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The Crime of Genocide and International Law: A Perspective on the 1915 Events

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The Genocide Convention

There is unquestionable consensus on the fact that genocide is the gravest crime against humanity. The Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the Genocide Convention or the Convention), adopted by the United Nations General Assembly on 9 December 1948 and entered into force on12 January 1951, sets specific legal standards with a view to defining and identifying the acts which may amount to the crime of genocide. Currently, 152 Member States of the United Nations are parties to the Convention. There are also 41 signatures not followed by ratifications. It would thus be safe to assert that the Convention enjoys universal recognition and it is a legally binding component of international law.

Turkey acceded to the Convention on 31 July 1950 without any reservation. Many States have ratified the Convention with a number of reservations. One example is the United States that ratified the Convention on 25 November 1988 with two "reservations", five "understandings", and one "declaration".

Article I of the Convention establishes genocide as an international crime "whether committed in time of peace or in time of war", inviting the States to prevent and punish this crime.

Article II defines genocide as "any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, 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."

A crucial provision of the Convention lies in article VI whereby the competent organs are explicitly identified with respect to allegations of genocide. Under this article, such claims "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."

Through this unambiguously formulated article, the Convention does not allow any person or body, including executive and legislative branches or local administrations, other than the competent national or international tribunals, to judge whether any act amounts to genocide.

This is the rule of international law. Any attempt circumventing this fundamental rule is tantamount to politicization of international law which carries the risk of gravely undermining the rules-based system.

The Aftermath of the Convention

Despite the universally accepted Genocide Convention of 1948, the Nazi Holocaust, during which more than six million Jews were killed, would not be the last genocide.

In Rwanda, an estimated 800 thousand Tutsis and moderate Hutus died in the 1994 genocide.

The International Criminal Tribunal for the Former Yugoslavia (ICTY) ruled that the 1995 massacre at Srebrenica was genocide.

During the 1990s, supporters of an international criminal court argued that, even if it may not always be possible to prevent genocide, establishing a permanent international tribunal might provide deterrence for potential perpetrators and bring to justice the perpetrators. Genocide is one of the four crimes over which the International Criminal Court (ICC), founded in 2002, has jurisdiction.

The ICC issued an arrest warrant for the President of Sudan, Omar al-Bashir, on genocide charges. He was accused of waging a campaign against the citizens of the Sudanese region of Darfur. Around 300 thousand people are said to have died and millions have been displaced in seven years of fighting.

Importance of Upholding the Standards Set by the Convention

Alain Destexhe, Belgian politician and former Secretary-General of Medecins Sans Frontieres, argued in his book titled “Rwanda and Genocide in the Twentieth Century” (1995), that “genocide is distinguishable from all other crimes by the motivation behind it … (it) implies an intention to completely exterminate the chosen group.”

He also believed the word genocide has fallen victim to “a sort of verbal inflation”. It is true that this strictly legal term is unreasonably and widely referred to in irrelevant contexts. Such usage causes loss of meaning for the concept of genocide and, in Destexhe’s words, the term is becoming “dangerously commonplace”.

The 1915 Events: Diverging Armenian and Turkish Narratives

Even though over a century has elapsed, the tragic consequences of World War I are still relevant today as a matter for historical controversy between Turks and Armenians, despite centuries of peaceful coexistence.

The background of this prolonged controversy differs in the national narratives as well as in the personal memories of Turks and Armenians.

I will endeavour to briefly evaluate the historical, legal as well as political perspectives of this question.

Historical Perspective

The Turkish side has not forgotten, neither does it want to forget, what happened over hundred years ago. The events of 1915 need to be understood fully, so that the memory of the lives lost may be properly respected.

The war years witnessed many tragedies for almost all nations that made up of the Ottoman Empire. The suffering of Armenians in this tragic episode of history deserves a careful consideration.

There is no doubt that this period needs to be understood in its entirety. It is with this understanding that Turkey has been calling for the establishment of a joint historical commission.

It is the task of historians to work on the events of 1915 and to clarify them.

Legal Perspective

The term “genocide” denotes a clearly defined crime with specific conditions of proof. The Genocide Convention of 1948 provides for a clear legal definition.

The International Court of Justice (ICJ) underlined in its judgment of 3 February 2015, in the case of Croatia v. Serbia, that the Genocide Convention is not retroactive. Its provisions do not impose a state obligation in relation to acts that occurred before the state became bound by the Convention.

The ICJ highlighted in the cases of Bosnia-Herzegovina v. Serbia and Croatia v. Serbia that if a State is to be responsible because it has breached its obligation not to commit genocide, it must be shown that genocide as defined in the Convention has been committed. It is for the party alleging a fact to demonstrate its existence.

According to the case-law of the ICJ, deportation or displacement is not necessarily equivalent to destruction of that group.

In the case Perinçek v. Switzerland, the European Court of Human Rights made a distinction between the clear establishment of the Holocaust by an international court, and the lack of thereof as regards the events of 1915. The Court also expressed doubt about the alleged existence of a general consensus concerning the legal characterisation of the events of 1915 as genocide.

Political Perspective

The Armenian narrative is based on a rather prejudicial portrayal of history. Any fair attempt to depict the 1915 events from a scholar or legal point of view is labelled as denial and silenced. Such atmosphere makes it difficult for the two nations to normalise relations.

The political leadership in Turkey has been progressively releasing messages aimed at enhancing the ground for dialogue. Empathy, compassion and mutually humane attitude are stressed instead of deriving enmity from history.

It remains to be crucial to refrain from politicizing history and the rule of law.

Rather, efforts must be directed to finding out the truth, setting the record straight and establishing a fair memory based on documented evidence.

What to Do

The events of 1915 are a matter for an ongoing legitimate debate. It is obvious that Armenia and Turkey have divergent narratives regarding the events of 1915.

History should be written on the basis of documented facts and it should not be abused or misused for political considerations. Dialogue and joint scientific research seem to be the only way out.

It is with this understanding that the Turkish side proposed the establishment of a joint historical commission composed of Turkish and Armenian historians, and other international experts, to study the events of 1915 in the archives of Turkey, Armenia and third countries.

The findings of the commission might bring about a true and fair understanding of this tragic period and contribute to normalization between Turks and Armenians.

The Grand Chamber judgment of the European Court of Human Rights, dated 15 October 2015, in the case of Perinçek v. Switzerland, is a crucial contribution in this regard.