ULUSLARARASI SUÇLAR VE TARİH

Altı Aylık Uluslararası Hukuk ve Tarih Dergisi

sayı
7-8
2009

TERAZİ
yayıncılık

ULUSLARARASI SUÇLAR VE TARİH

Uluslararası hakemli dergi - Yılda iki kez yayımlanır
Türkçe-İngilizce

2009, Sayı 7/8
ISSN: 1306-9136

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BASIM TARİHİ VE YERİ
12 Nisan 2010, Ankara

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RADOVAN KARACİÇ'İN TUTUKLANMASI: GERÇEKLERLE YÜZLEŞME ZAMANI

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Özet: *Slobodan Miloşeviç yönetiminin yıkıldığı Ekim 2000'den sonra Sırbistan'dan gelen en iyi haber, savaş suçlarından dolayı aranan Bosnalı Sırpların eski lideri Radovan Karaciç'in tutuklanmış olmasıdır. İlk defa 1995 yılının Temmuz ayında Eski Yugoslavya Uluslararası Ceza Mahkemesi tarafından savaş suçu işlemekle itham edilen Karaciç, Balkanlar'da 13 yıl serbest gezdikten sonra Temmuz 2008'de yakalandı. Karaciç'in yargılanması, bir nebze dahi olsa adaletin sağlanması açısından önemlidir. Adalet, sadece kurbanlar açısından değil, gelecekteki soykırımların, insanlığa karşı suçların tekrarlanmaması açısından da önemlidir. Karaciç'in yargılanması ayrıca Bosna savaşı ile ilgili ilave gerçeklerin ortaya çıkmasını da sağlayacaktır. Bu makalenin amacı, çocukları öldüren, okul ve kütüphaneleri yok eden bir katil olarak her zaman hatırlanacak olan Karaciç'in tutuklanması ve yargılanmasına ilişkin değerlendirmelerde bulunmaktır.*

Anahtar kelimeler: *Radovan Karaciç, Bosna-Hersek, Sırbistan, soykırım, Eski Yugoslavya Uluslararası Ceza Mahkemesi.*

RADOVAN KARADZIC'S ARREST: TIME TO FACE THE TRUTH

Abstract: *The best news heard from Serbia since October 2000, the end of the Slobodan Milosevic regime, was the arrest of Radovan Karadzic, former leader of Bosnian Serbians who was wanted for his war crimes. Karadzic, who was charged with committing war crime for the first time in July 1995 by International Criminal Tribunal for the former Yugoslavia, was caught in July 2008 after thirteen years of freedom. Karadzic's going to trial is of great importance for securing the justice even slightly. Justice is important not only for the victims but*

also for preventing the repetition of similar crimes against humanity. The trials will also reveal new facts about the Bosnian war. The purpose of this study is to make comments on the arrest and trial of Karadzic, who will always be remembered as a murderer who killed children and destroyed schools and libraries.

Keywords: *Radovan Karadzic, Bosnia and Herzegovina, Serbia, genocide, International Criminal Tribunal for the former Yugoslavia*

I. Giriş

Slobodan Miloşeviç yönetiminin yıkıldığı Ekim 2000'den sonra Sırbistan'dan gelen en iyi haber, savaş suçlarından dolayı aranan Bosnalı Sırpların eski lideri Radovan Karaciç'in tutuklanmış olmasıdır. Radovan Karaciç ve Ratko Mladiç gibi savaş suçlularının Sırbistan'da bulundukları yıllarca inkâr edildikten sonra, Sırbistan Millî Güvenlik Konseyi'nden, Karaciç'in başkent Belgrad'da tutuklandığı haberi gelmiştir. Böylece, Karaciç'in hiçbir zaman tutuklanmayacağına, kendisine adaletin önünde hiçbir zaman hesabın sorulamayacağına dair efsane yıkılmıştır.

Bu makalede, 1992-1995 yılları arasında yaşanan Bosna savaşı çerçevesinde Radovan Karaciç'in kişiliği hakkında bilgiler verilecek, savaş sırasında ve savaş sonrası dönemde Karaciç'in Sırbistan ile ne tür ilişkiler içinde olduğuna değinilecektir. Diğer taraftan, Karaciç'in neden tutuklandığı, yargılanmasının nasıl gerçekleşeceği, yargılanmasından Bosna savaşıyla ilgili ne tür gerçeklerin çıkabileceği, söz konusu gerçeklerin bilinmesinin neden önemli olacağı gibi konular üzerinde de durulacaktır.

II. Radovan Karaciç Kimdir?

Karadağ'ın Durmitor dağı yakınındaki Petnyitsa köyünde 1944 yılında doğan Radovan Karaciç, Tito Yugoslavyası'nın dağılmaya başlamasından, Bosna savaşının sona erdiği 1995 yılının sonuna kadar, Bosnalı Sırpların mutlak lideriydi. Kendisi aynı zamanda, Bosna-Hersek topraklarının yüzde 49'una karşılık gelen Sırp Cumhuriyeti'nin de ilk cumhurbaşkanıydı.

Karaciç'in babası bir Çetnikti. "Çetnik", Sırp tarihinin geçmiş dönemlerine ait kahramanlaştırılmış haydutlar için kullanılan geleneksel bir terimdir. Özellikle

İkinci Dünya Savaşı yıllarında Çetnikler, bir taraftan dini nefret yüzünden, diğer taraftan da etnik açıdan temizlenmiş "büyük Sırp devleti"ni oluşturmak uğruna, acımazsıca ve sistematik bir şekilde Boşnakları katletmiştir. 1990'ların başlarında yaşanmaya başlayan Yugoslavya krizi çerçevesinde, Karaciç, Boşnak kıyımı konusunda babasının adımlarını izleyeceğini hemen belli etmiştir. Babasından farklı olarak, Karaciç'in Tito Yugoslavyası'nda 1946 yılında kurulan gizli polis teşkilatı UDBA'nın *(Uprava drzavne bezbjednosti)* eski mensubu olduğuna inanılmaktadır. Diğer taraftan, Karaciç'in Bosna savaşının öncesinde de Belgrad'ın yönettiği gizli teşkilatlara hizmet ettiğini söylemek yanlış olmayacaktır.

Günümüzde Sırbistan'daki iktidarın başını çeken Demokratik Parti'nin kurucularından biri olan Sırp yazar Goyko Coko ile 12 Ekim 1991'de yaptığı bir telefon görüşmesinde, yani savaşın henüz alevlenmediği bir dönemde, Karaciç Boşnakların dünya yüzünden yok olacaklarını söylemişti. 13 Ekim 1991'de Bosnalı Sırpların eski bakanlarından Momçilo Mandiç ile yaptığı bir telefon konuşmasında ise Karaciç, birkaç gün içinde Saraybosna'nın yok edileceğini ve 500 bin Boşnakın öldürüleceğini belirtmişti. 14 Ekim 1991'de Bosna-Hersek meclisinin kürsüsünden seslenirken de, Karaciç, Bosna'yı ve Boşnakları yok etmekle açık olarak tehdit etmiştir. 1992'nin ilkbaharında Boşnaklar üzerinde başlayan kıyımın trajik bir finali olan ve Temmuz 1995'te gerçekleşen Srebrenitsa soykırımının arifesinde ise Karaciç, Bosnalı Sırpların generallerinden Radislav Krstiç'e Srebrenitsa'yı ele geçirmelerini emrettiğini belirtirken,[1] ormanlardan kaçmaya çalışan "Türklerin" peşlerine gidilmesini de istediğini, bu konuda "radikal özel bir görev" onayladığını ve bundan pişmanlık duymadığını açıklamıştır. Eski Yugoslavya Uluslararası Ceza Mahkemesi'nin (YUCM) Dava Dairesi, Karaciç'in bu ve benzer açıklamalarını, soykırım özel kastının[2] ispatlanmasında kanıt olarak sunmuştur.[3]

Karaciç'in konuşmalarıyla ilgili yukarıda verilen örneklerden birinci ile sonuncusu arasında geçen zaman aralığında Bosna'da yaşananlar, insanlık tarihinin en karanlık sayfaları arasında yer almıştır. Karaciç'in komutası altında

1 Bosnalı Sırpların generallerinden Radislav Krstiç 2 Ağustos 2001 tarihinde Eski Yugoslavya Uluslararası Ceza Mahkemesi tarafından, Srebrenitsa'da soykırım gerçekleştirdiği gerekçesiyle 46 yıllık hapis cezasına çarptırılmıştır. Savunmanın verdiği temyiz dilekçesi ardından ise, 2004'te Krstiç'in hapis cezası 35 yıla indirilmiştir.

2 1948 tarihli Soykırım Suçunun Önlenmesi ve Cezalandırılması Sözleşmesi (Soykırım Sözleşmesi) gereğince, suçun fiziksel unsuru dışında, suçun manevi unsurunun da ispatlanması şarttır. Bir başka ifadeyle, bir suçun işlenmesi durumunda varolması gereken zihni durumun da ispati gerekmektedir. Soykırım Sözleşmesi bunu "kasıt" ve "özel kasıt" kriterleriyle belirliyor. Bu zihni durumun ispatlanması üzerine kriter o kadar yüksek bir seviyede düzenlenmiş ki, bir devleti değil, bireyi bile soykırımdan suçlu bulmak zordur.

3 Prosecutor v. Slobodan Milosevic, *Decision on Motion for Judgement of Acquittal*, Case No. IT-02-54-T, 16 Haziran 2004, para. 238-245.

Bosna-Hersek nüfusunun yaklaşık yüzde 50'si (2,2 milyon kişi) savaş öncesi evlerini terk etmiş, yaklaşık 250 bin kişi hayatını kaybetmiş, 200 bin civarında sivil, değişik esir kamplarında işkencelere maruz kalmıştır. Diğer taraftan, Boşnak kadınlara ve kız çocuklarına sistematik bir şekilde tecavüz edilmiş, Saraybosna, Bihaç, Srebrenitsa, Gorajde ve Jepa gibi birçok Boşnak kenti uzun süreyle kuşatma altında tutulmuş ve Boşnak tarih ve kültürünün izleri olan 1200'ün üzerinde cami, mescit, tekke gibi eserler yıkılmış, yakılmıştır. Karaciç'in etnik temizlik ve soykırım politikalarıyla oluşturulan Sırp Cumhuriyeti'nde ise yakın geçmişe kadar Sırp olmayanlara tanınan tek hak, Bosna'nın bu biriminden göç etmek olmuştur.

Karaciç Saraybosna'dan nefret ettiğini hiç gizlememiştir. Oysa eğitim maksadıyla daha 14 yaşında Saraybosna'ya yerleşen Karaciç, aynı şehirden tıp diplomasını bile almıştır. Belki de yeğenine tecavüz etmek suçuyla yargılanmış olan babasının yarattığı utanç verici durumdan kaçmak için, Karaciç Karadağ'ı terk ederek, Saraybosna'ya yerleşmişti.

Askerliğini yapmamış olmasına rağmen, Bosna savaşı yıllarında Karaciç askeri üniformayla ortalıkta gezinmeyi seviyordu. Diğer taraftan, sadece Sırpların iyiliği için değil, bütün Batı'nın iyiliği için de savaştığına inanıyordu. Nitekim Karaciç bir seferinde Sırpların 600 yıl önce Avrupa'yı "İslam'dan koruduklarını", Bosna savaşında da Avrupa'yı Almanya'dan ve "İslami radikalizminden" korumakta olduklarını söylemiştir.[4]

Günümüzde Sırpların çoğunluğu Radovan Karaciç'i bir ulusal kahraman olarak algılamaktadır. Oysa Karaciç bir milli kahramandan çok, "milli bir korkaktı". 13 yıl boyunca gizlenmekle sadece kendi ailesine değil, genel olarak Sırp milletine değişik sıkıntı ve zararlar vermiştir.

III. Radovan Karaciç'ten Dragan Dabiç'e

Karaciç ilk olarak 24 Temmuz 1995'te YUCM tarafından savaş suçu işlemekle suçlanmıştır. Ancak, tutuklanması için üzerine doğru dürüst giden hiç kimse olmamıştır. Sırbistan yetkilileri defalarca Karaciç'in Sırbistan'da bulunmadığına dair yeminlerde bulunmuştur. Karaciç'in başkent Belgrad'ın göbeğinde tutuklanmasından sadece iki gün önce ise, YUCM ile işbirliğinden sorumlu devlet komisyonunun koordinatörü Rasim Layiç "Karaciç ve Mladiç gibi savaş

4 Smail Cekic, *Agresija na Republiku Bosnu i Hercegovinu: Planiranje, Priprema, Izvodenje,* Cilt 1, (Saraybosna, Institut za Istrazivanje Zlocina Protiv Covjecnosti i Medunarodnog Prava, 2004), s. 561.

suçlularının nerede bulunduklarını Sırbistan'ın hiçbir resmi kurumu bilmemektedir" yönünde bir açıklamada bulunmuştur.

Karaciç tutuklandığında, kendisine 1999 yılında düzenlenen Dragan David Dabiç adlı sahte kimlik altında, bambaşka bir şekil ve kişiliğe bürünmüş vaziyette yaşadığı anlaşılmıştır. Bosna savaşı yıllarında Sırp olmayanlardan temizlenmiş "alternatif bir Bosna" yaratmaya çalışan Karaciç'in, kendisine biçilmiş yeni kimlik altında "alternatif tıpla" uğraştığı ortaya çıkmıştır. Karaciç'in gizlenme şekli, sadece devlet kurumlarından görülen destekle mümkün olabildiği söylenebilir. Zaten Karaciç bütün Bosna savaşı boyunca Sırbistan ile Karadağ'dan siyasi, askeri ve istihbarat desteği görmüştür. Karadağ'da yayımlanan *"Monitor"* dergisinde yer alan bir iddiaya göre ise Karaciç 11 Mayıs 1996 tarihinde Karadağ'da tutuklanmış, ancak o dönemdeki Karadağ yönetimi tarafından serbest bırakılmıştır.[5]

Karaciç'in sürekli yer değiştirdiği ve bu yüzden yakalanamadığına dair inanç boş çıkmıştır. Adresli belli ve gayet normal bir hayat sürdürdüğü anlaşılmıştır. Karaciç'in rahat bir hayat sürdürdüğünü gösteren olgulardan biri, 2002-2005 yılları arasında beş kitabını yayınlatmış olmasıdır. Bunların dışında Karaciç'in yazıları Sırbistan'da yayımlanan *"Sağlıklı Yaşam"* isimli dergide de yer bulmuştur. 10 Aralık 2007 ile 23 Mayıs 2008 tarihleri arasında ise Karaciç yeni kimliğiyle alternatif tıp üzerine dört ayrı yerde tebliğler sunduğu ortaya çıkmıştır. Dahası, Karaciç'in Dragan Dabiç ismi altında kartvizit bastırdığı, iki cep telefonu kullandığı ve http://www.psy-help-energy.com/internet adresinde kendi sitesini kurduğu anlaşılmıştır. Alternatif tıp alanın ötesinde, Karaciç "arıların öldürülmesinin güna olduğu" tarzı konuşmalar bile yapıyormuş. Arıları bu şekilde savunan Karaciç yüzünden ise, bugün hâlâ Boşnak anneleri, Bosna-Hersek'in dört tarafında çocuklarının kemiklerini aramaya devam etmektedir.

Karaciç'e Dragan Dabiç kimliğiyle hayat verenler, ne oldu da bu hayatını geri aldı? Karaciç'in tutuklanmasına yönelik bir siyasi irade Sırbistan'da daha önce var olmamıştır. Karaciç'in yargılanmasının, Sırbistan devletinin milli çıkarlarına zarar verebileceğinden endişelenilmiştir. Özellikle Sırbistan'ın eski Başbakanı Voyislav Koştunitsa'nın, Karaciç'in tutuklanmasına uzun süre engel teşkil ettiğine inanılmaktadır. Koştunitsa'nın diğer bazı savaş suçlularının yakalamasına da zorluklar çıkardığı iddia edilmektedir. Örneğin, Hırvatistan'da Hırvat sivilleri üzerinde işlenen suçlardan dolayı aranan Goran Haciç 2004 yılında tam tutuklanmak üzereyken, Sırbistan'ın Novi Sad kentindeki evinden kaçmasını Koştunitsa yandaşlarının sağladığına inanılmaktadır.

5 S. Radoncic ve M. Tadic Mijovic, "Hapsenje Karadzica: Ko je Stvorio, Stitio i Otkucao D.D. Dabica", *Monitor,* Sayı 927 (1 Ağustos 2008).

11 Mayıs 2008'deki erken seçimden sonra Belgrad'da Koştunitsa'dan arındırılmış bir şekilde işbaşına gelen yeni hükümet, daha önceki dönemde Sırbistan'ın Batı ile krize giren ilişkilerini düzeltme çabasına girmiştir.[6] Oysa hem Brüksel, hem de Vaşington suçlularının yakalaması için Sırbistan'a yıllarca baskılar yapmıştır. Bu yüzden Karaciç'i tutuklayarak, yeni Sırbistan yönetimi özellikle Avrupa Birliği (AB) ile olan ilişkilere yeni bir soluk vermeye çalışmıştır. 11 Mayıs 2008'deki seçimlerin ardından Sırbistan istihbarat teşkilatı BIA'ya *(Bezbednosno-informativna agencija)* yeni bir başkanın atanmış olmasının, Karaciç'in tutuklanmasında büyük rol oynadığı söylenebilir.

IV. Karaciç'in Yargılanması

Radovan Karaciç yargılanmak üzere 30 Temmuz 2008'de Hollanda'nın Lahey kentinde bulunan Eski Yugoslavya Uluslararası Ceza Mahkemesine (YUCM) teslim edilmiştir.[7] YUCM'a teslim edilmesinden sonraki bir yıl boyunca Mahkeme Karaciç'le ilgili iddianameyi geliştirip tamamlamıştır. Radovan Karaciç'e karşı hazırlanan iddianamenin son hali iki soykırım suçunu, insanlığa karşı suçlar ve savaş suçları gibi değişik suçları içermektedir. Soykırım suçlamasının birinci kısmı, 1992 yılında Bosna-Hersek'in on belediyesinde yaşanan olaylarla ilgilidir. İkinci kısmı ise, 1995 yılında gerçekleşen Srebrenitsa soykırımıyla ilgili yapılan suçlamadır. Karaciç 30 Haziran 2009'da Mahkemeye sunduğu yazılı dilekçede suçsuz olduğunu söylemiştir.

Radovan Karaciç'in YUCM'daki yargılanma süreci 26 Ekim 2009 tarihinde resmen başlamıştır. Duruşmalarının başlamasından yaklaşık bir ay önce Karaciç kendi kendini savuna hakkından yararlanmayı istemiş ve bu konuda hazırlığını yapabilmek için 10 aylık bir süre talebinde bulunmuştur. Ancak Mahkeme duruşmaları Karaciç'in gıyabında başlatmıştır. 5 Kasım 2009'da ise YUCM Karaciç'e bir avukatın atanmasını kararlaştırıp, söz konusu avukatın hazırlığını yapabilmesi için duruşmaları 1 Mart 2010 tarihine kadar ertelemiştir.

Normal koşullarda YUCM'un 2010 yılına kadar kapatılması gerekiyordu. Bu mahkemede Sırpların adil olarak yargılanmadığını ileri süren ve BM Güvenlik Konseyi'nde veto hakkına sahip Rusya Federasyonu uzun süre YUCM'un görev süresinin uzatılmasına karşı çıkmıştır. Karaciç'in tutuklanması ardından ise

6 Sırbistan'ın Batı ile ilişkilerinin neden krize girdiği hakkında bkz. Erhan Türbedar, "Kosova'nın Bağımsızlık İlanının Sırbistan, Bosna-Hersek ve Makedonya'ya Etkileri", *Avrasya Dosyası,* Cilt 14, Sayı 1 (2008), ss. 26-35.

7 YUCM 1993 yılında Birleşmiş Milletler (BM) Güvenlik Konseyi tarafından, 25 Mayıs 1993 tarihli, 827 numaralı karar gereğince kurulmuştur. Görevi, 1991'den bu yana eski Yugoslavya topraklarında işlenen savaş suçlarının sorumlularını yargılamaktır. Bkz. UNSC Res. 827 (25 Mayıs 1993), UN Doc S/RES/827.

