; 2008; Şükrü Server Aya, *The Genocide of Truth Continues But Facts Tell the Real Story,* Derin Publications, 2010, Istanbul.

7 Taner Akçam states that; *"While talking about the 1915 events, we must get rid of the statement that everyone has suffered in the past. Different types of violence exist. The Foreign Minister ready to undertone is at the forefront of a new wording with his concept of 'just memory' in the context of the Armenian genocide*", *Taraf Newspaper*, 11.05.2010. Taner Akçam and other thinkers like him oversee the fact that what has triggered the decision for the 1915 relocation is the Van Armenian Rebellion in April 1915 and the Van massacre. For the Van rebellion of Armenians and the massacres they have committed see: Justin McCarthy, Esat Arslan, Cemalettin Taşkıran, Ömer Turan, *The Armenian Rebellion at Van*, University of Utah Press, 2006.

8 It was the Van massacres perpetrated towards the Muslim population – on grounds that they were Muslim Turks or Muslim Kurds – by Russian and Armenian troops who occupied the province of Van, which triggered the displacement of population.

pain and losses of that tragic period and mourn together for the losses of the past. This will be a more humane approach then accusing the "other" for all the plights. If this is not achieved, the gap between the communities will become deeper and seeds of hate will be infused upon the younger generations.

1. The Differences Between the Crime of Genocide and Other Crimes. Sine Qua Non Conditions to Legally Establish the Existence of the Crime of Genocide

For Mr. de Zayas genocide, crimes against humanity, war crimes are all the same. As the title of the pamphlet under review reflects, Mr. Alfred de Zayas' hypothesis is a postulate according to which the crime of genocide was committed by the Ottoman State to its citizens of Armenian origin. The righteousness of this hypothesis is taken for granted by Mr. de Zayas. He has no judiciary backing, no verdict from a competent court to support his allegations. Furthermore according to him; "*whether called exterminations, evacuations, mass atrocities, annihilation, liquidations, massacres or ethnic cleansing*", all these acts are equal to the crime of genocide.[9] In his conclusions, Mr. de Zayas writes the following lines to reflect his mastering (!) of the law of genocide:

> "*In the ICJ judgment of 26 February 2007, the International Court of Justice confirmed that genocide had been committed in Srebrenica. If a single massacre satisfies the criterion of Article 3 of the Genocide Convention, certainly many of the Ottoman massacres against the Armenian population before and during the First World War would qualify as genocid*e".

This statement does not concord with the decision of the International Court of Justice as it is presented in detail below.

Definitions of International Crimes

Mr. de Zayas' above mentioned reflections are biased and do not take into account the law of genocide. He seems to ignore the wording of the 1948 Genocide Convention and the Articles 5, 6, 7, and 8 of the Rome Statute of the International Criminal Court which include definitions regarding the crimes of genocide; crimes against the humanity and war crimes. These crimes are legally different type of crimes.[10] And those crimes were not existent at the beginning of the 20th century.

9 De Zayas idem, p.26.

10 Article 6. Genocide: a)Killing members of the group; b)Causing serious bodily or mental harm to members of the group; c)Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d)Imposing measures intended to prevent births within the group; e)Forcibly transferring children of the group to another group. Article 7. Crimes against humanity: a)murder; b)Extermination; c)Enslavement; d)

Every Act Can Not Be Qualified As Genocide

The term "genocide" is a legal term; it describes a crime specifically defined by the 1948 Genocide Convention and must be addressed accordingly. Genocide can be legally determined only by the judges of a competent tribunal on the basis of the prescribed legal criteria. The Genocide Convention does not allow for convictions on genocide by legislatures, scholars or others. Some historians, sociologists, politicians and even political scientists who dealt with these issues tend to describe - without knowledge and/or experience in international law - as genocide almost any incident, which involves an important number of dead;[11] they purposely mislead those who are not familiar with the law.

As mentioned above, Armenians and some of their supporters have deliberately set aside the legal aspects of the issue apparently because that would weaken their genocide claims.

As mentioned above, Armenians and some of their supporters have deliberately set aside the legal aspects of the issue apparently because that would weaken their genocide claims. Armenian writers and their supporters have chosen to adopt a dogmatic historical approach to underline the tragic nature of the incidents so that they could make genocide claims more easily acceptable by the public.[12]

The Sine Qua Non Condition of Genocide is Dolus Specialis "The Special Intent"

The most important characteristic of the *Genocide Convention* is that, - for the

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Deportation or forcible transfer of population; e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; f)Torture; g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violences of compatible gravity; h) Persecution against any identifiable group or collectivity open political, racial, national, ethnic cultural, religious, gender as defined in paragraph. 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; i) Enforced disappearance of persons; j) the crime of apartheid; k) Other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health Article 8. War Crimes (Only the summary is given below;) a) Grave breaches of the Geneva Convention of 12 August 1949, namely any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention; b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts. c) In the case of an armed conflict not of an international character, serious violations of Articles 3 common to the four Geneva Conventions of 12 August 1949, namely , any of the following acts committed against persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed hoers de combat by sickness, wounds, detention or any other cause; d) para.2c applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature ; e) Other serious violating of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts...etc.

11 William A. Shabas, *Genocide in International Law*, Cambridge, Cambridge University Press, 2000. p.7.

12 Gündüz Aktan,"The Armenian Problem and International Law", www.mfa.gov.tr//data/dispolitika/Ermeni iddialari/Document.pdf.

crime of genocide to exist - acts must have been committed with the intent to destroy the protected groups *as such*. The mental or subjective element (*mens rea*) of the crime is the constituent which refers the intention. The concept of "general intent" which is valid for ordinary crimes is inadequate in the identification of the acts of genocide.

Sociologically and psychologically the intent "to destroy a group as such" (due to the group character) emerges in racism, or in the most intensive stage of racism. Racial hatred is quite different from the ordinary animosity laced with anger, which parties engaged in a substantial dispute may feel towards one another. Racial hatred is a deeply pathological feeling or a complicated fanaticism. Anti-Semitism is an example in this context.[13]

According the Genocide Convention, the intent to destroy a group must be in the form of a "special intent" *dolus specialis* beyond any doubt. That is the most important legal component of the crime of genocide which the Armenians and their supporters deliberately ignore.

The Verdict of the International Court of Justice (ICJ)

This crucial aspect of the crime of genocide has been underlined by the International Court of Justice (ICJ) in para.187 of the verdict on the *Bosnia Herzegovina v Serbia* as follows:

> *"Article II (of the Convention) requires a further mental element. It requires the establishment of the intent to destroy in whole or in part the protected group as such. It is not enough to establish, for instance in terms of paragraph. (a) that unlawful killings of members of the group have occurred. The additional intent must also be established and is defined very precisely. It is often referred to as the "specific intent" (dolus specialis). It is not enough that the members of the group are targeted because they belong to that group that is because the perpetrator has a discriminatory intent. Something more is required. The acts listed in Article II, must be done with the intent to destroy the group* as such *in whole or in part. The words 'as such' emphasize that intent to destroy the protected group".*

If the special intent is not proved beyond any doubt, an act can not be qualified as genocide. The International Court of Justice (ICJ) examined the facts alleged by Bosnia and Herzegovina as:

13 Aktan, ibid, p. 270.

> *"İn order to decide (1) whether the alleged atrocities occurred and if established (2) whether the facts establish the existence of an intent, on the part of the perpetrators, to destroy in whole or in part the group of the Bosnian Muslims as such. The court made long and detailed findings of fact on the alleged atrocities which are grouped according to the categories of prohibited acts described in Article II of the Genocide Convention. With regard to killing member of the protected group (Article 1a of the Convention) the Court finds that it is established by overwhelming evidence that massive killings throughout Bosnia and Herzegovina were perpetrated during the conflict. However, the Court is not convinced that those killings were accompanied by the specific intent on part of the perpetrators to destroy in whole or in part, the group of Bosnian Muslims".*

The same conclusions have been reached by the ICJ with regard the alleged crimes foreseen in Article II (b) (c) (d) and (e) of the Convention. The Court decided that acts of genocide were committed by the VRS (The Army of Republika Sırpska) only in or around Srebrenica from about 13 July 1995.[14] These legal arguments clearly demonstrate the reasons why the statement of Mr. De Zayas in comparison with Srebrenica is wrong. The ICJ in its verdict does not take into account the magnitude or frequency of the acts but the "special intent to destroy a group as such" for qualifying an act as genocide.

