
Seyfo

The Assyrian Genocide in
International Law

By Ninos Warda

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Research

All material used in this dissertation is a result of months of reliable research undertaken in various libraries and institutions, not including research conducted on the internet and other media outlets. Effective use was made of the old and important books held in the British Library; various correspondences in the National Archives; and many legal textbooks and journals from the University of Westminster proved essential in discussing the Genocide from a legal perspective and the arguments surrounding this topic. Furthermore, JSTOR, The Scholarly Journal Archive, was indispensable in attaining material focusing on the sociological and psychological impacts of genocide on victims. The internet was also crucial in obtaining contemporary and up-to-date information on the state of the law of genocide and international law generally, and any developments in the global human rights regime in furtherance of promoting respect for human rights. Without all of these materials, this piece of work would not have been possible.

Foreword

The Ignored Genocide: Assyrian Genocide

The Armenian Genocide is generally mentioned in terms of a forgotten genocide. In a way, this may well be true. But if the Armenian Genocide is a forgotten genocide, shouldn't the Assyrian Genocide, committed in the same period by the same forces, be called the ignored genocide? Why isn't this genocide mentioned, why are the Assyrians ignored? Needless to say, this has many reasons. As much as they have been unprotected in the international arena, another important reason must have been the fact they haven't been able to stand up for themselves. Whereas thousands of books have been written on the Armenian Genocide, the number of books written on the Assyrian Genocide is very limited.

Moreover, in the Ottoman Empire many Armenians used to live in urban centres and were active in trade. Numerically they were larger than the Assyrians. Their being commercially engaged ensured them lots of internal and external advantages. They owned many political and cultural associations. They had authors and intellectuals. They were known. As opposed to all of this, the Assyrians used to live in rural areas and their modes of living consisted of agriculture and animal husbandry. Political and intellectual leaders were scarce. In a way, their external recognition was mostly dependent on the Assyrian language they spoke, a language similarly spoken by Christ and his disciples over 2000 years ago. They had no advocates in the country or abroad. Because they were

Christians they had been massacred before. When the 1915 genocide occurred, the outside world only heard of the Armenians and the Armenian Genocide. Therefore, the fate of the Assyrians resembles the fate of the Sinti and Roma in the Jewish genocide committed by Nazi Germany.

The Armenian diaspora has a long-standing history and story. The Armenians who settled in the United States, France, and many other countries had children and grandchildren. Many of them obtained degrees from college and became doctors, engineers, politicians, etc. They integrated into society and became influential in it. A state like Armenia is supportive of this multilingual young Armenian diaspora. Moreover, they have been struggling for the recognition of the Armenian Genocide for ninety years.

After all of this, the history of the Assyrian diaspora which spread from the countryside to Europe and many areas of the world is not very old. It has only existed for the past thirty years. The children of the survivors have only begun to finish their education and question their national identity. The childhood of this young diaspora was strewn with painful memories and stories they heard from their elders. This generation will produce many works on the 1915 genocide in future years. Ninos Warda's study you are holding at the moment is a demonstration of this trend. Moreover, in future years various strong connections will be laid between the Assyrian and Armenian diaspora.

Despite the above, it is also useful to be cognizant of the following. There are three important sources on the Assyrian Genocide of 1915. The first of these is: James Bryce

& Arnold Toynbee, *The Treatment of Armenians in the Ottoman Empire, 1915-1916* (677 pages). Approximately 145 pages of this book is about the Assyrians. Turkey and Turkey's official advocates are attacking this "Blue Book" and are claiming that its contents are fabricated. According to them, the information is made up of lies and was published during World War I by the British government as a propaganda tool. The book consists of eyewitness testimony, in other words it is composed of various consuls and missionaries in Anatolia and Mesopotamia who witnessed the genocide of the Armenian, Assyrian, and other Christians. In the first and original publication the names of the witnesses were kept secret for several reasons but later this was no longer deemed necessary and they were added. The book was de-censored by historian Ara Sarafian and republished in 2000 in London.

The second document is: Johannes Lepsius, *Deutschland und Armenien 1914-1918: Sammlung diplomatischer Aktenstücke* (Postdam, 1919). The protestant priest Johannes Lepsius has left a very large amount of material on the genocide committed by the Ittihad ve Terakki regime against the Christian Assyrians, Armenians, and Greeks. A part of Lepsius' documents and reports are related to the Assyrian Christians. Dr. Gabriela Yonan edited and published a compilation of the above-mentioned material in the journal *Pogrom* (vol.72-73) in 1980 and in 1989 she mentioned Lepsius many times in her book *A Forgotten Holocaust: The Extermination of the Christian Assyrians*.

Third, the Assyrian Genocide was passed on from generation to generation through the oral tradition of the

Assyrians. In the coming years, these very important oral histories will be transcribed.

The Young Turk movement that came to rule the Ottoman Empire wanted to create a homogenous society. Needless to say, the greatest threat to a monocultural society like that were the Christian minorities, who needed to be eliminated. Everything needed to be homogenized. Turkey needed to be Turkified and the Young Turks (or Ittihad ve Terakki regime) took the opportunity of World War I to destroy the Christian minorities in order to implement their ideal of one nation, one flag, and one religion. Turkey's ancient Christian population was reduced from its millions to only tens of thousands, whereas Turkey's greatest richness was its diversity of languages, religions and nations.

Although 90 years has passed since the 1915 genocide which was planned and carried out by the Ottoman State, it still bears significance for today. Turkey wishes to accede to the European Union and it is reminded of the need to cope adequately with its past. Is it possible to claim that a country, not facing up to its past and refusing to account for that past, is civilized and democratic? Orhan Pamuk is a great and respectable writer both in Turkey and the world at large. Weren't his books collected and burnt in Turkey in 2005 when he gave an interview on the genocide? Is it not the same mentality that is burning Orhan Pamuk's books nowadays, that ninety years ago in 1915 also burnt the Christian minorities, the Assyrians, Armenians, and Greeks?

Sabri Atman

Preface

This work will be concerned with the issue of the Assyrian Genocide in International Law. Many works have already been carried out on the Assyrian Genocide of 1915 from a historical and factual perspective, but very few have been dedicated to assessing the Assyrian Genocide in International Law from a legal perspective, which this work intends to do. The view propounded and proved throughout this work is that the acts of 1915 did indeed constitute genocide as is now defined and proscribed by international law.

The work will proceed by way of an introduction that attempts to explain why it is dedicated to the issue of the Assyrian Genocide solely, and not to that of the Armenian and Greek Genocide generally, which took place concurrently with that of the Assyrians. Some of the possible legal problems and impediments vis-à-vis the Assyrian Genocide are also briefly touched upon, leaving them for further discussion in subsequent chapters, together with a concise summary of how the legal issues concerning the Assyrian Genocide will be approached.

The second chapter attempts to put the Assyrian Genocide into context by giving a very brief account of the history of the Assyrian people up to the 20th century, and how the relationship of the Assyrians and the Ottoman Turks was affected by developments in the Ottoman Empire. This chapter is essential in order for the reader to fully comprehend the Assyrian Genocide.

The main bulk of this work will be found in chapter three, which discusses the Assyrian Genocide in International Law. The chapter will be separated into three sections: firstly, how genocide came to be regarded as a crime prohibited under international law; the next two sections will deal with the two elements of the crime of genocide, the *actus reus* and the *mens rea*, and will prove that these two elements were possessed by the perpetrators of the Assyrian Genocide.

Having substantiated claims that the Assyrians were the victims of genocide in 1915 in chapter three, the following chapter will discuss the sensitive issues of Turkish state responsibility and what obligations Turkey now has towards the Assyrians so that reparations may be rendered to the Assyrians as a result of damages inflicted upon them during the genocide.

The book shall then conclude by reasserting the view propagated throughout this work: that the acts committed against the Assyrians by the Young Turk regime in 1915 constituted genocide as proscribed by international law, and that international law requires all States, whether or not a party to the Genocide Convention, to undertake measures to prevent a future Assyrian Genocide, and how this may be achieved.

Ninos Warda

Research

All material used in this dissertation is a result of months of reliable research undertaken in various libraries and institutions, not including research conducted on the internet and other media outlets. Effective use was made of the old and important books held in the British Library; various correspondences in the National Archives; and many legal textbooks and journals from the University of Westminster proved essential in discussing the Genocide from a legal perspective and the arguments surrounding this topic. Furthermore, JSTOR, The Scholarly Journal Archive, was indispensable in attaining material focusing on the sociological and psychological impacts of genocide on victims. The internet was also crucial in obtaining contemporary and up-to-date information on the state of the law of genocide and international law generally, and any developments in the global human rights regime in furtherance of promoting respect for human rights. Without all of these materials, this piece of work would not have been possible.

Chapter 1 - Introduction

In recalling the world community's historic lack of political will to hold States accountable for atrocities, demonstrated by the light treatment of Turkey for the Armenian Genocide, Hitler posed the question, "Who still speaks of the extermination of the Armenians?"¹ as one of his justifications for the perpetration of the Holocaust. The question being posed here is, "Who even remembers, let alone speaks of, the extermination of the Assyrians?" It is generally accepted that the first genocide of the 20th century took place in present day Turkey in 1915.² Unfortunately, this genocide is only usually referred to as

¹ Kelly, M. J., 'Can Sovereigns be brought to Justice?' *The Crime of Genocide's Evolution and the Meaning of the Milosevic Trial* 76 (2002) *St John's Law Review* 257, pp. 276-277

² Fautre, W, *The Ottoman Genocide of Christian Minorities*, 2003 Human Rights Without Frontiers Int., http://www.hrwf.net/html/turkey_ps_20030423.html, Accessed: 24th September 2004

the “Armenian Genocide”. This misconception is dangerous because it negates the fact that this genocide was directed at all the Christian peoples of the Ottoman Empire, then under the hegemony of the Committee for Union and Progress (the CUP - also known as the Young Turk regime),³ including millions of Assyrians, Armenians and Greeks. Indeed, as one Assyrian author has noted:

“The war (i.e. World War One) provided the Ottoman government with the unique opportunity to rid itself from its Christian minorities. They would be destroyed from the social and economic fabric of Ottoman society... And it is precisely this destruction, resulting from deliberate, systematic plans from a central authority (i.e. the Committee for Union and Progress) that must be called genocide.”⁴

Thus, it was not only the Armenians who fell victim to the Young Turks’ genocidal tendencies, but so too must be included other Christian minorities such as the Assyrians and the Greeks. The effects of these genocidal tendencies can still be felt till the present day. Although numbers are hard to quantify, scholars estimate that by 1923, at least 3.5 million of Turkey’s historic Christian population: Assyrians,

³ See, for example, Atman, S, Turkey Should Recognize the Assyrian Genocide of 1915, 2004 (a speech given at the University of Amsterdam on 15/03/2004, <http://www.furkono.com/modules.php?name=News&file=article&sid=251>, Accessed: 24th September 2004; Fautre, W, The Ottoman Genocide of Christian Minorities, 2003 Human Rights Without Frontiers Int., http://www.hrwf.net/html/turkey_ps_20030423.html, Accessed: 24th September 2004

⁴ Atman, S, Turkey Should Recognize the Assyrian Genocide of 1915, 2004 (a speech given at the University of Amsterdam on 15/03/2004, <http://www.furkono.com/modules.php?name=News&file=article&sid=251>, Accessed: 24th September 2004

Armenians and Greeks, had been slain outright, starved, or marched to death, and millions more exiled from ancestral lands going back more than 3,000 years.⁵ Others have estimated that:

“In the space of one decade, the Christian populations of the regions that now constitute the Republic of Turkey went from some five million souls to less than 700,000. This figure has since fallen to less than 200,000. The question that presents itself today is does Christianity have a future in Asia Minor in the 21st century?”⁶

Whereas the genocide of the Armenians and the Greeks is generally well-known and recognised, that of the Assyrians is not. Whatever the reasons for this,⁷ such a status quo cannot be maintained. For example, in a Resolution of June 18, 1987, the European Parliament conceded that the tragic events in 1915-1917 involving the Armenians living in the territory of the Ottoman Empire constitute genocide within the meaning of the Convention on the Prevention and Punishment of the Crime of Genocide 1948 (hereinafter referred to simply as “the Genocide Convention” or “the Convention”) adopted by the United Nations (UN) General

⁵ Halo, T, ‘On Turkey’s Accession into the European Union’ Vol. X, 2004, Zinda Magazine, Issue 44, 19th November 2004, http://www.zindamagazine.com/magazine/11.19.04/index_fri.php, Accessed: 23rd November 2004

⁶ Diamadis, P, The Assyrian in the Christian Asia Minor Holocaust (delivered at the University of Sydney, Australia), http://aanf.org/America/assyrians/assyrian_christian.htm, Accessed: 24th September 2004

⁷ For example, some have argued that historical writings and the stands of journalistic and academic evidence about the Assyrian Genocide have been ignored. For this, see, Khosroyeva, A, The Assyrian Genocide during WWI, <http://www.furkono.com/modules.php?name=News&file=article&sid=71>, Accessed: 24th September 2004

Assembly (GA) on 9th December 1948.⁸ No mention was made of the Assyrians. Similarly, in January 2001 French President Jacques Chirac announced a law adopted by the French Parliament in the same month that recognized the 1915 genocide of the Armenians by the Ottoman Turkish army, making France the first western country to recognize the genocide.⁹ Assyrians were again omitted. The Deputies of the French National Assembly said the law is aimed at rendering justice to the Armenians.¹⁰ What about rendering justice to the Assyrians who were also victims of this egregious crime?