Moskova, Karaciç bir Rusya vatandaşı veya Sırbistan bir Rusya eyaletiymiş gibi davranarak, bu Balkan katilinin objektif yargılanmasını talep etmiştir.[8]

Moskova'nın bu yöndeki tutumu yüzünden Karaciç hüküm giymeden mahkemenin kapatılabileceğini ümit ederek, yaklaşık 20 hukukçudan aldığı danışmanlık hizmetiyle yargılanma sürecini elinden geldiğince boykot etmeye çalışmıştır. Ancak, Güvenlik Konseyi 16 Aralık 2009 tarihli kararıyla, Eski Yugoslavya Uluslararası Ceza Mahkemesinin çalışma süresini 2012 yılının sonuna kadar uzatmayı başarmıştır.[9]

Radovan Karaciç'e karşı hazırlanan iddianame oldukça hacimlidir ve soykırım suçu, insanlığa karşı suçlar ve savaş suçları gibi değişik suçları içermektedir. Nitekim medya kaynaklarında yer alan bilgilere göre, Karaciç'e karşı 1,1 milyon üzerinde yazılı sayfa, 45 bin üzerinde doküman ve birkaç bin ses ile görüntü kaydı delil olarak kullanılacaktır. Aynı zamanda 400 üzerinde kişi Karaciç'e karşı tanıklık yapacaktır.

Karaciç'e karşı hazırlanan hacimli iddianame bu yönüyle, aynı mahkemede yargılanan eski Sırp lider Slobodan Miloşeviç'in iddianamesine benzemektedir. Bu yüzden, Karaciç'in yargılanması için Miloşeviç davasından çıkartılabilecek derslerin olup olmadığına bakmak önemlidir. Hatırlatmak gerekirse, birkaç yıl yargılandıktan sonra hücresinde ölü bulunduğu için, Miloşeviç davasında boşuna yüzlerce tanık dinlenmiş, on binlerce evrak gözden geçirilmiş ve boşuna milyonlarca dolar harcanmıştır. Miloşeviç'e kendi kendisinin savunmasını yapmasına izin verilmişti. Böylece Miloşeviç, YUCM'da adeta şov yapmış ve yargılama sürecinin uzamasına sebebiyet vermiştir. Diğer taraftan, Miloşeviç davasında Hırvatistan, Bosna-Hersek ile Kosova hakkındaki suçlamaların toplu hale getirilmiş olması, temel bir hata olduğu söylenebilir. Söz konusu davalar ayrı ayrı görülseydi, Miloşeviç ölmeden en azından bitmiş olanlardan hüküm giyebilecekti.

Miloşeviç davasından çıkartılan bu yöndeki derslerden hareketle, teorik olarak Karaciç'in kendi kendini savunmasına izin verilmemesi gerektiği düşünülebilir. Diğer taraftan, Karaciç'in davasında en önemli suçlamalar üzerinde durulması, ayrıca yeterince delilin bulunduğu vakalara yoğunlaşılması önerilebilir. Ancak, YUCM, her mahkeme gibi, sanıkların adil yargılanma hakkına tam olarak saygı gösterilmesini önemsemektedir. Nitekim YUCM'un Statüsünün 21. maddesinin 4/b fıkrasında, sanığa savunmasını hazırlaması için yeterince sürenin tanınması

8 "Rusija Zatrazila Objektivno Sudenje Karadzicu u Hagu", *B92,* (23 Temmuz 2008).

9 UNSC Res. 1900 (16 December 2009), UN Doc S/RES/1900.

gerektiğine ilişkin güvence verilmektedir.[10] Diğer taraftan, YUCM'daki duruşmalar süresince çok sayıda tanık sözlü olarak delil sunmakta, yargılanan taraf ise tanığı çapraz sorgulayabilmektedir. Dahası, sanık kendi kendini savunma hakkından istifade etmeyi de talep edebilmekte, bu hakkın tanınması durumunda ise sanığa savunmasını hazırlamak üzere belli bir müddet verilmektedir. Bunlara ilave olarak, verilen bir mahkeme kararının yeniden incelenmesi için temyiz dilekçesi verilirse, YUCM'daki davalar uzayıp durmaktadır. Bir örnek vermek gerekirse, YUCM'da on yıl içinde görülen dava sayısı, Nazi savaş suçlularının yargılandığı Nüremberg Uluslararası Askeri Mahkemesinde bir yıldan daha az sürede görülmüştür.[11]

Yukarıda belirtilen sıkıntılarla birlikte, YUCM pratiğinde, Karaciç'in davasını hızlandırabilecek uygulamalar da vardır. Şöyle ki dava daireleri, daha önce YUCM'da görülmüş davalarda hükme bağlanmış olayları, Karaciç'in davasında delil olarak kabul edebilmektedir. Savunma, daha önce hükme bağlanmış davaları çürütme hakkına sahipken, davacı tarafın bu davalardaki delilleri yeniden ispatlama zorunluluğu yoktur.[12] Neticede, savunma ciddi bir çürütücü delil sunmadığı sürece, YUCM'da görülmüş davalarda hükme bağlanmış olaylar sayesinde, tekrarlamalar azaltılarak, kritik konuya odaklanılabilmekte ve yargılama süreci hızlandırılabilmektedir. Buradan hareketle konu ile ilgili uzmanlar yaklaşık üç yıllık süre içinde Karaciç'in yargılanmasının tamamlanabileceğini düşünmektedir.[13]

2012 yılının sonunda Karaciç'in yargılanması sona ermeden YUCM kapatılırsa, mevcut koşullar altında Karaciç'le birlikte eski Yugoslavya coğrafyasında suç işlemekle itham edilenler Sırbistan, Bosna-Hersek ve Hırvatistan'da kurdurulan yerel mahkemelerde yargılanmak zorunda kalacak. Örneğin sadece Bosna-Hersek'teki savaş suçları mahkemesinde 10 bin civarında şahıs savaş suçu işlemekle itham edilmiştir. Ancak, yerel mahkemelerdeki yargılamalardan adaletin sağlanıp sağlanamayacağı tartışılabilir. Örneğin, Srebrenitsa soykırımına iştirak eden "Akrepler" örgütünün Sırbistan İçişleri Bakanlığı'na bağlı olduğunu gösteren bir takım belge ve itiraflar bulunmaktadır.[14] Buna rağmen, Akrepler örgütünün beş mensubunu yargılayan, Belgrad'daki yerel mahkeme bünyesinde

10 Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, (Eylül 2009), http://www.icty.org.

11 Helena Cobban, "International Courts", *Foreign Policy,* (Mart-Nisan 2006), s. 23.

12 Helen Brady, "YUCM İçtihadında Önemli Dönüm Noktaları", *Uluslararası Suçlar: Bosna-Hersek Örneği,* ed. Sevin Elekdağ ve Erhan Türbedar içinde (Ankara: ASAM-İKSAREN Yayınları, 2008), s. 98.

13 "Karadzic Trial Will Start on October 19," *BIRN,* (8 Eylül 2009), http://birn.eu.com.

14 Nataşa Kandiç, "Uluslararası Adalet Divanı Kararı: Sırbistan'dan Bir Değerlendirme", *Uluslararası Suçlar: Bosna-Hersek Örneği,* ed. Sevin Elekdağ ve Erhan Türbedar içinde (Ankara: ASAM-İKSAREN Yayınları, 2008), s. 54.

kurulu bulunan Savaş Suçları Konseyi, 10 Nisan 2007'de açıkladığı kararda, Akrepler örgütünü Sırbistan devlet kurumlarıyla herhangi bir kurumsal ilişkisi bulunmayan milis bir örgüt olarak göstermiştir. Neticede, Akrepler dosyasıyla görevlendirilen yargıçlar adaletin koruyucusu olacaklarına, Slobodan Miloşeviç rejiminin kurumlarının yanlışlarını örtbas etmeyi milli bir çıkar olarak algılayarak, soykırımı gerçekleştirenlerin koruyucusu olmuştur.

Yerel mahkemelerdeki yargılamanın diğer bir sakıncası ise, tanıklık edenlerin güvenliğine ilişkindir. YUCM'daki davalarda tanıklık edenlerin yaklaşık yüzde 40'ının kimliği güvenlik sebeplerinden dolayı gizli tutulmuştur.[15] Buna rağmen, YUCM tanıkları büyük tehditlerle karşı karşıya kalabilmektedir. Böyle olunca, yerel mahkemelerde tanıklık edenlerin çok daha büyük baskı ve tehditlerle karşı karşıya kalabileceklerini söylemek yanlış olmayacaktır.

V. Karaciç'in Tutuklanmasına Sırbistan'da Verilen Tepkiler

1990'lı yıllarda Balkanlar'da yaşanan savaşlar üzerine farklı tarafların "farklı gerçekleri" vardır. YUCM'daki duruşmalardan Balkanlar'daki savaşlar üzerine gerçekler henüz ortaya çıkarılmadan, bölge ülkelerinin yöneticileri kendi çıkarlarının gerektirdiği "gerçekleri" üretmiş ve bunu halklarına "kesin gerçek" olarak kabul ettirmiştir. Bu yüzden, karara bağlanan YUCM davaları sıklıkla "siyasi davalar" olarak algılanabilmektedir. Özellikle Sırplar arasında YUCM'da Sırpların adil bir şekilde yargılanmadığı ve YUCM'un siyasi bir mahkeme olduğu düşüncesi yaygındır. Bu çerçevede sıklıkla ileri sürülen argümanlardan birisi, YUCM'da yargılananların büyük kısmının Sırp olmasıdır.

Kuruluşundan 2008 yılının ortalarına kadar YUCM 161 şahsa karşı suç duyurusunda bulunmuş, bunların içinden ise 93 Sırp, 31 Hırvat, 14 Boşnak, 8 Arnavut ve 3 Makedon söz konusu mahkemenin yargıçları önüne çıkarılabilmiştir.[16] Burada sunulan rakamlardan hareketle bir Sırp YUCM'un Sırplara karşı çalıştığını savunabilirken, bir Boşnak muhtemelen, söz konusu rakamların Sırpların en çok suç işlediklerini kanıtladığını söyler.

Farklı tarafların farklı gerçekleri bulunduğu için, Tito Yugoslavyası'nın neden dağıldığı hususunda bile Balkanlar'da görüş birliği yoktur. Ancak, Tito Yugoslavyası'nın dağılma sürecinde, bu ülkenin federal birimlerinden herhangi birinin Sırbistan'a saldırmakla tehdit bile etmediği bilinmektedir. Tam tersine,

15 "John Laughland: International Justice is Power Without Responsibility", *The Independent,* (29 Temmuz 2008).

16 "Srbima Hiljadu Godina za Ratne Zlocine", *Politika,* (14 Nisan 2008).

Slobodan Miloşeviç rejiminin Hırvatistan ve Bosna-Hersek'in toprak bütünlüklerine ciddi bir zarar vermeye kalkıştığı gerçeğini hiç kimse inkar edemez. Ne var ki, Karaciç'in tutuklanmasıyla ilgili habere Sırbistan'da verilen tepki, Sırp halkının bazı gerçeklerle henüz yüzleşmediğini göstermektedir. Sırpların çoğu hem Hırvatistan hem de Bosna-Hersek'teki savaşta Sırpların özgürlükleri için mücadele ettiklerine, bir çeşit kurtuluş savaşı yürüttüklerine inanmaktadır. Bu yüzden, çocuk ve kadınları bile öldüren Radovan Karaciç ve Ratko Mladiç gibi şahıslar Sırplar tarafından "milli kahraman" olarak algılanabilmektedir.

Balkanlar'daki suçlar bireylerin bağımsız eylemleri sonucunda işlenmemiştir. Tam tersine, işlenen suçların altında bir ideoloji, bu ideolojiye hizmet etmek üzere tahsis edilen değişik silahlı güçler yer almıştır. Sırpların örneğinde, suçların işlenmesini teşvik eden ideolojinin adı "Büyük Sırbistan"dır. Karaciç'in uğruna savaştığı bu ideoloji ise Belgrad'da geliştirilmiştir. Bir başka ifadeyle, Karaciç, Sırbistan'da geliştirilen bir ideolojinin hükümlerini uygulamakla görevlendirilen bir şahıstı.

Bilindiği gibi, Belgrad, Yugoslavya adı altında önce bölgedeki Slavları tek bayrak altına toplamıştı. Yugoslavya'nın dağılmasıyla birlikte Slavların birleşmesi fikri başarısızlıkla sonuçlanınca, Yugoslavya adı altında bütün Sırpların aynı devlet çatısı altında toplanmasına çalışılmıştır. Bu çerçevede, 1990'ların ilk yarısında "Birleştirilmiş Sırp toprakları" deyimi Sırplar tarafından sıklıkla kullanılmıştır. Sırp topraklarının birleştirilmesi fikrini yöneten ve koordine eden ise, Sırbistan'daki Slobodan Miloşeviç rejimi olmuştur.

Miloşeviç hem Hırvatistan Sırpları, hem de Bosna-Hersek Sırpları içinden istediği kişiyi lider olarak ön plana çıkarabiliyor, istediğinin de kariyerine son verebiliyordu. Örneğin, 1989 yılında Bosnalı Sırplara Sırp Demokrati Partisi'ni kurduran ve bu partinin başına Karaciç'in geçmesini sağlayan Belgrad'dır. Ardından Belgrad, Karaciç ile düzenli bir iletişim sürdürmüş, kendisine silah, finans ve diğer lojistik desteği sunmuştur. Belgrad, örneğin Bosna'da savaşmak üzere "gönüllüler birliklerinin" oluşturulmasını da örgütlemiş ve bu örgütleri finans etmiştir. Ancak, Sırbistan yetkilileri bu birlikleri "milis örgütler" olarak göstermeye çalışmakta ve Sırbistan kurumlarının bunlarla herhangi bir bağlantısının olmadığını savunmaktadır. Oysa, sözde gönüllü birliklerini kurduran Belgrad, bununla Sırbistan'ın Hırvatistan ve Bosna'daki savaşa karışmadığı görünümünü vermeye çalışmış, böylece "savaşa girmeden savaşmıştır".

Karaciç başlangıçta Miloşeviç'in tipik bir "piyadesiydi". Karaciç ve Mladiç'in

deskeleniyor olması yüzünden ise BM Güvenlik Konseyi'nin 30 Mayıs 1992 tarihli ve 757 sayılı kararıyla, Slobodan Miloşeviç'in kurdurduğu Yugoslavya Federal Cumhuriyeti'ne ekonomik ambargo uygulaması başlatılmıştır.[17] Daha sonra BM ambargosundan kurtulmaya çalışan Miloşeviç, Bosnalı Sırpların kontrolleri altına soktukları toprakların bir optimuma ulaştığına inanarak, Radovan Karaciç'ten "Vance-Owen Planı"nı kabul etmesini istemiştir.[18] Karaciç Miloşeviç'in bu talebini reddederek, Belgrad'la olan ilişkilerini belli bir mesafede tutmaya başlamıştır. Belki de bu yüzden Belgrad Ratko Mladiç'ten ziyade, Radovan Karaciç'i YUCM'a teslim etmiştir. Çünkü, Bosna'da işlenen suçlarla Belgrad arasındaki bağlantıyı asıl kuran savaş suçlusu Ratko Mladiç'tir.

Karaciç'in tutuklanmasına ilişkin haberin dünyaya duyurulmasıyla birlikte, 22 ve 23 Temmuz 2008 tarihlerinde, Sırbistan devlet televizyonu RTS'te, "Karaciç: Efsane ve Gerçek" isimli özel yayın gerçekleştirmiştir. Bu yayında konuşulanlar, Sırbistan'da olumlu anlamda çok şeyin değiştiğini, daha önce "yasak olan" bazı konuların Sırp devlet televizyonunda artık serbestçe konuşulabildiğini göstermiştir. Ama yine de, konuşulanlar arasında dayatılan bazı görüşlerle, Sırp halkının 1990'lı yılların gerçeklerini algılamasına müsaade edilmemiştir. Her şeyden önce, söz konusu programda merhum Boşnak lider Aliya İzetbegoviç'in Bosna yüzünden "barışı kurban ettiği" belirtilerek, dolaylı yoldan Bosna savaşının suçlusu olarak Boşnaklar gösterilmiştir. Karaciç yıllardan beri Belgrad'ın göbeğinde serbestçe yaşamış olmasına rağmen, Sırbistan'ın suç işleyenlerin gizlendiği bir ülke olmadığının altı çizilmiştir. Program sunucu "Radovan Karaciç soykırım suçu işlediği iddia ediliyor" tarzı cümlelerle Karaciç'i masum göstermeye çalışmış ve bir Batılı gazetenin Karaciç'i "Balkanlar'ın Bin Laden'ine" benzetmesinden rahatsız olduğunu açıkça belli etmiştir. Bunların dışında aynı programda "sözde Büyük Sırbistan projesi" tarzı kelimeler sarf edilmiş; programa telefonla bağlanan Sırp Cumhuriyeti Başbakanı Milorad Dodik'e ise, Karaciç'in işlediği suçları, adeta diğerlerinin Sırplar üzerinde işlediği suçlarla meşrulaştırmasına imkan tanınmıştır. Bütün bunların dışında, YUCM'un adaleti değil, özellikle Sırplara adaletsizliği dağıtan bir kurum olduğu mesajları verilmiştir.

"Karaciç: Efsane ve Gerçek" isimli programdan verilen bu örnekler bir araya getirilince ortaya çıkan resim, günümüzdeki Sırbistan devletinin Karaciç'e bakış

17 UNSC Res. 757 (30 May 1992), UN Doc S/RES/757.

18 İlkbahar 1993 boyunca BM arabulucusu Vance ve AB arabulucusu Owen'in hazırladığı barış planı gündemde olmuştur. Vance-Owen Planı, Bosna-Hersek'in bir federasyon çatısı altında on özerk kantona bölünmesini öngörmüştü. Planla en büyük haksızlık Boşnaklara yapılmıştı. Bosna'daki nüfus oranları yüzde 43,7 olmasına rağmen, Bosna topraklarının sadece yüzde 26,36'sının Boşnakların kontrolüne bırakılması planlanmıştı. Buna rağmen, gözü daha fazla toprakta olan Radovan Karaciç'in meclisi 26 Nisan 1993'te Vance-Owen Planını reddetmiştir.

açısını da özetlediği söylenebilir. İşte bu sebepten dolayı Karaciç'in yargılanması, bazı Sırpların geçmişte işlenen hatalarla yüzleşmesini sağlaması açısından önemlidir. 1990'ların ilk yarısında Balkanlar'da yaşanan savaşların iç yüzünü özellikle yeni yetişmekte olan Sırp nesillere göstermek açısından önemlidir. Yeni Sırp nesli "Boşnakların kendi kendilerini öldürdükleri" ve "Boşnakların kendi kendilerini esir kamplarına topladıkları" yönündeki yalanlarla yetiştirilmemelidir. Sırp milletinin gerçeğe hakkı olmalıdır. Bu gerçeklere, Miloşeviç ve Karaciç gibi şahısları yıllarca iktidara tutan toplumsal zihniyetin ve kültür yapısının değişmesi, dolayısıyla Sırbistan'da yeni bir düşünce tarzının gelişmesi, demokratikleşmenin tamamlanması açısından ihtiyaç vardır.

VI. Karaciç ve Batılı Ülkeler

Bosna savaşı yıllarında Karaciç'in Sırp olmayanlara yaşattığı insanlık trajedisi 3,5 yıl boyunca güç ve imkan yetersizliğinden değil, isteksizlikten durdurulmamıştır. Batılılar görünürde bir şeyler yapmaya çalışıyor gibiydi, oysa gerçekte Bosna'yı ve Boşnakları Karaciç'in katliamına terk etmişlerdi. Batılı ülkeler Karaciç'i durduracağına, Bosna'daki gelişmelere hep "insancıl kriz" gözüyle yaklaşmıştı. Bir başka ifadeyle, Batılılar savaşın sebepleri üzerine gideceğine, hep savaşın sonuçlarıyla uğraşıp durmuştur. Genel olarak uluslararası toplum Boşnakların öldürülüyor olmasını sürekli kınamış, ancak bu kıyımı durdurmak için neredeyse hiçbir şey yapmamıştır. Hazırladığı raporlarında Balkanlar'daki kanlı savaşların gerçekçi yüzünü yansıtmaya çalışan BM İnsan Hakları Komisyonu'nun Özel Raportörü Tadeusz Mazowiecki, Srebrenitsa soykırımının gerçekleşmesine müsaade edilmiş olmasından dolayı 27 Temmuz 1995'te sunduğu istifa dilekçesinde "Suçlar acımasız ve hızlı bir şekilde gerçekleşiyor, uluslararası toplumun buna cevabı ise yavaş ve verimsizdir" diyordu.[19]

Bosna'nın etnik çizgilere göre bölünmesine yardımcı olan da Batılılar olmuştur. Çünkü Batılı diplomatların sunduğu değişik barış planları, Karaciç'in etnik temizlik politikalarıyla şekillenen iç sınırları sürekli onaylamaktaydı. Bunun farkında olan Karaciç'in Sırpları, hep daha fazla toprağın peşine gidiyor, bu yüzden barış müzakereleri başarısızlıkla sonuçlanıyordu. Kuşkusuz, Bosna savaşında uluslararası toplumun davranışına gölge düşüren en önemli olaylardan biri Srebrenitsa soykırımı olmuştur.