Ethnic Cleansing

On the other hand, International Court of Justice put forth the difference between genocide and ethnic cleansing and other acts as; "*while ethnic cleansing can be carried out by the displacement of a group of persons from a special area, genocide is defined by the above mentioned specific intent to destroy the group or part of it*".[15]

"Nulla Crimen Sine Lege"

The governing principle of criminal law is: "*Nulla crimen sine lege"* which means no crime shall exist without law. The criminality associated with the tragic experience of the Ottoman population, including the Ottoman Armenians during the transfer of population from 1915 to 1918 was addressed by the Ottoman judiciary. Members of the gangs who attacked the Armenian convoys and officials

14 International Court of Justice Press Release, 2007/8 pages 4,5,6.

15 International Court of Justice, Press Release, 2007/8 page 4 paragraph.2.

who exploited the Armenian plight or neglected their duties or abused their powers were court-martialled and punished. In 1916; 1397 persons received various kinds of sentences in this context including death penalty.[16]

The Competent Tribunal to Judge the Genocidal Acts

Article IV of the *Genocide Convention* foresees the punishment of *persons* who are suspect to commit the crime of genocide.[17] This brings us to the notion of "competent tribunal" to judge and decide if an act amounts to the crime of genocide. Historians, journalists, political bodies or others have no authority to judge persons charged to have committed the crime of genocide. Many of those tend to describe as genocide any incident which involves an important number of dead. However, genocide is an international crime which can be determined only by judges of the competent tribunal on the basis of prescribed legal criteria. That is the reason why those who drafted the Convention clearly established a competent tribunal to judge the genocide accusations. Article VI of the *1948 Genocide Convention* reads as follows:

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

Universal Repression

The issue of the competent tribunal was debated extensively by the International Preparatory Conference of the 1948 Genocide Convention. The question of determining the competent tribunal was resolved[18] after lengthy discussion and the above mentioned text was approved. During the discussions a proposal of "universal repression" put forward by the delegation of Iran was rejected.[19]

16 Aktan, ibid, p.294.

17 Article IV: "Persons committing genocide or any other acts enumerated in Article III shall be punished whether they are constitutionally responsible rulers, public officials or private individuals".

18 See: Travaux Preparatoires Doc. E/794 page 294 and 97, th meeting of the Conference pages 360 and following pages

19 With regard the "Power to Exercise Universal Repression" or "Universal Repression"; See: 05.04.1948. Doc .E/794. pp.29-33; The Committee rejected a proposal in this respect (Ibid, p.32).

Those rejecting the principle of universal repression argued as follows: *"Universal repression is against the principles of traditional law; permitting the courts of one State to punish crimes committed in another state by foreigners will be against the sovereignty of the State; as genocide generally implied the responsibility of the State on the territory of which the crime was committed, the principle of universal repression would imply national courts to judge the acts of foreign governments. The result will be dangerous international tensions"*. The same issue has been addressed during the discussion of article VII of the Convention in the Plenary Meeting of the Conference on

Universal repression foresees the judging of the suspects by any tribunal of any State. Actually those who are not satisfied with the formulation agreed upon by the *Genocide Convention*, adopted by the General Assembly of the United Nations and ratified by an overwhelming number of States member of the UN, are trying in vain to reopen an academic debate on this subject.

3. Historical Introductions by Alfred De Zayas

According to De Zayas; *"For centuries the Armenian population of the Turkish Ottoman Empire was subjected to mistreatment and despotism*[20] Mr. de Zayas contradicts himself by writing in the same page the following:

For example, only a year before the World War I - and two years before the relocation (or transfer of population) decision - in 1913, the Minister of Foreign Affairs of the Ottoman Empire was an Armenian.

"*Especially in Ottoman capital, Istanbul, many Armenians were elevated to the ranks of the Empire's privileged and were recognized and rewarded for their talents in the government administration and finance*".[21]

The Armenians of the Ottoman State were called "the loyal nation" and they were active in the realm of public service. Many Armenians served as Ministers of the Ottoman Government. For example, only a year before the World War I - and two years before the relocation (or transfer of population) decision - in 1913, the Minister of Foreign Affairs of the Ottoman Empire was an Armenian. The Secretary General of the same Ministry was also of Armenian origin; which means the foreign policy of the Empire was left to their judgment. Many Armenians served at the highest ranks of the central administration and/or as governors, "pashas" or provincial governors; they represented the Ottoman State as Ambassador in foreign countries. The Director of the Bureau of Statistics has been Armenian. *(*These fact is especially important to note, for those who do not trust the official statistics of the Empire regarding the number of Ottoman citizens of Armenian origin). At the beginning of the 19th century the Ottoman Armenians flourished and came to dominate the state's economy. Unlike the Jews in Europe, they were not banned from practicing certain professions. They were not forced into ghettos or subjected to "pogroms".

9, 10 and 11 November 1948. See the records of the Plenary Meeting pp. 361-407. The current text of article VII of the Genocide Convention has been accepted by the Plenary meeting, after lengthy discussions, with 21 votes in favor, 10 against, and 15 abstentions.

20 De Zayas, idem, p.23.

21 De Zayas, idem, p.24.

One should bluntly underline that Mr. Zayas' accounts on the history are incorrect and try to reflect the biased Armenian version of the history. A just solution to avoid all sort of misunderstanding is that historians from Armenia, Turkey and all other nations interested in serious historical research should come together and discuss the historical data without discarding certain pages of it.

Ottoman Armenian Population Figures

Mr. de Zayas writes in his pamphlet that*:*

> *"In 1909 during the Ottoman period, 30.000 Armenians' lives have been claimed during the Adana massacre… 1.500.000 Armenians living in the Ottoman state during the First World War, 800.000 Pontus and Izmir Greeks and Chaldeans have been massacred by the Young Turk Government. The Armenian genocide has lasted until 1923".*

Ottoman demographic figures prove that prior to World War I fewer than 1.5 million Armenians lived in the entire Ottoman state. Thus allegations that 1.5 million Armenians perished does not reflect the truth. The same must be said regarding the population figures of other Christian populations of the Ottoman State. Armenian population figures vary according the sources. The claims concerning the number of the Ottoman Armenians and their losses are challenged by numerous scholars which have expressed different data based on Ottoman or Western sources. One of the studies on the subject has been made by Prof. Justin McCarthy[22] who finally concluded that "the Armenian genocide" allegation does not reflect the truth.

Selective Reading of the History by Discarding Certain Pages of It

Mr. De Zayas prefers to present the "Armenian version" of the history. He reflects a selective and biased reading. For example, he avoids reporting on the Armenian uprisings during the 19th and the 20th centuries. Armenians and their supporters reject any dialogue about their interpretation of the available information. History became a dogma for them; their immutable truth is unquestionable for them; and they do not accept or hear views which contradict their version of the history. The transfer of a part of the Ottoman Armenians with the aim of relocating them in other areas of the Ottoman Empire and the unfortunate events attached to that displacement is accepted as a tragedy and

22 Justin McCarthy, *Muslims and Minorities. The population of Ottoman Anatolia and the End of the Empire,* New York University Press, 1983, New York and London.

freely discussed in modern Turkey.[23] This is not the case in Armenia. In Turkey, there exists an abundant documentation with regard the Armenian transfer of population in Turkey. Also Armenian uprising plans are completely available in libraries. Those plans and actions have been clearly made public by many historians including Armenian authors.[24]

Armenian Uprisings

It was the Van uprising that triggered the relocation decision of the Ottoman Government. In March 1915, the Russian forces moved towards Van. Armenian insurgency, which began in Van, turned into a full-scale rebellion on April 11, during which the Armenian armed groups attacked the Muslim population killing and expelling them. Ten days later, the Russian Tsar sent a telegram to the Van Armenian Revolutionary Committee and thanked them for their services to Russia. The Armenian newspaper Gochnak published in the United States, gave in its 24 May 1915 issue the news that "only 1500 Turks had been left in Van". An Ottoman deputy named Gareghuine Pasdermadjian and another Ottoman deputy Hambartsum Boyagian were the leaders of the Armenian armed forces who attacked the Turkish villages and massacred the Turkish civilian population. Today some Armenians, their apologists and political supporters are not willing to read these pages of the history. But they have to understand that they can not forbid others to study these historical and factual documents which provide a different account of history then their self-contained dogmatic historical ideas.

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23 Today in Turkey one can buy all books supporting the genocide allegations (for example Dadrian, Akçam, Hovanissian etc.) from the bookstores. No books can be found in Armenia which deny the genocide allegations. In countries like France where pressures have been applied to publishers, books entailing opposing views cannot be found. Publishers and bookstores are afraid of being raided and vandalized.