With this in mind, this piece of work will solely be concerned with the Assyrian Genocide. The main view maintained here will be the fact that the acts committed against the Assyrians by the Young Turk regime in 1915 also constitute genocide within the meaning of the Genocide Convention.

At the outset it is important to note that the general view is that the Convention does not operate retroactively, i.e. it only applies to acts committed after the entry into force of the Convention: ‘... the simple fact is that the Genocide

⁸ European Parliament, Resolution, June 18, 1987, Armenian National Institute, http://www.armenian-genocide.org/Affirmation.152/current_category.7/affirmation_detail.html, Accessed: 3rd February 2005

⁹ Chirac Announces Law Recognizing Armenia Genocide, Xinhua (China), 01/03/2001, <http://search.epnet.com/login.aspx?direct=true&AuthType=cookie,ip,url,uid&db=buh&an=2W82001200101182890>, Accessed: 22nd September 2004

¹⁰ French Parliament Recognizes Armenia Genocide by Turkey, Xinhua (China), 01/18/2001, <http://search.epnet.com/login.aspx?direct=true&AuthType=cookie,ip,url,uid&db=buh&an=2W82001200101182890>, Accessed: 22nd September 2004

Convention is not applicable to acts committed before its effective date.’¹¹ Notwithstanding this apparent consensus (which shall be debated later), this does not mean that genocide cannot have been committed prior to 12 January 1951, when the Convention came into force, as the Preamble to the Convention itself admits that ‘at all periods of history genocide has inflicted great losses on humanity.’¹² However, it is argued that the operative clauses of the Convention, including article IX (dealing with state responsibility), can only apply to genocide committed after the entry into force of the Convention with respect to a given State party.¹³ One may ask, therefore, what is the point of attempting to prove genocide within the meaning of the Convention if the alleged acts committed took place before the entry into force of the Convention? The answer is simple: the modern State of Turkey continues to maintain its innocence.¹⁴ Furthermore, if the argument is accepted that the Convention is not retroactive, that does not preclude the recognition of the Assyrian Genocide; there may be historical and moral recognition,¹⁵ rather than simply a denial of the truth.

¹¹ Robinson, J, *And the Crooked Shall Be Made Straight* (New York: MacMillan, 1965), p.82

¹² Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), p. 542

¹³ Ibid

¹⁴ Kelly, M. J., ‘Can Sovereigns be brought to Justice?’ *The Crime of Genocide’s Evolution and the Meaning of the Milosevic Trial* 76 (2002) *St John’s Law Review* 257, p. 270

¹⁵ AUANEWSWATCH - PRESS RELEASE, Stockholm, 18th April 2002, <http://aanf.org/America/assyrrians/auanewswatch01.htm>, Accessed: 24th September 2004

The view shall be proved and substantiated by looking at the Assyrian Genocide in the light of contemporary international law on genocide, taking into account treaty law, case-law, customary international law, and other relevant material, i.e. academic debates on genocide. A critical analysis will be offered throughout of the current state of the law and how it relates specifically to the Assyrian Genocide, touching on particularly sensitive issues such as state responsibility, retroactivity (or the lack thereof) of the Convention, principles of justice, possible remedies to victims of genocide, the obligation of States to prevent a future Assyrian Genocide, and more.

In order to be able to fully understand the Assyrian Genocide in its context, a brief description of the Assyrian people must be given: who are the Assyrians? Where is the Assyrian homeland? Etc. This shall be provided in the next chapter, together with a brief analysis of the events leading up to the genocidal massacres of 1915 and an enquiry into the motives behind them. Following on from this, chapter three will be dedicated to the main issue at hand: the Assyrian Genocide in international law. This chapter will proceed by way of a general introduction to the development of the crime of genocide before 1948, culminating in the Convention of that year. The Assyrian Genocide shall then be proved within the meaning of the Convention, in particular Article II, which provides a stringent definition of the crime. Parallels shall be drawn throughout between the Assyrian Genocide and other genocides committed subsequent to the entry into force of the Convention, such as those in Rwanda and Bosnia, and how the legal precedents emanating therefrom have contributed to the development of the law on genocide.

Following this, a sensitive debate shall be conducted discussing who can be held responsible for these crimes and the consequences thereof, and what forms of redress, either juridical or otherwise, may be available to the Assyrian people as a result of damage inflicted upon them in the genocide. This work shall then conclude by bringing together all of the issues raised previously and shall reaffirm the view propounded above: that the Assyrian Genocide of 1915 does constitute genocide within the meaning of the Convention. This chapter will also argue that all States, whether or not party to the Convention, have an obligation under international law to prevent a future Assyrian genocide from reoccurring, an event, which, in the light of recent developments in the Middle East, and more specifically in the Assyrian homeland, does not seem a remote a possibility as one may think. Issues particularly pertinent to genocide prevention shall also be discussed.

Chapter 2 - The Assyrian Genocide in Context

Introduction to the Assyrians up to the 20th Century

As noted earlier, in order to fully appreciate the issues surrounding the Assyrian Genocide, and plight in general, a brief description of the Assyrian people and their homeland must be given.

The Assyrians are the indigenous people of the land of Assyria (Mesopotamia), ‘the cradle of civilisation’, and are the descendants of the ancient Assyrian Empire that ruled till the 7th century B.C. and represented one of the earliest civilisations in the world, hence the appellation ‘cradle of

civilisation.¹⁶ The Assyrian homeland encompasses what was once the core of the Assyrian Empire and is now made up of the areas of northern Iraq, south-eastern Turkey, north-western Iran, and north-eastern Syria, although there are now Assyrian communities scattered in other parts of the Middle East also.¹⁷ At the turn of the 20th century the Assyrians still occupied many of these areas.¹⁸ Unfortunately, the Assyrians no longer inhabit many of these areas as a result of persecutions¹⁹ and the genocide of 1915, and many areas of the ancestral Assyrian homeland are now erroneously referred to as “Kurdistan”. As a result of their cultural and religious diversity, the Assyrians, throughout the ages, have come to be known through

¹⁶ See, for example, Assyrian Human Rights Report, Assyrian International News Agency, <http://www.aina.org/reports/ahrr.htm>, Accessed: 17th February 2005; Westcott, K, Iraq's Rich Mosaic of People, BBC News Online, http://www.news.bbc.co.uk/go/pr/fr/-/2/hi/middle_east/2783989.stm, Accessed: 17th March 2003

¹⁷ Al-Jeloo, N, Who Are the Assyrians? The Assyrian Australian Academic Society, Sydney, Australia, July 2, 2000, <http://www.ngauk.com/literature/files/Who%20Are%20the%20Assyrians.doc>, Accessed: 24th September 2004. The author provides a very detailed description of the Assyrian homeland in the same article: “Northern Iraq includes the regions of Mosul, Dohuk, ‘Aqra and Zibar, Mezuriyeh, Gourzan (Gahra), Supna (Amadiya), Zakho and Adiabene (Arbil and Kirkuk). Southeastern Turkey includes the Assyrian regions of Hakkari (Hakkari), Van, Bohtan (Cizre), Bedlis (Bitlis), ‘Ayn-Sliwa / ‘Ayn-Slibo (Siirt), Amed / Omed (Diyarbakir), Lagga / Lago (Lice), Tur-‘Abdin (Jebel Toor), Mirda / Merdo (Mardin), Siverek, Tella-Shleela (Viransehir), Kharput (Harput), Malatya, Perin (Adiyaman), Palu, Gerger, Shmeishat (Samsat), Urhay / Urhoy (Sanliurfa), and ‘Ayn-Tawa / ‘Ayn-Towo (Gaziantep). Northwestern Iran includes the Assyrian region of Urmia and Salamast and northeastern Syria includes the Khabour region, the Euphrates valley and the villages around Aleppo.”

¹⁸ Saadi, Abdul-Masih, From Survival to Revival: In the Aftermath of the Assyrian Genocide, http://aanf.org/America/assyrians/survival_revival.htm, Accessed: 24th September 2004

¹⁹ Al-Jeloo, N, Who Are the Assyrians? The Assyrian Australian Academic Society, Sydney, Australia, July 2, 2000, <http://www.ngauk.com/literature/files/Who%20Are%20the%20Assyrians.doc>, Accessed: 24th September 2004

various appellations,²⁰ although the Assyrian name remains the most accurate.²¹ The Assyrians speak a Semitic language, Assyrian, also known as Syriac,²² and are essentially a Christian nation who are believed to have been one of, if not the, first nations to accept Christianity in the first century A.D.²³ All these characteristics make the Assyrians a distinct indigenous community in the Middle East and thus should be distinguished from their Arab,

²⁰ See, for example, the definition of 'Assyrian' found on <http://www.atour.com>: 2: the Assyrians, although representing but one single nation as the direct heirs of the ancient Assyrian Empire, are now doctrinally divided, inter sese, into five principle ecclesiastically designated religious sects with their corresponding hierarchies and distinct church governments, namely, Church of the East, Chaldean, Maronite, Syriac Orthodox and Syriac Catholic... No one can coherently understand the Assyrians as a whole until he can distinguish that which is religion or church from that which is nation - a matter which is particularly difficult for the people from the western world to understand; for in the East, by force of circumstances beyond their control, religion has been made, from time immemorial, virtually into a criterion of nationality. 3: the Assyrians have been referred to as Aramaean, Aramaye, Ashuraya, Ashureen, Ashuri, Ashuroyo, Assyrio-Chaldean, Aturaya, Chaldean, Chaldo, ChaldoAssyrian, ChaldoAssyrio, Jacobite, Kaldany, Kaldu, Kasdu, Malabar, Maronite, Maronaya, Nestorian, Nestornaye, Oromoye, Suraya, Syriac, Syrian, Syriani, Suryoye, Suryoyo and Telkefee."

²¹ Parpola, S, Assyrian Identity in Ancient Times and Today, <http://www.ngauk.com/literature/files/Assyrian%20Identity%20in%20Ancient%20Times%20and%20Today.pdf>, Accessed: 24th September 2004

²² Syriac is a dialect of the Aramaic language, which in turn belongs to the Semitic family of languages. On this, see, Coakley, J. F., Robinson's Paradigms and Exercises in Syriac Grammar, Fifth Edition (Oxford: Oxford University Press, 2002), p. 1

²³ Westcott, K, Iraq's Rich Mosaic of People, BBC News Online, http://www.news.bbc.co.uk/go/pr/fr/-/2/hi/middle_east/2783989.stm, Accessed: 17th March 2003. For example, the Assyrian kingdom of Edessa (the modern Urfa in south east Turkey), was celebrated throughout Christendom for the legend of the exchange of letters between its king and Jesus at Jerusalem, and was venerated as the first kingdom to accept Christianity. On this, see, Segal, J. B., Edessa: The Blessed City, Second Edition (Piscataway: Gorgias Press, 2001)

Turkish, Kurdish, etc. neighbours. The Assyrians, however, remain a stateless people with an increasing population living in the Diaspora, a phenomenon which can be directly linked to the Assyrian Genocide of 1915.²⁴ The situation of the Assyrians has become so precarious that one writer has simply referred to them as ‘The Vanishing Assyrians’.²⁵ The question, therefore, that now begs to be answered is, ‘What precipitated the events of 1915, culminating in the full-scale genocide of the Assyrian people?’