Batılı ülkelerin Karaciç'in üzerine gitmemesi, savaş sonrası dönemde de sürmüştür. 1995-1996 yılları arasında Karaciç Bosna'da kolayca

19 Dzemo Tufekcic ve Mirsad Tokaca, *Mazowiecki Izvjestaji 1992–1995*, (Tuzla: Univerzitet u Tuzli i Istrazivacko-Dokumentacioni Centar Sarajevo, 2007), s. 17.

tutuklanabilecek durumdaydı. Ancak, Batılı devletler uzunca bir süre bu kişinin yakalanmasına yönelik bir siyasi karar almaktan imtina etmiştir. Karaciç'i destekleyen Sırp silahlı kuvvetlerinin Bosna'daki değişik misyonlarda görev yapan uluslararası topluluk temsilcilerine saldırabileceği endişesiyle, Karaciç'in üzerine ciddi bir şekilde gidilmemiştir. Başarısızlıkla izlenen temel strateji, Karaciç'in YUCM'a gönüllü temsil edilmesini sağlamaktı. Uluslararası topluluğun tek kayda değer girişimi Karaciç'in pasifleştirilmesi konusunda olmuştur. Bosna savaşını sona erdiren 21 Kasım 1995 tarihli Dayton Barış Anlaşması'nın mimarı olarak kabul edilen Amerikalı diplomat Richard Holbrooke'a bu konuda önemli bir görev verilmişti. 19 Temmuz 1996'da Belgrad'da, Sırbistan ve Bosnalı Sırp yetkilileriyle görüştükten sonra, Holbrooke, Karaciç'in siyasi kariyerinin sonunun imzalandığını duyurmuştu. Bu olaydan sonra, bütün siyasi ve bürokratik görevlerinden vazgeçmesi karşılığında, Holbrooke'un Karaciç'e YUCM'a gönderilmeyeceği yönünde garanti verdiği üzerine bir söylenti yayılmaya başlamıştır. Nitekim mahkemenin huzuruna çıkartılığı ilk günden beri Karaciç, Holbrooke ile vardığı bir anlaşma gereğince YUCM'da yargılanamayacağı iddiasını ileri sürmüştür. Bir başka ifadeyle Karaciç bir dokunmazlığa sahip olduğunu ileri sürerek, Mahkemede kendisine karşı yürütülen sürecin durdurulmasını istemiştir. Holbrooke ve Amerika Dışişleri Bakanlığı Karaciç'in bu yöndeki iddialarını defalarca reddetmiştir. 7 Temmuz 2009'da ise YUCM'un aldığı bir kararla Holbrooke ile anlaşma iddialarına nokta koyulmuştur. Kararda, Holbrooke'un 1996 yılında BM Güvenlik Konseyi ve YUCM başsavcısı adına hareket ettiğine dair Savunma herhangi bir delil sunamadığı için, Karaciç'e ilişkin mahkeme sürecinin devam edeceği belirtilmiştir.

YUCM'daki duruşmalardan elde edilen delillere göre, 1997'nin sonlarından itibaren Karaciç, Sırp Cumhuriyeti'nde gizlenmeye başlamıştır. Ancak, tutuklanması noktasında olayın üzerine ciddi biçimde gidilmemiştir. Karaciç'in finansal desteğinin önemli ölçüde çökertilmesi dışında, bu savaş suçlusunun yakalanması için uzun yıllar somut bir adım atılmamıştır.[20]

Temmuz 1997'ye kadar Bosna-Hersek'te görev yapmış NATO misyonunun yükümlülükleri arasında, savaş suçlularının yakalanması görevi yoktu. Bu tarihten sonra ise NATO Bosna-Hersek'teki savaş suçlularının üzerine gitmeyi kabul etmiştir.[21] Buna rağmen, Bosna-Hersek'te Karaciç'in yakalanmasına yönelik NATO barış gücü askerlerinin bazı eylemleri göstermelik olmaktan öteye gitmemiştir. Karaciç'in 13 yıl boyunca Balkanlar'da serbest gezinmiş olması,

20 Mirko Klarin, "Zivot i Prikljucenije Radovana Karadzica", *Sense TV*, (2005).

21 Radio Free Europe/Radio Liberty, saat 02:30 Sırpça programı, (12 Ağustos 2008).

Batılı ülkelerde bu savaş suçlusunun yakalanmasına dair bir isteğin bulunmadığını göstermektedir.

YUCM'un eski başsavcısı Carla Del Ponte'nin sözlüğünü yapmış Florance Artman, Karaciç'in daha önceden yakalanmasını değişik vakalarda engelleyen ya ABD, ya İngiltere ya da Fransa'nın olduğunu iddia etmektedir. Artman'a göre, Karaciç'in tutuklanmasını bazen bizzat ABD'nin eski Başkanı Bill Clinton veya Fransa'nın eski Cumhurbaşkanı Jacques Chirac engellemekteydi.[22] Artman'ın ileri sürdüğü bilgilere göre, NATO'nun eski Komutanı Wesley Clark, 15 Aralık 2003'te Slobodan Miloseviç'in YUCM'daki davasında kapalı kapılar ardında verdiği ifadede, Clinton ve Chirac'ın onayı olmadan, Karaciç'in üzerine gidilemeyeceğini doğrulamıştır.[23]

Clinton'un döneminde Amerikan askerlerinin Bosna-Hersek'teki El-Kaide mensuplarının peşine gittikleri bilinmektedir. Bu yüzden, aynı askerlerin Karaciç ve Mladiç gibi savaş suçlularının peşine gitmemiş olmalarına anlam vermek zordur. Florance Artman'ın Karaciç'in neden yakalanamadığı üzerine iddiasının doğru olup olmadığı belki hiçbir zaman teyit edilemeyecektir. Ancak, söz konusu iddialar, Batılı ülkelerin Bosna savaşındaki rolü hakkında önemli bazı ipuçları verebilmektedir. Örneğin, Sırpları bir barış anlamasını imzalamaya razı ettirebilmek için, Batılı ülkelerin "güvenli bölge" olarak ilan edilen Srebrenitsa'nın Sırpların eline düşmesine izin vermiş olabilme ihtimali oldukça yüksektir. Ne var ki, bunu kanıtlayan ciddi delile şimdiye kadar ulaşılamamıştır. Burada rahatlıkla söylenebilecek bir şey, Dayton Barış Anlaşması'nın 1995'in sonlarında imzalanabilmesi için, Batılı ülkelerin Karaciç ile yoğun bir diyalog içinde bulunduklarıdır. Bu açıdan da Karaciç'in YUCM'da neler anlatacağı önem arz etmektedir.

Gerçi Karaciç Batılı ülkelerle sahip olduğu ilişkileri de kötüye kullanarak, uluslararası kamuoyunun dikkatlerini işin özünden, yani kendisine yöneltilen suçlamalardan uzak tutmaya çalışmaktadır. Örneğin, 21 Ağustos 2009'da Financial Times gazetesinde yayımlanan bir demecinde Karaciç, Tito Yugoslavyası'nın dağılmasından dolayı Batılıları suçlamıştır.[24] Muhtemelen savunması boyunca da Karaciç, Bosna halkının savaştan önce barış ve hoşgörü ortamında yaşadığını, ancak Batılı güçlerin Bosna'nın farklı etnik topluluklarını birbirine düşürdüğü yönündeki söylemini sürdürecektir. Bu tür söylemlere

22 Tanja Nikolic Dakovic, "Klinton i Sirak Licno Blokirali Hapsenje", *Blic,* (13 Ağustos 2008).

23 Radio Free Europe/Radio Liberty, saat 02:30 Sırpça programı, (12 Ağustos 2008).

24 Neil MacDonald, "Karadzic to Blame Self-interest of West for Yugoslav Break-up", *Financial Times,* (21 August 2009).

Karaciç, Bosna'da yaşanan olayların soykırım olarak nitelenemeyeceğini ortaya koymaya çalıştığı apaçıktır.

VII. Sonuç

İlk defa 1995 Temmuz ayında YUCM tarafından savaş suçu işlemekle suçlanan Radovan Karaciç, Balkanlar'da 13 yıl serbest gezdikten sonra 2008'in Temmuzunda yakalanmıştır. 31 Temmuz 2008'de ilk defa YUCM huzuruna çıkartılan Karaciç, af dilercesine masum bir insan imajını sergilemeye çalışmıştır. Ancak, kimlik değiştirmede profesyonelleşen Karaciç'i tarih her zaman çocukları öldüren, okul ve kütüphaneleri yok eden bir katil olarak hatırlayacaktır.

Herhangi bir tanık olmadan Karaciç'in yakalanmış olması, Sırp istihbarat teşkilatının baştan beri bu savaş suçlusunu kontrol ettiği söylenebilir. Bu yüzden Karaciç'in "yakalandığı" kelimesi yerine, "tutuklandığı" kelimesini kullanmak daha yerinde olacaktır. Karaciç'i yakalatan, Sırbistan'ın mevcut hükümetinin ülkeyi AB üyeliğine taşıma arzusu olmuştur. Bir başka ifadeyle, Karaciç ahlaki sorumluluktan ziyade, AB'ye katılımın bir önkoşulu olarak algılandığı için yakalanmıştır. Bu olay da Sırbistan'ın YUCM ile işbirliğine "ahlaki ilişki" gözüyle değil, "ticari ilişki" gözüyle baktığını göstermiştir.

Elbette, Karaciç'in tutuklanması tek başına yeterli değildir. Günümüzde Karaciç gibi şahısların talimatlarını uygulayan eli kanlı yüzlerce savaş suçlusu Balkanlar'da halen serbestçe gezebilmektedir. Ancak, bunların içinden Ratko Mladiç ve Goran Haciç gibilerinin yakalanması özel önem arz etmektedir.

Karaciç'in yargılanması, bir nebze dahi olsa adaletin sağlanması açısından önemlidir. Adalet, sadece kurbanlar açısından değil, gelecekteki soykırımların, insanlığa karşı suçların tekrarlanmaması açısından da önemlidir. Karaciç'in yargılanması ayrıca Bosna savaşı ile ilgili ilave gerçeklerin ortaya çıkması ve Sırpların Sırbistan devletinin geçmişteki hatalarıyla yüzleşmesi açısından da önemlidir. Söz konusu yüzleşmeye ise, Sırbistan'da demokratikleşmenin tamamlanması açısından da ihtiyaç vardır.

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THE PONTUS QUESTION: AN OVERVIEW

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Abstract: *This article intends to analyze the problematic known by the international public opinion as "the Pontus Question," which can be summarized as the uprisings of the Greek subjects living in the Black Sea Region of the Ottoman Empire during the last years of the Empire and the Turkish National Struggle, the subsequent inter-communal clashes, and the migration of these Greek subjects to Greece with the population exchange. Within this framework, it examines the historical and socio-cultural background of this question and elaborates why and how it has nowadays been presented to the international public opinion as "the Pontic Genocide" allegations.*

Key Words: *Pontus Question, Greek, Ottoman Empire, Greece, Population Exchange*

PONTUS MESELESİ: GENEL BİR BAKIŞ

Özet: *Bu makale uluslararası kamuoyunda "Pontus Sorunu" olarak tanımlanan, Osmanlı Devleti'nin son yıllarında ve Milli Mücadele döneminde Karadeniz bölgesinde yaşayan, imparatorluğun Rum tebaasının ayaklanmaları, bölgede yaşanan topluluklar arası çatışma ve son olarak Rum tebaanın nüfus mübadelesi ile Yunanistan'a göç etmesi olarak özetlenebilecek sorunsalı tanımlamayı ve analiz etmeyi amaçlamaktadır. Bu çerçevede sorunun tarihsel ve sosyo-kültürel arka planı incelenmekte ve günümüzde "Pontus soykırımı" iddialarının uluslararası kamuoyunun gündemine nasıl ve ne amaçla getirildiği yorumlanmaktadır.*

Anahtar Kelimeler: *Pontus Sorunu, Rum, Osmanlı Devleti, Yunanistan, Nüfus Mübadelesi*

Introduction

Nationalist movements within multi-ethnic empires had produced multiple alternative historiographies. The historians of the constituent communities evaluated their separation from the imperial system as a struggle for independence from tyrant rule, while the historians of the ruling community perceived the process as the emergence of a separatist movement, which aimed to destroy the long-lasting order created by the empire itself. This was the case for the Ottoman Empire. When the constituent elements of the Empire, namely the Serbians, Greeks, Romanians, Bulgarians, Albanians and Arabs gained their independence, multiple alternative historical narratives were produced by both sides. While those who gained their independence argued that they had engaged in a glorious struggle for achieving their independence and nation-state against the despotic and oppressive rule of the Ottomans, namely against the "Turkish yoke," Turkish historians tended to label the independence movements with terms such as "rebellion, revolt, uprising, incident, etc." For example, for a Bulgarian historian, the reason for Bulgarian backwardness was likely a direct result of the Ottoman oppressive and even imperialist/exploiting rule. Hence, according to this rendition, when the Bulgarians claimed their rights to be independent, Ottoman tyrants dispatched troops and killed thousands of Bulgarians to suppress the Bulgarian revolution. On the other hand, the majority of Turkish historians argued that the Bulgarians, who had lived under Ottoman Empire for centuries enjoying political, economic and religious privileges under the imperial system, had been corrupted by the nationalist ideas as well as foreign intervention. Therefore, they revolted against the Ottoman Empire, killed and expelled the Muslim population living in the region and committed treason against their own state.

These rival historiographies have survived even until today to a great extent; however, recent studies in history conducted both in Turkey and in the countries which emerged out of the Ottoman Empire have produced more objective and stimulating results. There are two significant exceptions to this trend. The first one is the revitalization of the historical studies regarding what had happened to the Armenians in 1915. There is a significant "war of wording" regarding this issue. While the Armenian and some Western historiographies employ the word "genocide" to describe the Armenian relocation and related incidents that took place in the first decades of the twentieth century, Turkish historiography uses the word "question" to denote the same occurrences. In other words, there are two competing depictions of the same moment in history: the "Armenian genocide" as an "event" and the "Armenian question" as a "process." This futile discussion was resurrected in the 1980s and is still occupying the agendas of both Turkey and Armenia as well as the agenda of the international community.

The second significant exception is a less-discussed debate of the Pontic Greek genocide allegations, so-named after the fate of the Greek community living in the region called Pontus, located along the Black Sea littoral from the town of İnebolu in the west and the city of Batum in the east. Similar to the Armenian case, but to a lesser degree, there emerged rival historiographies regarding the fate of the Pontic Greeks in the early decades of the twentieth century. Particularly admiring the "success" of the Armenian lobbies in convincing some 18 parliaments for recognizing the Armenian genocide allegations, the Greek state and Greek diaspora began to press for the "undeniable fact" of the Pontic Greek "genocide." However, still, the literature on this subject for both sides is newly emerging and quite limited. Hence, the idea of writing this paper as an overview of the Pontic Greek "genocide" debate emerged due to this dearth of literature, which is presently incapable of fully putting forward what had really happened to the Pontic Greeks. As such, this paper's aim is not to examine all the sources regarding the subject matter or to provide the reader with an all-encompassing and comprehensive study on the Pontic Greeks. Rather, this paper is designed as a preliminary work for demonstrating the basic discussions regarding the issue through referring to a bulk of literature, not only written by Turkish historians, but also by Greek and Western historians. In other words, this paper intends to review the Pontus Question in order to establish a basis for future research.

The paper is composed of four main chapters. The first chapter is devoted to the Pontic Greek genocide allegations in order to present the reader with some Greek and Western accounts of the subject matter. Among the literature making the claim of Pontic Greek genocide, two sources, a book and the written statement of a non-governmental organization, have been selected since the arguments of genocide were put forward, albeit briefly, in these works. After acquainting the reader with these allegations, the second chapter focuses on the historical background of the Pontus Question to contextualize these allegations and the response produced by Turkish historiography. This second chapter is divided into several sub-sections dealing first with the background of Greek nationalism which had been a stimulating factor for the Hellenization of the Ottoman Greeks and then with the Greek Revolution and subsequent independence of Greece together with the impact of this independence on the Greek community living in the Ottoman Empire. The third chapter tries to define the Pontus Question by focusing on the establishment of clandestine Greek societies in the Ottoman Empire, their activities and the inter-communal clashes between the Muslims and Greeks in the Black Sea region. In doing that, the chapter focuses on the cooperation between the European powers and the Ottoman Greeks, the Turkish reaction towards the incidents experienced in the Black Sea region and the exchange of population between Turkey and Greece, which had practically ended

the Pontus Question. Finally, the last chapter deals with the current ramifications of the Pontic Greek genocide allegations through examining the limited recognition of genocide allegations in Greece and in several states of the United States. The paper ends with an overall conclusion.

The authors of the paper do not claim that they have located or consulted all the literature regarding the subject matter. The literature written in Greek was unfortunately left unexamined; however still, to a great extent, Greek historians have been referred to through the English and Turkish translations. Furthermore, archival documents have not been utilized extensively, but the secondary literature citing archival documents has been examined and cited in the paper. Objectivity, an essential component of social scientific research, in this paper is adhered to as much as possible; hence both Greek and Turkish accounts are presented in a comparative sense. In other words, what has been written in this paper is clearly footnoted and nothing has been left uncited. Unfortunately, the authors of the paper have witnessed that even these basic requirements of social scientific research have been ignored in much of the literature regarding the subject matter; therefore this paper, is a modest attempt to review a significant part of the existing literature and to assist subsequent research in this much unexamined part of history.

I. Pontic Greek Genocide Allegations

As mentioned in the introduction, what had happened to the Pontic Greeks between 1914 and 1923 has been termed differently by Turkish and Greek accounts. While the Turkish side has described the events as a double-sided phenomenon which has both domestic and international dimensions, some Greek and Western sources are almost completely determinate on labeling these events as "genocide." Therefore, prior to the closer examination of the Pontus Question, it would be better to identify how the literature advocating the Pontic Greek genocide allegations perceives the issue as "genocide." Indeed, there is a plethora of publications having such a description and many of these publications are referred in the subsequent chapters of the article. However, in this part, two sources are utilized to provide the reader with a brief account of the Pontic genocide allegations. One of them is a book written by Harry Tsirkinidis entitled *At Last We Uprooted Them... The Genocide of Pontos, Thrace and Asia Minor through the French Archives*.[1] In this book, the central argument of the author is

1 Harry Tsirkinidis, *At Last We Uprooted Them... The Genocide of Pontos, Thrace and Asia Minor through the French Archives*, Athens: Kyriakidis Brothers Publishing House, 1993.

that after the fall of Constantinople in 1453, Greeks had been systematically oppressed and persecuted by the Turks through the centuries and this reached to a climax in the late nineteenth and early twentieth centuries; according to this view, the latest phase from 1914 to 1923 can be, without doubt, considered as "genocide."

Indeed, Tsirkinidis asserts that he has utilized French archival documents in order to support his claims; however, unfortunately, he has not footnoted the archival documents. Hence, it is impossible for the reader to check the accuracy of the documents and the claims in the book, since there is no indication in the book that the documents actually exist. If this academic deficiency can be ignored, the arguments in the book can be summarized as follows: The oppression and persecution of Greeks by the Turks can be neither confined to the period between 1914 and 1923 nor to the Pontus region. Rather, the persecutions had started after the Turkish conquest of the region where the Greeks had been living for centuries. When these maltreatments had reached a zenith in the early twentieth century, Pontic Greeks had established several organizations to protect their rights; however, this could not deter the Turks from increasing their pressure. Therefore, two phases of "genocide" were experienced. The first phase was perpetrated between 1914 and 1918 by the oppressive central and local authorities of the Committee of Union and Progress (CUP) claiming thousands of lives and uprooting much of the remaining Greeks in the Pontus region as well as in the western and central parts of Anatolia. The second phase, on the other hand, started with the arrival of Mustafa Kemal on May 19, 1919 in Samsun, one of the most important cities of the Pontus region, and ended with mass forced exodus of the Greek community of Anatolia. The symbolic event of this period was the great fire in İzmir said here to have been sparked by the invading Turkish army. The final action was the compulsory exchange of populations between Turkey and Greece clearly ending the Greek presence in their historic homelands in Anatolia.