24 Louise Nalbandian, *Armenian Revolutionary Movement: The Development of Armenian Political Parties Through the 19. Century*, Berkeley, University of California Press, 1963 pp.110-111: *"Agitation and terror were needed to elevate the spirit of the people. The people were also to be incited against their enemies and were to profit from the retaliatory actions of these same enemies. Terror was to be used as a method of protecting the people and winning their confidence in the Hunschak program. The party aimed at terrorizing the Ottoman Government, thus contributing toward lowering the prestige of that regime and working towards its complete disintegration. The Hunchaks wanted to eliminate the most dangerous of the Armenian and Turkish individuals. To assist them in carrying out all of these terror acts, the party was to organize an exclusive branch specifically devoted to performing acts of terrorism... The most opportune time to institute the general rebellion for carrying out immediate objectives was when Turkey was engaged in a war"*.; K.S. Papazian, *Patriotism Perverted*, Boston, Baikar Press, 1934 pp. 14,15: *"The purpose of the A.R. Federation (Dashnag) is to achieve political and economic freedom in Turkish Armenia by means of rebellion. Terrorism has, from the first, been adopted by the Dashnag Committee of the Caucasus as policy or a method for achieving its ends. Method No. 8 is as follows. To wage fight, and to subject to terrorism the government officials, the traitors; Method No.11 is to subject the government institutions to destruction and pillage"*.

"Freedom to History"

Forbidding different views and interpretations on historical events would transform history into a doctrine. It would bring historical research to an end. Lately, the "Report on matters concerning memory" presented to the National Assembly of France by its President Bernard Accoyer has been largely inspired by the *Appeal of Blois* written on 12 October 2008 and signed by almost 1000 historians and other intellectuals. At the root of this initiative lay a non-governmental organization, "Freedom for History".[25] The best approach to solve discrepancies between contradictory data and different views or interpretations is to arrange scientific meetings between historians and other experts to discuss all available data and try to reach an understanding by carrying out more in depth research, not adhering to empty propaganda.

The Treaty of Sevres Never Entered Into Force and Was Replaced by the Treaty of Lausanne.

Mr. De Zayas writes the following regarding the draft Treaty of Sevres:

> *"Although Turkey signed the Treaty of Sevres, the necessary pressure on Turkey was not applied, the US followed isolationist policies, Soviet Russia came to power, the English military presence withdrew from Turkey, the Young Turk Government collapsed, Kemalism rose in Turkey, the Treaty of Lausanne of 24 July 1923 abandoned the Allied demand for international trial and punishment of the Ottoman Turks for the genocide against the Armenians and the commitment to grant reparations to the survivors of the genocide, Armenia, which had declared its independence on 28 May 1918, lost Western Armenia to Turkey. Notwithstanding the fact that the Treaty of Sevres never entered into force, the text of the Treaty remains eloquent evidence of the international recognition of the crime of 'massacres' against the Armenian population of Turkey.*[26]
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> *Armenian claims were already in existence in 1915 and were recognized internationally in Article 144 of the Treaty of Sevres of 1920 which was signed by the representatives of the Sultan but not ratified after the Kemalist revolution. The non-enforcement of Article 144 does not mean that the entitlements did not exist, but rather that the use of force by Mustafa Kemal*

25 Bernard Accoyer, "Rapport Sur Les Questions Mémorielles" ; Appel de Blois; Liberté pour l'Histoire Pierre Nora, Françoise Chandernagor. These publications could be reached from websites and from the address contact@lph.asso.fr.

26 De Zayas, ibid, p.4.

Atatürk prevented the implementation of applicable norms of international law".[27]

Alfred de Zayas tends to disregard the Treaty of Lausanne which ended the World War I for Turkey along with the Treaties concluded between Turkey and Armenia following the war. Instead, he wants to bring on today's agenda the Treaty of Sevres of 10 August 1920 which was never ratified by the Ottoman State as well the Entente Powers.[28] Sevres has no international validity. The attempt to enforce a draft, void treaty is the same as disrupting the basis of international law, including the Vienna Convention on the Law of Treaties. The applicable norms are anchored in the Treaty of Lausanne as well as n in the Treaty of Kars. If Mr. de Zayas wants to defend peace and stability he has to abide to the rule of pacta sunt servanda foreseen by the Article 26 of the (1969) Vienna Convention on the Law of Treaties.

Finally, it is sad to note that by referring to the eastern provinces of Turkey as Western Armenia Mr. de Zayas adds his name in the list of the Armenian irredentist militants and looses his credibility as a scholar. The language of Mr. De Zayas towards the Turkish War of Independence tends adopt the hate speech of Armenian terrorist organizations and as such increases the tension between neighbors who have signed a protocol for the normalization of their relations last year.

Malta Tribunals: The Claim That Ottomans Taken to Malta to be Tried Have Been Exchanged with English Hostages

Mr. De Zayas claims that "*130 of the 140 Ottoman officials or politicians, who were exiled to Malta, were accused of Armenian genocide but were set free in 1921-1922 in exchange for the English officers held hostage by the new Kemalist Turkish Government*".

Mr. De Zayas is not reflecting the truth when he writes that "*those who were exiled to Malta have been accused of Armenian genocide*". First of all, the crime of genocide did not exist in the vocabulary at that period; second, Mr. de Zayas denies that occupying forces have not found enough evidence to file a lawsuit against the Ottoman citizens exiled to Malta for presumed crimes against Ottoman Armenians. The Ottoman archives was fully under the control of the occupying forces at the time; the English Government relied on an Armenian researcher Haig Khazarian[29] in its hunt for incriminating evidence against Ottoman officials brought to Malta.

27 De Zayas, "Genocide and Then What? The Law, Ethics and Politics of Making Amends", *Armenian Weekly,* Videoconference on October 23, 2010, UCLA.

28 Except Greece.

29 David S. Saltzman; *H.RES.106, Legal and Factual Deficiencies,* Turkish Industtrialists and Businessmen's Association Publication, 2001.

The British also requested the US Government's help for this purpose, but received the response that there was not enough evidence there. If even the slightest evidence existed at the hands of English authorities which would be enough to inculpate the prisoners at Malta, these judgments would surely have been made. In essence, the Ottoman citizens were sent to Malta to face trial.[30]

Another Armenian supporter who overlooked the fact that the US Government was consulted for the obtaining of evidence, but turned down is Mr. Geoffrey Robertson.[31] He evades this subject with the following statement:

> *"The jurisdictional* difficulties *of prosecuting foreign officials for killing their own people concerned Balfour. In December 1918 he told an Allied conference that the perpetrators of the Armenians massacres 'strictly speaking' had committed no definite legal offenses".*

The British Government on many occasions officially declared its position on the matter. On 14 April 1999 the Foreign Office spokesperson Baroness Ramsay of Cartvale said that "*the British Governments have not recognized the events of 1915 as indications of Genocide*"; On 7 February 2001, acting on behalf of the British Government, Baroness Scotland of Asthal declared:

> "*The Government, in line with the previous British Governments, have judged the evidence not to be sufficiently unequivocal to persuade us that these events should be categorized as genocide as defined by the 1948 United Nations on Genocide, a Convention which was drafted in response to the Holocaust and is not retrospective in application. The interpretation of events in Eastern Anatolia in 1915-1916 is still the subject of genuine debate among historians".*

Thus De Zayas' writings on this subject are mere propaganda material and nothing beyond that.

4. The View That Existence of Those Tried and Convicted at Ottoman Courts is Evidence That Genocide Has Been Committed Towards the Armenians

Mr. De Zayas states in his writings that: "*A few trials took place before Turkish courts martial, on the basis of articles 45 and 170 of the Ottoman Penal Code, the trials provide further evidence of the various aspects of the genocide against the*

30 See: Dr. Bilal N. Şimşir, *Malta Sürgünleri ve Ermeni İddiaları* (Malta Evacuations and Armenian Allegations), Declarations of the Development of Turkish Armenian Relations and the 1915 Events International Symposium, Gazi University Publication, 2006, pp. 267-276.

31 Geoffrey Robertson, "Was there an Armenian Genocide?", Policy Memorandum, 9 October 2009.

Armenians, and the accused were found guilty in the judgment of 5 July 1919 of the organization and execution of the crime of massacre against the Armenian population".[32]

The truth on this subject is as follows: The criminality associated with the tragic experiences of the Armenians in eastern Anatolia during the last years of the Ottoman Empire had already been addressed. No evidence of crimes that would constitute genocide, as the crime is presently defined, could be found".[33]

A. The judgments of 1919, the author mentions, were carried out by the courts of the Ottoman State "under occupation of Allies". No charges of crime against humanity were brought against them. It is also worth to mention that no charges were brought following the World War I against the Ottoman State for violation of the Geneva Conventions in force at the time. The Ottoman tribunals enforced Ottoman laws.[34] Among other suspects, six officials, members of the Union and Progress Party, were tried in absentia and some of the suspects have been found guilty; four of them were sentenced to death. Because these courts were hardly impartial and provided little that could be considered due process, their convictions have been strongly disapproved by the great majority of the Turkish public opinion.

