

## What Can Be Done about Historical Atrocities? The Armenian Case

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**ABSTRACT** *The global human rights regime is not equipped to deal with historical atrocities. When engaged politicians want to take matters in their own hands it is clear that this alternative is problematical. In the case of Armenia, the campaign for the recognition of the Armenian massacres in 1915 has addressed the questions involved in a simplistic way, both with respect to juridical points of departure such as definition of the crime and the status of the accused party, and with respect to the assessment of evidence. If proclamations which bear any similarity to juridical assessments are to be made at all the best alternative would be the creation of an international expert body representing both the history and the legal professions. Establishing the guidelines for this body to work, however, seems a daunting task. Can a generally accepted retrospective time limit be established? To what extent should court-like functions be performed for events which, at the time they happened, were not covered by international criminal law?*

In 1914 Ottoman Turkey was drawn into the war between the European alliances and was soon engaged in a battle on four fronts. Russian troops marched in from the north, and Turkey maintained that the intervention was supported by Armenians and that an internal revolt was imminent. As the Ottoman army retreated a massive deportation of Armenians in the war zone started, degenerating into massacres. The number of dead is not known, but estimates generally varying between about half a million and two million, and much lower figures as well, have been presented.<sup>1</sup>

The allied powers pressured the Turkish authorities to arrest a considerable number of Turkish leaders but the consequences were modest, for many reasons, including the difficulty of obtaining evidence.<sup>2</sup> Interestingly, in the final peace document, the Treaty of Lausanne, amnesty was given for all offences committed during the war and after.<sup>3</sup>

The Armenian massacres were strongly condemned in Western Europe at the time. In recent times condemnations have become a burning question again, and great efforts have been made in several countries to achieve some kind of official recognition of the massacres as genocide.

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The dominant aspects of the discussion have concerned the historical circumstances and facts, the moral need to remember and to show sympathy, and the need for official recognition. It is typical that the distinguished French daily *Le Monde*, the day after the French Parliament adopted its Armenia bill, carried an editorial under the caption ‘Arménie, devoir de mémoire’ (Armenia, a duty to remember).<sup>4</sup>

It is surprising that the concept of human rights has appeared so little in this debate. A global human rights regime has been in place for many years and its significance is routinely hailed by leading representatives of state powers and civil societies the world over: human rights have variously been praised as the idea of our time, a new standard of civilisation, and a framework for a world order of human dignity. For the UN Secretary-General human rights are the ‘common thread’ running through all UN activities.<sup>5</sup> Furthermore, there is a global human rights convention against genocide, of 1948, which is in fact the first and the seminal human rights treaty of the global regime, its approval preceding (although by only one day) the adoption of the landmark Universal Declaration of Human Rights.

Thus, there is all the reason in the world for discussing the Armenian question in human rights terms. A number of questions suggest themselves. Is the ongoing campaign for the recognition of the Armenian massacres as genocide fully compatible with the tenets of the global regime? Is it a deviation from regime thinking – for instance, since it focuses on events that took place long before the convention was signed – but a positive widening of horizons which should be carried even further? Are there incompatibilities between the campaign and the concepts of the genocide convention, and, if so, how could these be resolved?

In order to analyse these questions we do not have to go into the issue that has come to the fore more than any other aspect: what really happened with the Armenians? We need a background for the analysis, however, which is what we will turn to first. It is only natural that this background will deal more with the history of the campaign than with the historical object of these campaigns. The word ‘campaign’ here means pressure or a drive towards an objective (recognition) with actions that are to a degree interconnected.

### **The Rise of Demands for Recognition**

From time to time the Armenian massacres have been called genocide by political entities. However, in the 1990s a distinct upsurge took place. The Armenian National Institute, based in Washington, DC, documents ‘international affirmations’ of the Armenian genocide and lists several categories of these, which are posted on its home page: resolutions and declarations by parliaments (or part thereof), provincial governments (including US state governments), municipal governments, heads of state and international governmental organisations (IGOs) or non-governmental organisations (NGOs).

Most striking, perhaps, is the increase in the number of resolutions and declarations by peoples’ representative bodies. In all, two dozen national parliamentary bodies are listed as having affirmed the genocide, more than half of them since the 1990s, and many Italian communes and North American cities have also done so in recent years. It should be noted that exact figures are not very important in this context, and the listings are probably inflated.<sup>6</sup>

A recognition of genocide can be understood as a goal in itself in faithfulness to historical truth. According to a French parliamentary report (for the Foreign Affairs Commission), ‘Reconnaitre l’existence d’un génocide s’impose à tous, car un tel forfait interpelle l’humanité dans son ensemble. Nier son existence atteint directement les survivants, insulte la mémoire des victimes et les assassine une seconde fois’.<sup>7</sup>

However, recognition is clearly also thought to fulfil instrumental functions. It was stated in the discussion in the International Relations Committee of the US House of Representatives that: ‘What we are saying is that this time in history needs to be remembered because what has passed is often prologue, and failure to remember, failure to recognize, sweeping under the carpet of history is a mistake that ultimately we are doomed to repeat time and time again’. ‘If we believe that unrecognized genocide contributes to future genocides, don’t we have an obligation to assure that our diplomatic staff and those who advise our leaders learn about this history, learn about this genocide?’<sup>8</sup> The inherent function of *peacemaking* in this argument can be given a much more contemporary touch. Parliamentarians in France and Italy have maintained that recognition would contribute to peace and stability in the Caucasus region, and in particular to lasting peaceful relations between Turkey and Armenia, which should be based on a solid foundation, not on denial.<sup>9</sup>

There may also be self-interest involved (which we will come back to) but let us here just point out that the peacemaking arguments do not seem very solid. Producing historical horrors from under the carpet seems a questionable prevention mechanism, precisely because the event in question lies far back in history: present genocide situations are generally generated by today’s complexities. The alleged peacemaking function in today’s world is no less questionable. If Turkey were to make an acknowledgement of its own free will, this might serve to build peace, but if Turkey is unwilling to take such a step and rather feels that it is being put under illegitimate pressure, this situation does not seem to add to a peace-building potential – more likely the contrary.