The second source utilized in this part of the paper regarding the Pontic genocide allegations was a written statement submitted by the International League for the Rights and Liberation of Peoples, a non-governmental organization which had a special consultative status in the UN. In February 1998, the United Nations Economic and Social Council announced that the Secretary-General of the United Nations had received a written statement entitled "A People in Continued Exodus" from the League.[2] Indeed, in the document the concept of "genocide"

2 For the full text of the statement see http://daccessdds.un.org/doc/UNDOC/GEN/G98/106/67/PDF/G9810667.pdf?OpenElement

was never utilized; however still, the claims it included could be considered as a summary of a bulk of literature on the Pontic Greek "genocide."

To start with, it was stipulated in the document that the Pontus region was inhabited by the Greeks since the eighth century B.C., even before the establishment of the first Pontic Kingdom; hence, this region was essentially a Greek homeland. Secondly, it was determined that after the Ottoman conquest in the second half of the fifteenth century, living conditions and communal life of the Pontic Greeks were affected negatively by a number of economic and social mechanisms, such as deteriorating economic conditions, increasing taxes and a continuous distrust between Muslim and non-Muslim inhabitants of the region. Third, during the nineteenth century, a series of mass migrations of the Pontic Greeks had been experienced as a result of the Ottoman-Russian Wars of 1828-29, 1853-56 and 1877-78. Thousands of refugees, panicked by the fear of reprisal from the Muslims, migrated to the Russian territories. The formation of the initial Greco-Pontic communities in the North Caucasus and Georgia, therefore, was an outcome of these developments. Fourth, with the formation of the Young Turk movement in the early twentieth century, a new nationalistic and ethnocentric ideology appeared in the Ottoman Empire. This movement attempted to eliminate the Christian communities of the Empire in order to establish a nation-state. The number of Pontic Greeks in the beginning of the twentieth century may be estimated at about 750,000 and as a result of Young Turk as well as subsequent Kemalist policies, all of them were said to have been uprooted from their homelands through "massacres, atrocities, massive rapes, abduction of women and children, forcible conversions to Islam, death marches into arid regions, in inhuman conditions of hunger, thirst and disease meant for full extinction."[3] It was finally stipulated in this written statement that:

> [F]rom 1916 to 1923, about 350,000 Pontians disappeared through massacres, persecution and death marches. The population which could survive was driven to exodus. Thousands went away as refugees to a number of countries, such as France and the United States of America. Some 190,000 of the survivors arrived in Greece before 1923. The agreement signed in 1923 by Greece and Turkey, along with the Lausanne Treaty, for the mass exchange of refugees between the two countries, did not include the Pontians still alive in the region, most of whom had been converted to Islam. As a whole, about 200,000 fled from 1916 to 1923 to the Caucasus, mostly to Georgia and to Russia.[4]

3 Ibid.

4 Ibid.

All in all, the book written by Harry Tsirkinidis and the written statement submitted to the UN by the International League for the Rights and Liberation of Peoples summarize the Pontic Greek genocide allegations. Although the rest of this paper does not focus on responding to these allegations, these claims will be recalled when necessary. The paper does not intend to judge them as right or wrong, but rather it tries to approach these allegations through employing Turkish and Western sources in juxtaposition to the Greek ones to provide the reader with a more comprehensive and objective account of what actually happened in the early decades of the twentieth century with regard to the Pontic Greeks.

II. Contextualizing the Pontus Question: The Historical Dimension

1. Historical Background

The emergence of the Pontus Question is closely interrelated with the emergence of Greek nationalism and Greek identity formation in the early nineteenth century. Without examining the dynamics of Greek nationalist consciousness, it would be impossible to understand the emergence and evolution of the Pontus Question. Therefore, in this part of the paper three historical occurrences or processes contributing to and shaping the nature of Greek identity formation are examined. The first of these developments was the conclusion of the Treaty of Küçük Kaynarca in 1774 between the Ottoman Empire and Russia ending six years of war which began in 1768. The second development was the French Revolution in 1789 and the subsequent spread of nationalist movements within the Ottoman Empire. Finally, the third development was the exacerbation of the internal problems, particularly the economic ones, within the Ottoman Empire, which contributed to the uneasiness of the Orthodox Greek population.

a. The Treaty of Küçük Kaynarca and the "Eastern Question"

On July 21, 1774, in a small town in Silistria[5] called Küçük Kaynarca, the head of the Ottoman delegation, Grand Vizier Muhsinzade Mehmed Paşa (c.1720-1774),[6] and the head of the Russian delegation, Count Peter Aleksandrovich Rumiantsov (1725-1796), signed a peace treaty after a very short negotiation process, ending six years of Ottoman-Russian war. However, neither of them was aware that this

5 This town is still situated in the Silistria Province of Bulgaria.

6 In this article, the dates in paranthesis after the names of persons indicate the dates of birth and death. The dates with an "r." indicate the dates of beginning and end of the reign of an emperor, sultan, or king.

piece of paper opened a new era not only for the Ottoman and Russian Empires but also for the whole of world history. Accordingly, many historians agree that the Treaty of Küçük Kaynarca resulted in one of the most enduring international problems of European politics, known as the "Eastern Question."[7] As a matter of fact, the Eastern Question was a very complex phenomenon; however, it can be briefly defined as the international rivalry for domination over the Ottoman territories from the late eighteenth century until the early twentieth century. In other words, the concept of the "Eastern Question" does not refer to a particular problem, rather a variety of issues emerged out of the Ottoman decline. Indeed, the Eastern Question not only included inter-state rivalry over the Ottoman Empire, but also the nationalist movements within the Ottoman Empire and its implications on the dismemberment of its once-admired multi-ethnic composition.

What made the Treaty of Küçük Kaynarca extremely important for the emergence of the Eastern Question was two significant outcomes of its provisions. The first outcome is the Russian access to the Black Sea through her territorial acquisitions from the Ottoman Empire.[8] This achievement immediately turned out to be a major British concern. A prospective Russian naval superiority in the Eastern Mediterranean meant a significant threat for the security of the British trade routes to India. Hence, a policy of checks and balances through the preservation of territorial integrity of the Ottoman Empire against Russia turned out to be a priority for British foreign policy until the last quarter of the nineteenth century.[9] Thus, Anglo-Russian rivalry, which would ultimately result in a war in the mid-nineteenth century (namely the Crimean War between 1853 and 1856), had always been at the core of the Eastern Question from then on.

The second outcome of the Küçük Kaynarca Treaty is more important for understanding the transformation of the status of the Orthodox population in the Ottoman Empire in general and the Greeks in particular. Accordingly, Articles 7 and 14 of the treaty granted Russia the authority to protect the rights of the Orthodox Christian peoples of the Ottoman Empire.[10] Although Roderic Davison

7 There is a plethora of literature on the Eastern Question; however, two books provide the reader with a comprehensive account of the emergence and evolution of the Eastern Question: Matthew Smith Anderson, *The Eastern Question, 1774-1923: A Study in International Relations*, London: Macmillan, 1966; and A. L. Macfie, *The Eastern Question, 1774-1923*, London, New York: Longman, 1994.

8 With this treaty, the Ottomans ceded the part of the Yedisan region between the Dnieper and Southern Bug Rivers to Russia. This territory included the port of Kherson and gave the Russian Empire its first significant direct access to the Black Sea. Russia also acquired the Crimean ports of Kerch and Yenikale and the Kabarday region in the Caucasus; thus, it was able to consolidate its naval position in the Black Sea.

9 A. Lobanov Rostovsky, "Anglo-Russian Relations through the Centuries," *Russian Review*, Vol. 7, No. 2, (Spring, 1948), pp. 41-52, pp. 43-44.

10 For a detailed discussion of these articles with reference to the studies of a number of historians, see Roderic H. Davison "'Russian Skill and Turkish Imbecility': The Treaty of Kuchuk Kainardji Reconsidered," *Slavic Review*, Vol. 35, No. 3, (September, 1976), pp. 463-483.

interprets the text of the treaty more cautiously by stipulating that the wording of the treaty did not necessarily mention a "duty" for Russia to protect the rights of the Orthodox Christians, but rather a looser form of "representation" of the Orthodox Christians on behalf of the Ottoman Empire,[11] Russia would interpret the treaty in a way that it would easily intervene in Ottoman internal affairs with that pretext. Such an attitude contributed much to the emergence of independence movements since the Orthodox Christian elite became aware of the foreign support, which could be obtained easily when necessary.

All in all, the Treaty of Küçük Kaynarca can be considered as a valid starting point for contextualizing the Pontus Question since Russia became the protector of the Orthodox Greek population of the Ottoman Empire and exercised this self-assumed "duty" of the protection of Christians as a pretext for its own strategy within the framework of the Eastern Question. Only four decades after the signing of the treaty, this pretext became a significant tool for Russia to legitimize the war it waged against the Ottoman Empire (namely the Ottoman-Russian War between 1806 and 1812) and several subsequent wars (between 1828-1829, 1853-1856, 1877-1878). However, although Greeks obtained a foreign patron, Greek nationalism had not yet blossomed since it had to await a more significant breaking point in European as well as world history, namely the French Revolution.

b. The French Revolution

The French Revolution of 1789 not only transformed the French political system; its implications had also reached to even the remotest parts of Europe and then to the rest of the world, particularly through the spread of nationalism as an ideology motivating people who became aware of their national identity.

It is not surprising that the initial target of the nationalist ideas was the multi-ethnic empires, including the Ottoman Empire. Despite grave territorial losses, in the late eighteenth century, the Ottoman Empire had still retained many of its territorial possessions in Southeastern Europe. Due to geographical proximity to Western Europe from where the ideas of nationalism had been spreading, the Balkans, with its extremely diverse ethnic composition immediately developed into an arena for the implementation of the teachings of the French Revolution, such as freedom, independence and equality. Therefore, the first nationalist movements within the Ottoman Empire erupted in this volatile region.

11 Ibid., p. 469.

The velocity of the spread of nationalist ideas is quite striking, if one considers that Sultan Selim III (r. 1789-1808) was enthroned in the same year as the French Revolution, while the first nationalist uprising in the Ottoman Empire had erupted with the Serbs during his reign in 1804.[12] This revolt had been suppressed by the Ottomans; however, it opened a new era in the Balkans, which was mainly characterized by independence movements against the Ottoman Empire.

To sum up, if the Treaty of Küçük Kaynarca provided an external fulcrum for the Christian Orthodox population, the French Revolution contributed to the consolidation of their nationalist sentiments. Before the ideas of fraternity and equality, the ideas of liberty reached the most volatile region of the Ottoman Empire and turned it into the "powder keg" of Europe in the nineteenth century. Since the capacity for the reception of the ideas of the French Revolution was quite related with the intellectual quality of the recipients, it was the Greeks, among other ethnic communities, who eagerly absorbed this new thinking. This point will be elaborated upon further in the coming pages.

c. Internal Problems of the Ottoman Empire

In understanding Greek nationalism in general and the Pontus Question in particular, an examination of external factors, such as the intervention of foreign actors and the French Revolution, would not suffice; therefore, internal factors should be analyzed in order to understand the evolution of these issues more accurately. From the seventeenth century onwards, the Ottoman Empire began to encounter not only external setbacks, but also internal difficulties, particularly in terms of economic maintenance of the Empire. The longevity of the Ottoman wars resulted in a sharp decline in agricultural production because of lack of enough manpower. Moreover, devaluation of Ottoman currency to meet the expenses of the Empire increased popular discontent since the purchasing power of the people decreased considerably.[13] From the mid-eighteenth century onwards, the Ottoman

12 While several historians, including Charles and Barbara Jelavich, underestimated the significance of Serbian uprising of 1804 as a nationalist movement, Lawrence Meriage argues that it was quite important because of its being a pioneer movement for other ethnic communities living in the Balkans. The Serbian uprising, which had started as a reaction against the oppressive rule of the Ottoman governor of Belgrade, was initially launched by the Serbs of Vojvodina and later supported by Russia. See Charles Jelavich and Barbara Jelavich, *The Balkans,* Englewood Cliffs: New Jersey, 1965, p. 48; Lawrence Meriage, "The First Serbian Uprising (1804-1813) and the Nineteenth-Century Origins of the Eastern Question," *Slavic Review*, Vol. 37, No. 3, (September, 1978), pp. 421-439, p. 422; Stefanos Yerasimos, *Milliyetler ve Sınırlar: Balkanlar, Kafkasya ve Ortadoğu*, translated by Şirin Tekeli, İstanbul: İletişim Yayınları, 1994, p. 55.

13 These economic problems were compounded with a stormy wave of uprisings in Anatolia, known as *Celali* Revolts (named after the first serious rebellion by Sheikh Celal in 1519), particularly in the seventeenth and early eighteenth centuries. Benefitting from the weakening of central government, some local notables or governors appointed by the Sultan began to rebel. In their quest against the central government, they found a solid military base composed of former soldiers who had deserted the Ottoman army by refusing to participate

periphery witnessed the rise of urban notables (*ayan*), most of whom followed oppressive policies, particularly in terms of tax extraction from the people. As a result, both the Muslim and Christian subjects of the Empire suffered from increasing taxes.

In his significant book on the evolution of the Greek state, Richard Clogg writes "[t]here could have been no prospect of successfully sustaining a revolt if the Ottoman Empire had not been weakened militarily, territorially and economically during the course of the eighteenth century."[14] In other words, the economic and social problems experienced since the early seventeenth century established a significant pressure on the whole of Ottoman society. This distress was not only peculiar to the non-Muslim components of the Ottoman Empire. However, compounded with foreign intervention and the nationalist fervor particularly inflicted by the non-Muslim elite, the Orthodox Christian population became more reactant to the failures of the Ottoman administration. This was another factor contributing to the Greek Revolution of the nineteenth century and subsequent establishment of the Greek Kingdom.

2. Greek Nationalism, Greek Revolution and Greek Independence

Up to now, it was argued that the Russian protectorate of the Orthodox Christians living in the Ottoman Empire, the nationalist ideas emerging out of the French Revolution, and the discontent of the population regarding the deterioration of the living conditions within the Empire formed the basis of the nationalist uprisings within the Ottoman Empire. However, there are additional factors that make the emergence of Greek nationalism and subsequent developments, such as the success of Greek Revolution and acquisition of independence, more peculiar. In this section of the article these special conditions are examined in detail.

a. The Greek Community within the Ottoman Empire until the Greek Revolution

Indeed, one of the most significant assertions of those who support the claims of the Pontic Greek "genocide" is that the Greeks, as other non-Muslim communities

in long and exhausting wars. The *Celali* Revolts had prompted the desertion of almost all of the Anatolian Peninsula by exhausting its resources. Cities were sacked, agricultural lands were pillaged, and many peoples were killed. Hence, from the early seventeenth to mid-eighteenth centuries, the confidence of the population towards the Ottoman administrators decreased. For the economic problems of the Ottoman Empire, particularly in the eighteenth century, see Donald Quataert, *The Ottoman Empire, 1700-1922*, Cambridge: Cambridge University Press, 2000.

14 Richard Clogg, *A Concise History of Greece*, Cambridge: Cambridge University Press, 1992, p. 20.

of the Empire, had always been oppressed by the Ottoman Empire since the Empire itself was founded on a religious basis resulting in a solid distinction between Muslims and non-Muslims. True, there was such a distinction between Muslims and non-Muslims in a legal sense; however, this does not necessarily mean that non-Muslims had always been maltreated. Of course, particularly in times when the Ottoman economic and political decline was evident, the pressure on Ottoman society had increased and non-Muslims were mal-administered; they were even subject to oppression. However, still, as a multi-ethnic empire, the Ottoman state, had laws, regulations and all other political and legal apparatuses for proper administration of its subjects either Muslim or non-Muslim.

Furthermore, it was an oft-cited view of eminent historians that among other Christian communities living in the Ottoman Empire, Greeks had always enjoyed a privileged status. Ottoman favor of Greek subjects was first reflected just after the Ottoman conquest of Constantinople. Sultan Mehmed II (r. 1451-1481) immediately reestablished the Greek Orthodox Patriarchate, allowed for the election of a new Patriarch, Gennadius Scholarius (c. 1400-1473), and issued an imperial edict (*berat*) that granted extensive rights to the Patriarchate.[15] Besides religious rights and freedoms, with the abolishment of independent Bulgarian and Serbian Churches after the conquest of the Bulgarian and Serbian Kingdoms in the late fourteenth and early fifteenth centuries, the Patriarchate was given not only spiritual, but also financial and judicial authority over the entire Orthodox Christian population of the Ottoman Empire.[16] The privileged status of the Greeks was not only limited to this imperial edict of the Sultan. Accordingly, Greeks were able to preserve not only their religion but also their language since they were allowed to be educated in their own language. There were even imperial orders

15 The rights granted to the Orthodox Patriarchate were so generous that even many Western historians appreciate the extent of these concessions. According to Anton Bertram "[t]he whole fabric of the extensive privileges enjoyed by the Greek community in Turkey (still known officially as "Romans") rests upon an historic utterance of Mohammed the Conqueror. One of his first official acts was to re-establish the shattered religious organization of his new subjects. Constantinople fell on May 29, 1453. On June 1, the Conqueror, having directed the election of a new Patriarch, proclaimed the Patriarch-elect in the most honorific terms, delivered to him with his own hands the pastoral staff, and made use of these memorable words: "Be Patriarch, live with us in peace, and enjoy all the privileges of thy predecessors." These words are the charter of the Greek privileges. Nor has the Patriarch ever failed to cite them whenever these privileges have been called in question. Upon them rests the considerable civil jurisdiction which he and his tribunals have always enjoyed." See Anton Bertram, "The Orthodox Privileges in Turkey, with Special Reference to Wills and Successions," *Journal of the Society of Comparative Legislation*, New Series, Vol. 10, No. 1, 1909, pp. 126-140, p. 126. Greek historian Theodore Papadopoullos depicts and appreciates these concessions in a similar fashion: "These privileges, which had historical antecedents in the treaties, entered into by Islam and the Christian Church in the times of the Arab conquest, carried with them a civil jurisdiction over the Sultan's Christian subjects irrespective of national status. They also implied a responsibility vis-à-vis the Sultan in respect of the Christian subjects, whose allegiance was deemed to be guaranteed by the covenant entered into between the Ottoman Sultan and the Patriarch. In return for that allegiance and against discharge of the fiscal obligations prescribed by Islamic law, the Christian subject was to enjoy the free exercise of worship and the protection of his own traditional life and values." Theodore Papadopoullos, "Orthodox Church and Civil Authority," *Journal of Contemporary History*, Vol. 2, No. 4, Church and Politics, (October, 1967), pp. 201-209, pp. 201-202.

16 İlber Ortaylı, *İmparatorluğun En Uzun Yüzyılı*, İstanbul: İletişim Yayınları, 2003, p. 63.

written in Greek, meaning, according to İlber Ortaylı, that Greek became a semi-official language of the Empire in the years immediately after the conquest of Constantinople.[17]

In addition to religious freedoms, Greeks also assumed a privileged position within the Ottoman economic structure. Greek merchant communities expanded over the territories conquered by the Ottomans. For example, Halil İnalcık writes that when the Crimean port of Caffa was captured from the Genoese in 1475, there emerged an influx of Ottoman merchants to the region. Among the non-Muslim merchants entering Caffa in the year 1490, there were sixteen Greeks, four Italians, three Jews and two Armenians. In other words, Greek merchants outnumbered the merchants of other non-Muslim communities.[18] What is more, in the sixteenth century, in Venice, there were two hundred houses of Greek merchants, who were Ottoman subjects.[19] Greeks were not only active in the trade sector, they were also engaging in tax farming. Just two decades after the conquest of Constantinople, wealthy Greeks were able to challenge Ottomans for the tax farming of Istanbul. İnalcık writes:

> ... in 1476, when a five-man consortium of Greeks bid 11 million *akches* (about 245,000 ducats) for the farm of the Istanbul customs for three years, a four-man consortium of Muslims outbid them by 2 million and gained the contract. [The] Next year a Muslim Turk of Edirne and a Jew jointly put in a higher bid, but were outbid by a consortium of Greeks.[20]

The vibrant participation of Greeks in the Ottoman economic life was not peculiar to the earlier centuries of the Ottoman Empire. Daniel Panzac argues that as late as the eighteenth century Greeks were quite active in maritime trade, even more than in the earlier centuries. To provide an example, among the non-Muslim charterers organizing the intra-Ottoman maritime trade, Greeks formed the majority.[21] What is more, as a result of the disappearance of English and French ships from the Mediterranean due to the English-French wars between 1756 and 1763, the Greek merchant fleet was able to control the Eastern Mediterranean trade and beginning from 1783; Greek merchant ships composed the nucleus of the fleet used for European-Russian trade.[22] This fertile period for Greeks was reflected by Panzac as such:

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17 Ortaylı, op. cit., p. 63.