B. On the other hand, the judicial authorities of the Ottoman Government prosecuted already in 1916, the crimes committed by some Ottoman officials and citizens during the relocation of a part of the Ottoman Armenians. As a result of the judgments were made according to Ottoman laws, Ottoman officials and citizens whose crimes were determined, were convicted. 1673 people brought to court, 524 were imprisoned, 67 people were executed and 68 people were punished with shovels, exile, etc. Of those brought to court, 528 consisted of soldiers, police, and members of the Special Police Organization (Teşkilat-ı Mahsusa), 107 consisted of aid man, cash collectors, district governor, mayor or Director of (*Emval-i Metruke*) Abandoned Property Administration.[35]

Research and publications on those 1916 trials disturbs the Armenians and their supporters because information and documents about these judgments explicitly prove that the Ottoman Government has prosecuted and tried the suspects which committed crimes during the transfer of population.[36]

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32 De Zayas, ibid, p.5.

33 David S. Salzmann, ibid, p. 9.

34 Vakhan Dadrian, widely quoted among Armenian sources, has written that these Tribunals dispensed justice fairly and proved. See also; Guenther Lewy, *The Armenian Massacres in Ottoman Turkey, A Disputed Genocide,* p.73-82.

35 See: Prof. Dr. Yusuf Halaçoğlu, *Ermeni Tehciri ve Gerçekler (Armenian Relocation and the Facts)*, Ankara, TTK, 2001. Prof. Halaçoğlu expresses that in pages 93-95 of the book, See also: Doç.Dr. Yusuf Sarınay, *Ermeni Tehciri ve Yargılamaları 1915-1916 (Armenian Relocation and Judgments 1915-1916),* Declarations of the Development of Turkish Armenian Relations and the 1915 Events International Symposium, Gazi University Publications, 2006, pp. 257-265.

36 Taner Akçam, *Taraf Newspaper,* 15 June 2008.

Eventually, Armenian propagandists do not want to remember the universal legal norm according to which after an accused has been judged and convicted - in accordance of the laws of the country, they cannot be judged and convicted again for the same action; and furthermore, the criminal criterion of that acts cannot be altered later on.

The Rome Statute of the International Criminal Court lays down in its Article 20 the principle of "Ni bis in idem": No person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court".

Eventually, Armenian propagandists do not want to remember the universal legal norm according to which after an accused has been judged and convicted.

5. The View That "The Genocide Convention of 1948 Can Be Applied Retroactively"

Alfred de Zayas argues that the Genocide Convention may be applied retroactively.[37] In the pamphlet under review, de Zayas states that the language of the Genocide Convention is inconclusive on the issue of its retroactive application, and that the Travaux Préparatoires of the Convention merely provides for a "supplementary means of interpretation". Moreover, de Zayas refers to the Article 1 of the 1968 UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity and maintains that statutory limitations do not apply to the Genocide Convention.

Numerous international and genocide law specialists and positivist lawyers among others have opposed the view that the *Genocide Convention* could be applied retroactively.[38] This is a general rule under international law. Article 28 of the 1969 Vienna Convention on the Law of Treaties which entered into force on 27January 1980 states that; *"The provisions of treaties 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*". The International Court of Justice has not dealt yet with the issue of retroactivity of the 1948 Genocide Convention.

A legal analysis prepared at the initiative of the Turkish–Armenian Reconciliation

37 De Zayas, ibid, p.81-90.

38 Geoffrey Robertson, "Was There an Armenian Genocide?", Policy Memorandum, Foreign Commonwealth Office to Minister, London, 12 April 1990, p. 14: "*I do not consider that the Genocide Convention is retroactive and I do not accept the view of those legal scholars who believe that the treaty was declaratory of pre-existing international law and thus argue that it can be applied retrospectively"*. For example, Alfred de Zayas, William Schabas, who also defends the genocide allegations, has stated that the Convention cannot be applied retroactively.

Commission, for the International Center for Transnational Justice (ICTJ) by a group of anonymous legal advisors entitled the Applicability of the United Nations Convention on the Prevention and Punishment of the Crimes of Genocide to Events Which Occurred During the Early Twentieth Century explicitly states that the Genocide Convention contains no provisions mandating its retroactive application.[39] This analysis maintains that "neither the text nor the "Travaux Préparatoires of the Convention manifest an intention to apply its provisions retroactively.[40]

With regard the allegations of the -so called- Armenian genocide, how could an action which has taken place almost a century ago be considered genocide, without the existence of the competent tribunal's judgment?

No Crime Without Law

According to the general principles of criminal law, there can be no crime without law, as laid out in paragraph 1 of Article 15 of the International Covenant on Civil and Political Rights. However, the Armenians' advisor stresses the fact that:

"The criminal law aspects of the Convention are of lesser relevance in the Armenian context, since none of the perpetrators is alive... but that laws of restitution and compensation can be resorted to and brought into action".[41]

With regard the allegations of the -so called- Armenian genocide, how could an action which has taken place almost a century ago be considered genocide, without the existence of the competent tribunal's judgment? Without legally establishing that the crime of genocide was perpetrated and without determining who actually carried out the crime, and without hearing the defendant as well as carrying out a trial in conformity with the universal norms of law, how can compensation claims be advanced and what will they be based upon? The Armenian side and their supporters aspire to attain their goals by way of disinformation and biased political decisions adopted by certain parliaments or local councils recognizing the so-called genocide.

It is very unlikely that the differences of opinion between scholars will allow them to reach a solution. That is the reason why the theoretical aspects of the problem is

39 "The Applicability of the United Nations Convention on the Prevention and Punishment of the Crimes of Genocide to events which occurred during the early twentieth century", prepared for the International Center for Transnational Justice" (by unknown and unnamed experts)

40 Ibid., p.7.

41 De Zayas, ibid, p. 19.

beyond the current discussion put forth in this paper. Accordingly, taking into consideration the provisions of the Vienna Convention on Law of the Treaties, it is viable to hold the view that the 1948 Genocide Convention can not be applied retrospectively

6. Law Prior to the Genocide Convention

When analyzing the tragic events of 1915, one should take into account the law prior to the Genocide Convention. According to the 1648 Westphalian system, state sovereignty was an absolutely essential and the supreme principle. The matter of minorities was an internal affair for the states which applied domestic laws to the incidents that occurred within a given country. The concept of international crime did not exist then.

When the Armenian relocation began in May 1915, the British, French and Russian Governments -namely the belligerents and the enemies of Turkey in World War I-, informed on 24 May 1915 through a joint declaration the Sublime Porte that they would hold all members of the Ottoman Government as well as the agents who are found guilty of massacres personally responsible for the committed crimes. However, the U.S. Secretary of State Robert Lansing - who was not known as a Turkish sympathizer at all- admitted that the Turkish Government had more or less justifiable right to deport Armenians, provided that they lived within zone of military operations".[42]

At that period, the Hague Rules highlighted the crimes a country would commit in war. Those rules had not been envisaged to be applied to the crimes a country would be accused for having committed in its own territories. As mentioned above, following the World War I, no charges were brought against the Ottoman State for violations of the Geneva Conventions in force at that time.

At the Paris Peace Conference (1919) the Greek Foreign Minister suggested that a new kind of crime against humanity be created and there was to be a trial for the Armenian massacres. President Woodrow Wilson objected to this, saying that this would have been an ex post facto law. The United States was against the creation of such a crime. The Sevres Treaty -which never entered into force- foresaw that a trial be held in Turkey for the crimes in question.

As mentioned above the criminal actions against the Ottoman Armenians during the World War I, were addressed by the Ottoman justice. Already in 1916, the Ottoman Government brought to trial and condemned several officials for the crimes they

42 Gündüz Aktan, ibid, p. 204.

committed during the transfer of population. In 1919, a Martial Court was set up in occupied Istanbul. Many officials and government members were tried and condemned. Moreover, 140 defendants were taken to Malta for trial. As there was no evidence against them, they were released after almost two years of detention without trial.