The term ‘campaign’ has been used here in order to emphasise a certain interconnectedness between declarations and resolutions in different fora. Thus, for instance, similar references and cross-references are found in bills introduced to parliaments, in parliamentary debates and in resolutions.<sup>10</sup>

Many actors – primarily, it seems, of Armenian origin – have been involved in efforts to increase the number of accusations. Needless to say, the Republic of Armenia is in favour of recognition of the genocide and has been so ever since it was founded. The issue is actually included in its Declaration of Independence, which states that: ‘The Republic of Armenia stands in support of the task of achieving international recognition of the 1915 Genocide in Ottoman Turkey and Western Armenia’.<sup>11</sup>

The Armenian lobby in the USA sees itself as an influential force, in fact as the second most powerful lobby in the country (after the Jewish lobby, which is beyond comparison more influential).<sup>12</sup> Before Armenia achieved independence its main objective was to obtain recognition of the Armenian genocide. Following independence, the genocide has remained one of the main issues, but the activities of the US Congress concerning Azerbaijan and Turkey have been added. In spring 2000 the genocide issue became a hot topic for the Republican Party when the Armenian diaspora decided to make candidates for the US presidency recognise the genocide.<sup>13</sup> Contributing to the success of the lobby is the fact that Armenian-Americans have reached high positions, mostly through the Republican Party.<sup>14</sup>

The Armenian lobby is also active in many other countries, including France and Italy, although less visibly so. The fact that the Armenian lobby was the driving force behind the French Senate’s recognition of the genocide in 2000 is acknowledged by the Armenian Foreign Ministry.<sup>15</sup> Likewise, the French Ambassador to Armenia has spoken of the role of many Armenian-French organisations and private individuals who contributed to the adoption of the resolution.<sup>16</sup> Armenia’s ambassador to Italy was reportedly very active in promoting the recognition by the Italian Parliament.<sup>17</sup>

Turkey does not deny the reality of the massacres, although it maintains that the campaign has seriously exaggerated the death toll. However, Ankara categorically refutes the

accusation of genocide. It maintains that the Armenians were victims of inter-communal conflict during the Ottoman Empire's dying years in the midst of the First World War and stresses that Turks as well died en masse in this interneccine war. Moreover, it maintains that there is no proof that the killings were organised or financed by the state: on the contrary, it suggests that the lack of central organisation was to blame.<sup>18</sup>

### **The Definition of Genocide**

In the 1948 convention on genocide<sup>19</sup> the contracting states confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law and undertake to prevent and to punish it. Article II defines genocide as follows:

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 stipulates that not only the act of genocide shall be punishable but also conspiracy to commit genocide; direct and public incitement to commit genocide; attempts to commit genocide; and complicity in genocide.

In the Armenian campaign, however, there is a considerable definitional frivolity. Some bodies unequivocally state that their resolutions are in accordance with the UN Convention, for instance, the Russian Duma (1995) and the European Parliament (1987). Others make oblique references or seem to use their own definition. The Belgian Senate resolution (1998) mentions in a listing of introductory considerations that the UN convention provides a concept of genocide and also talks of the 'organized and systematic murder of the Armenians', suggesting that these definitions were synonymous. In a resolution by the Committee on International Relations of the US House of Representatives (2000), an Armenian genocide during the period 1915–23 was affirmed. A definition suggested by an international law scholar, Raphael Lemkin, who coined the term 'genocide' and was one of the forces that inspired the development of the 1948 convention, was used, rather than the conventional definition.<sup>20</sup>

It certainly makes a difference if the definition given in the 1948 convention is strictly applied or not. As can be seen, the definition excludes political acts and mentions explicitly the existence of intent, not just any kind of destructive intent but the intent of destroying a group as such. If we apply, for instance, Belgium's formulations, the set of properties or stipulations we have in mind will be much less restrictive and the number of potential situations that would merit the label 'genocide' will be considerably increased, and the matter of verification becomes much less complicated. Thus, if in scrutinising a horrendous situation it is not possible to establish whether a given group was (intentionally) massacred because of its ethnic characteristics or because of its political opposition, this is certainly a stumbling block in terms of the genocide convention, but not at all in terms of the Belgian formulation.

In practice, it may turn out to be very difficult to ascertain intentions in the conventional meaning, and it is therefore no surprise that the problem involved is frequently dodged. The mass killings in the former Soviet Union, in particular during the Stalin years, provide an illustration. In the enormous population mosaic that this communist empire

constituted, death and terror seem to have struck most socio-economic, cultural or political strata, the *nomenklatura* itself not excluded. In a work that is frequently consulted, R.J. Rummel sets out to quantify the killings and finds that the regime was probably responsible for the deaths of no less than 62 million people. He quotes from the convention on genocide to underscore the relevance of the concept in this connection (also using it in the title of the book) but fails to adopt the definition provided by the convention. He resorts to a prior resolution on genocide by the UN General Assembly in which the nature of the motive for the killings is declared irrelevant.<sup>21</sup>

The French philosopher Jean-Paul Sartre dodges the problem in a different way. In connection with the so-called International War Crimes Tribunal arranged by the Bertrand Russell Peace Foundation to try the US warfare in Vietnam, Sartre maintains that the US government was guilty of genocide in the sense of the genocide convention. Sartre's method is to unveil the USA's 'hidden intention' by making a Marxist-inspired analysis of societal and military history and their interconnectedness. Since the beginning of the nineteenth century, he says, Western nations have had to choose between peaceful approaches towards their opponents or total war – *tertium non datur* – and in Vietnam the USA obviously opted for the liquidation of an entire people (to establish a Pax Americana).<sup>22</sup> This method of identification of genocidal intent is more than questionable, and the flaws in his conclusion are striking.<sup>23</sup>

However, more often than not the political resolutions seem to avoid definitions altogether. Those passed by the Argentinean Senate (1993), the Italian Chamber of Deputies (2000), the Swedish Parliament (2000) and the Parliamentary Assembly of the Council of Europe (2001)<sup>24</sup> are but a few examples. Generally speaking, when there is no mention of a definition, it seems reasonable to assume either that the actors for all practical purposes do not have a definition or that they have one (probably different from that contained in the convention) which for some reason they are not willing to disclose. In either case, silence on this point seems difficult to defend: an accusation is made about actions which are frequently called the worst of all crimes, and yet the meaning of the crime is not clarified.

The genocide convention has been variously evaluated and many negative opinions have been voiced concerning the specification of protected groups (the fact that it excludes political, economic and similar groups), the enumeration of punishable acts and several other aspects.<sup>25</sup> However, these are well-known shortcomings, hardly more serious than shortcomings in other human rights instruments.<sup>26</sup> We should be aware, of course, that no document of international law is likely to make full justice to all possible demands, since it is a product of negotiation between states.

The point to be made here is, quite simply, the following. The fact that a convention on genocide was adopted and, moreover, gained wide acceptance by the world's states<sup>27</sup> makes problematical the neglect of the definition it provides. It seems strange, in fact arbitrary, to use other definitions or none at all.<sup>28</sup>

### **Arguments for Denunciation**

The major reason offered for resolutions on the genocide is often not an *argumentum ad rem* but references to the positions taken by others. For instance, the Standing Committee on Foreign Affairs of the Swedish Parliament argues in its proposal to the full Parliament: 'An official statement and recognition of the genocide of the Armenians is important and necessary. In 1985 the UN and the European Parliament established the fact that the Ottoman Empire had committed genocide against the Armenian people at the beginning of this century'.<sup>29</sup>

References to precisely these two bodies are common. Citing others' decisions, however, is a valid argument only if these other sources are reliable authorities in the

field under discussion. Otherwise this reasoning only amounts to the well-known *ad verecundiam* fallacy.<sup>30</sup> The European Parliament resolution the Swedish Parliamentary Committee refers to establishes that the ‘Armenian genocide’ is ‘historically proven’ and ‘believes that the tragic events in 1915–17 involving the Armenians living in the territory of the Ottoman Empire constitute genocide within the meaning of the convention on the prevention and the punishment of the crime of genocide adopted by the UN General Assembly on 9 December 1948’.<sup>31</sup> However, the European Parliament is not known to be a reliable authority in the matters under discussion here. Being a purely political body it does not have greater authority than the Swedish Parliament itself.