A Genocide Grounded on National Ideology

At the beginning of the 20th century the Assyrian people lived predominantly under the hegemony of the Ottoman and Persian Empires.²⁶ It was developments that specifically took place within the Ottoman Empire however which were to shape the destiny of the Assyrian people. The Assyrian Genocide of 1915 has been categorised as an ideologically-motivated genocide, one of the first of the 20th century,²⁷ and upon close examination one can see why this is so. Chalk and Jonassohn give a particularly concise and accurate account of the events within the Ottoman Empire leading up to the genocide of 1915:

²⁴ Assyrian Human Rights Report, Assyrian International News Agency, <http://www.aina.org/reports/ahrr.htm>, Accessed: 17th February 2005

²⁵ Brentjes, B, *The Armenians, Assyrians & Kurds: Three Nations, One Fate?* (Varanasi: Rishi Publications, 1999), pp. 45-66

²⁶ Saadi, Abdul-Masih, *From Survival to Revival: In the Aftermath of the Assyrian Genocide*, http://aanf.org/America/assyrians/survival_revival.htm, Accessed: 24th September 2004

²⁷ Chalk, F, & Jonassohn, K, *The History and Sociology of Genocide: Analysis and Case Studies*, (London: Yale University Press, 1990), p. 249

“It occurred during World War I, after the Ottoman Empire had been experiencing a steady decline. The decline, combined with ideas spreading from Western Europe, gave rise to a new ideology of nationalism that emphasized a homogenous nation with one language and one religion. Through the writings of Zia Gokalp, this new ideology with its rejection of minority rights and individual liberties, found an audience among the Young Turks, a factious movement that sought to overthrow the Sultan and modernize the Turkish state. Its emphasis on a common culture and language, shared by all Turkic-speaking people, led to a Pan-Turkism that excluded all minority groups. When the Committee of Union and Progress under Talaat and Enver came to power, Gokalp was a member of the Central Committee.”²⁸

Thus, the adoption of Turkish nationalism by the CUP government had a devastating impact upon Christian Ottomans.²⁹ This devastating impact was precipitated by the large territorial losses of the Ottoman Empire, losses which shook to its foundations the multinational and multi-religious character of the Empire and caused the Young Turks to regard the Assyrians, Armenians and Greeks not only as foreigners but as distrustful and unwanted people who could only be dealt with by extermination.³⁰ This genocidal tendency which was meant to “solve the Eastern

²⁸ Ibid

²⁹ Karpat, K. H., ‘The Memoirs of N. Batzaria: The Young Turks and Nationalism’ 6 (1975) *International Journal of Middle Eastern Studies* 276, p. 293

³⁰ Saadi, Abdul-Masih, *From Survival to Revival: In the Aftermath of the Assyrian Genocide*, http://aanf.org/America/assyrrians/survival_revival.htm, Accessed: 24th September 2004

Question”³¹ was furthered by the declaration of a ‘jihad’, a Holy War, whereby on 12 November 1914, the sultan-caliph unveiled a decree of war, signed by the Turkish ministers, and shortly thereafter addressed an imperial declaration to the army and navy, demanding their participation in the jihad.³² This calling of a jihad also helped encourage other Muslims in the Empire such as the Kurds, which were instrumental in the genocide, to participate in it. It is interesting to note that in an article by Rudolph J. Rummel of the University of Hawaii, the Young Turk regime is classified as the fifth most lethal regime of the 20th century, with an annual rate of 0.96% of the population killed in what he terms ‘democide’ per year of the regime.³³

Thus, from the above, albeit brief, description of events within the Ottoman Empire, it becomes clear that the dictatorial regime which emerged within the Empire, led by a triumvirate made up of Talaat Pasha (1874 - 1921), Jemal Pasha (1872 - 1922) and Enver Pasha (1881 - 1922),³⁴ was at the centre of the commission of the Assyrian Genocide of 1915, which is the topic of discussion here.

³¹ Dadrian, V. N., ‘The Naim-Andonian Documents on the World War 1 Destruction of Ottoman Armenians: The Anatomy of a Genocide’ 18 (1986) *International Journal of Middle Eastern Studies* 311, p. 328

³² Yonan, G, *Holy War Made in Germany: New Light on the Holocaust Against the Christian Assyrians during World War 1*, Berlin, Germany, July 2, 2000, <http://www.ado-world.org/en/articles.php?id=11>, Accessed: 24th September 2004

³³ Rummel, R. J., ‘Power, Genocide and Mass Murder’ 31:1 (1994) *Journal of Peace Research* 1, pp. 3-4

³⁴ Astourian, S, ‘The Armenian Genocide: An Interpretation’ 23:2 (1990) *The History Teacher* 111, p. 131

Chapter 3 - The Assyrian Genocide in International Law

Genocide Prohibited as a Crime under International Law

Although human history is replete with examples of people perpetrating genocide against one another,³⁵ buttressing the fact that ‘genocide is as old as humanity’,³⁶ it is unfortunate that the legal prohibition of genocide as a crime under international law is a lot younger. In fact, what is now known as genocide was prosecuted by the Nuremberg Tribunal (IMT) under

³⁵ Kelly, M. J., ‘Can Sovereigns be brought to Justice?’ *The Crime of Genocide’s Evolution and the Meaning of the Milosevic Trial* 76 (2002) *St John’s Law Review* 257, p. 262

³⁶ *Ibid*, p. 264

the heading of crimes against humanity,³⁷ and neither Article 6 (c) of the Charter of the IMT nor Article II (1) (c) of Control Council Law No. 10 explicitly envisaged genocide as a separate category of these crimes, even though the wording of the relevant provisions clearly encompassed genocide.³⁸

The term ‘genocide’ itself was first coined as a neologism by Raphael Lemkin in his work *Axis Rule in Occupied Europe*,³⁹ and, in fact, the term’s first use in a trial and judgement came in 1946 when the Supreme National Tribunal of Poland convicted Rudolf Franz Hoess, the former commandant of Auschwitz, of the crime of genocide.⁴⁰

The major breakthrough came, however, with UN GA Resolution 96 (1) of December 1946, which designated genocide as a crime under international law, the perpetrators of which can be subject to prosecution, and eliminated the nexus between genocide and armed conflict which resulted from the Nuremberg jurisprudence.⁴¹ Two years later, in 1948, the Genocide Convention was adopted

³⁷ Kittichaisaree, K, *International Criminal Law*, (Oxford: Oxford University Press, 2001), p. 67

³⁸ Cassese, A, *International Criminal Law*, (Oxford: Oxford University Press, 2003), p. 96

³⁹ Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), pp. 24-30

⁴⁰ Kelly, M. J., ‘Can Sovereigns be brought to Justice?’ *The Crime of Genocide’s Evolution and the Meaning of the Milosevic Trial* 76 (2002) *St John’s Law Review* 257, p. 281

⁴¹ Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), p. 46

by the UN GA after much discussion and compromise during the drafting stages,⁴² significantly giving genocide autonomy as a specific crime.⁴³

Although not perfect, the prohibition of genocide as defined in the Convention as a *jus cogens* norm has been confirmed by the International Court of Justice (ICJ), as has been the non-contractual character of the Convention, i.e. its capacity in creating obligations even vis-à-vis non-affected States (*erga omnes* obligations) on the basis of its compelling humanitarian nature.⁴⁴ The importance of the prohibition of genocide now is such that it has been included in a myriad of subsequent legal instruments and cases. For example, both Article 2 of the Statute of the International Criminal Tribunal for Rwanda (ICTR) and Article 4 of the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY) use the same definition for genocide as is found in the Convention;⁴⁵ similarly, the same definition is found in Article 6 of the Rome Statute of the International Criminal Court (ICC)

⁴² For an interesting insight into some of the problems encountered in the drafting of the Genocide Convention, see, Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), Ch. 2, pp. 51-101

⁴³ Cassese, A, *International Criminal Law*, (Oxford: Oxford University Press, 2003), p. 96

⁴⁴ Bantekas, I, & Nash, S, *International Criminal Law*, Second Edition, (London: Cavendish Publishing Limited, 2003), p. 358

⁴⁵ *Genocide, War Crimes and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia*, Human Rights Watch, (London: Human Rights Watch, 2004), p. 12 and p. 161

1998,⁴⁶ making genocide one of the crimes the ICC has jurisdiction over;⁴⁷ and, the definition of genocide found in the ICC Statute is further elaborated upon by Article 6 of the Elements of Crimes of the ICC.⁴⁸ As a result of subsequent legal and non-legal developments since the adoption of the Convention, it is therefore not an exaggeration to assert that genocide can now be regarded as the ‘crime of crimes’.⁴⁹

The Assyrian Genocide within the Framework of the International Law on Genocide

In order to attract liability for any criminal act the perpetrator must possess both the requisite *actus reus* (the physical act) and *mens rea* (the mental state of mind) of the act in question. With regards to genocide, both of these elements are found in Article 2 of the Convention, which provides a stringent definition of the crime of genocide:

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

a) Killing members of the group;

⁴⁶ Schabas, W. A., *An Introduction to the International Criminal Court*, Second Edition, (Cambridge: Cambridge University Press, 2004), pp. 197-198

⁴⁷ *Ibid*, pp. 36-41

⁴⁸ *Ibid*, pp. 280-282

⁴⁹ Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000)

- 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.

The elements thus contained in Article 2 must therefore be present in order for liability for genocide to be established. As stated by the Trial Chamber of the ICTR in Prosecutor v Bagilshema, Case No. ICTR-95-1A-T, June 7, 2001: ‘The Chamber considers that a crime of genocide is proven if it is established beyond reasonable doubt, firstly, that one of the acts listed under Article 2 (2) of the Statute (of the ICTR, which corresponds to Article 2 of the Convention) was committed and, secondly, that this act was committed against a specifically targeted national, ethnical, racial or religious group, with the specific intent to destroy, in whole or in part, that group. Genocide therefore invites analysis under two headings: the prohibited underlying acts and the specific genocidal intent or *dolus specialis*.’⁵⁰

The approach that will be taken here, therefore, will be to firstly prove that the Assyrians were subjected to the enumerated acts listed in Article 2 of the Convention, fulfilling the *actus reus* requirement of the crime, and

⁵⁰ Genocide, War Crimes and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia, Human Rights Watch, (London: Human Rights Watch, 2004), p. 12

secondly, it will be proved that the perpetrators of the acts possessed the necessary genocidal intent to fulfil the second element of the crime, the *mens rea*.

Actus reus

The five acts enumerated in Article 2 provide an exhaustive list of offences,⁵¹ which can be committed through either act or omission.⁵² With regards to the Assyrian Genocide, it is indeed possible to prove that the Assyrians were the victims of all of the enumerated acts in Article 2, which is the purpose of this section.

Paragraph (a) of Article 2 makes killing members of the group an underlying offence of genocide. The Trial Chamber of the ICTR in Prosecutor v Akayesu, Case No. ICTR-96-4-T, September 2, 1998, made it clear that the killing must be intentional.⁵³ Furthermore, the victim must be a member of the national, racial, ethnical or religious group that is the target of the genocide in question,⁵⁴ and it is not imperative that the perpetrator killed more than one

⁵¹ Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), p. 154

⁵² *Ibid*, p. 156

⁵³ *Genocide, War Crimes and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia*, Human Rights Watch, (London: Human Rights Watch, 2004), p. 20

⁵⁴ Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), p. 158

person to be guilty of this offence.⁵⁵ (The question of whether or not the Assyrians are a national, racial, ethnical or religious group within the meaning of the Convention will be addressed in the next section dealing with the *mens rea* of genocide).

