

THE ARMENIAN GENOCIDE AND INTERNATIONAL LAW

Alfred de Zayas

Murder has been a sin since Cain killed Abel, long before the first attempts by lawyers to codify penal law, before the Hammurabi and other ancient codes. More fundamentally, murder is a crime by virtue of natural law, which is prior to and superior to positivistic law. Crimes against humanity and civilization were crimes before the British, French and Russian note condemned the Armenian massacres in 1915¹. Genocide was a crime before Raphael Lemkin coined the term in 1944.²

According to article 38 of the Statute of the International Court of Justice, general principles of law are a principal source of law. Not only positivistic law – not only treaties, protocols and charters – but also the immanent principles of law are sources of law before the ICJ and can be invoked. Among such principles are “*ex injuria non oritur jus*” which lays down the rule that out of a violation of law no new law can emerge and no rights can be derived. This is a basic principle of justice – and of common sense. Another general principle of law is “*ubi jus, ibi remedium*”, where there is law, there is also a remedy, in other words, where there has been a violation of law, there must be restitution to the victims. This principle was reaffirmed by the Permanent Court of International Justice in its famous judgement in the Chorzow Factory Case in 1928. Another general principle is that the thief cannot keep the fruits of the crime. Another principle stipulates that the law must be applied in good faith, uniformly, not selectively. Thus, there is no international law *à la carte*.

And yet there are those who claim that the Armenians have no justiciable rights, because the Genocide Convention was only adopted 1948, more than thirty years after the Armenian genocide, and because treaties are not normally applied retroactively. This, of course, is a fallacy, because the Genocide Convention was drafted and adopted precisely in the light of the Armenian genocide and in the light of the Holocaust. Not only the Armenian Genocide but also the Holocaust predated the Convention, and no one would question the legitimacy of the claims of the survivors and descendants of the victims of the Holocaust, simply because the Nazi atrocities were committed before the entry into force of the Genocide convention. Moreover, this argumentation is a kind of red herring, intended to confuse and to distract attention from the legal basis of the Armenian claims. Indeed, the rights of the Armenians do not derive from the Genocide Convention. Rather: the Genocide Convention strengthens the pre-existing rights of the Armenian to recognition as victims, to restitution and compensation.³

Articles 144 and 230 of the Treaty of Sèvres , signed on 10 August 1920 by four representatives of the Ottoman Sultan Mehmed VI, recognized the rights of the survivors of the extermination campaign against the Christian minorities of the Empire, including the Armenians, the Greeks from Pontos, the Chaldeo-Assyrians, and affirmed the obligation of the Turkish State to investigate these crimes and punish the guilty.

Article 144 stipulated in part:

“The Turkish Government recognises the injustice of the law of 1915 relating to Abandoned Properties (*Emval-i-Metroukeh*), and of the supplementary provisions thereof, and declares them to be null and void, in the past as in the future. The Turkish Government solemnly undertakes to facilitate to the greatest possible extent the return to their homes and re-establishment in their businesses of the Turkish subjects of non-Turkish race who have been forcibly driven from their homes by fear of massacre or any other form of pressure since January 1, 1914. It recognises that any immovable or movable property of the said Turkish subjects or of the communities to which they belong, which can be recovered, must be restored to them as soon as possible, in whatever hands it may be found...”

Article 230 stipulated in part:

“The Turkish Government undertakes to hand over to the Allied Powers the persons whose surrender may be required by the latter as being responsible for the massacres committed during the continuance of the state of war on territory which formed part of the Turkish Empire on August 1, 1914. The Allied Powers reserve to themselves the right to designate the tribunal which shall try the persons so accused, and the Turkish Government undertakes to recognise such tribunal....”

Even though the League of Nations never established an international criminal tribunal to try the Turkish perpetrators of the genocide against the Armenians and other Christian minorities, numerous trials under Turkish law did take place in Istanbul in 1919, even before the treaty of Sèvres was signed. The Turkish authorities conducted these trials against Ottoman officials involved in the genocide pursuant to the Ottoman penal code. Many were convicted and three persons were executed.

The Treaty of Sèvres, however, was not implemented, because of the coup d'état against the Sultan conducted by a Turkish general, Mustafa Kemal, who not only overthrew the Sultan but proceeded to wage war against the Greeks and the British, push them out of Anatolia and negotiate a new Peace Treaty with the Allies, which ensured impunity for the thousands of Turkish officials, officers and soldiers involved in the massacres.

To deny that the Armenian massacres amounted to genocide manifests both ignorance of the facts and bad faith. There is no doubt that the Armenian genocide was many times worse than the ethnic cleansing that occurred in the former Yugoslavia in the 1990s, a crime which the UN General Assembly in its resolution 47/121 (1992) considered "a form of genocide". There is no doubt that the massacres of the Armenians were many times worse than the massacre of Srebrenica, which the International Criminal Tribunal for the Former Yugoslavia and the International Court of Justice condemned as genocide.