Reference to the UN could be much more relevant, since it is the Sub-Commission of Human Rights that is intended, in other words a body which is composed of experts and is not a purely political body (although it is certainly not free from political bias). However, what happened at the Sub-Commission meeting in 1985 was not a (UN) recognition of the Armenian genocide, although it is frequently portrayed that way – far from it.

A member of the Sub-Commission, appointed as special rapporteur, submitted a report on genocide which was debated.<sup>32</sup> This debate, in which divergent views were expressed about the content of the report, did not result in any kind of recognition of individual human tragedies mentioned, nor even in the adoption of the report as such, but resulted in the Sub-Commission’s ‘taking note’ of the special rapporteur’s study. It should be emphasised that neither was there any recommendation to the superior Commission on Human Rights to adopt a resolution.<sup>33</sup>

The special rapporteur’s study also lacks weight for a different, perhaps even more important, reason. The special rapporteur does not seem to stick to the definition of genocide given by the 1948 convention. After listing a number of cases of genocide during the twentieth century, including the massacre of Armenians in 1915–16, he concludes: ‘It could seem pedantic to argue that some terrible mass-killings are legally not genocide, but on the other hand it could be counter-productive to devalue genocide through over-diluting its definition’.<sup>34</sup> The inevitable conclusion is that we do not know which of the examples would be genocide within the meaning of the genocide convention.

The force of an argument, of course, all depends on the material evidence that can be demonstrated. The fact of the killings of Armenians is not at issue. The number of people slain is not known, but the exact dimensions of the disaster would not affect the substance of an accusation of genocide.<sup>35</sup> The fundamental question relates to the intent behind the killings. Documentary evidence shows that the Ottoman government ordered a displacement of the Armenian population in Eastern Anatolia. Evacuations could of course be undertaken for different purposes, in particular to cripple the actual or assumed political or military role of a particular group. What has to be demonstrated in the first instance is the nature of the massacres – that these were designed to destroy the Armenians because of their nationality, or ethnic, racial or religious characteristics, rather than for politico-military considerations, purely ‘practical’ considerations and so on.

The main evidence to this effect is assertions by foreign observers, for instance, of the kind mentioned in the 1985 Sub-Commission report. The German Ambassador, Wangenheim, on 7 July 1915 wrote: ‘The government is indeed pursuing its goal of exterminating the Armenian race in the Ottoman Empire’.<sup>36</sup> It is certainly a delicate question how such statements, typically based on the observation of patterns of action, can be a sufficient basis for us to draw indisputable or correct conclusions about intent within the meaning of the 1948 convention.

We should, moreover, be aware that the formulations used by eminent people at the time are not necessarily compatible with the terms and connotations that appear in the genocide convention: for natural reasons, the genocide convention was not known to them.

Tellingly, Turkish political leaders and ministers who were court-marshalled were found to be guilty to the crime of ‘massacre’.<sup>37</sup>

High expectations are sometimes entertained that more archive materials could become accessible, primarily in Turkey, which would considerably improve the possibility of drawing safe conclusions. However, the existence of relevant archives in Europe seems a rather obscure point. It has been claimed, for instance, that no materials from this period exist in the United Kingdom.<sup>38</sup> It should also be kept in mind that the identification of intent presupposes that the identity of the accused is not shrouded in mystery. A notable development has taken place since the Second World War: the principle of individual criminal responsibility has been firmly established. The so-called Nuremberg Principles, adopted by the UN General Assembly in 1946, are a landmark document in that respect. The first principle opens by stating that ‘Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment’.<sup>39</sup>

The genocide convention certainly reflects this thinking. Although genocide may be linked to state offices, only individuals are held responsible, as expressed in 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’.

During the process of drafting the convention, the United Kingdom wanted to introduce the concept of state responsibility, but its amendment was defeated.<sup>40</sup> In the Armenian campaign this principle for criminal responsibility has de facto been deserted since the responsibility is generally laid on a rather abstract and diffuse collectivity, or none at all.<sup>41</sup>

It is certainly a flaw in itself that the question of the identity of the respondent(s) tends to be obscured in the Armenian campaign. Moreover, since accusations which concern intent are generally not directed towards individuals they tend to become meaningless or at least non-logic. It is reasonable to guess that the perspective of individual responsibility has been neglected in the Armenian campaign because of the quality of the materials at hand.

## **Universalism**

The principle of universalism is of the utmost importance for the modern human rights regime – it fact the key word ‘universal’ is to be found in the Human Rights Declaration of 1948. Universalism means that rules are the same everywhere and, *ipso facto*, that violations are uniformly assessed and addressed.

History is so full of horrors that the Armenians do not seem uniquely entitled to international campaigns on their behalf. Since the UN Sub-Commission report of 1985 has been so important in the Armenian campaign it is appropriate to mention other cases which it cites.<sup>42</sup> The report lists, besides the Armenian case and, of course, the Holocaust, the German massacre of Hereros in South-West Africa in 1904; the Ukrainian pogrom against the Jews in 1919; the Tutsi massacre of Hutus in Burundi in 1965 and 1972; the Paraguayan massacre of Ache Indians prior to 1974; the Khmer Rouge massacre in Kampuchea between 1975 and 1978; and the Iranian killings of Baha’is.

More examples could be found in the serious/professional genocide literature. In his well-known and esteemed book on the political use of genocide during the twentieth century, up to 1981, when it was first published, Leo Kuper includes, among others, the following cases: actions against the Chechens, Kalmyks, Ingush, Karachai, Balkars, Crimean Tatars and others in the Soviet Union in the 1940s; the genocide against the Serbs during the Second World War; the genocide between Hindus and Muslims in India after the Second World War; the actions in Pakistan in 1970–71; and the actions in Burundi in 1972.<sup>43</sup> Whereas these are called genocide, others are being called genocidal

massacres,<sup>44</sup> for instance, those in Sudan in 1955–72 and those during the decolonisation of Algeria in 1954–61.<sup>45</sup>

A case which deserves particular mention is the US decision to drop the atomic bomb on two Japanese cities at the end of the Second World War. Historians generally seem to accept the official US view that the bombs were dropped because the USA wanted a quick end to the war. However, so-called revisionist historians have maintained that there was an element of showing off the USA's military potential. Irrespective of such military objectives, it seems difficult to deny that the actions must have included an intent to destroy Japanese populations precisely because they were Japanese.<sup>46</sup> It would therefore not be far-fetched to conclude that these actions deserve just as much consideration as any others that are mentioned here – perhaps even more.