18 Halil Inalcik, "Capital Formation in the Ottoman Empire," *The Journal of Economic History*, Vol. 29, No. 1, The Tasks of Economic History, (March 1969), pp. 97-140, p. 112.

19 Ibid., p. 113.

20 Ibid., p. 124.

21 Daniel Panzac, "International and Domestic Maritime Trade in the Ottoman Empire during the 18th Century," *International Journal of Middle East Studies*, Vol. 24, No. 2, (May, 1992), pp. 189-206, p. 200.

22 Ibid., p. 203.

> ... the Ottoman Greek merchant navy began to grow during the 1770s. The wars of the French Revolution, beginning in 1792, and later the suppression of the Republic of Venice in 1797 ended in the disappearance of the French and Venetian merchants' navies in the Mediterranean. This disappearance benefited especially the Greeks, navigators and merchants, who were far more oriented toward European relations than the Muslim merchants.[23]

Such control over the economic activities of the Empire resulted in the emergence of a wealthy Greek community, which was able to send its children to Europe for education. Particularly those merchants acquainted with the ideas of Enlightenment, starting from the eighteenth century onwards, wanted their children to be raised accordingly. Hence the Greek elite became more familiar with European ideas and particularly after the French Revolution; this familiarity would result in increasing nationalist fervor among the Greeks.[24] Earlier, the main country of attraction for Greek students was Italy, the cradle of humanism and the Renaissance; however, starting from late eighteenth century onwards Germany replaced Italy. Hence, besides the more secular and republican ideas of the French Revolution, Greek youngsters began to encounter German Romanticism from the writings of Johann Gottfried von Herder (1744-1803) and Johann Gottlieb Fichte (1762-1814).[25]

Economic prosperity and capital accumulation also brought political power to the Greek community of the Ottoman Empire. In the early eighteenth century, tired of handling local disputes for the administration of the principalities of Wallachia and Moldavia, which had been dependent on the Ottoman Empire from the late fifteenth century onwards, the Ottoman administration decided to send the rulers of these principalities from the center. The Ottoman choice was the Greek notables of the Phanar district of the capital, known as the Phanariots. Indeed, the Phanariots had already served the Empire as imperial dragomans, since many of them had been educated in European universities, particularly in Padua, and since they were familiar with European languages.[26] They also acted as merchants and, from the early seventeenth century onwards, numerous Phanariot businessmen began to settle in the Danubian principalities. Through intermarriages, the

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23 Ibid., p. 204.

24 For a detailed account of Greek encounters with Western philosophy see, G. P. Henderson, "Greek Philosophy From 1600 to 1850," *The Philosophical Quarterly*, Vol. 5, No. 19, (April, 1955), pp. 157-165.

25 Constanze Guthenke, *Placing Modern Greece: The Dynamics of Romantic Hellenism, 1770-1840*, Oxford: Oxford University Press, 2008, p. 97.

26 Thomas Naff, "Reform and the Conduct of Ottoman Diplomacy in the Reign of Selim III, 1789-1807," *Journal of the American Oriental Society*, Vol. 83, No. 3, (August - September, 1963), pp. 295-315, p. 299.

Phanariots began to be accepted by the local nobility.[27] From the early eighteenth century until the Greek Revolution in 1821, these two principalities were ruled by these Greek families. According to Wayne Vucinich, the Phanariots were so loyal to the Ottoman Empire that they "...were sometimes called the 'Christian Turks,' a term that seems to describe their 'moral and political position.'".[28]

All in all, Greeks had enjoyed significant political, economic, social and religious privileges under the Ottoman administration. It can be argued that the Ottomans initially attempted to use the former religious authority of the Greek Patriarchate to administer the Christian population of the Empire. They increased the competence of the Patriarch at the expanse of other Orthodox components of the Empire. This made the Patriarchate a target for reaction in the eyes of Slavic people even more than the Turks; that is why, for example, the Bulgarian independence movement initially began as a quest for an independent church rather than an independent state.[29] What is more, economic privileges granted to the Greeks resulted in the emergence of a Greek merchant class, whose offspring educated in Europe turned out to be the Greek revolutionaries in the early nineteenth century.

b. Who Are the Greeks?: The Problem of Definition

In order to understand Greek nationalism, emergence of Hellenism as an ideology for identity formation should be considered as a significant development and should be examined carefully. Such an examination also requires an analysis of how the Greeks have defined themselves. Indeed, the definition and self-definition of Greeks has long been a matter of controversy. There are at least four concepts utilized to define this community.[30] To start with, the Ottomans used the word *Rum* to define the Greeks up until Greek independence. The very word was derived from "Roman," denoting the descendants of the subjects of the Byzantine Empire.[31] Various ethnic communities of the Balkans and Anatolia, including Turks, Albanians, Vlachs, Greeks, Bulgarians, etc., were baptized as Orthodox

27 Peter F. Sugar, *Southeastern Europe Under Ottoman Rule, 1354-1804*, Seattle and London: University of Washington Press, p. 132.

28 Wayne S. Vucinich, "The Nature of Balkan Society under Ottoman Rule," *Slavic Review*, Vol. 21, No. 4, (December, 1962), pp. 597-616, p. 602.

29 Ortaylı, op. cit., p. 64.

30 Herkül Millas, *Geçmişten Bugüne Yunanlılar: Dil, Din ve Kimlikleri*, İstanbul: İletişim Yayınları, 2003, p. 163.

31 The designation of the Eastern Roman Empire as "Byzantine" was first encountered in Western Europe in 1557, when German historian Hieronymus Wolf published his work *Corpus Historiæ Byzantinæ*, It would later be popularized by French historians in the seventeenth century. See Valerie A. Carras, "Some Ecumenical Principles for Teaching and Writing History," *Journal of Ecumenical Studies*, Vol. 35, No. 3/4, Summer/Fall 1998, pp. 387-400.

Christians under the Byzantine Empire and all of them were referred as "Roman."[32] Similarly, the Ottomans did not have a specific definition of the Greek community; rather, they tended to define all the descendants of the Byzantine Empire as *Rum.* Such labeling of Greeks as "Roman" was not only peculiar to the Muslim world. Rigas Velestinlis (1757-1798), one of the major ideologues of the Greek Revolution, defined his own nation as *Romios*, having the same meaning with *Rum.*[33]

The second word used to denote this Orthodox community was "Greek." Indeed, this word has been and still is utilized not by the Greeks themselves but by the Europeans, although it was one of the oldest usages of the Greeks for their self-definition. Accordingly, the word is derived from ancient Greek word of *Grakoi*, which, according to Aristotle, had been originally used by the Illyrians for the Dorians in Epirus. Herkül Millas argues that Adamantios Korais (1748-1833), one of the major ideologues of the Greek Revolution, advocated for defining the nation as "Greek," since the Europeans acknowledged that nation with this name.[34]

However, particularly after the Greek independence, neither the word "*Romios*" nor the word "Greek" was used for Greek self-identification. The winner of this conceptual rivalry was the word "Hellen" (ἑλλην) referring to the ancient glorious past of the Greeks. Therefore, the independent Greek state was initially named as the "Hellenic" (ἑλλάς) Republic. That is why the process of transferring national awareness to the Ottoman *Rum* community in the late nineteenth century onwards was labeled as "Hellenization."[35] On the other hand, after the establishment of the Greek Kingdom, Ottomans tended to label the citizens of this new state not as *Rum* but as *Yunan.* This word is a derivation of the adjective "Ionian," which was utilized to distinguish between the Greeks living in the Greek Kingdom and the Greek subjects of the Ottoman Empire, which had still been labeled as *Rum.* In

32 Indeed, since the Abbasid Empire, the Muslims came to known on the Anatolian Peninsula as *Diyar-ı Rum* (Roman lands). Therefore, it is not surprising that Mehmed II named himself *Kayser-i Rum* (the Caesar of Rome) after the conquest of Constantinople, since he perceived the Ottoman Empire to be the successor of the Roman Empire.

33 Millas, op. cit., p. 163.

34 Millas, op. cit., p. 163.

35 Although Hellenization was a process experienced mainly in the nineteenth century, the idea of Hellenism as a Greek nationalist ideology can be traced back even to the early fifteenth century. George Gemistos Plethon (1355-1452), a Greek humanist, wrote that his community could be labeled as Hellenes since the community could claim the heritage of the Hellenic civilization dating back to the fourth century B.C., to the glorious days of the Alexander the Great. However, the real revival of Hellenism was compounded with the European reception of ancient Greek heritage in the Renaissance and Enlightenment periods. It was the European philhellenism that contributed much to the Greek awareness of their history and heritage, which resulted in what Millas has called *progonoplexia* (a strong commitment to ancestors) and *arhaiolatreia* (worshipping to the ancient world). These two attributions formed the basis of Greek identity as well as the admiring mood of philhellenes for the Greek civilization. Millas, op. cit., pp. 164-166.

other words, the Ottomans tried to prevent Hellenization of the Ottoman *Rum* community through distinguishing between the identities of the Greeks of the Ottoman Empire and the Greeks of the Greek Kingdom.

Before moving onto the Greek Revolution, the ideologues of the Greek nationalist movement, particularly Adamantios Korais and Rigas Velestinlis, should be mentioned briefly in order to better understand the nature of Greek nationalism in the early nineteenth century. Inspired by the thinking of French philosophers such as Voltaire and Rousseau, Rigas called for combating against "Turkish tyranny" as well as against the establishment of civilian control over the military and a government accountable to the citizens.[36] Unlike Rigas, who perceived some Turks as potential allies for the combat against Ottoman tyranny, Adamantios Korais was a radical, for whom "...all Turks were obsessively loathed."[37] The anti-Ottoman and sometimes anti-Turkish stance of these two Greek ideologues shaped the thinking of particularly the educated Greek youngsters at the turn of the nineteenth century and fueled the eight years of continuous uprisings and wars in the Ottoman history, known as the Greek Revolution.

c. Emergence, Evolution and the Consequences of the Greek Revolution (1821-1829)

Up to now, the emergence of Greek national consciousness has been discussed; however, several other external factors were influential in determining the time and location of the Greek Revolution. To start with, it was not until the early nineteenth century that Greek national consciousness had consolidated in a way that would lead the Greek people to independence. Secondly, starting from late eighteenth century onwards, Russia emerged as an external intervener, inflicting Greek reaction against the Ottoman Empire.[38]

A second significant development contributing to Greek aspirations for independence was the establishment of the Septinsular Republic on the Ionian Islands in 1800, after these islands were freed from French occupation by a joint Ottoman-Russian fleet. Although this autonomous state was a nominal part of the Ottoman Empire, it was mainly controlled by Russia. This experience of autonomy, albeit in a limited region, contributed to the Greek desire for

36 David Brewer, *The Greek War of Independence: The Struggle for Freedom from Ottoman Oppression and the Birth of the Modern Greek Nation*, New York: The Overlook Press, p. 19.

37 Brewer, *The Greek War of Independence*, p. 21.

38 For example, during the 1768-1774 Ottoman-Russian War, the Russian fleet reached the Peloponnesian peninsula and attempted to initiate an uprising by the local population against the Ottoman Empire. İsmail Hakkı Uzunçarşılı, *Osmanlı Tarihi*, Vol. 4, Ankara: Türk Tarih Kurumu Yayınları, 1982, p. 361 ff.

independence. Later, the islands were re-occupied by the French during the Napoleonic Wars, but after the defeat of Napoleon, the islands were given to the British and another independent republic was established in 1815. This independence was more influential than the former experience of autonomy; therefore, Greek fervor for independence further consolidated.[39]

A third significant development was the establishment of Greek revolutionary organizations in the early years of the nineteenth century. Among these institutions, *Philike Hetairia* (The Friendship Society) was one of the first and most efficient organizations. Established in 1814 in Odessa by three Greeks named Emmanuel Xanthos, Nicholaos Skufas and Athanasios Tsalakov,[40] it was estimated that the number of members of the society reached a thousand on the eve of the Greek rebellion of 1821.[41] Two influential Greeks of Phanariot descent were invited to be the leaders of the Society. These two Greeks had also been serving the Russian state at that time. Count Ioannis Capodistrias (1776-1831), who had been appointed as the Joint Minister of Foreign Affairs of Tsar Alexander I (r. 1801-1825) together with Count Karl Robert Nesselrode (1780-1862), rejected the offer of leadership, while Alexander Ypsilantis (1792-1828), the most effective leader of the organization, who had been appointed as the aide-de-camp of the Tsar in 1816, accepted the offer in 1820.[42] Under the administration of Ypsilatis, the Society quickly spread from Russia to the Principalities of Wallachia and Moldavia, as well as to the Peloponnese, Istanbul, Aegean and Ionian Islands.[43]

The final significant event that ultimately led to the Greek Revolution was the revolt of Tepedelenli Ali Paşa (1744-1822), which erupted in 1820. Tepedelenli Ali Paşa, son of an Albanian notable, had been appointed as the governor of Ioannina in 1788 and ruled the region for more than three decades. He was quite oppressive, particularly against the Greek revolutionaries, and his staunch rule had not allowed the Greeks to initiate a full-scale uprising against Ottoman rule. Indeed, Tepedelenli Ali Paşa was aware of the Greek insurgency movement and the clandestine organizations, so much that he continuously tried to inform the Porte about a prospective Greek rebellion. However, at that time, Sultan Mahmud II (r. 1808-1839) was manipulated by a mighty member of the Palace, Halet

39 Duane Koenig, "A Report from the Ionian Islands, December 1810," *The Journal of Modern History*, Vol. 15, No. 3, (September, 1943), pp. 223-226, p. 223, particularly footnote 2.

40 C. W. Crawley, "John Capodistrias and the Greeks before 1821," *Cambridge Historical Journal*, Vol. 13, No. 2, 1957, pp. 162-182, pp. 175-176.

41 Clogg, op. cit., p. 51.

42 Ibid., p. 48.

43 Crawley, op. cit., p. 179. For a detailed account of Philike Hetairia, see Brewer, op. cit., pp. 26-35.

Efendi (1760-1823), who was renowned to be pro-Greek. Halet Efendi was able to convince the Sultan to limit the authority of Ali Paşa, which in turn resulted in his revolt against the state, lifting his tight control over the Greeks in the Peloponnesian Peninsula.[44]

Although everyone expected a significant Greek rebellion in the Peloponnesian region, surprisingly the first Greek rebellion was initiated in a remoter part of the Empire, namely in Moldavia by Alexander Ypsilantis on March 1821. Ypsilantis was able to convene an army and passed the Prut River, expecting that he would be able to prompt the Rumanians to join his army. However, the Rumanians, already weary of the suppressive rule of the Phanariots, were not enthusiastic to fight alongside the Greeks. On June 1821, the army of Ypsilantis was defeated by Ottoman troops and Ypsilantis fled to the Habsburg Empire.[45]

Meanwhile, almost at the same time, another rebellion erupted in the Peloponnesian region. Unlike the Danubian revolt initiated by *Philike Hetairia*, this was a popular movement and it quickly spread over the Peloponnesian region. Ottoman troops sent to suppress the rebellion were defeated by the revolutionaries; during the rebellion, the Muslim population living in the region was almost totally exterminated. According to Salahi Sonyel "[i]t is estimated that more than 50,000 Muslims, including women and children, lived in the Peloponnese in March 1821. A month later, when the Greeks were celebrating Easter, there was hardly anyone left." Solely, in the town of Tripolitsa, 10,000 Muslims were massacred on October 5, 1821.[46] Hence, Greek rebellion started as a reaction against Ottoman rule, but once it was triggered, it was transformed into a total anti-Muslim uprising, claiming thousands of Muslim lives in the region.

On January 13, 1922, Greek rebellion leaders were assembled and declared the independence of Greece. Ottoman incapacity to suppress the rebellion led Sultan Mahmud II to demand the support of the governor of Egypt, Kavalalı Mehmed Ali Paşa (1769-1849). Mehmed Ali Paşa demanded the governorships of Crete and the Peloponnesian Peninsula to support the Sultan and his demands were accepted. From 1824 to 1826, Egyptian troops had almost completely suppressed the rebellion. However, this time, European powers, which preferred a weaker and

44 Halet Efendi had been educated by the Phanariots and served for the dragoman families of Istanbul. What is more, in order to preserve their posts, all high-ranking officials, including the governors, had to bribe Halet Efendi with valuable gifts. In 1820, he had not received the gifts he demanded from Tepedelenli Ali Paşa. Frustrated by the attitude of Ali Paşa and convinced by his Greek fellows about his oppressive rule, Halet Efendi was able to persuade the Sultan to issue an imperial edict limiting the authority of Ali Paşa within Ioannina. *Mufassal Osmanlı Tarihi,* op. cit., p. 2879.

45 Clogg, op. cit., p. 49.

46 Salahi Sonyel, *The Turco-Greek Imbroglio: Pan-Hellenism and the Destruction of Anatolia*, Ankara: SAM Papers, 1999, pp. 12-15.

independent Greece instead of stronger governance initiated by Mehmed Ali Paşa, intervened. A joint fleet from Russia, Britain and France attacked the Ottoman-Egyptian fleet at Navarino Bay and burned it completely on October 20, 1827.[47] This was followed by an Ottoman declaration of war against Russia in 1828 and its subsequent defeat one year later. Finally, with the Treaty of Adrianople, signed on September 14, 1829, the Ottoman Empire recognized the independence of Greece.

The recognition of Greek independence was not the end of Ottoman-Greek contention; rather, it completely altered the inter-communal relations. The next chapter, therefore, focuses on how Greek independence fostered further Greek irredentism and how the disintegration of the Ottoman Empire, compounded with the reflection of Greek nationalism towards Ottoman Greeks, further exacerbated inter-communal clashes between the Turks and the Greeks. Although such inter-communal disputes had been experienced in all parts of the Empire, for the sake of this paper, the incidents in Pontus region are the primary focus.

III. Defining The Pontus Question: An Evaluation Of The Historical Facts

The definition of Pontus Question is a difficult task because of the complex nature of this phenomenon. As stipulated in the introduction, there are two rival historiographies regarding the issue, which are contradicting in evaluating the basic historical facts. In this chapter, therefore, it is intended to examine what actually happened in the turbulent years of the nineteenth and early twentieth centuries in the Pontus region and how these occurrences can be evaluated to put forward a more accurate account of the Pontus Question.

1. The *Megali Idea* (Great Idea) and Greek Expansion during the Nineteenth and Early Twentieth Centuries

Established in 1832, the borders of the Greek Kingdom was only limited to the Peloponnesian Peninsula and the Attica region; in other words, the lands claimed by the Greeks as the Greek mainland such as Thessaly, Epirus and Western Thrace had remained in the Ottoman Empire. This made the new state a revisionist one as stipulated by Theodore George Tatsios: "...the underlying objective of Greece would be expansion to include, within the borders of the new state, all the lands still in Turkish hands and inhabited mostly, or to a great extent

47 For the details of the Navarino incident and Anglo-Russian relations at that time, see C. W. Crawley, "Anglo-Russian Relations 1815-40," *Cambridge Historical Journal*, Vol. 3, No. 1, 1929, pp. 47-73.

by Greeks."[48] Therefore, from the very beginning, Greece aimed at expanding its borders at the expense of the Ottoman Empire. Indeed, this practical policy agenda had its ideological background in a centuries-old idea, which would be revitalized in the mid-nineteenth century. This idea, known as the "*Megali Idea*" (Great Idea), was deeply rooted in the Greeks' national and religious consciousness and designed to motivate the Greeks for the recovery of Constantinople for Christendom and the reestablishment of the universal Christian Byzantine Empire which had fallen in 1453.[49]

The irredentist ideology of *Megali Idea* would require continuous Greek expansion towards the old Byzantine territories, namely all of Southeastern Europe, the Aegean Islands, Crete, Cyprus, Asia Minor and Pontus. The *Megali Idea*, as a concept, was clearly referred to, for the first time, by an ambitious Greek politician, John Kolletis, who voiced the fundamental characteristics of this ideology in the Greek National Assembly in January 1844 as such:

> The Kingdom of Greece is not Greece; it is merely a part, the smallest, poorest part of Greece. The Greek is not only he who inhabits the Kingdom, but also he who inhabits Ioannina or Salonika or Serres or Adrianoupolis or Constantinople or Trebizond or Crete or Samos or any other region belonging to Greek history or the Greek race... There are two great centers of Hellenism. Athens is the capital of the Kingdom. Constantinople is the great capital, the City, the dream and hope of all Greeks.[50]

48 Theodore George Tatsios, *The Megali Idea and the Greek Turkish War of 1897: The Impact of the Cretan Problem on Greek Irredentism, 1866-1897*, Boulder: East European Monographs, 1984, p. 6.