Historical and contemporary sources are replete with evidence attesting to the intentional killings of Assyrians and the destruction of whole Assyrian villages and towns in furtherance of the Young Turks' genocidal policy of Pan-Turkism, falling within the parameters of Article 2 (a) of the Convention. In the traditional Assyrian province of Diyarbakir in South East Turkey, for example, one estimate, from a western source, puts the proportion of human losses of all the Assyrian Christian communities in the province at 74%.⁵⁶ Similarly, another source, an Assyrian one, presented by the Syriac Orthodox Patriarchate at the Peace Conference of 1919, estimates that around 77,963 individuals were massacred in the Diyarbakir province during the genocide of 1915.⁵⁷ Individual accounts of intentional killings can also be given. One of the most harrowing comes from the Assyrian city of Mardin, where we read that due to the Muslim and Christian neighbourhoods of the city being intermingled, it made it difficult distinguishing a Muslim from a Christian home, a problem which was remedied in 1915 by crosses being

⁵⁵ Ibid, and, Genocide, War Crimes and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia, Human Rights Watch, (London: Human Rights Watch, 2004), p. 286

⁵⁶ de Courtois, S, The Forgotten Genocide: Eastern Christians, The Last Arameans, (New Jersey: Gorgias Press, 2004), p. 198

⁵⁷ Ibid, p. 196

painted on the doors of Christian homes, facilitating the massacre of Assyrians.⁵⁸ This is strikingly similar to testimony given in Akayesu whereby the Trial Chamber found that evidence that the ‘troops of the Rwandan Armed Forces and of the Presidential Guard were going into houses in Kigali that had been previously identified in order to kill’ was sufficient to show both ‘killing’ and ‘serious bodily harm’ to members of a group.⁵⁹ Two accounts, that of Father Armalet’s and Patriarch Rahmani’s, concur in affirming that all Assyrian villages in the province were attacked, naming several of them.⁶⁰ This is corroborated by Father Simon’s account, a Dominican priest on a mission to the region and stayed in Mardin till June 1916. An extract from one of his accounts merits full citation for an understanding of some of the atrocities committed there:

“From March to November 1915, an immense red line the color of blood streaked the sky of Turkey. Monstrous deeds were occurring, nameless, indefinable, as the young Ottoman land decimated, or rather annihilated its own sons with its own hands - most of them serving in its army - evicted from their homes, raped their daughters, kidnapped their wives, scattered their families, torched their villages, deporting the survivors, burning the dead.”⁶¹

⁵⁸ Ibid, p. 114

⁵⁹ Genocide, War Crimes and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia, Human Rights Watch, (London: Human Rights Watch, 2004), p. 21

⁶⁰ de Courtois, S, *The Forgotten Genocide: Eastern Christians, The Last Arameans*, (New Jersey: Gorgias Press, 2004), p. 177

⁶¹ Ibid, p. 161

In another massacre, Turkish soldiers are estimated to have killed the 564 Assyrian inhabitants of the village of Ka'biye at the insistence of the Turkish vali of the province (a vali is a Governor General of a province),⁶² Reshid Bey,⁶³ including a schoolteacher and deacon of the village.⁶⁴ In a similarly barbarous act, two testimonies confirm massacres in Assyrian villages in the north of the province in the Al-Hattakh diocese:

“In this whole northern region of the vilayet, there were fifteen Jacobite (i.e. Syriac Orthodox Assyrians) villages that were very prosperous, and which brought quite a bit of income to the State; it was a population of about 20,000 individuals. A spirit of insanity must have come over Turkey for it to send to their deaths hard working and faithful subjects who did not have the fatal name of Armenians and who were even called ‘the orphans of Mohamed’. This important fact shows that Turkey was not just after Armenians, but after all Christians.”⁶⁵

If such barbaric acts, which are just the tip of a large iceberg, are not intentional killings as proscribed by Article 2 (a), it is hard to imagine what is.

The Assyrians of the Assyrian mountainous regions of Tur Abdin and Hakkari shared a similar fate to that of their brethren in Diyarbakir, as did the Assyrians of the Urmia region. The Russian withdrawal from Urmia on 2nd January

⁶² Ibid, p. 284

⁶³ Ibid, p. 178

⁶⁴ Ibid

⁶⁵ Ibid, p. 178

1915 proved ominous for the Assyrians there, allowing the Turks to attack the city on the 4th.⁶⁶ Rev. W. A. Shedd, D. D., of the American Presbyterian Mission, writing from Urmia, gives an account of the massacres there and attaches responsibility where it belongs:

“The retreat of the Russians put all Christians in peril... The flight left some 25,000 Christians in Urumia. All of these sought shelter from massacre. On the one hand the Kurds were pouring into the plain, urged on and followed by Turkish officers and troops... Many died as martyrs to their faith. In several places the Christians defended themselves, but the massacring was not confined to these. Villages that deliberately gave up their arms and avoided any conflict suffered as much as those that fought... During the months of Turkish occupation there was never a time of real safety for the Christians... During this period the Turks were responsible not only for failure to protect the Christians effectively, but also for direct massacres under orders. One hundred and seventy men thus massacred were buried by the American missionaries, their bodies lying in heaps where they had been shot down and stabbed. They had been tied together and led out to be murdered by Turkish agents.”⁶⁷

Again, a striking resemblance can be struck with the Akayesu case where testimony regarding ‘heaps of bodies... everywhere, on the roads, on the footpaths and in rivers

⁶⁶ Rockwell, W. W., *The Pitiful Plight of the Assyrian Christians in Persia and Kurdistan*, Second Edition, (New York: American Committee for Armenian and Syrian Relief, 1916), p. 15

⁶⁷ *Ibid*, pp. 19-20

and, particularly, the manner in which all these people had been killed' was found to be evidence sufficient to show both 'killing' and 'causing serious bodily harm to members of a group'.⁶⁸ The Assyrians of Hakkari and Tur Abdin were similarly victimised: the Hakkari Assyrians were attacked by the Turks and Kurds and eventually driven from their villages for good, including one of the Assyrian patriarchs, Mar Shimun;⁶⁹ Tur Abdin suffered a massive wave of attack in the summer of 1915, leaving many villages and their inhabitants desecrated - for example, the village of Kerburan, one of the most prosperous and inhabited by more than 350 Assyrian families of the Syriac Orthodox faith were burned by Kurds inside their homes, and in the town of Hasankeif, which was estimated to have an Assyrian population of 600-700 individuals was completely razed: 'The massacre lasted for 4 hours in an orgy of unheard-of violence that spared no one, neither women nor children. There were no survivors.'⁷⁰

The above eye-witness accounts and descriptions of large-scale massacres of Assyrian Christians therefore, seems to prove beyond reasonable doubt that the Assyrians were subjected to intentional killings due to their distinct ethnic and religious identity to that of the Turks, and their agents, the Kurds. This would put the Assyrian massacres therefore

⁶⁸ Genocide, War Crimes and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia, Human Rights Watch, (London: Human Rights Watch, 2004), p. 21

⁶⁹ Heazell, F. N., *The Woes of a Distressed Nation: Being an Account of the Assyrian People from 1914-1934*, (London: Faith Press, 1934), p. 3

⁷⁰ de Courtois, S, *The Forgotten Genocide: Eastern Christians, The Last Arameans*, (New Jersey: Gorgias Press, 2004), pp. 186-187

inexorably within Article 2 (a) of the Convention, as interpreted and applied by subsequent case-law. This is further substantiated by the fact of the wide-scale nature of the massacres: they were not directed to Assyrians of a particular region only.

Article 2 (b) of the Convention makes ‘causing serious bodily or mental harm to members of the group’ an act of genocide (provided it is accompanied with the requisite *mens rea*). The ICTR has, in many cases, elaborated upon what constitutes serious bodily or mental harm. As an example, in *Prosecutor v Rutaganda*, Case No. ICTR-96-3, December 6, 1999, the Trial Chamber affirmed that: ‘Serious bodily or mental harm includes acts of bodily or mental torture, inhumane or degrading treatment, rape, sexual violence, and persecution.’⁷¹ This reaffirmed the precedent set in *Akayesu* where the ICTR explained that rape and sexual violence may constitute genocide on both a physical and mental level.⁷² Graphic and distressing evidence was presented in the Tribunal of the rape of Tutsi women. An excerpt from such an account is presented here because of its compelling similarity to the sort of rape and sexual violence Assyrian women were also subjected to during the genocide:

“The Chamber wishes to underscore the fact that in its opinion, they (i.e. rape and other crimes of sexual violence)

⁷¹ Genocide, War Crimes and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia, Human Rights Watch, (London: Human Rights Watch, 2004), p. 22

⁷² Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), p. 161

constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such. Indeed, rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways to inflict harm on the victim as he or she suffers both bodily and mental harm. In light of all the evidence before it, the Chamber is satisfied that the acts of rape and sexual violence described above, were committed solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated, and raped several times, often in public... and often by more than one assailant. These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole. The rape of Tutsi women was systematic and was perpetrated against all Tutsi women and solely against them.”⁷³

The similarity between the treatment of Tutsi and Assyrian women during both genocides is startling. Sexual violence was also an integral part of the destruction of Assyrian women and the community. For example, writing around the time of the genocide, Abraham Yohannan notes that in the village of Gulpashan in the district of Urmia, after the men were slain, the good-looking women and girls were carried off, and, furthermore, in the village of Babarud, hundreds of women jumped in the deep river when they

⁷³ Ibid, p. 163

saw how many of their sisters were violated by the band of brigands, in broad daylight, in the middle of the road.⁷⁴

“When the male population of a village were done away with, many of the women were not killed but reserved for a more humiliating fate. The women who were unable to flee or did not succeed in hiding themselves were deliberately dishonored, and the girls deflowered. We weep for them because they were not killed by the butcher’s knife.”⁷⁵

In many cases young Assyrian girls were also kept as prostitutes, and passed from one Turk to another.⁷⁶ Furthermore, eye-witness testimony is also available affirming the fact that many Assyrian women were killed after being violated. One such witness is Halata, an Assyrian woman from the town of Sairt.⁷⁷ The public humiliation Tutsi women were subjected to was also prevalent during the Assyrian Genocide, where we learn that many Assyrian women were entirely stripped, under pretence of being searched, by Turkish officers and their Kurdish agents.⁷⁸ We know that other women were not subjected to such humiliating and barbaric treatment because some of them even participated in persecuting Assyrian women and children.⁷⁹ For example, there is evidence that Assyrian women were burned by Turkish and

⁷⁴ Yohannan, A, *The Death of a Nation*, (New York: The Knickerbocker Press, 1916), p. 127

⁷⁵ *Ibid*, pp. 139-140

⁷⁶ Naayem, J, *Shall This Nation Die?*, (New York: Chaldean Rescue, 1920), p. 43

⁷⁷ *Ibid*, p. 147

⁷⁸ *Ibid*, pp. 209-210

⁷⁹ *Ibid*, p. 209

Kurdish women in order to recover the gold and precious stones they were supposed to have swallowed.⁸⁰

Notwithstanding the methods of rape and sexual violence used against Assyrian and other Christian women, other methods were also utilised to cause serious bodily or mental harm to members of the Assyrian group. The Elements of Crimes of the ICC makes it clear that inhuman or degrading treatment is also included within Article 2 (b).⁸¹ In Akayesu, it was stated that death threats during interrogation, alone or coupled with beatings, constitute infliction of ‘serious bodily or mental harm’ inflicted on members of the group.⁸² In his book *Shall This Nation Die?*, the Assyrian author Joseph Naayem has dedicated a whole chapter on his prison experiences and the atrocities he and fellow prisoners whom he interviewed suffered at the hands of the Turkish police, with accounts of beatings, death threats and other barbaric treatment abundant.⁸³

⁸⁰ Ibid, p. 170

⁸¹ Schabas, W. A., *An Introduction to the International Criminal Court*, Second Edition, (Cambridge: Cambridge University Press, 2004), 281

⁸² *Genocide, War Crimes and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia*, Human Rights Watch, (London: Human Rights Watch, 2004), p. 22