The use of nuclear weapons was later discussed by the International Court of Justice, which is the United Nations' chief advisory organ on matters of international law. The ICJ concluded in 1996 that the genocide convention certainly was relevant in this context:

The Court would point out in that regard that the prohibition of genocide would be pertinent in this case if the recourse to nuclear weapons did indeed entail the element of intent, towards a group as such, required by the provision quoted above. In the view of the Court, it would only be possible to arrive at such a conclusion after having taken due account of the circumstances specific to each case.<sup>47</sup>

The list of possible cases of genocide can certainly be made far longer. In fact, Turkey could argue that genocide has also been directed against Turks.<sup>48</sup> However, our purpose here is only to demonstrate that there are certainly many historical cases for which there is obviously or apparently no less reason for international castigation than in the Armenian case.

While the world takes much less interest in cases such as those mentioned above, the Armenian campaign seems to go against the principle of universality. Note that this is not to question that it is easier to exercise pressure on some, relatively weak, states than on others, and that the strength of the target and the power resources available have to be considered when the kind of action to take is decided upon.<sup>49</sup> Here, we are talking only of manifested interest, in terms of resolutions and statements, which is not a matter of strength and resources available.

Could the objection be raised that in some of these cases the underlying conflicts were resolved a long time ago and, in fact, no demands or campaigns have been initiated by victims or later generations? This would seem to be a dubious argument for selecting cases. It is difficult to determine the degree of resentment or potential demands, particularly among the populations in general, since the dismantling of conflicts is by and large a matter for the state powers to handle.

Moreover, as, for instance, Richard Falk has pointed out, the generation of international concern frequently depends on the existence of a powerful transnational constituency. As examples of indifference Falk mentions allegations of genocidal behaviour on the part of the Indian government in its counterinsurgency actions against the Naga and Mizo peoples in 1956–64 and genocidal campaigns in Latin America.<sup>50</sup>

A more recent illustration of these problems is provided by disclosures in 2001 by a former French general concerning the war in Algeria in 1954–62. Although the general revealed that torture and execution were routine, the reaction from the French government (which expelled the ageing officer from the military reserves) was weak, and that from the Algerian side even weaker – probably not for the same reasons. A spokesman for the Committee Against Torture and Disappearances during the National Liberation War

suggested that the current Algerian government did not want this question to come up since it is itself accused of severely maltreating its own people.<sup>51</sup>

It would seem morally devastating and quite unacceptable from a human rights regime point of view for the world's concern for cases of genocide (historical or present) to be contingent on factors such as the political clout of the victim or the willingness of governments.

Why is it that precisely the historical tragedy in Turkey has been so decisively brought to the fore? It is beyond our aim in this article to answer this question, and a proper answer may be beyond reach. However, some relevant factors may be the following:

- By and large, Turkey is not a highly esteemed country, nor is its history highly regarded. This would tend to lend accusations *a priori* credence.<sup>52</sup>
- The Armenian lobby is relatively strong, with influential emigrant societies, whereas the Turkish counter-lobby, and particularly its emigrant societies, seem relatively weak.
- Turkey is not considered a very important country: thus, for instance, the positive contribution it could make to the European Union (EU) as a future member is not often spelled out.<sup>53</sup> Its strategic value is appreciated in the West considerably more by the USA than by the Europeans.
- Turkey is anxious for EU membership, and this has given the West Europeans a strong leverage for influencing it. EU demands on candidates for membership are generally motivated in terms of what are called the Copenhagen criteria, and pro-Armenian forces in West Europe are seeking to utilise this as leverage to get Turkey to acknowledge the genocide. The European Parliament, in its resolution in 1987, listed a number of conditions for Turkey's joining the EU and believes that the 'refusal by the present Turkish Government to acknowledge the genocide against the Armenian people committed by the Young Turk government' is an 'insurmountable obstacle' to consideration of Turkey's accession.<sup>54</sup>

However, a link in the reverse direction should perhaps not be excluded, the Armenian question being an instrument rather than a goal. For instance, the president of the rightist Mouvement pour la France has stated that: 'Le refus obstiné de la Turquie de reconnaître les massacres de 1915 est un élément supplémentaire pour refuser l'entrée de la Turquie dans l'Union européenne.'<sup>55</sup> It can be assumed that for this organisation the more pressing question is to keep Turkey out of the EU and the Armenian question is an instrument to this end.

### **Implementation of the Universality Principle**

The consistent use of the principle of universalism would seem to be potentially destabilising, making for an increased level of animosity in the international system. This is so first of all because attempts to bring up historical cases may become entangled with manifest or latent conflicts of interest of various kinds, as is well illustrated by the Armenian case.

In October 2000 the International Relations Committee of the US House of Representatives passed a resolution which labelled the Armenian massacres as genocide. This resolution went to the House of Representatives for a full vote, which, however, never materialised, being cancelled by the Speaker of the House. It is generally understood that the genocide resolution came up in the first place because of politicking in the election race that was going on at the time and the endangered situation of a Republican in a district with a huge Armenian-American population.<sup>56</sup> The reason for the cancellation was no less politically coloured. The Speaker came under intense pressure from the President, the Secretary of State and

the Secretary for Defense as well as the military, who presented security policy arguments against the resolution (no doubt under the influence of Turkey, which had lobbied heavily against the resolution). Explaining his decision not to bring it to the floor, the Speaker said that he had little choice: ‘The President believes that passage of this resolution may adversely impact the situation in the Middle East and risk the lives of Americans’.<sup>57</sup>

To political concerns which were clearly manifest should be added suspicions about the role of political interests. In the Armenian case there are indeed suspicions in Turkey. It is widely thought that the campaign for recognition is intended to pave the way for certain demands on Turkey (which we will consider again below).

Can we demur that increasing animosity would perhaps be a reasonable price to be paid for truth and humanitarian principles?

Campaigns for the recognition of historical atrocities as genocide may risk upsetting sensitive processes of healing, which many would consider a much less reasonable price. As is well known, world history is full of lingering sensitivities, for instance, in East Asia, indicated by the strong reactions against Japan when its unwillingness to recognise historical misdeeds against its neighbours (such as the ‘Rape of Nanking’ in 1937) comes to the fore.<sup>58</sup> There is even the possibility that accusations of genocide would add fuel to live conflicts which are difficult to resolve. Cyprus has been a dangerous hot spot in the Eastern Mediterranean. Countless efforts by the parties themselves and the international community to resolve the conflict there (which started in 1963 according to the Turkish side, in 1974 according to the Greek side) have been in vain. A number of intricate issues are involved, including security, popular representation and territory. Negotiations started again in early 2002 in what has been widely called a last-ditch effort. What consequences would a (possibly reciprocal) genocide recognition campaign concerning atrocities in the early 1960s have for peace in the region?