7. The Treaties of Lausanne, Moscow and Kars As Well As the Agreement Between United States and Turkey Covered all Compensation Demands. Amnesty Has Been Declared for All Sides.

The Lausanne Peace Treaty

The Treaty of Lausanne signed on 24 July 1923 included a declaration of amnesty for all crimes committed between 1 August 1914 and 20 November 1922.

Right to Return to Turkey

According to the *Lausanne Peace Treaty*, ending the war between Turkey and other powers, it was decreed that previous Ottoman citizens who resided in countries that were separated from Turkey by the Article 31 of the Lausanne Treaty, and who had automatically gained citizenship of that country by Article 30, would have the right within two years to choose Turkish citizenship. Through these decrees, all the Armenians who were at that day outside Turkey, and who retained Turkish citizenship, and those Armenians who were in those countries separated from Turkey, obtained the right to return to Turkey if they wished.

Moreover, the Article 6 of the Amnesty Declaration attached to the *Lausanne Treaty* states in the same subject:

> *"The Turkish Government which shares the desire for general peace with all the Powers, announces that it will not object to the measures implemented between 20 October 1918 and 20 November 1922, under the protection of the Allies, with the intention of bringing together again the families which were separated because of the war, and of returning possessions to their rightful owners".*

It is apparent that this Article concerned the individuals who were forced to emigrate, and who returned to their homes during the period of armistice and occupation. At that time, Turkey announced that these procedures, made under the control of the occupation powers, would be maintained without modification.

Amnesty for Those Arrested, Prosecuted or Sentenced

According to the Amnesty Declaration, and the Protocol, Turkish nationals, and reciprocally nationals of the other powers signatory of the *Treaty of Lausanne* arrested, prosecuted or sentenced prior to 20 November 1922, benefited from an amnesty.

Return of the Property

Article 65 of the *Treaty of Lausanne* stipulates that property of individuals who had foreign citizenship when the war started, and whose possessions in Turkey had been confiscated would be returned to them. The article 95 gave a deadline for inquiries on this mater.

Section VIII and paragraph 6 of the *Lausanne Treaty* on Declaration of Amnesty declared the Turkish Government's intent not to contest the measures carried out under the auspices of the English and French during the period between 1918 and 1922, with the object of Armenians scattered around outside Turkish borders returning and their properties being given back to them. According to this, Armenians wanting to return to Turkey would return; arrangements were made concerning the measures on Armenians whose properties returned to them, would maintain its validity; a timeframe was determined for the Armenians to request their rights; and in order to resolve possible disagreements that could arise, a Special Civil Claims Tribunal was created. Judges of various countries to stand by Turkish judges were also foreseen in these courts.[43]

Liquidation of the Ottoman Debts

Finally articles 46-63 of the *Lausanne Treaty* were about the liquidation of the debts of the Ottoman State. This process of liquidation ended after Turkey paid all the debts.

Reciprocal Renouncement for the Loss and Damages

According to article 58 of the *Treaty of Lausanne*, the Parties reciprocally renounced all claims for the loss and damage suffered between 1 August 1914 and 6 June 1924 as a result of acts of war or measures of requisition, sequestration, disposal or confiscation**.**

43 Prof. Dr. Nurşen Mazıcı, "Ermenilerin Tazminat Davası" (The Armenians' Suit for Damages), *Radikal*, 13 August 2010.

Economic clauses

Articles 65-72 also entailed economic clauses; in the section of properties, rights and interests, all legal interests and interests related to properties of those subjected to relocation were being protected. Article 74 entailed special provisions related to insurance contracts and in relation, prescription. Taking into account those provisions, it is clear that no one has the right to make any kind of demand from Turkey about the events occurring before the signing of the Lausanne Treaty.[44]

Moscow, Kars and Ankara Treaties

The Treaties of Moscow and Kars concluded before the Treaty of Lausanne settled the conflicts between Turkey and Armenia. The Moscow Treaty of 16 March 1921 was signed between Turkey and Russia. Thereafter, the Treaty of Kars was concluded between Turkey, Armenia, Azerbaijan and Georgia on 13 October 1921. This Treaty stated in its article 15 that "each of the Contracting Parties agrees to promulgate a complete amnesty to citizens of the other Party for crimes and offenses committed during the course of the war on the Caucasian front".

The Ankara Treaty with France

Some of the tragic events took place in territories occupied by France where Armenian groups cooperating with France committed massacres towards the Muslim population. The Ottoman Muslims retaliated. The Ankara Treaty signed on 20 October 1921 between France and Turkey had foreseen that the Parties promulgate a total amnesty for the crimes committed in that occupied territories. Those treaties constitute lex specialis in legal terms.[45]

Agreement Between Turkey and United States

Finally, an Agreement was concluded between Turkey and the United States on 24 December 1923 and a Supplemental Agreement on 25 October 1934 with respect to the claims settlement between two States. Turkey paid the sum of 899.3238,09 US dollars to the United States between 1938 and 1944. Pursuant to Article II of this agreement, every claim emanating from the U.S. has been considered and treated as finally settled. According the list of claimants attached to a Report

44 Kamuran Gürün, *The Armenian File,* p.295, Rustem Bro and Weidenfeld and Nicholson Ltd. London, 1985.

45 Sadi Çaycı, "Ermeni Sorununun Hukuksal Boyutu" (*The legal dimension of the Armenian question*), http://www.eraren.org/bilgibankası/tr/index2_1_2.htm.

entitled "American-Turkish Claims Settlement prepared by Fred K. Nielsen"[46] about 114 American citizens of Armenian origin presented claims to the U.S. Government.

The Purpose of the Above mentioned Treaties, Agreements, Protocols.

The purpose of the above mentioned international agreements was to put an end to the wars and insurgencies, disrupting the country and region's peace since 1914; the foreseen amnesties aimed to cover the humanitarian dimensions of the tragic past. The Armenians and their supporters including Mr. De Zayas, who tend to ignore these international agreements and amnesty declarations, will clearly have to eventually put an end to their endeavors to damage the peace and stability established almost a hundred years ago.

First of all, we should underline again, that an act or an offence or even a presumable crime can not be qualified as "genocide" without a valid decision of the competent tribunal.

8. The View That the Crime of Genocide Does Not Lapse With Time[47]

According to Mr. de Zayas;

> *"The crime of genocide does not lapse with time. Article 1 of the Convention drafted by the United Nations on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (of which Turkey and the United States among others are not parties)... stipulates that "no statutory limitation shall apply to the crime of genocide as defined in the 1948 Convention... irrespective of the date of its commission".*

First of all, we should underline again, that an act or an offence or even a presumable crime can not be qualified as "genocide" without a valid decision of the competent tribunal. In the absence of such a decision, genocide assertions of scholars, politicians or their supporters should be regarded as of political nature.

If a recent example is reviewed in order to underline the differences between the legal and political or journalistic approaches to the problematic of the crime of genocide, what is put forth so far will be more clear. In the Bosnia Herzegovina v

46 American-Turkish claims Settlement under the Agreement of December 24, 1923, and Supplemental agreements between the U.S. and Turkey. Opinion and Report prepared by Fred K. Nielsen in accordance with the act of March 11, 1925.49 Stat.47 United States Government Printing Office, Washington 1937.

47 De Zayas, ibid., p. 42.

Serbia case, the ICJ did not deny the existence of crimes, massacres or ethnic cleansing committed in Bosnia; but clearly stated in its verdict that the necessary legal conditions did not apply for these to be considered as genocide.

According to the Turkish Penal Code, once it is legally established that an act constitutes genocide, no statutory limitations may be applied to the persons who committed the said crime. In the absence of such a verdict in that the question of statutory limitations will not come to the agenda of the justice.

The Competent Tribunal: Universal Jurisdiction and Protective Principle[48]

According to Alfred de Zayas, the universal jurisdiction principle should apply in the case of the crime of genocide and that the crime of genocide may be tried by any district court under the principle of "protective principle". He cites the Eichmann precedent which was judged by an Israeli District Tribunal to support his views.