⁸³ Naayem, J, *Shall This Nation Die?*, (New York: Chaldean Rescue, 1920), pp. 52-109. With regards specifically to death threats, the author recites a particular interrogation by a Commandant Mazloun, who threatened not only the life of the author himself but revealed an intent to kill all Christians in Turkey generally: “Commandant Mazloun entered the cell and began to abuse me. ‘Die like a dog, you ungrateful traitor!’ he said. ‘You Christians live among us, but you are ever ready to bite us like venomous snakes. We ought to crush your heads and get rid of you.’” p. 73

In discussing the scope of Article 2 (c) of the Convention, the ICTR in *Prosecutor v Kayishema and Ruzindana*, Case No. ICTR-95-1-T, May 21, 1999, stated that:

“Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part includes circumstances which will lead to a slow death, for example, lack of proper housing, clothing, hygiene and medical care... and methods of destruction which do not immediately lead to the death of the members of the group.”⁸⁴

In his discussion of Article 2 (c), William Schabas has rightly held that the treatment of the Armenians by the Turkish rulers in 1915 provides the paradigm for this provision, especially with regards to the ‘deportations’, as they went beyond mere expulsion or transfer, because the deportation itself involved deprivation of fundamental human needs with the result that large numbers died of disease, malnutrition and exhaustion.⁸⁵ Unfortunately he makes no mention of the Assyrians who were subjected to the same deportations. In a telegram sent by the Ministry of the Interior of the CUP on 26 October 1914, the Minister evidences the governments’ intention to deport the Assyrians⁸⁶ ‘to appropriate provinces’ in dispersed manner

⁸⁴ Genocide, War Crimes and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia, Human Rights Watch, (London: Human Rights Watch, 2004), p. 23

⁸⁵ Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), p. 168

⁸⁶ The Minister refers to “Nestorian” Assyrians only, i.e. Assyrians of the Church of the East

so that they will not be together in a mass and be exclusively among Muslim people, with each location not having more than 20 dwellings.⁸⁷ This no doubt reveals the governments' intent of assimilating the Assyrians within the larger Turkish population, eventually bringing about the destruction of the Assyrians as a distinct people.

Other more overt actions were taken by the Turkish authorities that clearly fall within the ambit of Article 2 (c). One writer, for example, notes that in the town of Sairt Assyrians were rounded up like cattle and made to march for days in the harsh climate.⁸⁸ Also, American, English and French archives now report that the Turkish army attacked the Assyrian villages and, using Kurdish auxiliary troops from the Assyrian neighbourhood, destroyed the Assyrians by seizing their land, livestock and possessions.⁸⁹ The American Committee for Armenian and Syrian Relief (ACASR), from June 1, 1915, to January 1916, for example, reports on the situation of the Assyrians in Urmia as follows:

“At the beginning of June, 1915, when the people emerged from our premises emaciated from sickness and malnutrition and crushed by the blow that had fallen upon

⁸⁷ Donef, R, The Deportation of the Assyrians in Ottoman Documents, <http://www.atour.com/-aahgn/news/20040306b.html>, Accessed: 24th September 2004

⁸⁸ Khosroyeva, A, The Assyrian Genocide During WW1, <http://www.furkono.com/modules.php?name=News&file=article&sid=71>, Accessed: 24th September 2004

⁸⁹ Yonan, G, Holy War Made in Germany: New Light on the Holocaust Against the Christian Assyrians during World War 1, Berlin, Germany, July 2, 2000, <http://www.ado-world.org/en/articles.php?id=11>, Accessed: 24th September 2004

them, they were confronted by a seemingly hopeless situation. Practically all of their household furnishings and food supplies had been plundered; the same was true of their domestic animals on which they depended in large measure for their subsistence; their houses were without any doors and windows and probably a full third of them had been demolished.”⁹⁰

The complete razing of Assyrian villages was a common phenomenon to help rid any Assyrian presence and to prevent any survivors from returning to their homes. This is confirmed by H. P. Packard of the ACASR,⁹¹ and even by the Ministry of the Interior of the CUP, who, in a telegram of October 30 1915, admits of the desertion of the large Assyrian regions of Midyat and Mardin.⁹²

These are all inexorable instances of genocide committed against the Assyrians within the meaning of Article 2 (c). It is interesting to note that the Guatemalan Commission for Historical Clarification concluded that genocide had been committed against the Mayan people by the army in 1981-83, and noted practices which included the razing of villages and the destruction of property, which left communities without any food, causing the Commission to opine that this amounted to conditions of life ‘that could bring about, and in several cases did bring about, its

⁹⁰ Rockwell, W. W., *The Pitiful Plight of the Assyrian Christians in Persia and Kurdistan*, Second Edition, (New York: American Committee for Armenian and Syrian Relief, 1916), p. 22

⁹¹ *Ibid*, p. 27

⁹² Donef, R, *The Deportation of the Assyrians in Ottoman Documents*, <http://www.atour.com/-aahgn/news/20040306b.html>, Accessed: 24th September 2004

physical destruction in whole or in part'.⁹³ It is hard to see any difference between the plight of the Mayan people during this period and that of the Assyrians in 1915.

Having described just some of the sexual ordeals Assyrian women had to endure at the hands of the Turkish and Kurdish forces when discussing Article 2 (b)'s application to the Assyrian Genocide, the issue once again becomes pertinent with regards to Article 2 (d), 'imposing measures intended to prevent births within the group'. One of the most disturbing reports in this regard tells of the slashing of pregnant women's wombs,⁹⁴ an action obviously intended to prevent births within Assyrian society. Furthermore, it has become clear through the case-law of the ICTR in cases such as Akayesu, that the mental effect of rape by which a woman is so traumatised that she refuses to procreate would also amount to genocide.⁹⁵ This makes sense because it is well-known that rape victims suffer from long-term traumas as a result of the sexual violence. This sexual violence was a step toward the destruction of the Tutsi group in Rwanda by destroying their (Tutsi women) spirit, will to live, or will to procreate.⁹⁶ Similarly, many Assyrian women lost the will to live either as a result of sexual

⁹³ Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), pp. 168-169

⁹⁴ Khosroyeva, A, *The Assyrian Genocide During WW1*, <http://www.furkono.com/modules.php?name=News&file=article&sid=71>, Accessed: 24th September 2004

⁹⁵ Bantekas, I, & Nash, S, *International Criminal Law*, Second Edition, (London: Cavendish Publishing Limited, 2003), p. 363

⁹⁶ Kittichaisaree, K, *International Criminal Law*, (Oxford: Oxford University Press, 2001), p. 74

violence, or through fear of impending sexual violence, as occurred in Babarud mentioned above.⁹⁷

The final act of genocide enumerated in Article 2 of the Convention is found in paragraph (e), ‘forcibly transferring children of the group to another group’. As rightly stated by the International Law Commission (ILC), ‘the forcible transfer of children would have particularly serious consequences for the future viability of a group as such.’⁹⁸ This is so because, presumably, when children are transferred from one group to another, their cultural identity may be lost; they will be raised within another group, speaking its language, participating in its culture, and practicing its religion.⁹⁹ This is especially true for the Assyrians, who possess a distinct culture, language, religion and ethnicity to that of the Turks, Kurds, Arabs, etc.

One way in which this act of genocide was committed against the Assyrians was through a process of ‘eradication by conversion’.¹⁰⁰ Being predominantly Christians living in a largely Muslim society, the Assyrians were constantly under threats of forced conversions and 1915 was no exception. We learn, for example, that kidnapped girls, often little more than children, were converted and then raised according to the rules of Islam by Muslim families, who considered them ‘gawars’, without rights and cut off

⁹⁷ Yohannan, A, *The Death of a Nation*, (New York: The Knickerbocker Press, 1916), p. 127

⁹⁸ Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), p. 176

⁹⁹ *Ibid*

¹⁰⁰ de Courtois, S, *The Forgotten Genocide: Eastern Christians, The Last Arameans*, (New Jersey: Gorgias Press, 2004), Ch. 8, pp. 123-129

from their roots.¹⁰¹ Many were later sold as slaves to serve as domestic help for Muslim families.¹⁰² This is further corroborated by Chalk and Jonassohn who write that ‘small children, snatched from their parents, were renamed and farmed out to be raised as Turks.’¹⁰³ This clearly falls within Article 2 (e) of the Convention. The issue of forced conversions is particularly pertinent to Article 2 (e) because the term ‘forcible’ corresponds not only to forcible physical transfer but also to acts of threats or trauma which would lead to the forcible transfer, as held in *Akayesu* and followed in subsequent cases.¹⁰⁴

The forced conversions were further fuelled by the calling of a jihad throughout the Ottoman Empire. As a result, forced conversions that took place in 1915 were analogous to weapons, since wide-scale, systematic conversions were used to combat an ‘enemy’.¹⁰⁵ With regards to such forced conversions of Assyrian children, this action falls directly within Article 6 (e) (7) of the Elements of Crimes, which requires that the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction (i.e. of the group).¹⁰⁶

¹⁰¹ Ibid, p. 128

¹⁰² Ibid

¹⁰³ Chalk, F, & Jonassohn, K, *The History and Sociology of Genocide: Analysis and Case Studies*, (London: Yale University Press, 1990), p. 260

¹⁰⁴ Kittichaisaree, K, *International Criminal Law*, (Oxford: Oxford University Press, 2001), pp. 81-82

¹⁰⁵ de Courtois, S, *The Forgotten Genocide: Eastern Christians, The Last Arameans*, (New Jersey: Gorgias Press, 2004), p. 123

¹⁰⁶ Schabas, W. A., *An Introduction to the International Criminal Court*, Second Edition, (Cambridge: Cambridge University Press, 2004), p. 282

In conclusion, it is beyond reasonable doubt that the Assyrians were subjected to all of the genocidal acts by the Turkish and Kurdish forces, now outlawed by Article 2 of the Convention, as has been illustrated above. Having substantiated and proved the first element of the crime, the *actus reus*, it is now necessary to prove that the perpetrators possessed the second element, the *mens rea*, to which we now turn.

Mens rea

To constitute the crime of genocide, one of the five acts must be accompanied with the ‘intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such...’ This is the *mens rea* element of genocide. The degree of intent required by Article 2 can be described as ‘specific intent’ or ‘special intent’.¹⁰⁷ The Appeals Chamber of the ICTY defined this specific intent requirement in *Prosecutor v Jelusic*, Case No. IT-95-10, July 5, 2001, thus:

“The specific intent requires that the perpetrator, by one of the prohibited acts enumerated in Article 4 of the Statute (which corresponds to Article 2 of the Convention), seeks to achieve the destruction, in whole or in part, of a national, ethnical, racial or religious group, as such.”¹⁰⁸

¹⁰⁷ Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), p. 217

¹⁰⁸ *Genocide, War Crimes and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia*, Human Rights Watch, (London: Human Rights Watch, 2004), p. 162

The intent is required prior to the commission of the acts,¹⁰⁹ and, even more importantly, the intent ‘may, in the absence of direct explicit evidence, be inferred from a number of facts and circumstances’ (Jeliscic case).¹¹⁰ This specific intent requirement is easily provable in the context of the Assyrian Genocide, through not only the facts and circumstances, but also through actual statements by influential members of the CUP, the ruling Ottoman government of the day.