### **Tribunal Functions**

The events in Ottoman Turkey have been discussed (by parliaments and other popular assemblies) in terms of crimes and culprits, not seldom with some reference to international law, and, of course, the resolutions passed are intended for international audience. Actions taken have, of course, no force in international law; nevertheless it seems accurate to say that parliaments and others de facto attribute themselves tribunal-like functions.

Is the global human rights regime well served by the fact that tribunal or quasi-tribunal functions are exercised with respect to historical events? Assuming that it is, although much could be said to the contrary, let me make some points on the appropriate way of meting out historical justice.

It follows from what has been said above that parliaments are less than suitable for the function because of the risk of inappropriate concerns intervening. The handling of the genocide bill in the US Congress is of course an example of political contamination. In the French parliamentary setting strong solidarity sentiments have manifested themselves. The point has been made that recognition of the genocide would be a way of honouring the French engagement for the Armenian community living in France and a way of strengthening the bond of friendship between France and Armenia.<sup>59</sup>

Moreover, because parliamentarians are elected on their political merits rather than for their competence in matters of international politics – much less international law – their knowledge of the subject can be questioned, or at least should not be taken for granted, the more so as legislatures, typically, are not given a major role in the making of foreign policy. It is important to realise that juridical competence includes the competence to make appeal to authority.<sup>60</sup>

It is common in Turkish milieus to refer to historians. President Ahmed Necdet Sezer, hailed abroad for his concern for the rule of law and respect for human rights, has stated that ‘the question of genocide should be left to historians’.<sup>61</sup> Professional Turkish historians agree, for instance, Halil Berkay of Sabanci University in Istanbul, who, moreover, maintains that by leaving it to the academics the Turkey of today could wash its hands of the question: republican Turkey is not a continuation of the Ottoman state.<sup>62</sup>

Not only Turkish historians have made this point,<sup>63</sup> and not only Turkish statesmen. Former Israeli Foreign Minister Shimon Peres is reported to have discussed the fate of Jews and Armenians during the Second and First World Wars, respectively, and maintained the following: ‘Genocide is a much wider term. It is not the business of a state to judge history. States create history, but should not judge (it). It should be left to the historians’.<sup>64</sup>

This position is sometimes viewed with greater or less scepticism, apparently because this issue is so politically loaded. In the Swedish Parliament’s resolution on the Armenian genocide the importance of ‘unbiased independent and international research’ on the Armenian massacre was underscored.<sup>65</sup>

This seems a rather weak recommendation since, at the same time, it was stated repeatedly that the genocide is a fact. It has been reported that Armenia showed distrust when the Turkish authorities took the initiative to set up a commission consisting of seven Turkish scholars to study the purported genocide.<sup>66</sup> In fact, on the side of the Armenians this ‘historians thesis’ tends to be refuted altogether. President Robert Kocharyan of Armenia, for one, has made clear that he does not agree that the Armenian massacre is a matter for historians. If there were any doubt regarding the genocide, he has said, then it could be a matter for historians; but it is a fact free from any doubts.<sup>67</sup>

A strong case can of course be made for genocide claims being left to historians. They would be much better equipped than parliamentarians, not only because of their command of historical method but also because of a professional ethic that helps to protect against political interests, considerations or bias. However, the limitations of historians must be stressed here. They may be helpful in providing data and documentation which bear on the case and in assessing the trustworthiness of documents. What is just as important, however, is the legal assessment of evidence, primarily with respect to the aspect of intent, which is fundamental in the genocide convention. This is a matter for professional juridical expertise. On that account historians can, at most, serve as consultants the jurists need.

We might think of situations when juridical and other expertise would perhaps do best to refrain from making a thorough investigation of a possible case of genocide. In a particular urgent situation demands for an investigation might possibly be mitigated if we consider that expressions of a belief that certain acts are of a criminal nature would have the force to prevent or halt a criminal policy.<sup>68</sup> However, here we are discussing historical events for which such a point of view seems largely irrelevant.

## **Compensation**

It seems that accusations quite easily provide the seed of demands for compensation. Consider, for instance, the NGO declaration made at the World Congress against Racism in 2001. This document addresses grave crimes such as racism, crimes against humanity and genocide (which is mentioned 26 times). Culpability and compensation are twins. In a section entitled ‘Reparations’ (articles 238–47), dealing with crimes against humanity, particularly slavery, the declaration takes up far-reaching demands such as the return of land, monetary compensation and debt cancellation. However, demands for the public acknowledgement of these crimes and the correction of history are also included (articles 239, 244).<sup>69</sup>

Those who call for recognition of the Armenian genocide sometimes find it necessary to clarify that only the Turkey of the past is impugned. A well-known French political figure, Philippe Douste-Blazy, has stated: ‘Je crois qu’aujourd’hui il faut lever une ambiguïté: la reconnaissance de la responsabilité du gouvernement de 1915, n’entraîne pas la culpabilité des Turcs de 1999. Il n’existe pas en matière criminelle, même pour le plus odieux des crimes, celui contre l’humanité, de culpabilité héréditaire’.<sup>70</sup> Another well-known French politician, Bertrand Delanoë, makes a similar point: ‘La Turquie moderne ne peut évidemment être tenue pour responsable des faits survenus dans les convulsions de la fin de l’Empire Ottoman. Au contraire, la paix entre les peuples ne peut que reposer sur des fondements solides et jamais sur l’occultation du passé’.<sup>71</sup>

If the Turkey of today is not held responsible for the imputed crime, can it then be held responsible for giving or having the duty to give compensation to later Armenian generations? From a logical point of view a strong case can be made for an answer in the negative (although the matter is rather complex). From a political point of view this does not seem to be a dead issue. The European Parliament in the 1987 resolution cited above recognises ‘that the present Turkey cannot be held responsible for the tragedy experienced by the Armenians of the Ottoman Empire and stresses that neither political nor legal or material claims against present-day Turkey can be derived from the recognition of this historical event as an act of genocide’.<sup>72</sup> However, the resolution also states that ‘the historically proven Armenian genocide has so far neither been the object of political condemnation nor received due compensation’.

Ambiguity with respect to the question of compensation is even more pronounced in the following examples. In its request to the Italian government to acknowledge the genocide of the Armenian people, the Commune of Milan states that Turkey ‘must assume the responsibility for this genocide, and that the recognition of the crime committed is also in the interest of the Turkish people, which will in that way free itself from an unbearable moral burden’. Furthermore it expresses its ‘full solidarity with the Armenian people in their fight for the acknowledgement of the historical truth and the defence of their inviolable rights’.<sup>73</sup> The last two words seem to suggest something beyond mere recognition, possibly some kind of indemnification.