49 Michael Llewellyn Smith, *Ionian Vision: Greece in Asia Minor, 1919-1922*, Ann Arbor: The University of Michigan Press, 1998, p. 3, also see, Michael M. Finefrock, "Ataturk, Lloyd George and the Megali Idea: Cause and Consequence of the Greek Plan to Seize Constantinople from the Allies, June-August 1922," *The Journal of Modern History*, Vol. 52, No. 1, On Demand Supplement, March 1980, pp. D1047-D1066. The Megali Idea had never disappeared from the Greek minds, particularly those of the Greek political and religious elite, and indeed, it was the Ottoman tolerance towards Greeks that nourished the development of Megali Idea. According to Tatsios, "[t]he decision of the Turkish conqueror [Mehmed II] not to destroy the Christian religion was an event of the greatest importance in the development of the Megali Idea. The Orthodox Patriarchate became the new center for Hellenism and the Hellenized races of the Balkans and their only hope for future deliverance from the Turkish yoke. Consequently, although the Byzantine Empire was annihilated and the Greek race was submerged the Greek population survived and became the most important non-Turkish element of the Ottoman Empire. See Tatsios, op. cit., p. 9.

50 Richard Clogg, "The Greek *millet* in the Ottoman Empire," in Benjamin Braude and Bernard Lewis (eds.), *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society I, The Central Lands*, New York: Holmes and Meier, 1982, p. 193. Clogg cites another interesting excerpt from an Athenian Greek named Zeta, which is quite similar to that of Kolletis: "Do not think that we consider this corner of Greece as our country, or Athens as our capital, or the Parthenon as our national temple. The Parthenon belongs to an age and to a religion with which we have no sympathy. Our country is the vast territory of which Greek is the language, and the faith of the Orthodox Greek church is the religion. Our capital is Constantinople, our national temple is Santa Sophia, for nine hundred years the glory of Christendom. As long as that temple, that capital, and that territory are profaned and oppressed by Mussulmans, Greece would be disgraced if she were tranquil." See Richard Clogg, "The Byzantine Legacy in the Modern Greek World: The Megali Idea," in Lowell Clucas (ed.), *The Byzantine Legacy in Eastern Europe*, Boulder: East European Monographs, 1988, p. 253.

In other words, the establishment of the Greek Kingdom satisfied neither the Ottomans nor the Greeks. While the Ottomans perceived Greek independence as a fatal threat to the Ottoman territorial as well as communal integrity, which would result in further rebellions by the Ottoman Greeks, the Greeks of the Greek Kingdom were discontent with the limited borders of their new state. Hence, the establishment of Greece did not solve but rather exacerbated Ottoman-Greek relations.

The *Megali Idea* was not only promulgated by romantic propagandists but also by the very founding documents of the Greek state itself. To illustrate, King George I (r. 1863-1913) was labeled in the Greek Constitution of 1864 as the "King of Hellenes" not as the "King of Greece", meaning that he had the authority over all Greek nation, wherever they had been living.[51] What is more, the *Megali Idea* did not remain within the confines of the Kingdom of Greece; it had spread quickly to the remotest parts of the Ottoman Empire starting from the mid-nineteenth century onwards. To give an example, in 1865, just two decades after the famous aforementioned speech of Kolletis, another speech given in Trabzon to a Greek audience celebrating the accession of King George I ended with these words: "Come sovereign, the peoples of the East await you...and like...the Greek Alexander, implant civilization in barbarized Asia...Long Live George I King of the Hellenes! Long Live the Greek Nation! Long Live the Protecting Powers!"[52] Hence, Trabzon began to become the center of Hellenism in the Pontus region through infiltration of such irredentist ideas.

According to Richard Clogg, "[t]he *Megali Idea* was not merely the dominant ideology of the nascent Greek state, it was in effect the *only* ideology."[53] Despite this, however, the *Megali Idea* was not a monolithic ideology. There are at least three variants, all of which survived until the early twentieth century. The first variant was the "...romantic dream of a revival of [the] Byzantine-Greek Empire centered on Constantinople."[54] Although this option seemed charming for ordinary Greeks, more pragmatist politicians were aware that it was really a dream. The second variant was the "...aspiration for Greek cultural and economic dominance within the Ottoman Empire, leading to its gradual subversion from within the Ottoman Empire by a natural process, which need not entail a violent clash between the rival Greek and Turkish nations."[55] Particularly, Greek merchants and their extensions in the Ottoman Empire suggested such a peaceful

51 Clogg, *A Concise History of Greece,* op.cit., p. 46.

52 Clogg, "The Greek *millet* in the Ottoman Empire," op. cit., p. 198.

53 Clogg, "The Byzantine Legacy...," op. cit., p. 254.

54 Tatsios, op. cit., p. 4

55 Ibid.

option in order to protect their economic interests and profitable trade. Finally, the third variant argued for a "...progressive redemption of the Greek *irridenta* by their incorporation in the Greek [K]ingdom, which entailed a head-on clash with the Ottoman Empire."[56] It was this third variant promulgated by the Greek politicians that prevailed during the nineteenth and early twentieth centuries. Therefore, until the final resolution of the Turkish-Greek contention in the Lausanne Treaty in 1923, the Kingdom of Greece continuously attempted to expand territorially and the Ottoman Empire and later the Turkish nationalist movement aimed to prevent this territorial expansion.

In the second half of the nineteenth century, particularly between 1864 and 1874, there was great political turmoil in Greece since twenty-one governments had served in just a decade, the longest of which lasted only a year and a half. However, especially during the last two decades of the nineteenth century, Greece had achieved relative political stability which created a fertile environment for internal development and external territorial expansion. In 1864, Britain had ceded the Ionian Islands to Greece; hence, this can be perceived as the starting point for Greek expansion. But the real opportunity came with the Ottoman-Russian War of 1877-1878. Although Greece aimed to side with Russia, with the pressure coming from Britain and France, it remained neutral during the war. In the Congress of Berlin in 1878, Greece demanded Crete, Epirus and Thessaly; however, the Ottoman Empire refused these demands. A final resolution was designed with the mediation of Great Britain in 1881, when the Ottoman Empire ceded all of Thessaly and a small part of Epirus to Greece.

The territorial expansion of Greece was compounded by the establishment of a new Greek irredentist organization almost after a century from the establishment of *Philike Hetairia*. This new organization, named *Ethniki Hetairia* (National Society), was established in November 1894, mostly by the junior officers of the Greek army. The aims of the Society were declared as "[t]o work unceasingly to ensure the unification, liberation, and progress of the Greeks, and when the time comes... to support a weak and tiny Greece; to work for Greater Greece, even if this means going against the wishes of the present government."[57]

The activities of *Ethniki Hetairia* together with available international circumstances resulted in further attempts for territorial expansion. The next territories on the Greek nationalist agenda were Crete and Macedonia. In late 1896, inflicted by Greek authorities, a rebellion broke out on Crete, and on

56 Ibid.

57 Salahi Sonyel, *Minorities and the Destruction of the Ottoman Empire*, Ankara: Turkish Historical Society Publications, 1993, p. 266.

January 21, 1897, a Greek army landed in Crete to unite the island with Greece. The European powers, however, intervened, and proclaimed Crete as an international protectorate. This intervention had not stopped Greek aspirations. The retreating Greek army was sent to northern Thessaly and crossed the Ottoman-Greek border. This time the Ottoman response was decisive. Ottoman troops defeated the Greeks and advanced towards Athens. This alarmed the Great Powers and resulted in their intervention. After a ceasefire on May 1897, peace negotiations had started. While the Ottoman Empire demanded retrocession of Thessaly and the renewal of agreements with Greece as indispensable terms to be included in the peace treaty, the Great Powers were reluctant to include any provision that would disturb the former balance between the Ottoman Empire and Greece. Thus, the Ottoman Empire had to cede the territories that it occupied during the war and had to be content with a small amount of war indemnity paid by Greece.[58] What is more, the Ottoman Empire *de facto* lost Crete in December 1898 when the international protectorate delivered the island to the administration of Prince George of Greece (1869-1957) as the first governor-general.

The defeat of 1897 was humiliating for the Greeks despite their political gains; thus, they were waiting for an opportunity of a reprisal, which came in 1912. Through a series of negotiations, the able and ambitious Greek politician, Eleftherios Venizelos (1864-1936) joined a Balkan alliance against the Ottoman Empire, promulgated first and foremost by the Serbian Prime Minister Milovan Milovanoviç (1863-1912) and included Serbia, Greece, Montenegro and Bulgaria. The general war had started with the Montenegran attack on the Ottoman Empire on October 1912. Other Balkan states joined immediately and they quickly defeated unorganized Ottoman troops, forcing them to retreat even to the environs of the capital city. However, the sharing of the spoils of war, particularly the ethnically complex region of Macedonia, resulted in another series of war fought among the former allies, in which the Ottoman troops were able to retake some territories that they had previously lost, including Edirne.

For Greece, the territorial gains of the two Balkan Wars were enormous. Greece acquired Salonika and the coastal strip of Macedonia including the fertile plains of Kavalla, Southern Epirus with Ioaninna, Crete (unification of the Island with Greece was formally recognized by the Ottoman Empire), and the islands of Lesbos, Chios and Samos. The population and surface area of the country were almost doubled.[59] The Ottoman Empire, on the other hand, had lost almost all of

58 For a detailed account of the reasons for the 1897 Ottoman-Greek War, see Mehmet Uğur Ekinci, "The Origins of the 1897 Ottoman-Greek War: A Diplomatic History," Unpublished M.Sc. Thesis, Bilkent University, Department of History, July 2006.

59 Smith, op. cit., p. 19.

its European possessions except for the small territory of Eastern Thrace. Indeed, the Balkan Wars turned the Ottoman Empire into a revisionist state since the Ottoman authorities saw revisionism as the only remedy to postpone, if not eliminate, the threat of disintegration. Therefore, just one year later, after the conclusion of Balkan Wars the Ottoman Empire entered its final war, namely World War I in 1914,, which would ultimately result in its disintegration.

To conclude, considering the Ottoman-Greek relations after Greek independence, Greek irredentism was one of the most significant reasons for further deterioration of these relations. Continuous attempts for Greek expansion together with Western, particularly British, Russian and French, support for Greek aspirations resulted in a significant Ottoman distrust of the Greeks as well as their European patrons. These problematic relations had repercussions for the ordinary Ottoman Greeks, who are the focus of the next part of this paper.

2. Anatolian Greeks in the Nineteenth and Early Twentieth Centuries

a. A General Overview until the Late Nineteenth Century

Scattered around every corner of the Anatolian Peninsula, Greeks living in Ottoman Asia Minor could not be considered as a monolithic and homogenous community in the nineteenth and early twentieth centuries. Smith enumerates at least three different Greek communities living in different parts of the Empire. In Western Anatolia there was "...the relatively compact population of Smyrna and the western coastal strip with its historic towns."[60] This community included almost all social strata, from the peasant farmer to a large middle class and to the educated class of the bourgeoisie. Having considerable contacts with Europe and being relatively more educated compared to other Greek communities of the Empire, the Greek community of the Aegean region was the target of the Greek nationalist movement, and it had easily been influenced by the political developments which had taken place in Greece. The second group was composed of the Orthodox community of interior Anatolia, primarily living in the Karaman province. This Orthodox community spoke Turkish; their knowledge of Greek was confined to the alphabet. Therefore, their books were produced in Turkish but written in Greek characters. Known as *Karamanlides*, these people "...were distinguishable from the Muslims neither in occupation, class, nor racial stock, but only in religion."[61] Their level of integration to the Ottoman social system was

60 Ibid., p. 27.

61 Ibid., p. 27. For a detailed account of the *Karamanlides*, see Richard Clogg, "Anadolulu Hıristiyan Karındaşlarımız: The Turkish Speaking Greeks of Asia Minor," in John Burke and Stathis Gauntlett (eds.), *Neohellenism*, Canberra: Australian National University Publications, 1992, pp. 65-91.

so high that they had been the Greek community least influenced from Greek national consciousness and irredentist aspirations. Finally, the third variant of the Greek community was the very ancient Greek-speaking Orthodox community of the Pontus region in northeastern Anatolia.[62] These people began to claim themselves as descendents of two great Pontic kingdoms. The first Pontic Kingdom was established around 280 B.C. and expanded under the powerful ruler, Mithridates Eupator (132-63 B.C.). However, it fell under Roman control in 62 A.D. The second Pontic Kingdom, on the other hand, was established by the descendants of the Byzantine Empire, namely by the Comnenos Dynasty after the fall of Constantinople to the Latins in 1204. It was able to survive until the second half of the fifteenth century when its capital city, Trabzon, was conquered by Sultan Mehmed II in 1461. Although the male heirs of the Comnenos Dynasty of this second Pontic Kingdom were first exiled and then executed for being accused of participating in a plot against Mehmed II, after the conquest of Trabzon, local Christian landowners were very much protected. According to Dimitri Korobeinikov, "...Orthodox Christian *timars* existed in Bayburt, one of the Pontic centers, until the beginning of the sixteenth century, which suggests that Christian military landlords were incorporated in the Muslim society."[63] In other words, Ottomans did what they had done in the Balkans in the late fourteenth and early fifteenth centuries, namely they preserved the Christian populations of the region under Christian landholders. What is more, although "[t]hese Pontic Greeks were under Muslim rule from the 1220s at the latest [,]... we find several extant Pontic metropolitan sees in the fifteenth to seventeenth centuries."[64] In other words, particularly after the reorganization of the Greek Orthodox Patriarchate following the conquest of Constantinople, the religious centers in the Pontus region was also preserved and they were placed under the authority of the Patriarchate. In sum, until the nineteenth century, the Greek community was very much integrated into the Ottoman society without a strong assimilation.

Although the Greek Revolution was the first serious blow to the Ottoman multi-ethnic structures and although there emerged a great distrust towards the Greeks, Smith argues that between the Greek Revolution and the Greek-Turkish War of 1919-1922, "...the Greeks were able to increase and multiply, colonize, penetrate inland, found new businesses and propagate nationalist ideals with little interference from the Ottomans. There were no massacres or widespread persecutions..."[65] Similarly, according to Sonyel, particularly by the second half

62 Ibid., p. 26.

63 Dimitri Korobeinikov, "Orthodox Communities in Eastern Anatolia in the Thirteenth and Fourteenth Centuries. Part 1: The Two Patriarchates: Constantinople and Antioch," *Al-Masaq*, Vol. 15, No. 2, (September 2003), pp. 197-214, p. 198.

64 Ibid.

65 Smith, op. cit., p. 29.

of the nineteenth century, Greeks "...had largely regained their economic and partly political influence in the affairs of the Ottoman state, which they had enjoyed prior to the Greek rebellion of 1821."[66] In other words, during the nineteenth century, as noted above, Greeks retained their former political and economic privileges and they continued to prosper in the Pontus region as well.[67]

b. Internal Population Movements in the Ottoman Empire in the Nineteenth Century

Regarding the population movements of the nineteenth century, it can be understood from the Ottoman statistical data that starting from the mid-nineteenth century onwards, the proportion of the Greek population in Central Anatolia and the Black Sea region declined considerably. There are two significant reasons for this decline. First of all, there was a huge influx of a Muslim population migrating from the Caucasus and Balkans, fleeing from the Russian advances in the Ottoman-Russian Wars of 1853-1856 and 1877-1878 as well as Balkan Wars. Tens of thousands of such refugees were settled in the interior parts of Anatolia as well as the Black Sea region. For example, an English missionary visiting Samsun in 1864 "found the place overflowing with Circassian emigrants... The pasha was doing all that lay in his power to scatter the poor exiles in every direction. Shiploads of them were sent to other ports."[68] In other words, the Muslim population increased more in these years vis-à-vis the Greek population. Their settlement in the region produced tremendous problems, which sometimes disturbed the peace and tranquility of the inhabitants of the region, particularly of the non-Muslims, including the Greeks.

The second reason for the relative decline in the Greek population in Central Anatolia and the Black Sea region was the internal migration of the Greeks from these parts of the Empire to the Western coastal areas. Many Greek sources argue that these migrations were forced movements, intentionally planned by the Ottoman authorities. However, according to Greek historian Gerasimos

66 Sonyel, op. cit., 1993, p. 257.

67 To give an example of how the Greeks preserved their political and economic status the official annual registers (salname) of the Ottoman Empire dating from 1879 provide significant clues. Accordingly, there were over fifty high ranking Greek functionaries in government service, including judges, professors, diplomats, governors, etc. What is more, among the 40 private bankers listed in Istanbul, there were 12 Greeks, 12 Armenians, 8 Jews and 5 Levantines. Similarly, of the 35 stock-brokers in the capital city, 18 were Greeks, while of the 32 bankers in European Turkey, there were 22 Greeks. All these statistics demonstrate that towards the end of the nineteenth century, the Greek community had once more emerged as strong as before the Greek Revolution. See, Sonyel, op. cit., 1993, pp. 257-258.

68 Excerpted from Gerasimos Augustinos, *The Greeks of Asia Minor: Confession, Community, and Ethnicity in the Nineteenth Century*, Kent: The Kent State University Press, 1992, pp. 24-25.

Augustinos "[t]he migrations that Greeks undertook at this time were not imposed nor directed by the authorities. Economic interests were the impelling force behind the Greeks' journeyings."[69] These internal migrations reached such a level that the Greek Orthodox metropolitan of Kayseri, for example, prepared reports indicating that by the year 1834, almost 60 percent of the Greek males who were able to work left from the cities in the Kayseri province and headed mainly towards the coastal regions of the Empire.[70]

While the proportion of the Greek community in Central Anatolia and the Black Sea region declined considerably, the overall Greek population of the Ottoman Empire increased in the last decades of the nineteenth century. One of the most significant reasons for this increase in the Greek population was the Greek immigration from the Kingdom of Greece and Cyprus to the Ottoman Empire. Political instability and economic incapacity of the Greek state forced its citizens to seek lucrative jobs on the other side of the Aegean. As Augustinos writes:

> Greece was endowed with a good climate and as yet a thinly populated land, but with few trading centers of any note and a government struggling with the problems of social order and administrative efficiency; it was less than a promised land in its early years. That the risks to personal security seemed no greater in well-populated areas of the Ottoman Empire and that officials did not unduly interfere in people's private affairs was enough to convince many Greeks to remain it the lands of the sultan and encourage others to emigrate from the Hellenic Kingdom in a quest for better economic opportunities.[71]

According to Smith, "...the economic growth of the Greek communities on the west coast [namely the Aegean region of the Anatolian Peninsula] was partly dependent on, and helped to attract, Greek immigration."[72] What is more, the opening up of Anatolia to European trade and construction of railways from İzmir to its hinterland facilitated trade and attracted more of a Greek population. Sonyel also writes "[a]s Greece could not provide employment for all her subjects, many of them lived and worked in the Ottoman Empire. Even Greek Cypriots migrated periodically to the southern coast of the Empire, especially to Antalya, in search of work."[73]

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69 Ibid., p. 26.
70 Ibid., p. 27.
71 Ibid., p. 29.
72 Smith, op. cit., p. 25.
73 Sonyel, op. cit., 1993, p. 261.

The destination of Greek migration from the Pontus region was not confined to Western Anatolia; from the mid-nineteenth century onwards, Greeks migrated to Russian territories as well. Indeed, Greek authors tend to write that the reason for Greek migration was the Ottoman persecution of Pontic Greeks. This thesis had also largely been utilized by Venizelos and Greek religious authorities during and after World War I to convince the European public opinion that these immigrant Greeks should be returned. However, as Augustinos argues, this immigration was not mainly because of security considerations, but because of economic reasons. The long excerpt from his writings clearly shows the reasons of Greek immigration:

> The lands abandoned by the Muslim tribespeople [in the Caucasus] who departed for the Ottoman Empire lay ready to receive new settlers. Russian officials were quick to appreciate the value of encouraging the colonization of those lands. The availability of a Christian population nearby in Eastern Asia Minor seemed just the answer to their needs. In the shifting of peoples between the imperial realms, which the two governments [the Ottoman and the Russian governments] sanctioned, the Russians must have felt they were getting the better part of the bargain. Unskilled, non-sedentary Muslims, whose faith was at odds with the Russian state religion were leaving; in their place would come coreligionists possessing needed skills and ready to settle down.
>
> In the aftermath of the Crimean War, Russian consuls and agents in towns along the Pontic coast worked diligently to recruit prospective Christian emigrants. As an inducement to Greek Orthodox and Armenian subjects of the Porte, the Russians offered employment at good wages to skilled workers, such as bricklayers, carpenters, and stonemasons, as well as land for settlement and the promise of better treatment by the tsarist authorities...
>
> ...Of those who did emigrate to Russia, a number found the reality did not live up to the promise. Disillusioned with the experience, after a while they petitioned the Ottoman authorities for permission to return.[74]

These words demonstrate that Russians were not only interfering in Ottoman internal affairs with the pretext of protecting the rights of the Orthodox Christians, they also tried to attract the Greek population to prompt them to settle in the Caucasus region.