The fact that this intent requirement existed prior to the commission of the genocidal acts is easily discernible from a statement by one of the Young Turks’ chief ideologues, Dr. Behaeddin Shakir, where in the 1911 Congress of the CUP in Salonika, he told the Congress that: “the nations that remain from the old times in our empire are akin to foreign and harmful weeds that must be uprooted. To clear our land...”¹¹¹ The genocidal intent, therefore, did not appear spontaneously in 1915, but was present before the commission of the acts. Dr. Shakir was one of the members of the Central Committee of the CUP which had extensive powers over civilian and military personnel alike¹¹² and it is beyond doubt that the genocide was secretly decided and

¹⁰⁹ Ibid, p. 13

¹¹⁰ Ibid, p. 164

¹¹¹ Assyrian Genocide in Mesopotamia Submission to NSW Local Government, Fairfield City Council, 2002, http://www.aua.net/assyrian_genocide.htm, Accessed: 24th September 2004

¹¹² Astourian, S, ‘The Armenian Genocide: An Interpretation’ 23:2 (1990) The History Teacher 111, p. 142

handled by the top leaders of the CUP.¹¹³ For example, at the Turkish Military Tribunal (TMT), evidence was adduced of a case in which a high-ranking deportation official, Abdulahad Nuri, admitted to receiving orders of destruction from Talaat Pasha, Minister of the Interior, as the ‘purpose of the deportation was destruction’, to finally solve the ‘Eastern Question’.¹¹⁴

In another telegram, Talaat reiterates the point that the crimes being committed serve the purpose of the government, with the long-decided extermination.¹¹⁵ Even more chillingly, in another telegram Talaat orders his functionaries to act harshly and swiftly to speed up the desired deaths in accordance with the government’s grand policy.¹¹⁶ What was this grand policy? Clearly this was the nationalistic Pan-Turkism ideology articulated by the two main leading ideologues of the CUP, Dr. Shakir and Dr. Mehmet Nazim.¹¹⁷ As accepted by the Appeals Chamber of the ICTY in Jelusic, although the existence of a plan or policy is not a legal ingredient of the crime, in the context of proving specific intent, the existence of a plan or policy

¹¹³ Dadrian, V. N., ‘The Documentation of the World War 1 Armenian Massacres in the Proceedings of the Turkish Military Tribunal’ 23 (1991) *International Journal of Middle Eastern Studies* 549, p. 550

¹¹⁴ *Ibid*, p. 558

¹¹⁵ Dadrian, V. N., ‘The Naim-Andonian Documents on the World War 1 Destruction of Ottoman Armenians: The Anatomy of a Genocide’ 18 (1986) *International Journal of Middle Eastern Studies* 311, p. 314

¹¹⁶ *Ibid*

¹¹⁷ Fautre, W, *Remembering the 1915-1918 Genocide*, 2003 Human Rights Without Frontiers Int., http://www.hrwf.net/html/turkey_ps_20030325.html, Accessed: 24th September 2004

may become an important factor,¹¹⁸ and this is no more so than the Assyrian Genocide where the Young Turks' ideology of Pan-Turkism excluded minorities such as the Assyrians. Even more interestingly, in Akayesu it was stated that the 'general political doctrine which gave rise to the acts' could be a factor to take into consideration when assessing *mens rea*, and¹¹⁹ this would surely cover the political doctrine of Pan-Turkism prevalent in the Ottoman Empire during the Assyrian Genocide.

As noted earlier, the intent requirement for genocide can also be inferred. This is especially important because in many cases a perpetrator of genocide will not publicly confess an intention to commit genocide. Turkey is a good example of this: it still denies that the Assyrian Genocide ever took place.

In Kayishema and Ruzindana the Trial Chamber identified, among other factors, 'the methodical way of planning' and 'the systematic manner of killing' as relevant factors in assessing *mens rea*.¹²⁰ The systematic and methodical manner in which Assyrian villages and towns and their inhabitants were attacked precludes any possible denial of governmental involvement. An excerpt from Sebastien de Courtois' book is indicative of this:

¹¹⁸ Genocide, War Crimes and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia, Human Rights Watch, (London: Human Rights Watch, 2004), p. 165

¹¹⁹ Ibid, p. 14

¹²⁰ Ibid

“The most striking aspect of these events (i.e. the attacks against the Assyrians of Tur Abdin) is the agreement of different testimonials as to the simultaneity of the attacks. They all began in the beginning of the month of June, within days of each other: on the 10th at Mardin and its surroundings; on the 14th at Nusaybin, on the 21st at Midyat, and in June 1915 at Jezireh. Given these circumstances, it is hard to imagine some sort of ‘spontaneous attack’ taking place at the same time in places often several days walk away from each other. Moreover, all the witnesses are in agreement as to the direct involvement of many regular ‘soldiers’ in several massacres. The fact that the police executed several governors judged too moderate in their anti-Christian sentiments, such as the governor of Lice, might lead one to suppose that they were obeying orders from higher up.”¹²¹

The fact that some officials who resisted their orders were removed from office, or, in some instances, put to death to ensure compliance from others,¹²² is well-known, with Talaat Pasha even directing the court-martialing of some such officials.¹²³ All these factors can only lead to one conclusion: that the destruction of the Assyrians was planned, decided and executed by the CUP. This is further corroborated by the reports of the British authority Lord

¹²¹ de Courtois, S, *The Forgotten Genocide: Eastern Christians, The Last Arameans*, (New Jersey: Gorgias Press, 2004), p. 194

¹²² Dadrian, V. N., ‘The Documentation of the World War 1 Armenian Massacres in the Proceedings of the Turkish Military Tribunal’ 23 (1991) *International Journal of Middle Eastern Studies* 549, p. 560

¹²³ Dadrian, V. N., ‘The Naim-Andonian Documents on the World War 1 Destruction of Ottoman Armenians: The Anatomy of a Genocide’ 18 (1986) *International Journal of Middle Eastern Studies* 311, p. 315

Bryce, who reports that although many of the atrocities were also executed by the Kurds, they were operating under the direct orders of the Turkish military command.¹²⁴

Although cultural genocide, i.e. the destroying of a people's language, culture, religious and cultural institutions, etc, is not included in Article 2 of the Convention, it can be used as evidence to show the intent to destroy the victim group.¹²⁵ As the Trial Chamber of the ICTY noted in *Prosecutor v Krstic*, Case No. IT-98-33, August 2, 2001: "Where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of an intent to physically destroy the group."¹²⁶ The destruction of Assyrian churches and monasteries, for example, which number amongst some of the oldest in the world, was concomitant with the destruction of the Assyrians themselves. The purpose of this was simply to wipe out any physical evidence of Assyrian existence and continuity in

¹²⁴ Tashjian, J. H., *Turkey: Author of Genocide - the destruction of the Assyrian Nation*, <http://www.atour.com/education/20001120a.html>, Accessed: 24th September 2004. Also, in a debate in the House of Lords on 6 October 1915, Lord Bryce stated that: "As I have said, the procedure was exceedingly systematic. The whole population of a town was cleared out... Many of the Moslems tried to save their Christian neighbours and offered them shelter in their houses, but the Turkish authorities were implacable." For this, see, Sarafian, A, & Avebury, E, *British Parliamentary Debates on the Armenian Genocide, 1915-1918*, (London: Gomidas Institute, 2003), p. 11

¹²⁵ Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), p. 188

¹²⁶ *Genocide, War Crimes and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia*, Human Rights Watch, (London: Human Rights Watch, 2004), p. 166

that land. A brief look at the situation of two Assyrian churches gives the reader a sense of the scale of destruction: the Syriac Orthodox Church and the Church of the East. At the eve of 1895, the Syriac Orthodox Church numbered 13 dioceses; immediately after WW1, it would only have five plus a new one, Lebanon.¹²⁷ In a list of damages incurred during the genocide drawn up by the Syriac Orthodox Church, it is estimated that 156 churches and monasteries were destroyed.¹²⁸ The situation of the Church of the East proved just as bleak: “With the loss of the Hakkari region during World War 1... Among the victims were two patriarchs, the metropolitan, many bishops, and the majority of priests. This had a catastrophic effect on the church’s situation: the Apostolic Church of the East appeared to have been entirely wiped out.”¹²⁹

The scale of the destruction is such that it is hard not to infer an intention to completely destroy the Assyrians. In the words of the ICTY in *Prosecutor v Karadzic and Mladic*, Case No. IT-95-5-R61, July 11, 1996: “The destruction of mosques or Catholic churches is designed to annihilate the centuries-long presence of the group or groups.”¹³⁰ The Ottoman government almost succeeded in annihilating the centuries-long presence of the Assyrians.

¹²⁷ de Courtois, S, *The Forgotten Genocide: Eastern Christians, The Last Arameans*, (New Jersey: Gorgias Press, 2004), p. 95

¹²⁸ *Ibid*, p. 239

¹²⁹ Baum, W, & Winkler, D. W., *The Church of the East: A Concise History*, (London: RoutledgeCurzon, 2003), p. 139

¹³⁰ Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), p. 188

Despite the fact the Ottoman government failed in its attempt to completely annihilate the Assyrians, this would not be a stumbling block for a finding of genocide, because Article 2 makes it clear that the intention must be to destroy the group ‘in whole or in part’, as affirmed in *Akayesu*, meaning that the actual extermination of the entire group is not required.¹³¹ Although it has been shown that the Ottoman government intended to completely annihilate the Assyrians (and all other Christians in the Empire for that matter), there is evidence that there was a tendency to kill influential or intellectual figures in the community first. For example, in the Harput district, which had a large Assyrian community, we learn that the governors conducted arbitrary arrests of young men or influential figures, teachers, priests, notables. These arrests, which soon became executions, first targeted each community’s elites.¹³² Professor Ashur Yussef of Harput,¹³³ and Dr. Paul Shimun of Urmia,¹³⁴ both Assyrians, are good examples of this tendency, a tendency which may also help to explain why Assyrian churches and their clergy were so badly devastated, as they were able to provide some form of leadership for their members. This would fall within the meaning attached to the phrase ‘in part’ by the ICTY, where in both *Prosecutor v Sikirica et al*, Case No. IT-95-8,

¹³¹ Genocide, War Crimes and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia, Human Rights Watch, (London: Human Rights Watch, 2004), p. 15

¹³² de Courtois, S, *The Forgotten Genocide: Eastern Christians, The Last Arameans*, (New Jersey: Gorgias Press, 2004), p. 163

¹³³ *Ibid*

¹³⁴ Yohannan, A, *The Death of a Nation*, (New York: The Knickerbocker Press, 1916), p. 134

September 3, 2001, and *Prosecutor v Jelasic*, Case No. IT-95-10, December 4, 1999, it was stated that genocidal intent may manifest itself even if there is evidence that the destruction is related to only a significant section of the group, such as its leadership.¹³⁵

To meet the definition of genocide in the Convention, the perpetrator must intend to destroy, in whole or in part, ‘a national, ethnical, racial or religious group, as such.’ It must be shown therefore that the Assyrians fall into one of these categories, the list being exhaustive.¹³⁶ If the purpose of the Convention was to protect national minorities from crimes based on ethnic hatred,¹³⁷ then the Assyrians must be a ‘national’ group for the purposes of the Convention, being numerically smaller than, and ethnically different to, the Turks. This is further strengthened if one accepts the recent definition of ‘national minority’ by the European Commission for Democracy through Law, which entails ‘a group which is smaller in number than the rest of the population of a State, whose members, who are nationals of that State, have ethnical, religious or linguistic features different from those of the rest of the population, and are guided by the will to safeguard their culture, traditions, religion or language.’¹³⁸ Such a definition would definitely cover the Assyrians living under the Ottoman Empire.

¹³⁵ Genocide, War Crimes and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia, Human Rights Watch, (London: Human Rights Watch, 2004), p. 163

¹³⁶ *Ibid*, p. 166

¹³⁷ Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), p. 119

¹³⁸ *Ibid*, pp. 116-117

The definition of an ‘ethnic group’ was elaborated upon in Akayesu, where it was stated that ‘An ethnic group is generally defined as a group whose members share a common language or culture.’¹³⁹ This was affirmed in Kayishema.¹⁴⁰ The definition thus seems to incorporate the Assyrians as an ethnic group also; the Assyrians have a common language and share a common ancient culture and were regarded as a distinct ethnic group to the Turks, which is why they were subjected to genocide.

If the definition of ‘racial group’ as propounded in Akayesu and Kayishema is accepted as correct, it becomes difficult trying to fit the Assyrians alone into that category. The definition given to it in Akayesu was quite broad: “The conventional definition of racial group is based on the hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors.”¹⁴¹ Such a broad definition, therefore, would arguably include not only the Assyrians, but other people from the same geographical area sharing similar physical traits, i.e. the Armenians, Kurds, Turks, Arabs, etc.

An argument based on similar thought can be used with regards to ‘religious groups’. In Akayesu it was asserted that

¹³⁹ Genocide, War Crimes and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia, Human Rights Watch, (London: Human Rights Watch, 2004), p. 17

¹⁴⁰ Ibid. Here the ICTY added groups that distinguish themselves as a distinct ethnic group (self-identification) or a group identified as such by others, including the perpetrators (identification by others).