The position taken by Armenia in this matter is of course crucial. The Armenian President has asserted that Armenia and the Armenian diaspora around the world are more interested in Turkey’s recognition of the Ottoman massacre than in compensation. He has stated that Turkish recognition will not result in Armenian claims for compensation; there is no legal basis for this, since the state of Armenia did not exist at the time.<sup>74</sup>

However, such a statement must be put in context. First, we can certainly not ignore the existence of lingering, unexpressed territorial demands in Armenia. In any case, Armenia has given rise to suspicions about possible irredentism. Some fundamental documents make mention of Turkish territories; the Declaration of Independence – dubiously – mentions Western Armenia; and the Constitution of the Republic of Armenia describes the coat of arms with Mount Ararat in the centre.<sup>75</sup> Second, linkages have been made between irredentist territories and the issue of compensation. In an interview for an Armenian news agency, an Armenian special envoy who has carried out important missions in the UN makes some reflections on the Turkish denial of the Armenian genocide. One cannot expect Turkey to change its position, he states, unless it knows the consequences thereof. It has to know beforehand what territorial, financial and property consequences it would have to face. Therefore, Armenia should think of drawing up the rough outlines of possible agreements.<sup>76</sup> This diplomat evidently presupposes that some form of compensation should ensue. It is also notable that he says that the territory where the Ararat

Mountains are situated should under all circumstances be returned to Armenia; this is a separate issue, which does not refer to the territories of former West Armenia.<sup>77</sup>

It seems obvious that the recognition campaign is, *nolens volens*, part of a realpolitik setting and, given the murkiness of Armenian foreign policy ambitions, it cannot be excluded that the dynamics of the campaign will make this even more obvious. The workability of this realpolitik would, in fact, paradoxical though it may seem, be facilitated by a certain indistinctness in the genocide convention. Individual responsibility is not in focus in this campaign (although the convention makes it absolutely clear that only individuals own liability). At the same time, however, Article IX seems to attribute a diffuse ‘responsibility’ to the state. It seems that this discrepancy would make it easier for Armenia to pursue demands for compensation once it has been more generally accepted that Turkey has committed genocide, even though the principle of individual responsibility of international criminal law has been deserted.

### **History on Trial**

The global human rights regime is not equipped to deal with historical atrocities, and when engaged politicians want to take matters in their own hands it is clear that this alternative is problematical.

The Armenian campaign has addressed the questions involved in a simplistic way, both with respect to juridical points of departure such as definition of the crime and the status of the accused party, and with respect to the assessment of evidence. Moreover, this campaign is undermined by the apparent neglect of the universality principle which is fundamental in human rights thinking. On the other hand, a wider application of this principle would seem to open up a Pandora’s box, particularly since retrospective shaming can easily feed demands for compensation or retribution.

A laissez-faire approach may seem the best and most natural solution. Moreover, if proclamations which bear any similarity to juridical assessments are to be made at all, it seems evident that they should not be made by politicians. A much more palatable alternative would be the creation of an international body to deal with possible historical cases of genocide, composed by experts with solid expertise and reputation for their impartiality. Necessarily, both the history and the legal professions should be duly represented.

While it would seem natural to link such an organ to central UN structures, such as the General Assembly, any such attachment to the world organisation would also create risks of political contamination. Attachment to learned societies might be a better option. However, whatever affiliation is sought, funding would be a fundamental problem, given the need to heed the principle of universality.

Establishing the guidelines for this body to work may be no less problematical; can a generally-accepted time limit to the period its investigations are to cover be agreed on or established? If developments during the early years of the past century should be of concern, why not events at the end of the century before or even earlier?

Going backwards of course also raises the issue of *nullum crimen sine lege*. To what extent should court-like functions be performed for events which, at the time they happened, were not covered by international criminal law? The principle of non-retroactivity is a fundamental tenet in modern human rights thinking.<sup>78</sup>

### **Acknowledgements**

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## Notes

<sup>1</sup>For a valuable discussion of varying estimates, see Rudolph J. Rummel, *Statistics of Democide: Genocide and Mass Murder since 1900* (Münster: Lit Verlag, 1998). Professor Yusuf Halacoglu, President of the Turkish History Association, has stated that the true number was 57,610; see *Turkish Daily News*, 5 Feb. 2001. Rummel gives 300,000 as the lowest figure.

<sup>2</sup>William A. Schabas, *Genocide in International Law: The Crime of Crimes* (Cambridge: Cambridge University Press, 2000), pp.20ff.

<sup>3</sup>Ibid., p.22.

<sup>4</sup>*Le Monde*, 19 Jan. 2001.

<sup>5</sup>See Bertil Dunér, *The Global Human Rights Regime* (Lund: Studentlitteratur, 2002), p.169.

<sup>6</sup>For example, the list includes a statement by the Prime Minister of Canada in 1996. However, the Prime Minister only ‘recognizes and deplores the fact that a great number of Armenians were killed during the wars’ and ‘extends his sympathy to the Armenian Community’. Speech as reproduced at the Armenian National Institute home page, <http://www.armenian-genocide.org>.

<sup>7</sup>René Rouquet, ‘Rapport fait au nom de la Commission des Affaires Étrangères sur la Proposition de loi de M. Didier Migaud et Plusieurs de ses Collègues (no.895), relative à la reconnaissance du génocide arménien de 1915’, no.925, Assemblée Nationale, Onzième Législature, mis en distribution le 28 mai 1998, Introduction.

<sup>8</sup>‘Markups before the Committee on International Relations, House of Representatives, 106th Congress, 2nd session, September 28 and October 3, 2000’, Serial no. 106–96 (accessed on the home page of the US Government Printing Office), quotations by Representatives Menendez and Rothman, respectively.

<sup>9</sup>Cf. Rouquet (note 7); Mozione Pagliarini ed altri n. 1-00303 concernente il riconoscimento del genocidio del popolo armeno, Allegato A, Seduta n. 707 del 3/4/2000; and Mozioni Fei ed altri n. 1-00481 e Giovanni Bianchini ed altri n. 1-00482 concernenti le vicende del popolo armeno durante la prima guerra mondiale, Allegato A, Seduta n.799 del 26/10/2000.

<sup>10</sup>References such as those made by the Swedish Parliament, cited here (see the section on Denunciation Arguments), are quite common and have also been made by the Italian and French parliaments, which, moreover, have referred to each other. Cf. the ‘Mozione Pagliarini e altri’ in the Italian Camera dei Deputati. Mr Pagliarini presents a long list of bodies that have recognised the Armenian genocide, including the Swedish and French parliaments. *Resoconto Stenografico dell’Assemblea*, Seduta n. 707 di lunedì 3 aprile 2000.

<sup>11</sup>The Declaration of Independence of 1990 was accessed on the home page of the Armenian Ministry of Foreign Affairs, <http://www.armeniaforeignministry.com/htms/doi.html>.

<sup>12</sup>Rooben Shoogharyan (Armenian Ministry of Foreign Affairs), ‘The Armenian Lobby Abroad’, *Newsletter of the Lecture Series Program*, American University of Armenia, 25 May 2000.

<sup>13</sup>There are several important Armenian advocacy groups in the US, including the Armenian National Institute (ANI) in Washington, DC. Its overarching goal (presented on its home page) is proclaimed to be the ‘affirmation of the worldwide recognition of the Armenian Genocide’, and its formal founding in early 1997 happened to coincide with the most decisive phase of the recent upsurge of recognition.