As mentioned above, the "Travaux Préparatoires" of the Genocide Convention discussed at length the question of universal repression with regard the crime of genocide. The delegates opposing the international jurisdiction declared that the intervention of an international court would defeat the principle of the sovereignty of the State because this court would be substituted for a national court. The principle of universal repression was rejected by the Committee preparing the Draft Convention.[49] The same issue came to the agenda of the Conference and a proposal in this direction was voted down by 29 votes to 6, with 10 abstention[50] Probably Mr. Alfred de Zayas is one of the scholars who try to reopen a discussion on the whole of the Genocide Convention. It is not to the scholars but to the State Parties of an international convention to decide on the review of the text of it. If the State Parties to the Genocide Convention decide to review and/or to amend the 1948 Genocide Convention they might decide following the foreseen procedure by inviting an international review conference. Until then, the provisions of the Genocide Convention are valid and must be abided by all Parties and also by non-partisan scholars with a certain degree of self-esteem**.**

Parallelism Between Holocaust and the 1915 Events

De Zayas tries also to draw a parallelism between the Holocaust and the events

48 De Zayas, ibid., p. 51.

49 Document E/794 P. 29. and p.32 Tuesday 13 April 1948.

50 Travaux Préparatoires of the 1948 Genocide Convention p. 406.

related to the 1915 transfer of population. However, these two events are different. First of all, the existence and nature of the Holocaust was determined by the Nurnberg Tribunal.[51] Second, the German (and other European Jews) neither engaged in a struggle for independence, nor did they ever chase after territorial claims; they did not resort to terrorism massacring innocent German civilians; they did not join hands with the armies of Germany's enemies in war; they did not stab the German armies on the back by blocking the strategic roads and logistic lines; The Jews in Germany and Europe constituted a totally innocent group with respect to politics. Anti-Semitism which rose dramatically fifteen years prior to the Holocaust was a movement that had been continuing actively since the beginning of the second millennium; they were annihilated because they were Jews. The Holocaust crime has been established as a historical truth by the verdict of the Nurnberg Tribunal.

As the UK Government who did not accept to qualify as genocide the 1915 events, the Israeli Governments refused to accept a parallelism between Holocaust and the tragic events of 11915. The Ambassador of Israel Rivka Kohen in Yerevan declared on 7 February 2002, during a press conference that:

> "The *1915 events couldn't be considered as genocide because the main killings in these events were not planned and the Ottoman Government had no intention to destroy a nation or a group of people. As a well-known fact many people from the Armenian and Muslim groups had lost their life in these events. Holocaust is unique. At this stage nothing should be compared with Holocaust*"

On 10 April 2001 the Nobel Prize awarded Israeli, Foreign Minister Shimon Perez said that:

> "*The fate of Armenians in Anatolia was a tragedy, not genocide. Armenian allegations are meaningless. We reject attempts to create a similarity between the Holocaust and the Armenian allegation. If we have to determine a position on the Armenian issue it should be done with great care not to distort the historical realities".*[52]

51 Sevin Elekdağ, "Ermeni Olaylarını Anlamak. Holokost ile Karşılaştırmalı Analiz" (Understanding the Armenian Events. Comparative Analysis with the Holocaust), *Review of Armenian Studies,* No.32, 2009, p.91.

52 Middle East Intelligence Bulletin, Vol. 3, No.5, May 2001.

9. Can a State That Did Not Exist at the Time of the Crime Try a Person Inculpated With the Crime of Genocide?[53]

Mr. De Zayas states that

> *"The Eichmann precedent illustrates that a State which did not exist at the time of the crime, (Israel) can try and punish a foreign citizen for genocide, when it has a legitimate and fundamental link to the victims. Armenia also could represent the rights of the Armenian victims of genocide against Similarly States like France, Canada, and the United States could represent the rights of the descendants of the survivors of the genocide against the Armenians who have become their citizens and/ or currently reside in France, Canada and the United States".*[54]

This view:

a) Disregards the 1948 Genocide Convention's article VI related to the competent tribunal;

b) Draws the conclusion that any country has jurisdictional authority over a crime committed in another state and decide if that may be qualified as genocide;

c) Suggests that any other State could legally represent the rights of their "citizens' or even "inhabitants" whose families have been harmed during tragic events which took place in another country; even if it took place before the 1948 Genocide Convention had entered into force.

This statement is not only contradictory to International Public Law, but also to the principles of International Private Law. The exercise foreseen by this proposal disrupts the basic principles of international relations and disregards the treaties concluded between countries after international conflicts. Finally, the Eichmann case is based on the Holocaust recognition and condemnation by the Nurnberg trials.

The doctrine of State responsibility for international wrongful acts. De Zayas requests compensation for Armenian properties in Turkey based on the doctrine of the responsibility of the successor state,[55]

53 De Zayas, ibid., p.53.

54 De Zayas, ibid., p.53.

55 De Zayas, ibid., p.54.

According De Zayas,

> *"A State is responsible for injuries caused by its wrongful acts and is bound to provide reparation for such injuries; the international community should not recognize as legal a situation created by an international crime, should not assist the author of an international crime in maintaining the legal situation, and should assist other States in the implementation of the obligations".*

As mentioned above, the Republic of Turkey settled the issue of Ottoman debts in accordance with the Treaty of Lausanne.[56] Turkey also paid a substantial amount in US dollars to the United States Government for distribution to its citizens based on the Agreement of 24 December 1923 and Supplemental Agreements**,** concluded and implemented between the U.S. and Turkey.[57] The Supplemental Agreement of 25 October 1934 concluded by the two Governments was signed for a final settlement of outstanding claims of the nationals of each country against the other, and it was for that reason that the Article II of the Agreement was incorporated into the agreement. It read as follows:

> "*The two Governments agree that, by the payment of the 899.840 dollars the Government of the Republic of Turkey will be released from liability with respect to all of the above-mentioned claims formulated against it and further agree that every claim embraced by the Agreement of December 24, 1923, shall be considered and treated as finally settled*".[58]

At this stage, some other documents and references which are important to underline are as follows. According the US archives, (document numbered NARA, T&1192 R2.860J.01/395 and verified by the Armenian Patriarch) 644.900

56 See: Supplement to the Treaty of Lausanne-Declaration of Amnesty.

57 Report Prepared by Fred K. Nielsen on American-Turkish Claims Settlement Under the Agreement of December 24, 1923 and Supplemental Agreements between the United States and Turkey. On December 24, 1923, the Turkey and United States of America concluded an agreement with regard the settlement of claims of their citizens. A joint Commission was created to examine the claims. 898 dossiers were laid before the Commission by the U.S. Government. No claims of Turkish citizens against the U.S. were presented to the Commission. The dossiers of the claims had to contain the documents establishing the nature, the origin and the justification of each claim. The claims had to be submitted until February 15, 1934. The U.S. Government had the right to submit up to August 15, 1934 other documents in support of claims. According to Mr. Nielsen, the author of the report; *"These provisions are in harmony with international practice in relation to such matters. The following type of stipulations is found in numerous claims agreements: The high contracting parties engage to consider the result of the proceedings of the (claims settlement) commission as a full, perfect and final settlement of every claim upon either Government arising out of any transaction of a date prior to the exchange of the ratifications of the present convention; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred or laid before the said commission".*

58 Publications on this subject: Nevzat Onaran, *Emvâl-i Metruke Olayı, Osmanlı'da ve Cumhuriyette Ermeni ve Rum Mallarının Türkleştirilmesi,* (Abandonned Property. Turkification of Armenian and Greek properties in the Empire and Republic), Belge Publications, May 2010; Selâhaddin Kardeş, *Tehcir ve Emval-I Metrûke Mevzuatı,* (Relocation and Legislation on Abandoned Property) Maliye Bakanlığı Strateji gelisştirma Başkanlığı Ankara 2008 (Publication of the Ministry of Finance, Ankara 2008).

Armenians returned and settled to Anatolia after the war and right before the Treaty of Sevres.[59]

By returning to Ottoman territories in 1918–1919, many Armenians regained some of their properties they had left behind during the 1915 transfer of population. For instance, the number of properties returned until 30 April 1919 was recorded as 241.000. This comprised approximately 98% of the immovable properties.[60] Records also state that some problems and injustices took place during application of the regulations.[61] It has already been mentioned that some Ottoman citizens who committed crimes during the transfer of population were punished in 1916 pursuant to Ottoman Penal Code.

Mr. de Zayas Asserts That Diaspora Armenians Have the Right to Return and Settle in Turkey

As mentioned above, the Lausanne Treaty covered this aspect. Even if the deadline foreseen by the Treaty of Lausanne for their return is exceeded, all Armenians wanting to come to Turkey may apply for an entry visa pursuant to the Turkish laws on emigration. According to the media reports, actually more then 40.000 Armenian citizens contentedly reside and work in Turkey.

10. Suggestions and Recommendation by Mr. de Zayas to the Republic of Armenia[62]

According to Mr. de Zayas,

> *"The norms on international law are fairly clear. Nevertheless these norms are not always self executing and may require legislative action to identify the specific legal basis and establish then proper forum where claims for restitution and reparation may be adjudicated".*[63]

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59 Yusuf Halaçoğlu's article published in Taraf newspaper on 23 June 2008.