¹⁴¹ Ibid, p. 18

“A religious group is one whose members share the same religion, denomination or mode of worship.”¹⁴² We have seen throughout this work, that the genocidal acts of the CUP were directed to ‘Christians’ in the Empire generally, i.e. Assyrians, Armenians, Greeks, which is why some have called it the ‘Christian Asia Minor Holocaust’.¹⁴³ On this basis, therefore, it is also arguable that the Ottoman government committed genocide against not only individual Christian groups in the region such as the Assyrians, but at all the Christians in the Empire generally.

Having discussed both the *actus reus* and *mens rea* elements of genocide as contained in Article 2, it is the writer’s firm view that the acts committed against the Assyrians in 1915 by and at the insistence of the CUP can be categorised as nothing other than genocide itself, resulting in nearly the total annihilation of the Assyrian people who still feel the effects of the genocide. It is unfortunate that the State of Turkey continues to deny the Assyrian Genocide, a denial which prevents recognition of the act, let alone a willingness to accept responsibility for it.

¹⁴² Ibid

¹⁴³ Diamadis, P, The Assyrian in the Christian Asia Minor Holocaust (delivered at the University of Sydney, Australia), http://aanf.org/America/assyrians/assyrian_christian.htm, Accessed: 24th September 2004

Chapter 4 - Turkey's Responsibilities under International Law

Having shown substantial Ottoman governmental involvement in the Assyrian Genocide, the question that now begs to be answered is how is the modern state of Turkey responsible for these crimes against humanity, and what are its duties to the Assyrian people under international law.

Reference to the sensitive topic of state responsibility is explicitly made in Article IX of the Convention.¹⁴⁴ The topic is sensitive because of the long-running debate as to whether Article IX imposes 'criminal' or 'civil' liability on

¹⁴⁴ "Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

States for acts of genocide. Due to the nature and gravity of genocide, it is hard to conceive of genocide without some form of State complicity or involvement,¹⁴⁵ so the general concept of state responsibility for genocide can hardly be doubted.¹⁴⁶ But is responsibility civil or criminal? Some have argued that Article IX refers to the ordinary civil responsibility of States,¹⁴⁷ relying on debates during the drafting of the Convention as evidence of this.¹⁴⁸ If that is an accurate statement of the law then it is questionable whether it is the correct approach. Due to the wide-scale nature of genocide, usually with significant governmental involvement (the Ottoman government is a good example of this), it is hard to see why States cannot be criminally responsible for genocide. The comments of Denmark, submitted to the ILC on behalf of the Nordic countries, are in conformity with this view:

“If, for instance, one looks at the crime of genocide or the crime of aggression, such crimes are, of course, perpetrated by individual human beings, but at the same time they may be imputable to the State insofar as they will normally be carried out by State organs implying a sort of ‘system criminality’. The responsibility in such situations cannot in our view be limited to the individual human being acting on behalf of the State. The conduct of an individual may give rise to responsibility of the State he or

¹⁴⁵ Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), p. 418

¹⁴⁶ *Ibid*, p. 434

¹⁴⁷ Jorgensen, N. H. B., *The Responsibility of States for International Crimes*, (Oxford: Oxford University Press, 2003), p. 40, p. 271

¹⁴⁸ Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), pp. 420-421

she represents. In such cases the State itself must be brought to bear responsibility in one forum or another, be it through punitive damages or measures affecting the dignity of the State... If the term ‘crime’ used in relation to a State is, however, regarded as too sensitive, consideration may be given to using other terminology such as ‘violations’ and ‘serious violations’ (of an international obligation).”¹⁴⁹

Interestingly, in the Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections (*Bosnia and Herzegovina v Federal Republic of Yugoslavia*), ICJ Reports 1996, 595-624, Bosnia-Herzegovina argued that a State may be guilty of genocide if it, or its officials or agents, commit genocide as defined in Article 2 of the Convention.¹⁵⁰ The ICJ concluded that the reference in Article IX to ‘the responsibility of a state for genocide...’ did not exclude any form of state responsibility, hence, the Court did not rule out the possibility that a State could be held directly responsible for genocide.¹⁵¹ Although the approach of the ICJ has been criticised,¹⁵² and which ever stance is adopted, it is evident that there is nothing in the Convention to exclude the direct responsibility of a State for genocide, and nothing to prevent its interpretation in a new light so that it reflects developments in international law.¹⁵³

¹⁴⁹ Ibid, pp. 441-442

¹⁵⁰ Jorgensen, N. H. B., *The Responsibility of States for International Crimes*, (Oxford: Oxford University Press, 2003), p. 266

¹⁵¹ Ibid, p. 269

¹⁵² Ibid, p. 278

¹⁵³ Ibid, p. 277

For state responsibility for an ‘internationally wrongful act’, of which the commission of genocide is undoubtedly one,¹⁵⁴ to arise, two elements must be present: 1) there must be an unlawful act (which may be committed through act or omission) in breach of the State’s international obligations; and 2) the unlawful act must be attributable to the State.¹⁵⁵ With regards to Turkey’s responsibility for the Assyrian Genocide, the first element becomes problematic if one accepts that the Convention is not retroactive,¹⁵⁶ as it can be argued that Turkey was not bound by any international legal obligations prohibiting genocide in 1915 (Turkey has been a party to the Convention since 31st July 1950)¹⁵⁷ and therefore is not responsible for the genocide. This is because if responsibility is to arise, it is essential that the act or omission causes a breach of an international obligation that is binding on the State at the time of the act or omission,¹⁵⁸ a principle that runs in conformity with the principles of *nullum crimen sine lege* and *nulla poena sine*

¹⁵⁴ Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), p 443

¹⁵⁵ Crawford, J, & Olleson, S, *The Nature and Forms of International Responsibility*, Ch. 14, in Evans, M. D., *International Law*, First Edition, (Oxford: Oxford University Press, 2003), p. 453

¹⁵⁶ On this, see footnote 11

¹⁵⁷ United Nations Treaty Collection (As of 9 October 2001), 1. Convention on the Prevention and Punishment of the Crime of Genocide, <http://www.unhchr.ch/html/menu3/b/treaty1gen.htm>, Accessed: 24th September 2004

¹⁵⁸ Dixon, M, *Textbook on International Law*, Fourth Edition, (London: Blackstone Press Limited, 2000), p. 233. This is also confirmed in Article 13 of the ILC’s ‘Articles on the Responsibility of States for Internationally Wrongful Acts’: “An act of a state does not constitute a breach of an international obligation unless the state is bound by the obligation in question at the time the act occurs.” For this, see, Brownlie, I, *Basic Documents in International Law*, Fifth Edition, (Oxford: Oxford University Press, 2002), pp. 300-310

lege. These arguments lose considerable strength, however, when one looks at the outcomes of the Nuremberg trials and the judgement of the Supreme Court of Israel in *Eichmann v Attorney-General of the Government of Israel* (1962) 36 I. L. R. 277.

The precise contours of *nullum crimen* received extensive discussion during and after the Nuremberg trials, where the defendants asserted that the charges against them - in particular that of waging a war of aggression - were not crimes as of 1939.¹⁵⁹ The IMT took an extremely loose and controversial view however of *nullum crimen* in 1946 and the court saw it as a 'principle of justice' and stated that it would be unjust to let the perpetrators go unpunished since 'the attacker must know that he is doing wrong'.¹⁶⁰ Where is the justice in the attempted annihilation of the Assyrians, costing hundreds of thousands of lives, without anyone being held responsible for it? That cannot be based on any principle of justice. Furthermore, this injustice is perpetuated by the State of Turkey still denying that the genocide even took place. The perpetrators of the genocide must have known what they were doing was wrong as their actions were met by a joint declaration from the governments of France, Great Britain and Russia, dated 25 May 1915, asserting that 'in the presence of these new crimes of Turkey against humanity and civilization, the allied Governments publicly inform the Sublime Porte that they will hold personally responsible for the said crimes all

¹⁵⁹ Ratner, S. R., & Abrams, J. S., *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*, Second Edition, (Oxford: Oxford University Press, 2001), p. 22

¹⁶⁰ *Ibid*

members of the Ottoman Government as well as those of its agents who are found to be involved in such massacres.’¹⁶¹

The Supreme Court of Israel also relied extensively on the reasoning of the IMT in convicting Eichmann for his major role in the ‘Final Solution’ of the Jews.¹⁶² The Court made it clear that the crimes created by the law of which Eichmann was convicted must be deemed today to have always borne the stamp of international crimes banned by international law:¹⁶³

“If there was any doubt as to this appraisal of the ‘Nuremberg Principles’ as principles that have formed part of customary international law ‘since time immemorial,’ such doubt has been removed by... the United Nations Resolution on the Affirmation of the Principles of International Law Recognised by the Charter and Judgement of the Nuremberg Tribunal and that affirming that Genocide is a crime under international law... the crimes established in the Law of 1950... must be seen today as acts that have always been forbidden by customary international law - acts which are of a ‘universal’ criminal character and entail individual criminal responsibility...”¹⁶⁴

If the crimes Eichmann was convicted of always bore the stamp of international crimes, then surely the crimes the

¹⁶¹ Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), p 16

¹⁶² Green, L. C., *International Law through the Cases*, Fourth Edition, (Toronto: The Carswell Company Limited, 1978), p. 222

¹⁶³ Ibid

¹⁶⁴ Ibid, p. 224

Assyrians were subjected to also always bore the stamp of international crimes. This is further reaffirmed by the joint declaration of May 1915 which refers to these new crimes of Turkey against humanity and civilization. Thus, on these bases, there is a strong argument for asserting that Turkey was indeed in breach of its international obligations when committing genocide against the Assyrians, a breach which is attributable to the state of Turkey as it was instigated, organized and committed by the State, i.e. it was systematic,¹⁶⁵ and a breach which continues to be condoned by Turkey's constant denial of genocide.

It is axiomatic that breach of an international obligation gives rise to a secondary obligation to make reparation for that breach and this principle has been incorporated into the ILC's Draft Articles on State Responsibility, Part III.¹⁶⁶ Remedies are important because when the State has committed human rights violations, remedies can provide the psychological and social functions of reintegration and rehabilitation of the victimized.¹⁶⁷ This is reflected in the ILC's Draft Articles which provides that full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination.¹⁶⁸ There is also strong support in international law, stemming from treaty

¹⁶⁵ Jorgensen, N. H. B., *The Responsibility of States for International Crimes*, (Oxford: Oxford University Press, 2003), p. 112

¹⁶⁶ Dixon, M, *Textbook on International Law*, Fourth Edition, (London: Blackstone Press Limited, 2000), p. 240

¹⁶⁷ Shelton, D, *Remedies in International Human Rights Law*, (Oxford: Oxford University Press, 1999), pp. 50-51

¹⁶⁸ Brownlie, I, *Basic Documents in International Law*, Fifth Edition, (Oxford: Oxford University Press, 2002), p. 307

obligations such as the International Covenant on Civil and Political Rights 1966 (ICCPR), to which Turkey is a party,¹⁶⁹ that States are obligated to compensate victims of human rights violations, whether committed by the current government or a former regime.¹⁷⁰ The current State of Turkey therefore is not precluded in international law from giving reparation to the Assyrians because the genocide was committed by a former government, i.e. the Young Turks' regime.