<sup>14</sup>Shoogharyan (note 12).

<sup>15</sup>BBC Monitoring Service, ‘Armenian Foreign Minister Calls for Dialogue with Turkey without Preconditions’, 4 Oct. 2000.

<sup>16</sup>BBC Monitoring Service, ‘Armenian Foreign Ministry Welcomes French Senate’s Resolution on Genocide’, 9 Nov. 2000.

<sup>17</sup>‘Yerevan Urges Italy to Recognize Armenian Genocide’, from the home page of the SNARK news agency, Yerevan (as of 4 May 2000).

<sup>18</sup>See ‘The Armenian Allegation of Genocide: the Issue and the Facts’, from the home page of the Turkish Ministry of Foreign Affairs, <http://www.mfa.gov.tr/grupa/ad/adf/massacre.wash.be.ing.htm>.

<sup>19</sup>Convention on the Prevention and Punishment of the Crime of Genocide, adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948.

<sup>20</sup>‘Markups before the Committee on International Relation, House of Representatives’ (note 8), pp.137ff.

<sup>21</sup>R.J. Rummel, *Lethal Politics: Soviet Genocide and Mass Murder since 1917* (New Brunswick and London: Transaction Publishers, 1990), pp.xivff. and 243.

<sup>22</sup>Jean-Paul Sartre, ‘On Genocide’, in *Prevent the Crime of Silence*, Reports from the Sessions of the International War Crimes Tribunal founded by Bertrand Russell, selected and edited by Peter Limqueco and Peter Weiss, with additional material selected and edited by Ken Coates and a foreword by Noam Chomsky (London: Allen Lane, Penguin Press, 1971), part II, chapter 17, pp.350–65.

<sup>23</sup>The war prosecuted by the US cannot have been genocide within the meaning of the convention: for one thing, the US government was apparently not fighting a particular ethnic group since its Vietnamese allies belonged to the group in question.

<sup>24</sup>The resolution was what is called a Written Declaration, which commits only the members who have signed it. Recognition of the Armenian genocide, Doc. 9056, 2nd edn, 14 May 2001, Written Declaration no. 320, 2nd edn, originally tabled on 24 April 2001.

<sup>25</sup>Cf. the discussion of omitted groups in Nehemiah Robinson, *The Genocide Convention: A Commentary* (New York: Institute of Jewish Affairs, World Jewish Congress, 1960), part V.

<sup>26</sup>Cf. Dunér (note 5).

<sup>27</sup>The United Nations reported 133 parties to the convention as of 9 Oct. 2001.

<sup>28</sup>Substituting an earlier UN resolution for the convention (as Rummel does) is of course also arbitrary. UN resolutions may be stepping-stones for the subsequent hammering out of international law instruments, but of course a piece of law which has been widely adopted and ratified by UN member states takes precedence over prior resolutions. Two researchers have complained that ‘although it marked a milestone in international law, the UN definition is of little use to scholars’. Frank Chalk and Kurt Jonasson, *The History and Sociology of Genocide: Analyses and Case Studies* (New Haven, Conn.: Yale University Press, 1990), p.10. This sounds somewhat presumptuous given the widely diverging views taken by different scholars. An inverse formulation would not seem to be exaggerated: whereas the conventional definition marked a milestone, scholarly definitions are of little practical importance.

<sup>29</sup>Swedish Parliament, Utrikesutskottet (Standing Committee on Foreign Affairs), Utrikesutskottets Betänkande [Report of the Standing Committee on Foreign Affairs] 1999/2000:UU1The European Parliament meeting was in fact in 1987, not 1985.

<sup>30</sup>Cf. James D. Carney and Richard K. Scheer, *Fundamentals of Logic*, 3rd edn (New York: Macmillan, 1980), pp.41ff.

<sup>31</sup>European Parliament, ‘Resolution on a Political Solution to the Armenian Question’, Doc. A2-33/87, 18 June 1987.

<sup>32</sup>United Nations, ‘Review of Further Developments in Fields with which the Sub-Commission has been Concerned’, UN document E/CN.4/Sub.2/1985/6, 2 July 1985.

<sup>33</sup>United Nations, ‘Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its 38th Session’, UN document E/CN.4/Sub.2/1985/57, 4 November 1985, Resolution 1985/9, pp.88ff.

<sup>34</sup>Ibid., article 24.

<sup>35</sup>Cf. the discussion in Tim Dunne and Daniela Kroslak, ‘Genocide: Knowing What It Is that We Want to Remember, or Forget, or Forgive’, *International Journal of Human Rights*, Special Issue, Vol.4, Nos3/4 (autumn/winter 2000), pp.31ff.

<sup>36</sup>United Nations, ‘Review of Further Developments in Fields with which the Sub-Commission Has Been Concerned’ (note 32 above), para. 24, note 13.

<sup>37</sup>Schabas (note 2), p.21.

<sup>38</sup>According to Justin McCarthy; see *Turkish Daily News*, 16 March 2001.

<sup>39</sup>For the evolution of the application of individual criminal responsibility, see, e.g., M. Cherif Bassiouni, *Crimes Against Humanity in International Criminal Law*, 2nd rev. edn (The Hague: Kluwer Law International, 1999), chapter 10. The Nuremberg Principles are reproduced on pp.538ff.

<sup>40</sup>One of the delegations stated that the UK proposal was superfluous since it gave ‘the impression that a State could be held guilty of the commission of a crime’. See Schabas (note 2), pp.41ff.

<sup>41</sup>The Swedish resolution speaks of massacres on Armenians ‘in the collapsing Ottoman Empire’ but no guilty party is identified. Utrikesutskottets Betänkande 1999/2000:UU11 (note 33).

<sup>42</sup>United Nations, ‘Review of Further Developments in Fields with which the Sub-Commission has been Concerned’ (note 32), para. 2.

<sup>43</sup>Leo Kuper, *Genocide: Its Political Use in the Twentieth Century* (Harmondsworth, UK: Pelican Books, 1981).

<sup>44</sup>The line drawn between ‘genocide’ and ‘genocidal massacre’ is obscure; by the latter concept Kuper probably intends massacres with fewer victims. Ibid., p.32.

<sup>45</sup>New revelations about French atrocities in Algeria in 1954–62 made in 2001 by a retired French general might lead to a more exact assessment of French behaviour during the conflict.

<sup>46</sup>It has been suggested that US President was not informed about the decision to drop the second bomb, which he did not want because of the consequences for innocent civilians. Stanley Goldberg, ‘What Did Truman Know, and When Did He Know It?’, *Bulletin of the Atomic Scientists*, Vol.54 (May/June 1998), p.3.

<sup>47</sup>International Court of Justice, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996.

<sup>48</sup>Primarily in Cyprus in 1963. See, e.g., Harry Scott Gibbons, *The Genocide Files* (London: Charles Bravos, 1997).