But let us return to the general principle of law *ubi jus ibi remedium*. What is of relevance today is not the punishment of the guilty, because no person criminally responsible for the massacres is still alive. What is crucial is the right to the Armenian homeland, which entails the right to return and the right to restitution and compensation. In this context it is relevant to cite the final Report of the United Nations Special Rapporteur on the Human Rights Dimensions of Population Transfers, Awn Shawkat Al Khasawneh (today a judge at the ICJ). The Declaration appended to the Report, which was formally adopted by the Commission on Human Rights and by ECOSOC provides in article 8: "Every person has the right to return voluntarily, and in safety and dignity, to the country of origin and, within it, to the place of origin or choice. The exercise of the right to return does not preclude the victim's right to adequate remedies, including restoration of properties of which they were deprived in connection with or as a result of population transfers, compensation for any property that cannot be restored to them, and any other reparations provided for in international law. "Article 10 reiterates the *erga omnes* obligation of all States not to recognize the consequences of crime:

"Where acts or omissions prohibited in the present Declaration are committed, the international community as a whole and individual States, are under an obligation: (a) not to recognize as legal the situation created by such acts; (b) in ongoing situations, to ensure the immediate cessation of the act and the reversal of the harmful consequences; (c) not to render aid, assistance or support, financial or otherwise, to the State which has committed or is committing such act in the maintaining or strengthening of the situation created by such act."⁴

Similarly, the United Nations Basic Principles and Guidelines on the Right to a Remedy, adopted by the General Assembly on 16 December 2005 stipulate in part in Article IX:

“19. *Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.

20. *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.”⁵

Since there is no statute of limitations applicable in cases of genocide and crimes against humanity, the Armenian claims to restitution and compensation continue to be valid to this day. Most importantly, however, the Armenians have a right to recognition as victims of genocide. They have a right to truth⁶ and a right to historical memory. Such recognition is a fundamental human right and a *sine qua non* to reconciliation. For decades the Armenians were victims of silence. And indeed, the crime of silence is worse than that of negationism. International law will ensure that truth and justice shall prevail.

The preface to Alfred DeZayas’ book, *The Genocide against the Armenians 1915-1923, and the Relevance of the 1948 Genocide Convention*, is written by Federico Andreu-Guzman, Senior Legal Advisor, International Commission of Jurists, in April 2005. Guzman brings a quotation from the well-known Dr. Nazim, who was one of the leaders of the young Turks known as the Committee of Union and Progress (CUP) which was responsible for the Armenian Genocide. This is the statement by Dr. Nazim in 1912:

It is absolutely necessary to eliminate the Armenian people in its entirety so that there is no further Armenian on this earth and the very concept of Armenia is extinguished.

Is there any doubt whatsoever of an absolute genocidal intent?



Alfred de Zayas is the author of *The Genocide Against the Armenians 1915-1923 and the Relevance of the 1948 Genocide Convention*, a book-pamphlet published by Haigazian University in Beirut, Lebanon in February 2010. The book gives the further information that "an earlier version of this legal opinion was published by the European Armenian Federation for Justice and Democracy in Brussels in April 2005 in

commemoration of the 90th Anniversary of the beginning of the Armenian Genocide." The present publication is a second revised edition to coincide with the 95th commemoration of the Armenian Genocide and "contains additional information and updates, reflecting primarily normative developments in the UN."

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¹ Vahakn Dadrian, *The History of the Armenian Genocide: Ethnic Conflict from the Balkans to Anatolia to the Caucasus*, ISBN 1571816666; "The Armenian Genocide and the Legal and Political Issues in the Failure to Prevent or Punish the Crime", 29 U. West L.A. Law Review, 43.

² Alfred de Zayas, *The Genocide against the Armenians 1915-1923 and the Relevance of the 1948 Genocide Convention*, Haigazian University Press, Lebanon 2010, ISBN13: 978-9953-475-15-8.

³ Cf. Geoffrey Robertson, «Was there an Armenian Genocide ? » Legal Opinion, 9 October 2009, London, ISBN 978-0-09564086-0-0

⁴ E/CN.4/Sub.2/1997/23.

⁵ <http://www2.ohchr.org/english/law/remedy.htm>

⁶ http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_9_11.pdf; UN Doc A/HRC/12/19, *Report of the United Nations High Commissioner for Human Rights on the Right to the truth* (2009).

Source Note: This essay was revised for GPN Genocide Prevention Now by the author. An earlier text appeared in the California Courier on May 19, 2011, under the title, "The Armenian Cause and International Law." A larger background work by the author will be found in his book, cited above, The Genocide against the Armenians 1915-1923 and the Relevance of the 1948 Genocide Convention.