This reparation can take many forms. Restitution, for example, is designed to re-establish the situation which existed before the wrongful act was committed,¹⁷¹ so vis-à-vis the Assyrians of Turkey, this can entail the state of Turkey allowing the Assyrians that were driven from their homes and villages during the genocide to return; the rebuilding of villages, homes, churches and monasteries, etc, destroyed during the genocide. Compensation is another form of reparation, insofar as the damage caused is not made good by restitution.¹⁷² This certainly includes monetary compensation payable by the state of Turkey to Assyrian victims who suffered as a result of the death of their relatives during the genocide, the compensation assessable by reference to the loss suffered, as occurred in

¹⁶⁹ Warda, N, International Human Rights Law and the Assyrians, <http://www.ngauk.com/literature/files/International%20Human%20Rights%20Law%20and%20the%20Assyrians.pdf>, Accessed: 27th March 2005

¹⁷⁰ Ratner, S. R., & Abrams, J. S., Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy, Second Edition, (Oxford: Oxford University Press, 2001), p. 159

¹⁷¹ Brownlie, I, Basic Documents in International Law, Fifth Edition, (Oxford: Oxford University Press, 2002), p. 306

¹⁷² Ibid

The Lusitania Case, 7 RIAA 32 when The Lusitania was sunk in 1914.¹⁷³

Reparation is not limited however to only monetary compensation. Reparation in the form of satisfaction, for example, may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.¹⁷⁴ As noted above, Turkey continues to deny that the Assyrian Genocide occurred. In his final report to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Theodoor van Boven rightly indicated that revelation of the truth is a fundamental requirement of justice,¹⁷⁵ justice denied to the Assyrians by Turkey's constant denial. One way in which the truth behind the perpetration of the Assyrian Genocide may be revealed is through the medium of a truth commission set-up specifically for this purpose. Commissions are usually created at a transition point in a society to demonstrate or underscore a break with a past record of human rights abuses, to promote national reconciliation, and/or to obtain or sustain political legitimacy.¹⁷⁶ Turkey is now seeking to enter the European

¹⁷³ Dixon, M, *Textbook on International Law*, Fourth Edition, (London: Blackstone Press Limited, 2000), p. 240

¹⁷⁴ Brownlie, I, *Basic Documents in International Law*, Fifth Edition, (Oxford: Oxford University Press, 2002), p. 306

¹⁷⁵ Shelton, D, *Remedies in International Human Rights Law*, (Oxford: Oxford University Press, 1999), p. 20

¹⁷⁶ Ratner, S. R., & Abrams, J. S., *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*, Second Edition, (Oxford: Oxford University Press, 2001), p. 229. Some have also called for the creation of a Permanent International Truth Commission. For this, see, Scharf, M. P., 'The Case for a Permanent International Truth Commission' 7 *Duke Journal of Comparative and International Law* 375

Union (EU). It can and should be made a pre-requisite for Turkey's accession into the EU that a truth commission is set-up to reveal the truth behind the Assyrian Genocide of 1915, in order that Turkey may show its political maturity by coming to terms with its past, recognise and condemn the events of 1915, apologise for them and take positive steps towards making reparation to the victims of the genocide.

The organisation Human Rights Without Frontiers Int. has also made some excellent recommendations to the Turkish government that can go a long way in repairing the damage done to the victims of the genocide and in strengthening the human rights regime in Turkey.¹⁷⁷ It is hoped that the Turkish government takes these recommendations seriously and takes positive steps to implement them in the near future.

¹⁷⁷ Fautre, W, Turkey: National Minorities, 2003 Human Rights Without Frontiers Int., http://www.hrwf.net/html/turkey_ps_20030129.html, Accessed: 24th September 2004

Chapter 5 - Conclusions: Duty to Prevent a Future Assyrian Genocide

This work has sought to prove and has proved that the acts committed against the Assyrians by the Young Turk regime in 1915, in an attempt to annihilate the Assyrian presence in its ancestral homeland, constitute genocide within the meaning of the Genocide Convention and international law. After looking at the material facts concerning the events of 1915; genocide as defined and prohibited in international law; similarities between the Assyrian Genocide and subsequent genocides such as those in Rwanda and Bosnia, it is impossible to come to any other conclusion. The first step, however, which must be taken in order that justice may be rendered to the Assyrian people, is recognition that the genocide took place: recognition not only by Turkey but by the international community in general. This is important for

the future benefit of Turkey and the international community as a whole, because by preventing history from being lost or re-written, society can learn from its past in order to prevent a repetition of such violence in the future.¹⁷⁸

This brings us neatly onto the international legal duty to prevent a future Assyrian Genocide. The title of the Convention and the provisions of Article 1 make it clear that Contracting Parties undertake to prevent and punish the crime of genocide. This obligation¹⁷⁹ is reaffirmed in Article VIII: “Any Contracting Party may call upon the competent organs of the UN to take such action under the Charter of the UN as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.” Furthermore, it has been argued that the prohibition of genocide, and the duty to prevent and punish it, constitute norms of *jus cogens*,¹⁸⁰ meaning the rule is so fundamental that it binds all States,¹⁸¹ not just parties to the Convention. This means that all States have a duty to prevent a future Assyrian Genocide under international law.

Due to a recent and worrying rise in fundamentalism in the Middle East, the prospect of a future Assyrian Genocide is

¹⁷⁸ Scharf, M. P., ‘Responding to Rwanda: Accountability Mechanisms in the Aftermath of Genocide’ 52:2 (1999) *Journal of International Affairs* 621, p. 626

¹⁷⁹ Vetlesen, A. J., ‘Genocide: A Case for the Responsibility of the Bystander’ 37:4 (2000) *Journal of Peace Research* 519, p. 531

¹⁸⁰ Schabas, W. A., *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), p. 500

¹⁸¹ Martin, E. A. (ed.), *Oxford Dictionary of Law*, (Oxford: Oxford University Press, 2003), p. 274

not as impossible as one may think, a prospect which may be further augmented by the recent Assyrian church bombings and kidnappings in Iraq reported by the media. Genocide prevention is important because it is far better to prevent genocide than to have to cope with it after it has occurred.¹⁸² Many steps can be taken to prevent genocide in the future, but the first need is to strengthen the ability of key institutions and actors in the Global Human Rights Regime, i.e. the UN, regional organisations such as NATO, EU, etc, committed nongovernmental organisations, so that they can prevent genocide.¹⁸³ A major step in this regard is the need to create an early warning system¹⁸⁴ to prevent genocide, or a genocide monitor as proposed by UN Secretary-General Kofi Annan.¹⁸⁵ Furthermore, the UN and the human rights community in general should develop more effective ways to communicate and educate people about human rights and, in particular, how human rights issues across the globe are directly relevant to their daily lives.¹⁸⁶ All these steps and more must be taken by the international community so that the plight of oppressed peoples such as the Assyrians may be heard and action taken to alleviate it. Specifically in regards to the Assyrians,

¹⁸² Riemer, N, (ed.), *Protection Against Genocide: Mission Impossible?* (London: Praeger Publishers, 2000), p. 5

¹⁸³ *Ibid*, p. 3

¹⁸⁴ Krug, H. N., 'Genocide in Rwanda: Lessons Learned and Future Challenges to the UN Human Rights System' 67 (1998) *Nordic Journal of International Law* 165, pp. 198-212

¹⁸⁵ UN: Annan's Call for Genocide Monitor Endorsed, 2004 Human Rights Watch, <http://www.hrw.org/english/docs/2004/01/26/global7074.htm>, Accessed: 24th September 2004

¹⁸⁶ Krug, H. N., 'Genocide in Rwanda: Lessons Learned and Future Challenges to the UN Human Rights System' 67 (1998) *Nordic Journal of International Law* 165, pp. 211-212

such developments are ever more imperative so that the failed goal of the Young Turks Ottoman government, the total annihilation of the Assyrians from their homeland, may not one day become a reality.

Appendices

Appendix 1

Convention on the Prevention and Punishment of the Crime of Genocide (1948)

Preamble

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,

Recognizing that at all periods of history genocide has inflicted great losses on humanity, and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided:

Article I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article II

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

(a) Killing members of the group;

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

Article III

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article IV

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article V

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

Article VI

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.

Article VII

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article VIII

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

Article IX

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

Article X

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

Article XI

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article XII

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article XIII

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a proces-verbal and transmit a copy thereof

to each Member of the United Nations and to each of the non-member States contemplated in article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected, subsequent to the latter date, shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

Article XIV

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Article XV

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

Article XVI

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article XVII

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

- (a) Signatures, ratifications and accessions received in accordance with article XI;
- (b) Notifications received in accordance with article XII;
- (c) The date upon which the present Convention comes into force in accordance with article XIII;
- (d) Denunciations received in accordance with article XIV;
- (e) The abrogation of the Convention in accordance with article XV;
- (f) Notifications received in accordance with article XVI.

Article XVIII

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in article XI.

Article XIX

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

Appendix 2

Rome Statute of the International Criminal Court (1998)

Preamble

The States Parties to this Statute,

Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

Recognizing that such grave crimes threaten the peace, security and well-being of the world,

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

Reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any

State, or in any other manner inconsistent with the Purposes of the United Nations,

Emphasizing in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State,

Determined to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole,

Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions,

Resolved to guarantee lasting respect for and the enforcement of international justice,

Have agreed as follows:

PART 2. JURISDICTION, ADMISSABILITY AND APPLICABLE LAW

Article 5

Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:
 - (a) The crime of genocide;
 - (b) Crimes against humanity;
 - (c) War crimes;
 - (d) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Article 6

Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

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

PART 13. FINAL CLAUSES

Article 128

Authentic texts

DONE at Rome, this 17th day of July 1998.

Appendix 3

Elements of Crimes

General Introduction

1. Pursuant to article 9, the following Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8, consistent with the Statute. The provisions of the Statute, including article 21 and the general principles set out in Part 3, are applicable to the Elements of Crimes.
2. As stated in article 30, unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge. Where no reference is made in the Elements of Crimes to a mental element for any particular conduct, consequence or circumstance listed, it is understood that the relevant mental element, i.e., intent, knowledge or both, set out in article 30 applies. Exceptions to the article 30 standard, based on the Statute, including applicable law under its relevant provisions, are indicated below.
3. Existence of intent and knowledge can be inferred from relevant facts and circumstances.
4. With respect to mental elements associated with elements involving value judgment, such as those using the terms ‘inhumane’ or ‘severe’, it is not necessary that the perpetrator personally completed a particular value judgment, unless otherwise indicated.

5. Grounds for excluding criminal responsibility or the absence thereof are generally not specified in the elements of crimes listed under each crime.¹⁸⁷
6. The requirement of ‘unlawfulness’ found in the Statute or in other parts of international law, in particular international humanitarian law, is generally not specified in the elements of crimes.
7. The elements of crimes are generally structured in accordance with the following principles:
 - As the elements of crimes focus on the conduct, consequences and circumstances associated with each crime, they are generally listed in that order;
 - When required, a particular mental element is listed after the affected conduct, consequence or circumstance;
 - Contextual circumstances are listed last.
8. As used in the Elements of Crimes, the term ‘perpetrator’ is neutral as to guilt or innocence. The elements, including the appropriate mental elements, apply, *mutatis mutandis*, to all those whose criminal responsibility may fall under articles 25 and 28 of the Statute.
9. A particular conduct may constitute one or more crimes.
10. The use of short titles for the crimes has no legal effect.

Article 6 - Genocide

Introduction

With respect to the last element listed for each crime:

¹⁸⁷ This paragraph is without prejudice to the obligation of the Prosecutor under article 54, paragraph 1, of the Statute.

- The term ‘in the context of’ would include the initial acts in an emerging pattern;
- The term ‘manifest’ is an objective qualification;
- Notwithstanding the normal requirement for a mental element provided for in article 30, and recognizing that knowledge of the circumstances will usually be addressed in proving genocidal intent, the appropriate requirement, if any, for a mental element regarding this circumstance will need to be decided by the Court on a case-by-case basis.

Article 6 (a) – Genocide by killing

Elements

1. The perpetrator caused serious bodily or mental harm to one or more persons.¹⁸⁸
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (b) – Genocide by causing serious bodily or mental harm

Elements

1. The perpetrator caused serious bodily or mental harm to one or more persons.¹⁸⁹

¹⁸⁸ The term ‘killed’ is interchangeable with the term ‘caused death’.

¹⁸⁹ This conduct may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment.

2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (c) - Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction

Elements

1. The perpetrator inflicted certain conditions of life upon one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such
4. The conditions of life were calculated to bring about the physical destruction of that group, in whole or in part.¹⁹⁰
5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (d) - Genocide by imposing measures intended to prevent births

¹⁹⁰ The term “conditions of life” may include, but is not necessarily restricted to, deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes.

Elements

1. The perpetrator imposed certain measures upon one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The measures imposed were intended to prevent births within that group.
5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (e) - Genocide by forcibly transferring children

Elements

1. The perpetrator forcibly transferred one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such
4. The transfer was from that group to another group.
5. The person or persons were under the age of 18 years.
6. The perpetrator knew, or should have known, that the person or persons were under the age of 18 years.
7. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

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