<sup>49</sup>Cf. K. Anthony Appiah, ‘Grounding Human Rights’, in Michael Ignatieff et al., *Human Rights as Politics and Idolatry* (Princeton, N.J. and Oxford: Princeton University Press, 2001), pp.101–16, pp.103ff.

<sup>50</sup>Richard Falk, *Human Rights and State Sovereignty* (New York and London: Holmes & Meier, 1981), pp.159ff.

<sup>51</sup>International Herald Tribune, 19 June 2001. In both countries, however, political parties and NGOs reacted vigorously: cf *Le Monde*, 8 May 2001.

<sup>52</sup>For an unusually clearcut example of this lack of estimation see a statement made in the Swedish Parliament by the chairperson of the Swedish Support Committee for Human Rights in Turkey (which includes members from all the political parties represented in the Parliament) on 1 Feb. 2001: ‘We should be aware that Turkey almost always speaks with a double tongue’.

<sup>53</sup>Cf. Bertil Dunér, ‘Why Let Turkey In?’, in Bertil Dunér (ed.), *Turkey: The Road Ahead?* (Stockholm: Swedish Institute of International Affairs, 2002).

<sup>54</sup>European Parliament, ‘Resolution on a Political Solution to the Armenian Question’ (note 31), article 4.

<sup>55</sup>Philippe de Villiers, ‘Le Blocage au Sénat Est De Fait Imputable au Gouvernement Jospin’, *Nouvelles d’Arménie En Ligne*, <http://www.armenews.com/nam/Sommaire.asp>.

<sup>56</sup>The Republicans had hopes of keeping control of the House. ‘Were it not for Jim Rogan that resolution would never be coming up’, the head of the Republican campaign committee told reporters, adding that the resolution was ‘part of the process’. Reuters, ‘Political Fallout for US House Vote on Armenia’, 27 Sept. 2000.

<sup>57</sup>Reuters, 20 Oct. 2000, reporting from the *Washington Post* that same day.

<sup>58</sup>Relations with South Korea improved considerably after 1988, when Kim Dae Jung accepted Japan’s apology for its occupation of Korea (1910–45), but this did not stop the flaring up of passions in 2001 when a non-apologetic Japanese history textbook was published; South Korea recalled its ambassador to Tokyo and cancelled official visits. *International Herald Tribune*, 19 April 2001.

<sup>59</sup>Rouquet (note 7), Conclusion.

<sup>60</sup>Cf. above on the evaluation of the Sub-Commission report of 1985 made by the Standing Committee on Foreign Affairs of the Swedish Parliament. The full Parliament later confirmed the Committee’s evaluation.

<sup>61</sup>Time Europe, 11 June 2001.

<sup>62</sup>Neshe Düzel, ‘Ermenileri Özel Örgüt Öldürdü’, *Radikal*, 9 Oct. 2000 (interview).

<sup>63</sup>Cf. Justine McCharthy, ‘Let Historians Decide on So-Called Genocide’, *Turkish Daily News*, 10 April 2001.

<sup>64</sup>‘Holocaust Yes, Armenian Genocide No!’ *Cyprus Weekly* (Nicosia), posted on the Internet 27 April 100Cf. also interview with Günter Verheugen, EU Commissioner for Enlargement: ‘I must say that I prefer leaving that to the historians’, *Turkish Daily News*, 7 Feb. 2001.

<sup>65</sup>Urikesutskottets Betänkande 1999/2000:UU11 (note 29).

<sup>66</sup>BBC Monitoring Service, ‘Armenia Hails Setting Up of Turkish Genocide Commission, But Doubtful of Aim’, 31 Oct. 2000.

<sup>67</sup>Interview by Mehmet Ali Birand under the title ‘Armenia Has No Land Demand from Turkey’, *Turkish Daily News*, 1 Feb. 2001.

<sup>68</sup>See also Adriaan Bos, ‘The International Criminal Court: A Perspective’, in Roy S. Lee (ed.), *The International Criminal Court: The Making of the Rome Statute: Issues, Negotiations, Results* (The Hague, London and Boston: Kluwer Law International, 1999), chapter 17, pp.463–70.

<sup>69</sup>World Congress against Racism (WCAR) NGO Forum Declaration, 3 Sept. 2000This document is described as the outcome of an international process before and during the NGO forum of the WCAR held in Durban, South Africa, 28 Aug.–1 Sept. 2001.

<sup>70</sup>Philippe Douste-Blazy, ‘Pour Rejoindre l’Union, la Turquie Devra Reconnaître le Génocide Arménien’, *Nouvelles d’Arménie*. En Ligne, <http://www.armenews.com/nam/Sommaire.asp>.

<sup>71</sup>Bertrand Delanoë, ‘Au Nom de l’Avenir’, *Nouvelles d’Arménie* En ligne, <http://www.armenews.com/nam/Sommaire.asp>.

<sup>72</sup>European Parliament Resolution, 18 July 1987: European Parliament resolution on a political solution to the Armenian question, Doc. A2-33/87.

<sup>73</sup>Mozione del Cons. Massimo de Carolis ed altri: Genocidio del popolo armeno, Consiglio Communale Di Milano (submitted and accepted in November 1997).

<sup>74</sup>‘Armenia Won’t Ask for Compensation If Turkey Recognizes “Genocide”’, CIS Online, 2 Feb. 2001.

<sup>75</sup>A considerable number of articles with references to the Armenian territorial claims have been published by the Turkish press (e.g., by *Milliyet*, *Hürriyet* and the *Turkish Daily News*). Cf. in particular ‘Two Ambassadors Discuss Armenian Question’, *Turkish Daily News*, 22 Oct. 2001.

<sup>76</sup>‘Recognition of Armenian Genocide Is A Matter of Time’, interview with Ashot Melik-Shahnazarian, from the home page of the SNARK news agency, Yerevan (as of 4 May 2000).

<sup>77</sup>The question of material compensation can also be brought up in civil society. An Armenian Deputy Foreign Minister has urged Armenians to take up the issue with American insurance companies and fight for compensation in courts worldwide. See Shoogharyan (note 12).

<sup>78</sup>There is no consensus on the legal status of the crime of genocide before the 1948 convention. The Charter of the Nuremberg trials (1945–46), included a provision on ‘crimes against humanity’ (article 6(c)), which is

closely related, but not identical, to genocide. The legality of Article 6 has been very much discussed and it is frequently seen as innovative rather than a reflection of international law at the time. See, e.g., Bassiouni (note 39), Concluding Assessment; and Margaret McAuliffe de Guzman, 'The Road From Rome: The Developing Law of Crimes Against Humanity', *Human Rights Quarterly*, Vol.22 (2000), pp.335–403, at 344. Interestingly, in 1945, before the start of the trials, the US government recognised that the pre-war atrocities committed by the Nazis were not offences against international law. See Benjamin B. Ferencz, *An International Criminal Court: A Step Toward World Peace: A Documentary History and Analysis* (London, Rome and New York: Oceana Publications, 1980), Volume I, document 12.