60 Prime Ministry Ottoman Archives UMVM 159/21" lef.3.

61 *Tehcirden Dönenlerin Malları (Properties of Those Returning from the Relocation)*, Social History, September 1994, pp. 45-48 Returning of properties Asst. Prof. Dr. Bülent Bakar, Editor Hikmet Özdemir's Turkish Grand National Assembly publication. Turkish-Armenian Dispute Articles pp. 327-339. See: enactment of 8.1.1920. Md. 33 b) Takvim-i Vekayi 12 Kanunu Sani 1336 No.3747 BOA. MV. 245/15 Düstur II Tertip. C.II. pp. 553-554.

62 De Zayas, ibid., pp. 21-22.

63 Alfred de Zayas, "Genocide and Then What? The Law, Ethics and Politics of Making Amends", *Armenian Weekly,* Videoconference, 23 October 2010, UCLA.

"Armenia Should Appeal to the United Nations"

"Armenia should invoke article VIII of the Genocide Convention, which provides that any contracting party may call upon the competent organs of the United Nations to take such action as they consider appropriate for the "suppression" of genocide….To suppress the crime, it is necessary to suppress…its consequences. This entails besides punishing the guilty, providing restitution and compensation to the surviving generations.[64] *The United Nations General Assembly can, pursuant to article 96 of the UN Charter ask the International Court of Justice an advisory opinion should be requested from the International Court of Justice concerning the Armenian genocide. Based on article 96 of the UN Constitution, the General Assembly or Security Council may request the International Court of Justice to give an advisory opinion on "the application of the 1948 Genocide Convention on the 1915-1923 Armenian genocide" and "the legal consequences of the Turkish state continuing to maintain Armenian territories, properties and cultural heritage" and "Turkey paying compensation to the successors of the survivors of the Armenian genocide". Most probably, it is more suitable for this request to be presented to the General Assembly…"*

No doubt, requesting the United Nations General Assembly to adopt a resolution which defines an act who took place in the history as genocide would be equal to opening the "Pandora's Box".

No doubt, requesting the United Nations General Assembly to adopt a resolution which defines an act who took place in the history as genocide would be equal to opening the "Pandora's Box". Thereafter all the massacres and atrocities committed throughout the mankind's history, such as Americans atrocities against the autochthonous peoples in North America, the Spanish atrocities against the other autochthonous peoples in Mexico and Peru in Guatemala etc.,[65] the French massacres in Africa, Vietnam and in Algeria, Armenian massacres in Khojaly (Azerbaijan), the Czech atrocities against the Sudeten Germans, various other massacres perpetrated in the USSR territories, Bulgarian and Greek massacres against Turks who were obliged to leave their homes and all their belongings in the Balkans, St. Barthelemy massacres of the French Catholics against those embracing Protestantism, the so called "Albi massacres" by the French against the Cathars, Australian treatment of the Aborigines, Swedish and Norwegian treatment of the Sami communities, the massacres of the native Africans by the colonial powers and

64 De Zayas, p.91.

65 David Stannard, "American Holocaust; The Destruction of American Native Peoples".

thousands more will be brought to the agenda of the UN General Assembly, and the Organization will most probably experience the most interesting and intense session which has taken place until today, during which everyone will spill out all bottled up negative feelings.

Armenia Should Initiate Action for an Advisory Opinion on the Retroactive Application of the Genocide Convention

The Armenian Government will surely consider this proposal and if convinced will put forward the necessary steps.

Mr. De Zayas Proposes that Armenia Should Bring the Armenian Genocide Allegation to the International Court of Justice

> "*According to Article IX of the 1948 Genocide Convention "Disputes between the Contracting Parties relating to the interpretation, application, or fulfillment 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 (ICJ), based on article IX, at the request of any of the parties to the dispute"*.[66]

Until now, the ICJ has addressed the 1948 *Genocide Convention* three times. The first time it provided advisory opinions on 28 May 1951 concerning the reservations expressed to the Convention. Second, on 3 September 2006, it adopted the decision on Genocide in Rwanda. The third case has dealt with Bosnia Herzegovina *vs.* Yugoslavia

Upon receipt of such a request from Armenia, the ICJ will firstly examine whether a legal dispute, similar to type expressed in article 38 of the Statute of the Court, exists between two or more States. Based on this article, if legal disagreements exist, then they will be resolved according to principles of international law. A "dispute is the clash of opposing legal opinions or interests between two parties concerning a *de jure* or *de facto* issue"; if it exists, the dispute must be determined objectively; it will be necessary to prove that the request of one of the sides has not encountered the objection of the other side.[67] The ICJ in some of its previous

66 De Zayas, p.92.

67 In Palestine, the Mavromatis Company Case Resolution No.2, 1924 CPJI Serie A No.2 p.11. The peace treaty concluded between Bulgaria, Hungary, and Romania. Advisory opinion: 1950 Resolutions p.74; South-West Africa ICJ Resolution: 1996 Resolutions p. 615. paragraph 29.

decisions had concluded that disputes existed;[68] there are other cases where the ICJ has concluded not. Before filing a lawsuit, Armenia must officially appeal to Turkey that a legal dispute exists between the two States.

The difference of opinion between the Turkish Republic and the Armenian Republic is not on the interpretation of the Convention. It is on the interpretation of the history. Turkey is in the opinion that the tragic events of 1915-1916 were not one sided criminal acts and there was no special intent to destroy the Ottoman Armenians as such.

According to Mr. de Zayas as no suspect of the tragic events remains alive, the criminal aspect of the Genocide Convention is of no relevance. What is relevant for the Armenians is apparently the State responsibility aspect. The State responsibility would occur if the crime of genocide is committed. Again here, legally speaking the decision of the competent court on the existence of genocide is a sine qua non condition.

Statements by some parliaments or politicians on whether the 1915 events should be considered as genocide are not legal, but political assessments of "declaratory" character.

If it decides so, a plaintiff must appeal to the ICJ by explaining which provision of the 1948 Genocide Convention the contracting party has violated or which obligation it has failed to fulfill. For example, if a Contracting Party does not transfer for trial an individual accused of or indicted for genocide, state responsibility is incurred.[69] Responsibility on the part of a state is further incurred, for example, if a government representing a state violates its obligation to prevent genocide. In the Bosnia Herzegovina vs. Serbia and Montenegro case heard at the ICJ, the responsibility of Serbia was incurred for these reasons. The other responsibilities of a State prescribed by the Convention are as follows:

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68 Such as on Eastern Timor between Portugal and Australia, between Bosnia Herzegovina and Yugoslavia and between Lichtenstein and Germany, on the issue of some of the properties of the Principality. See also ICJ Resolutions, 1995 Resolutions, p. 100 para.22; ICJ Resolutions, 1996 Resolutions, p. 615 para.29; ICJ Resolutions, 2005 Resolutions, p. 18 and 19.

69 Yusuf Sarınay, *Ermeni Tehciri ve Yargılamalar 1915-1916*, Türk-Ermeni İlişkilerinin Gelişimi ve 1915 Olayları Uluslar arası Sempozyum Bildirileri, Ankara, Gazi Üniversitesi Atatürk İlkeleri ve İnkılap Tarihi Araştırma ve Uygulama Merkezi Yayını, 2006, pp.257-265. The tragic events of 1915 do not fall under the 1948 Convention which can not be applied retrospectively. But even if such crimes were unlawful according to national and customary international law of that period, the Ottoman Government prosecuted and condemned the perpetrators of those crimes. During 1916 the Ottoman Government charged 1673 individuals for violations against -among others- the Ottoman citizens of Armenian origin ; 659 suspects were convicted and 67 of themexecuted in accordance with the Ottoman Penal code.Those were crimes like murder, massacres,rape,usurpation and maltreatment, etc. These trials continued after the end of the war under the occupation of the Allied powers. The courts records and judgments have been published in Takvim-i Vekayi. the Ottoman governments' official gazette.

Yusuf Sarınay: In its article with the title "The Armenian Relocation and Trials" reports that this information is deduced from the lists annexed to confidential letters dated. *February 19, 1916; March 16, 1916; and May 22, 1916.* from the Ottoman Ministry of Interior to the Ottoman Foreign Ministry.