74 Augustinos, op. cit., pp. 30-31.

The number of the population of Pontic Greeks has long been a matter of controversy. Greek sources have tended to exaggerate the number of the Pontic Greek population living in the region in order to justify that the region had included a Greek majority throughout history. However, in order to provide the reader with a more realistic account, the Ottoman census results should be included. Because Ottoman authorities had never allowed the Westerners to engage in population studies within the borders of the Empire, and until the disintegration of the Empire, the Ottoman authorities had the sole responsibility for designing population censuses. This means that Western statistical data could only be counted as a secondary source. Just to give an example, a Western historian, A. Synvet, joined the endeavor of the Greek Patriarchate of Hellenizing the Bulgarians, Serbs, Romanians and other Orthodox Christians and claimed the number of the Greek population in the Ottoman Empire was 4,324,369 in 1878.[75] However, according to Kemal Karpat, who had used Ottoman census results to determine the Ottoman population, reached the conclusion that the number Greek population living within the borders of Empire was 2,332,191 (13.4% of the total population), nearly half of the number stipulated by Synvet. This huge gap between statistical data shows that those who study the Ottoman population have to be very careful not to be trapped into exaggerated numbers having no solid statistical basis.[76]

According to Kemal Karpat, the number of Greeks living in the Ottoman Empire increased slightly in 1905 to 2,823,063 (13.5% of the population), and decreased in 1914 to 1,729,738 corresponding to 9.3% of the total population.[77] This means that when the Ottoman Empire entered World War I, Greek population constituted less than 10% of the total population. These numbers were also approximately in line with the numbers provided by the *Encyclopaedia Britannica*, which stipulated that the approximate number of Greeks living in the Ottoman Empire in 1914 was 1.5 million.[78]

Coming to the population debates regarding the Pontus region, the starting point in this paper for the population statistics of the region is the first Ottoman census in 1831 ordered by Sultan Mahmud II. In this census, solely the male population had been counted and it had been determined that the number of Muslim and non-

75 Kemal Karpat, *Ottoman Population 1830-1914: Demographic and Social Characteristics*, Wisconsin: The University of Wisconsin Press, 1985, pp. 47-48. For a detailed analysis of Greek statistical studies on Greek population in the Ottoman Empire, see Justin McCarthy, *Muslims and Minorities: The Population of Ottoman Anatolia and the End of the Empire*, New York: New York University Press, 1983.

76 Kemal Karpat, "Ottoman Population Records and the Census of 1881/82-1893," *International Journal of Middle Eastern Studies*, Vol. 9, 1978, pp. 237-274, see charts in pp. 258-274.

77 Ibid., pp. 237-274.

78 Sonyel, op. cit., 1993, p. 261.

Muslim males in Trabzon province was 46,890 and 11,431 respectively.[79] The reason for why the statistics regarding the Trabzon province has been chosen is that the borders of this particular province roughly corresponded to the Greek definition of the Pontus region. Of course, non-Muslim components did not only include Greeks, but also Armenians and other Christian communities. This data was also supported by a German traveler, Jakob Philip Fallmerayer, who had visited the Black Sea region around 1840s. Accordingly, he stipulated that Greeks had assumed a majority nowhere in the region and to illustrate this, he gave the number of the population living in the city of Trabzon, in which there were approximately 5,000 Muslim houses (*hane*) whereas the number of Greek houses hardly exceeded 400.[80] In 1869, according to the Annals of the Trabzon Province (*Trabzon Vilayet Salnamesi*), in the city of Trabzon, there were 1,776 Greek houses while the number of Muslim houses corresponded to 5,763. What is more, among 63,365 houses counted in the entire Trabzon *Sancak*, 10,519 belonged to the Greeks. In 1871, in the Province of Trabzon, which was composed of the *Sancak*s of Trabzon, Lazistan, Canik and Gümüşhane, the number of houses were 146,972, of which 23,874 belonged to the Greeks.[81] In other words, in the years 1869-1871, the ratio of Greek population was most concentrated in Trabzon city (30,8%); it declined when the Trabzon Sancak was taken into consideration (16,6%) while the ratio declined further when the Trabzon Province was taken into consideration (16,2%). This means that the Greek tradesmen and artisans were settled in the city and town centers, while in the rural areas, the number of Muslims exceeded Greeks considerably because the Muslims were mainly engaging in agricultural activities.

According to the Annals of the Trabzon Province, in 1895, of 1,071,477 people living in the province of Trabzon, 157,212 were Greek (14,6%); the reason for this decline of the proportion from 16,2% in 1871 might be, as mentioned above, Muslim immigration from the Caucasus to the Pontus region and simultaneous Greek immigration from the Pontus region to the Caucasus.[82] In an encyclopedic book published in 1897 in Istanbul, it was stipulated that in the Trabzon Province the number of the population was 1,477,700. Among the population, there were 636,700 Muslims vis-à-vis 193,000 Greeks (13% of the total population).[83] In

79 Enver Ziya Karal, Osmanlı İmparatorluğu'nda İlk Nüfus Sayımı (1831), Ankara, 1943, pp. 214-215, excerpted in Mesut Çapa, *Pontus Meselesi*, Trabzon: Serander Yayınları, 2001, p. 26.

80 Jakob Philip Fallmerayer, *Doğu'dan Frangmanlar*, translated by Hüseyin Salihoğlu, Ankara: İmge Kitabevi, 2002, pp. 54-55.

81 Çapa, op. cit., pp. 141-143.

82 Ibid., p. 144.

83 Ali Cevad, *Memalik-i Osmaniye'nin Tarih ve Coğrafya Lugatı*, İstanbul: 1897 [1313], cited in Çapa, op. cit., p. 28.

1898, the Annals of the Trabzon Province determined the number of population and the number of Greeks as 1,163,815 and 181,044 respectively (15,5%).[84] In 1901, this time, the numbers were 1,211,644 and 185,784 respectively (15,3%).[85]

All in all, the statistical data acquired from the Ottoman archives demonstrate that the Greeks had never constituted the majority in the Pontus region. Therefore, the land claims demanded by some Greek delegations from the region in the 1919 Paris Peace Conference and subsequent international meetings regarding the establishment of an independent Pontus state had no significant basis. Although the Greeks tried to demonstrate that many of the Muslims living in the region were converted Greeks and some of these converted Greeks had not even known of this very "fact," even they were aware that such a claim would not suffice to convince the Western states that they constituted majority in the region.

c. Inter-Communal Relations between Muslims and Greeks in the Late Nineteenth and Early Twentieth Centuries

Towards the end of the nineteenth century, Greek educational, literary and cultural societies began to mushroom first in the capital, then in all parts of Anatolia where Greeks had been living. These societies, known as *sillogi*, aimed to Hellenize the Orthodox population of Anatolia. While Ottoman Greeks were labeled as *Rum* and they had been integrated to the Ottoman society for centuries, starting from the mid-nineteenth century onwards, Greek teachers sent to the capital and Anatolia tried to raise Greek national consciousness within the Ottoman Empire. Accordingly, Sonyel writes that in Istanbul alone "...there were about 20 such *sillogi* c. 1878, the most important of which was the Greek Literary Society... which founded some 200 Greek schools throughout the Empire."[86] These schools were supported by Greek banks, by the subventions from the Greek state and by the contributions of the prosperous Greek communities of Egypt; the teachers were educated by the University of Athens by the main propagandists of the *Megali Idea*.[87] Although these schools and other efforts for Hellenization of the Ottoman Greeks through missionary activities met with little success in the interior parts of Anatolia, they were largely successful in the coastal areas of the Empire and particularly in the great urban centers, such as Istanbul, Izmir and Trabzon.

84 Çapa, op. cit., p. 144.
85 Ibid., p. 146.
86 Sonyel, op. cit., p. 264.
87 Ibid.

The Ottoman-Greek War of 1897, the Cretan decision to unite with Greece in 1908 and the Balkan Wars had exacerbated the Turkish distrust of the Greeks. Particularly, the forced immigration of Muslims from the Balkans to Istanbul and Anatolia during and after the two Balkan Wars worsened the situation. The atrocities committed by the Greeks and Bulgarians over the Muslim inhabitants of the Balkans led to a great disturbance among the Ottomans. The massacres perpetrated against the Ottoman prisoners of war also had significant repercussions in all parts of the Empire. Sonyel refers to Greek historian Grigoriadis, who admits that 65,000 Ottoman prisoners of war were taken to the desert island of Makronisi outside Lavrio and most of them were massacred there.[88] What is more, there emerged the question of settling huge numbers of immigrants. All these problems resulted in several atrocities against the Greek population living in Anatolia and the government sometimes remained insufficient to prevent such occurrences.

All these developments prompted Venizelos to devise a solution. He understood that the distrust between Turkish and Greek people made their coexistence very difficult. Hence, he decided to conclude an agreement with the Porte for a voluntary exchange of the Greek-speaking populations of Turkish Thrace and Aydin Vilayet in Asia Minor for the Muslim populations of Greek Macedonia and Epirus.[89] However, Turkey's entry to the World War I interrupted the process and the idea of exchange of populations had been frozen almost for a decade.

The Balkan Wars revealed that the Greeks might be considered by the Ottoman officials as a significant danger for the preservation of the territorial integrity of the Empire. Unlike the Armenians, who solely counted on the Russian protectorate, Greeks had not only been supported by the Europeans; they had also their own state which had been turning the Ottoman Greeks against the Ottoman Empire. Even Mark Levene, who accused the Ottoman Empire of creating "a zone of genocide" between the years 1878 and 1923, admits this grave perception of threat:

> Significantly, a Greek challenge to the political integrity of a would-be Turkish state was more plausible than anything the Armenians could muster. Greece, after all, had seceded from the empire almost a century earlier, expanding at the Ottomanist expense in the western Mediterranean and Thrace, and was to attempt, in the aftermath of CUP defeat in the First World War, a full-scale -and initially successful- invasion of the Anatolian

88 Ibid., p. 277.

89 Smith, op. cit., pp. 32-33

> mainland. It could thus be argued that the CUP had real grounds for concern over the existence of a large Ottoman Greek fifth column, especially in the Turkish-held Mediterranean and Aegean islands and coastline, as well as by their supremacy in the western-orientated trade out of Smyrna.[90]

Despite this troublesome perception of the Greeks by the Ottoman administration, namely by the Committee of Union and Progress, even as late as 1913, the Greeks of the Ottoman Empire retained their privileged status. Even Henry Morgenthau (1856-1946), one of the ardent anti-Turkish and pro-Greek Western diplomats, who served as the American Ambassador to the Ottoman Empire in Istanbul between November 1913 and February 1916, wrote in his extremely philhellenic book entitled *I Was Sent to Athens* the following:

> I learned that, not only in Constantinople, but also throughout Asia Minor, the Greeks largely controlled the banking, the shipping, and the general mercantile business. Some of the Greeks in Constantinople were among the most brilliant and cultivated people I have ever met anywhere in the world. Highly educated, fluent linguists, and very prosperous, they would have adorned any society. Some of them were the only non-diplomatic residents of Constantinople who were admitted into the diplomatic social circles.
>
> I found that the Greeks, like various other non-Mohammedans, occupied a peculiar legal status in Turkey, for which there is no parallel in any European country. They constituted a separate legal community, and exercised all community rights for themselves. They organized and supported their own schools. This peculiar status arose from the theocratic nature of the Turkish Government.[91]

All in all, in the late nineteenth and early twentieth centuries, while continuous Ottoman defeats in subsequent wars increased the Ottoman concerns for the preservation of the territorial integrity of the Empire, non-Muslim minorities of the Empire, particularly Greeks and Armenians contributed to this feeling of insecurity through organizing direct rebellions or indirect support for the anti-Ottoman activities. Hence, a vicious circle had been created. The activities perpetrated by the minorities increased Ottoman concerns for the maintenance of

90 Mark Levene, "Creating a Modern 'Zone of Genocide': The Impact of Nation and State-Formation on Eastern Anatolia, 1878-1923," *Holocaust and Genocide Studies*, Vol. 12, No. 3, (Winter 1998), pp. 393-433, p. 407.

91 Henry Morgenthau, *I Was Sent to Athens*, New York: Doubleday, Doran and Company, 1929, the full text of the book was available at http://www.hri.org/docs/Morgenthau/

the Empire and this sense of insecurity resulted in increasing Ottoman pressure on the minorities, further alienating the Greeks and Armenians living in the Empire. This vicious circle, which had also been exacerbated by the Westerners, would turn into a catastrophe in the early decades of the twentieth century, affecting the lives not only of non-Muslim, but also of all the citizens of the Ottoman Empire in an extremely negative way.

3. Pontus Society and its Activities

As stated above, there were various Greek societies called *sillogi* established in different parts of the Ottoman Empire towards the end of the nineteenth century that had served for the Hellenization of the Ottoman Greeks. Considering the Pontus region specifically, the Pontus Society was one of the most active *sillogi*. Indeed, the Pontus Society was not a monolithic entity; it was an umbrella organization uniting various smaller organizations established in different parts of northeastern Anatolia.

a. Establishment of Clandestine Greek Organizations in the Ottoman Empire

The first Greek organizations in the Pontus region were established as clandestine organizations in the Merzifon American College in 1904 and they were called *Rum İrfanperver Klübü* (Greek Club of Knowledge-Lovers) and *Pontus Klübü* (Pontus Club). In the same year, in İnebolu, another secret organization was founded by a Greek-origin American priest named Clematheos.[92] Four years later, in 1908, two additional secret organizations were established in Samsun under the auspices of the Metropolitan of Amasya, Germanos Karavangelis (1866-1935).[93] These organizations were called *Rum Teceddüd ve İhya Cemiyeti* (Greek Society for Renewal and Revitalization) and *Müdafaa-i Meşruta* (Legitimate Defense). This last organization was a military one and it aimed to arm all the Greeks living in the Pontic region extending from İnebolu in the west to Batum in the east. Greek historian Stephanos Yerasimos criticized the militarization of Greek secret organizations by a religious leader, namely Germanos as such: "Although there was no local discontent requiring the establishment of a self-defense organization, Germanos established the first armed militia organization with the youngsters of this neighborhood [Kadıköy, near Samsun] immediately after the 1908 revolution."[94]

92 Mustafa Balcıoğlu, *İki İsyan Bir Paşa*, İstanbul: Babil Yayıncılık, 2003, p. 70.

93 *Pontus Meselesi: Teşkilat – Rum Şekavet ve Fecayi-i Hükümetin İstitlaat ve Tedabiri: Avrupa Hükümetleriyle Muhabere*, Ankara: [Uncited Publisher], 1922, edited by ..... pp. 118-119.

94 Yerasimos, op. cit., p. 356.

What is more, it was understood that Greek companies contributed these organizations through providing them logistical support. For example, in 1908, fifty Manlicher rifles had been transported by the Greek Destunis Company and stored in the coffee house of Mercanis in the Kadıköy district of Istanbul, which would later be utilized to arm the members of this clandestine military organization.[95]

Following this establishment period, particularly the Greek organizations in Samsun quickly established branches in various cities of the Black Sea region, including Bafra, Çarşamba, Fatsa, Havza, İnebolu, Kavak, Sinop, Tokat and Ünye; they had even extended to the interior parts of Anatolia including Kırşehir, Kayseri and Ürgüp.[96] In 1909, all these organizations were put under the control of the Asia-Minor Society (*Asya-yi Suğra Cemiyeti*) through the connection established by Chrysanthos Filippides (1881-1949), the Metropolitan of Trabzon.[97] In 1910, the Pontus Society began to publish a journal entitled *Pontus*.[98]

b. The Activities of Greek Organizations during World War I

Ottoman participation in World War I in 1914 and the subsequent defeat of Ottoman armies on the Eastern front resulted in the Russian occupation of Eastern Anatolia, including the coastal areas of the Black Sea region. On April 18, 1916, Russian troops entered Trabzon and were welcomed by Metropolitan Chrysanthos. In a letter he sent to the Russian Tsar, he declared his support for the Russian occupation of the city.[99] The governor of Trabzon, Cemal Azmi Bey (1868-1922), had to deliver the administration of the city to Chrysanthos, who dissolved the existing Municipal Council and assembled a new one composed mainly of Greeks.[100] Encouraged by the Russian occupation of the Black Sea littoral, Greek organizations intensified their activities and Greek irregular bands armed by these organizations began to attack Turkish villages. One of the strongest band leaders, Vasil Usta, was contacted by the Russian secret service and with a Russian torpedo boat he was sent to Samsun to organize the bands in the region.[101] Later on, Vasil Usta went to Sivas and collected hundreds of armed

95 Ibid., p. 57.

96 *Pontus Meselesi*, op. cit., pp. 118-119.

97 Ali Güler, *İşgal Yıllarında Yunan Gizli Teşkilatları*, Ankara: Kültür ve Turizm Bakanlığı Yayınları, 1988, p. 49.

98 Ibid.

99 *Pontus Meselesi*, op. cit., p. 165.

100 Mahmut Goloğlu, Trabzon Tarihi: Fetihten Kurtuluşa Kadar, Trabzon: Serander Yayınları, 2000, p. 175.

101 Yerasimos, op. cit., p. 360.

men to start a "general rebellion."[102] On September 24, 1916, he attacked Muslim villages to force Muslims to retaliate and to urge the Russians to protect the Greeks against Muslim attacks. This time, he was accompanied by the secretary of the Greek Consulate in Samsun, Lazaros Melidis. However, he was defeated by Turkish troops near Ordu and escaped to Trabzon, where he stayed until the end of the World War I.[103] As a result of this insurgency, Greeks of Tirebolu region were relocated in November 1916 to the interior regions of the Sivas Province. Towards the end of January 1917, Greeks living in Bafra were also relocated, this time to the Ankara Province. Although Greek sources argue that these relocated Greeks were persecuted by the Ottoman troops, Yerasimos wrote that there were no massacres perpetrated against relocated Greeks and they returned to their home after the end of World War I in 1918.[104]

The archives of the Greek Metropolitan See in Trabzon, which were examined by Turkish authorities after the Russian retreat, included the documents of secret correspondence sent to Chrysanthos during World War I. In these documents, Chrysanthos was informed that some Greeks were assigned to inform the Russian officers on the situation and tactics of the Turkish army located in Eastern Anatolia. In two of such letters dated in 1917 and addressing Chrysanthos, two such Greek spies, Polihronyos Partenopulos and Pavlos Patmanidis, were named.[105] What is more, it was understood from these documents that many of the Greek religious leaders, including Metropolitans serving in the region contributed to the establishment of the new Greek secret organizations. A letter sent from the Gümüşhane Metropolitan See to Chrysanthos on December 18, 1917 demonstrated that a branch of the Trabzon-based *Rum İttihad-ı Milli Cemiyeti* (Greek National Unity Society) was established in Gümüşhane.[106]

The Pontus Society not only had branches within the Ottoman Empire but also in Europe. The center of Greek propaganda in Europe was France, particularly Marseilles. In this city, an organization called the External Pontic Congress (*Harici Pontuslular Kongresi*) was established and it was headed by Konstantin Konstantinides, the son of the major of Giresun, Yorgi Paşa.[107] In 1917, in one of the meetings of the Congress, Konstantinides delivered a speech, in which he not

102 Ibid., p. 361.

103 Ibid., pp 361-362.

104 Ibid.

105 Unless it would be stipulated otherwise, all the letters referred in this section of the article had been discovered in the Trabzon Metropolitan Office and they had been translated by a committee including one Greek (Dimitraki Efendi) and one Turkish translator (Mülazım-ı evvel [First Lieutenant] Ziya). *Pontus Meselesi*, op. cit., p. 120.