- *In accordance with Article V, the Contracting Parties have the responsibility "to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions" of the Convention and, "to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in Article III";*

- *In accordance with Article VI, the Contracting Parties have the responsibility to transfer those accused of committing genocide to the competent tribunal which may have jurisdiction;*

- *In accordance with Article VII, they have the responsibility to extradite criminals.*

If a Contracting Party violates these obligations, its responsibility is incurred, and if a disagreement is to arise thereupon, a state may resort to the International Court of Justice on the basis of Article IX of the Convention. Finally, one should underline that if Armenia had seen the slightest chance of success it would have attempted to bring the case before the ICJ long years ago.

Armenia May Represent the Rights of the Descendants of the Survivors of Genocide

According Mr. de Zayas, *"if Turkey objects about the standing of Armenia to represent the rights of the descendants of the survivors of the genocide, it could be countered by the "protective principle" enunciated by the District Court of Israel in the Eichmann case. Moreover, Armenia could offer Armenian citizenship to all Armenians in the Diaspora".*

Bypassing the National Jurisdiction

Individuals and their descendants wanting restitution or compensation from Turkey must firstly resort to national jurisdiction. This is the fundamental principle of law. De Zayas suggests bypassing the procedures of national law. His proposal disrupts the entire system of international law.

Alfred de Zayas Proposes the Creation of an International Fund for the Payment of Compensation to the Armenians

De Zayas writes:

> *"According to the doctrine (?) the world (?) has an obligation not to*

> *recognize the financial and territorial consequences of the genocide perpetrated (?) by the Ottoman Empire, and (the world) is entitled to demand the cultural heritage of the Armenian people (?) be returned to the Armenian people (?)and to the Armenian Patriarchate (?) and that adequate compensation be paid to the descendants of the victims of the genocide. For this purpose an international Fund could be established, which could be administered by the Office of High Commissioner for Human rights..".*

A "brilliant (!)" suggestion put forward by de Zayas. The technical details such as; "which doctrine?", "which world?", "which legally non existent genocide?", "who represents the Armenian people?", "which Patriarchate?", "who will contribute to the Fund" are apparently of less importance.

Again here, the Republic of Armenia is requested to take an initiative, which will be surely followed by many other initiatives coming from different parts of the world. If Armenia does not take such an initiative, other "interested" states are impatiently waiting the right time and the right occasion to take the right actions.

If Armenia does not take such an initiative, other "interested" states are impatiently waiting the right time and the right occasion to take the right actions.

Alfred de Zayas Proposes That an Advisory Opinion Should be Requested From the International Court of Justice on the "Right to Truth as Human Right"

This is an interesting proposal based on a resolution of the UN Commission on Human Rights about "The Right to Truth" (20 April 2005-UN Do. E/CN.4/2005/66). That will give the opportunity to all the sides to bring forward their views about history and present information and documentations about the different aspects of "the truth". And this aspect enters in the sphere of the freedom of expression. On his subject the European Court of Human Right stated the following in its judgment *Lehideux v France:*

> "The *Court considers that it is not its task to settle (the) point which is part of ongoing debate among historians about the events in question and their interpretation. As such it does not belong to the category of clearly established historical facts such as the Holocaust-whose negation or revision would be removed from the protection of Article10 by Article 17*".

The same Court in its judgment *Ginievski v France* of 31 January 2006, declared the following:

> *"In such matters concerning public interest in a democratic society, restrictions of freedom of expression are to be strictly interpreted. The court considered it essential that a debate on the causes of acts of particular gravity, resulting in crimes against humanity, take place freely in a democratic society*".

So, "the right to truth" encompasses all the aspects of the truth and the lecture of all the pages of the history. In short "a just memory".

Thus, initiatives for dialogue between those who defend different views should be promoted. In this respect, the creation of joint commissions foreseen by the Protocol between Armenia and Turkey will -no doubt- may serve the cause of "Truth"; even if parties to the conflict probably will insist to highlight their views on the different aspects of the "truth"; the result may help to further mutual understanding.

But regarding Mr. De Zayas' statements accusing Turkey of genocide, still, a captivating question comes to the minds: "Why only are the 1915 displacements and the tragedy attached to them being brought to the agenda as genocide, whereas other historical tragedies are not even mentioned?"[70]

This brings us to the problematic of subjectivity in history. Several thinkers and philosophers have written numerous articles and books in this field. In this context, the writings of distinguished French philosopher Paul Ricoeur on the subject provide a good example. Ricoeur defends the opinion that history is not frozen or rigid forever; that assessments categorized as historical truth cannot be conclusive, and that the assertion related to historical knowledge develops; consequently, research on history is continuous.

Paul Ricoeur,[71] who has received international recognition with his book entitled *"Memory, History, Forgetting"*, criticized the concept of "collective memory" and pointed out that some ideologies have been formed under the auspices of this concept in an article published in *Le Monde* on 15 June 2000. Concerning the warning – reminded frequently by local and foreign scholars or politicians in Turkey and abroad – on "completing the task of memory", Paul Ricoeur emphasized that not the "task of memory" but a "study of memory" process should be developed in our minds. He further stated that discussions around "rightful

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70 François Terré, author of an article published in La Figaro newspaper on 13 October 2006 asked: *"Why is this only genocide?"*, criticized the draft resolution in the French Parliament which foresees the punishment of those denying the Armenian genocide, has asked: *"Why is a resolution not adopted for Stalin's Ukraine genocide or Pol Pot's Cambodia genocide, but is adopted only for the Armenians?"*, and had stated that history cannot be written through the resolutions of the parliament.

71 Paul Ricoeur, "*La mémoire, l'histoire, l'oubli*" Editions Seuil, 2000.

memory" creates a difficult picture vis-à-vis those who are forced somewhere to exceedingly remember their sorrows, may equally face somewhere else the position of those who tend to excessively forget; that conviction and punishment is the task of the judge; that the citizen must resist to "forgetting" while at the same time he/she should possess a "just memory"; that the task of the historian is not to accuse or exculpate, but to understand; that the "study of memory" is open to improvement and its feature of défamiliarisation[72] outweighs the task of memory".

Conclusion

A great majority of the Turks do not deny that Ottoman Armenians, together with other Ottoman citizens, were the subject of a tragedy during the 1915 events; and that they have lost their lives, properties, families as well as their homes. Also during the relocation - or "displacements", - the administration and some civil servants of the Ottoman state did not act justly, and even more, did not enforce the existing laws appropriately. However,-as mentioned above- it should be noted that more than 1600 of these officials were tried in Ottoman courts and condemned to various punishments - including death penalty - as a result of the trials which took place during 1916.

On the other hand, Turks reject the accusation of genocide because the legal conditions foreseen by the 1948 Genocide Convention have not been fulfilled - as explained in detail in this article. But if it was not genocide, then the question arises how to name or qualify the tragic events which took place in 1915? Was it mutual killing? Was it crimes under the Ottoman Penal Code? Was it war crime or crimes against humanity? It is believed that all these issues should be reviewed and discussed by legal experts, historians as well as other social scientists between the Armenians and Turks. Even if it seems to be difficult to reach an agreement on these subjects, the results of these discussions should be published together with a view to indicate the agreements and/or disagreements in a concrete way. Then, the process of mutual understanding should be continued. Obviously, this will take time.

Furthermore, it is believed that to prevent a similar tragedy from taking place again, all the necessary measures and precautions must be taken by all the governments and by the non-governmental organizations. The lives, properties and all the rights of the persons must be protected with much greater care. A culture of peace should prevail all around the world.

72 Defamiliarization or ostranenie (остранение) is the artistic technique of forcing the audience to see common things in an unfamiliar or strange way, in order to enhance perception of the familiar.

The Armenian intellectuals with whom the author of this article has met during a visit to Yerevan have shown that a dialogue without precondition between the Armenians and the Turks is possible. On the other hand, the majority of the Armenians continue to think that the Ottoman Government have had the intention to destroy the Armenian population of the Ottoman State and this act should be named as genocide. In this context, it is unlikely that the beliefs of the great majority of the Armenians will change in the near future. Then, another question arises; what to do under these circumstances?

Turks will continue to ask the Armenians and their supporters to acknowledge that some others may have opposite views and facts to support those views. The author of this article is ready to listen to their arguments and will also be asking them to listen to other views. Unfortunately contacts have previously been in the form of "monologue"; this should be changed into a "responsible dialogue".

Finally, it is regretful to note that Mr. Alfred de Zayas' booklet reviewed in this article is biased and far from being constructive, nor does it possess the empathy that is urgently and much needed to contribute to peace and understanding between the Armenians and Turks. Mr.de Zayas follows the line of the post-modern crusaders who endeavor to create an alternative historical truth *via* "Turkey bashing"and "Tête de Turc" treatment.

With the hope that this review will contribute to establish a "responsible dialogue" between the two sides.