106 Ibid., p. 217.

107 Yerasimos, op. cit., p. 367.

only defined the region of Pontus, but also commented on the Greek activities in the region. Accordingly he defined Pontus as a region stretching from the Kastamonu province in the west and Caucasus in the east. He further argued that the number of population living in this region was 3.5 million among which there were 1.5 million Orthodox Greeks, 500,000 Greek-speaking Muslim Greeks, 250,000 Orthodox Greeks who declared themselves as Muslims to the Ottoman officials and 1,250,000 other ethnicities including Turks, Georgians, Turcomans, and Circassians.[108] In other words, he claimed that Turks constituted only a small minority in the region, while the Greeks formed the majority. Of course, these numbers were quite exaggerated and as noted above, they were inconsistent with the academic studies as well as government censuses on the population of the Black Sea region.

Konstantinides not only had made such propagandistic speeches, but also tried to attract foreign attention to the Pontic cause. In one of his letters written to Leon Trotsky (1879-1940), the then Russian Commissar for Foreign Affairs, he demanded Russian intervention for the establishment of a republic whose borders would stretch from the Russian border in the east to the Sinop Province in the west after the Russians had retreated from the region.[109]

One of the most significant problems that those Greeks demanding an autonomous, if not independent, Pontic state in the region encountered was that the region had also been demanded by another Ottoman minority, namely the Armenians. Although, in the second half of 1918, the Greek and Armenian diaspora in Europe became more organized with the establishment of the League of the Oppressed Nationalities of Turkey (*Ligue des nationalités opprimées de Turquie*) in Geneva, whose members were predominantly Greek and Armenian, soon after the Armistice of Mudros, the spoils of war resulted in a significant contention between them, particularly on the city of Trabzon.[110] In other words, anti-Ottomanism could only unite Greeks and Armenians until the end of World War I; however, still, particularly Chrysanthos and Venizelos strived for the continuation of Greek-Armenian cooperation against the Ottoman Empire and Kemalist forces. This territorial disagreement demonstrated why the region of Pontus became a significant problem between Armenians and Greeks in the Paris Peace Conference and a number of subsequent international meetings regarding the fate of the Ottoman Empire between 1919 and 1922.[111] In November 1918,

108 Konstantinides said that he had taken these numbers from a newspaper article, published in an Athens newspaper called *Neologos*. *Pontus Meselesi*, op. cit., pp. 138-139.

109 Ibid., p. 140.

110 Sonyel, op. cit., 1993, p. 346.

111 Ibid., p. 347.

Konstantinides assembled another congress in Marseilles and the resolution adopted at the end of the congress was sent to the British Foreign Minister, Lord Curzon (1859-1925). In this resolution, Konstantinides demanded the protectorate of the Allied Powers over the 1,500,000 Greeks and the establishment of a Pontus Republic in the region stretching from the Russian border to the Sinop Province.[112] However, at that time, British foreign policy regarding the region was to establish an Armenian state, which would be placed under the mandate of the Allied Powers and to integrate the Pontic Greeks into this prospective Armenian state. In other words, even the British were aware that it would be impossible to establish a Greek state in the region with such a small number of Greek populations in the region; hence, a Greco-Armenian federation seemed for them a more plausible option.

While Konstantinides tried to garner European support for the Pontic cause, Metropolitan Chrysanthos aimed to establish contacts with the Greeks living in the Caucasus region. As mentioned previously, these Greeks were attracted by the Russians in the last quarter of the nineteenth century and established a significant community in the region. In one of the letters sent by a Greek living in Tbilisi named Velisaridis to Metropolitan Chrysanthos, Velisaridis informed Chrysanthos that it was quite possible to gather volunteers for the Pontus Society from Kuban and Sochum.[113] In other words, Greeks living in the Caucasus might be utilized to establish volunteer troops against the Muslims living in the region. Meanwhile, Greek notables of Istanbul who were engaged in anti-Ottoman activities began to intensify propaganda activities, including publishing propaganda materials regarding the Pontus Question. Accordingly, one of the central branches of the Pontus Society, located within the Beyoğlu *sillogi,* prepared a booklet entitled "Horrors in Pontus" (*Pontus Fecayii*). This booklet was translated into several languages and sent to European countries as well as the United States.[114] Additional books were prepared and published in Istanbul and Athens. The *Black Book* published by the Patriarchate in Istanbul was followed by the *Red Book* or *Great Adventure of Pontus* published in Athens. All these books were translated and distributed in Europe.[115] As it can be seen, not only Greek secret organizations, but also the Greek Patriarchate in Istanbul contributed to the Pontus cause and influenced not only the public opinion of the Ottoman Greeks but also European public opinion. This strategy was quite similar to the one adopted by the Armenians. However, while Armenian propaganda materials such

112 Yusuf Sarınay, "Pontus Meselesi ve Yunanistan'ın Politikası", in Berna Türkdoğan (ed.), *Pontus Meselesi ve Yunanistan'ın Politikası: Makaleler*, Ankara: Atatürk Araştırma Merkezi Yayınları, 1999, p. 14.

113 *Pontus Meselesi,* op. cit., p. 220.

114 Çapa, op. cit., p. 17.

115 Ibid., pp. 74-76.

as the *Blue Book* were published by the Allied Powers during World War I, Greek propaganda materials were mainly published in Greece or in Istanbul under the auspices of the Greek government and the Greek Orthodox Patriarchate in Istanbul.

c. The Activities of Greek Organizations after World War I until 1920

The Paris Peace Conference which was convened in 1919 to settle the post-World War I international environment witnessed the gathering of delegations from the Ottoman minorities, particularly established by Armenians and Greeks. These delegations tried to convince the leaders of the European states to allow the Armenians and Greeks to establish their own autonomous, if not independent, states in what were in remnants of the Ottoman Empire. Besides the Greek delegation representing the Greek state, in May 1919, Chrysanthos attended the Paris Peace Conference as well. He delivered a memorandum to the delegates of the conference on May 2, in which he labeled himself as the "Metropolitan of Trabzon and the Delegate of Unsaved Greeks" (*Trabzon Metropoliti ve Gayr-ı Müstahlis Rumların Murahhası*).[116] Accordingly, in the memorandum, he first defined the Pontus region. This definition was more limited when compared to the aforementioned definition made by Konstantinides in 1917. Chrysanthos claimed that historically the Pontus region was composed of the Provinces of Trabzon and Karahisar as well as some parts of the Provinces of Kastamonu and Sivas. The region that he defined as Pontus comprised almost the entire Black Sea littoral from İnebolu to Batum. The Greek population of the region was given by Chrysanthos as 600,000; however, there were also 250,000 Greeks which had to migrate to the Caucasus before and during World War I. This would make the total Greek population 850,000.[117] Probably, Chrysanthos was likely aware that the numbers presented by Konstantinides two years before were so unrealistic that the Paris Peace Conference would not take them seriously. However, still, even these reduced numbers were not welcomed by the British authorities of the Foreign Office. Arnold Toynbee, who had been serving in the Foreign Office during the Paris Peace Conference, wrote at that time:

> The statistics and frontiers put forward in this memorandum are fantastic, and the official figures of the Greek Government only total 450,000 Greeks for the vilayets of Trebizond and Sivas. Even this is, of course, a large number... But the memorandum errs in claiming that they are a

116 The Turkish translation of this memorandum was available in Ibid., pp. 161-164.

117 Ibid., p. 163.

majority of the population, and no state territory with a Greek majority could be carved out in this region.[118]

Perceiving that the territorial and demographic information provided by the delegation representing the Pontic Greeks seemed unconvincing, the head of the delegation representing the Greek state, Venizelos, adopted a more realist attitude. Citing the statistics of the Greek Patriarchate of Istanbul, he argued in the Conference that the number of the Greek population living in the region was 477,828, while the Muslim population was 2,735,815.[119]

Returning to the memorandum presented by Chrysanthos at the Paris Peace Conference, after giving these numbers and after explaining the Russian occupation of Trabzon and his subsequent administration of the city, Chrysanthos also added a significant detail. Accordingly, Colonel Chardigny, the French representative in Tbilisi, had demanded him to establish Pontus troops in order to fight against the Turks on the side of the Allied States.[120] Indeed, the Russian army had established a division of 12,000 Greeks who joined the Russian army during the Russian occupation of the region. This Pontic division was commanded by Greek soldiers serving in the Russian army, namely Colonel Ananias and Colonel Nikiforakis.[121] Although the number of troops was aimed to be increased to 50,000, after the Bolshevik Revolution, the Greek division was disbanded before it became operational.[122] However, still, the confession of Chrysanthos was significant enough to demonstrate the degree of external support to the Pontic cause.

The memorandum of Chrysanthos ended with some claims and demands. He claimed that the Muslim and Greek population of the Pontus region was almost equal and indeed majority of the Muslim population was originally Greek, who had forgotten neither their identity nor language. He added that both Turks and Russians admitted that the Greeks were competent more than any other nation to rule the Pontus region; therefore, he demanded from the conference to place the Pontus region under the control of an autonomous Greek state.[123] It should be recalled that these demands came from an Ottoman citizen and a religious figure

118 Sonyel, op. cit., 1993, p. 352.

119 Sarınay, op. cit, p. 19. In 1921, the Central Army Commandment sent a report on the Greek population in the region where the Greek insurgents aimed to establish an "independent" Pontic state. In this report, the Greek population in the region was stipulated as 273,733, while the Muslim population was 2,391,316. This means that the Greek population hardly exceeded 10% of the total population. Cited in Balcıoğlu, op. cit., p. 81.

120 Ibid., p. 163. This letter sent from Chardigny to Chrysanthos on December 24, 1917 was also available in the book, Ibid., p. 225.

121 Sarınay, op. cit., p. 10.

122 Ibid.

123 *Pontus Meselesi,* op.cit., p. 164.

serving in the Ottoman Empire. His demands were so ambitious and so unrealistic that they had even been refused by Venizelos, who was aware of the British policy of the establishment of an Armenian state and integration of Pontic Greeks to that state. Accordingly, Venizelos demonstrated himself as making a great sacrifice to leave Trabzon to the prospective Armenian state as an outlet to the Black Sea and never mentioned a Pontic state.[124] Such a policy frustrated the Pontic Greeks demanding their own state.

After disappointed by Venizelos in the Paris Peace Conference, the leaders of the Pontic Society began to pursue a more active policy. A significant aspect of this new active stance was to increase the Greek population living in the region in order to increase the Greek proportion in the total population. Indeed, the strategy of population transfers was not new; it had been implemented since the last quarter of the nineteenth century. According to the statistics, it was estimated that between 1870 and 1920, 30,000 Greeks inhabited the Samsun region with the joint effort of the Patriarchate and Greek State.[125] During the Armistice period between 1918 and 1922, Greek immigrations to the region from the Caucasus and interior parts of Anatolia intensified. A secret organization called *Kardus* was specifically established in Istanbul in 1919 to organize the Greek immigration to the Pontus region. This organization seemed to be a charity establishment operating under the overt name of "Central Commission of Greek Immigrants"; however, it aimed to increase the Greek influx to Asia Minor and to send irregular bands to the Pontus region under the guise of immigrants.[126] According to Ottoman archival documents, as a result of the activities of this organization, towards the end of July 1919, approximately 8,000 armed Greeks were transferred from the Caucasus to Trabzon.[127]

Towards the end of 1919, Chrysanthos had returned to Trabzon from Paris without a tangible result for the establishment of an independent Pontic state. However, he continued his efforts. In November 1919, he went Batum and during his presence there a Pontic government was established in the city. The government, which had not been recognized officially, started arms delivery to the shores of Trabzon immediately and issued passports to the Greeks in the name of the Pontic Republic.[128] From Batum, Chrysanthos went toTbilisi and Yerevan and initiated negotiations with Armenians for a prospective Greek-Armenian

124 Sabahattin Özel, *Milli Mücadelede Trabzon*, Ankara: Türk Tarih Kurumu Yayınları, 1991, p. 38.

125 Ertuğrul Zekai Ökte, "Yunanistan'ın İstanbul'da Kurduğu Gizli İhtilal Cemiyeti (Kordus)," *Belgelerle Türk Tarihi Dergisi*, No. 40, January 1971, ss. 22-23, cited in Sarınay, op. cit., p. 21.

126 Ibid.

127 Özel, op. cit., p. 133.

128 Ökte, op. cit., p. 28.

federation in Eastern Anatolia and the Pontus region. This was done under the directions of Venizelos and in January 1920, Greek representative Kathenioties and Armenian representative General Termissian signed a treaty which concretized the Greek-Armenian collaboration.[129]

Meanwhile in December 1919, Greek Prime Minister Venizelos suggested that the British government organize approximately 4,000 Pontic Greeks serving as volunteers in the Greek army. Accordingly, Colonel Katheniotes had been assigned by the Greek government to deal with these Greek soldiers and, if accepted by the British Foreign Ministry, these troops could be sent to Pontus to restore order there.[130] In other words, besides the Russians, the Greek state also engaged in a more active policy, even including military operation towards the Pontus region. However, British officials clearly refused this offer with an observation stipulating that this "...idea should certainly be discouraged."[131]

All in all, from the Paris Peace Conference until early 1920, Greek organizations aimed to obtain foreign support. Their demands from the British were refused and their activities within Russian territories for the establishment of a Pontic division could not be operationalized. Disappointed by these failures and forced to be contended with armaments and a limited number of officers from European states and particularly from Greece, the local leaders of these organizations decided to struggle with the Ottomans by their own means. This resulted in the intensification of the activities of Greek bands in the region, which had already been established before World War I.

4. The Activities of Greek Bands in the Black Sea Region

Indeed, the activities of Greek bands first intensified just after the beginning of World War I, when the first significant incidents of these bands were witnessed in the Bafra region. There were eleven Greek villages in the Nebyan district of Bafra whose population reached 6,219. The inhabitants of these villages came together and established armed bands with a total number of 1,500 men. When the Ottoman government declared a state of war against the Allied Powers and began to conscript male Ottoman citizens, the Nebyan Greeks refused to join the army and began to attack Muslim villages as early as October 1914. From this date until the end of 1920, there were 110 incidents committed by the Nebyan bands against Muslims living in the region. According to official documents, in these 110

129 Ibid., p. 29.

130 Sonyel, op. cit., 1993, p. 363.

131 Ibid., p. 364.

incidents, 534 Muslims were killed, thousands were wounded and their properties were pillaged.[132] Solely, in the villages of Çağşur and Koşaca 367 Muslim civilians were brutally murdered.[133] The total value of Muslim properties pillaged in Alaçam region near Nebyan exceeded 360.000 *kurush*, while among 27 villages and farms, 16 were burned to the ground and the remaining were partially damaged.[134]

Another location where Greek insurgency intensified was the city of Samsun. Between March 1915 and February 1916 Greek bands burned more than 500 houses, and until the end of 1920, 51 Muslims were killed.[135] Solely in the town of Çarşamba, 335 houses, two mosques, and two schools were burned in the same period as well.[136] Three incidents were particularly recorded in detail in the archival documents. These were the massacres perpetrated by Greek bands in the villages of Güney, Baylarca and Duayeri. Accordingly, 24 Muslims were killed in the first two villages and among them there were small children as well as elderly people. In Duayeri, 20 Muslims were killed as a result of crossfire by the Greek bands.[137] Similarly, in the city of Amasya, 48 Muslims were killed and 17 villages were pillaged.[138]

Greek atrocities were most intensified in the Köprü town and its dependent districts. There, the Greek bands, which were composed of 800 Greeks, had destroyed several villages. In these incidents more than a hundred Muslims were killed; all of their properties were pillaged.[139] Particularly, in Ortaklar and Esenbey villages, all inhabitants were brutally massacred.[140] Ortaklar had once been a prosperous village composed of 150 houses; however, after it was pillaged in October 1921, there was no single house left for inhabitance.[141] Similarly, in the Küpecik village of Ladik town on 1 August 1921, only five houses and ten granaries were left unburned among 150 houses.[142]

In all, the total recorded number of the Muslim losses who had lost their lives as a result of the atrocities perpetrated by Greek bands in the Pontus region was

132 The details of these incidents were provided in Ibid., *Pontus Meselesi,* op. cit., 243-303.
133 Ibid., p. 240.
134 Ibid., pp. 246-248, 297.
135 Ibid., pp. 310.
136 Ibid., pp. 312-314.
137 Ibid., pp. 303-304.
138 Ibid., p. 316.
139 Ibid., pp. 334-344.
140 Ibid., pp. 333-334.
141 Ibid., p. 344
142 Ibid., p. 350.

1,641.[143] However, Turkish government estimated that the number was higher. The Minister of Interior, Fethi Bey, declared in a speech he delivered in the Grand National Assembly on December 29, 1921, that the number of houses burned and pillaged from 1919 to late 1921 was 3,303.[144] These numbers demonstrate the level of Greek atrocities which claimed hundreds of lives and resulted in a serious desolation in the region.

These atrocities were not only documented in the Turkish archives but also there were French archival documents providing accounts of the Greek insurgency. Yerasimos cited two of them. In the first document, it was stipulated that the bands were mainly located around Samsun and reached 2,500 men. The document states: "For the last few years, they engaged in bloody revenge activities against Muslim people in all occasions"[145] In the second document, it was determined that since Turkish troops began to protect the cities of the Black Sea region, Greek bands directed their attacks to less protected villages.[146] In other words, Western representatives serving in the region had witnessed the atrocities committed by the Greeks and cited them in their reports.

Greek atrocities were responded to by the establishment of Turkish irregular bands and these several attacks towards Greek villages hosting the Greek insurgents. In other words, there were no one-sided persecutions solely perpetrated by the Turks against the Greeks as many Greek and European sources indicated. Rather, the distrust between the two communities reached such a level that their coexistence turned out to be in danger and mutual atrocities were perpetrated. As a result of the inter-communal clashes, local leaders of Greek organizations began to complain to the High Commissars of the Allied Powers about the atrocities committed by the Turks in the Pontus region. Even in the weekly meeting of High Commissars held on February 6, 1919, the French representative, Admiral Amet, argued that in the rural areas of the Black Sea region as well of Central Anatolia Greeks were massacred. However, Yerasimos writes how the Greek propaganda material published in these years included solely the incidents perpetrated by the Turks while ignoring the ones perpetrated by the Greeks:

> In the counter-propaganda book entitled *Pontus Question (Pontus Sorunu)* and published in 1923 in Istanbul by the Turks, 25 killings and an equal number of usurpation incidents were cited in detail; contrarily, there was

143 Ibid., p. 397.

144 Ibid.

145 Yerasimos, op. cit., p. 378.

146 Ibid.

> no single concrete example in the long theses of martyrdom of the Pontic Greeks for the winter and summer of 1919.[147]

Greek atrocities against the Muslim population of the Black Sea region intensified after the Armistice of Mudros. Particularly, the landing of British troops in Samsun and Merzifon in March 1919 facilitated Greek insurgency activities. What is more, just after the signature of the Armistice another Greek organization was established in Istanbul. Known as *Mavri Mira* (the Black Destiny), this organization was established under the auspices of the Patriarchate and protected by the British state.[148] This organization was rapidly spread to Bursa, Adapazarı, Ankara, Konya, Karaman, Kayseri, Maraş, Urfa, Diyarbakır and Siirt through clandestine agents. More important, the organization hosted some Greek bands operating in the Marmara region, the most significant of which was the band of Todori at the outskirts of Istanbul.[149] In other words, Greek brigandage activity became more organized with the establishment of these new organizations supported by the British state and the Patriarchate.

While *Mavri Mira* was hosting existing Greek bands established by Ottoman Greeks, at the same time, the Greek state also increased its support of the Pontic Greeks. Accordingly, Greek officer Karaiskos arrived in Samsun and began to organize Greek bands already established in this region. Soon, the number of armed men in these bands reached 25,000.[150] The atrocities committed by these bands reached such a level that the Ottoman government decided to send a military inspector to the region in order to report on the reasons for these insurgencies.[151] He was Major-General Mustafa Kemal (1881-1938), who demanded and was appointed to that post. Mustafa Kemal reached Samsun on May 19, 1919, examined the situation there and sent several reports to the Porte. In his report dated 21-22 May, he wrote that the reason for the disturbance in the region was the activities of some forty Greek bands and if these bands were to end their activities, thirteen Muslim bands, which had been established to protect the Muslim inhabitants of the region, would immediately do the same.[152]

The Greek insurgency was not only depicted in the reports of Mustafa Kemal but also in the writings of several European visitors coming to the region. For

147 Ibid., p. 371.

148 Güler, op. cit., p. 36.

149 Ibid., pp. 37-38.

150 Sarınay, op. cit., p. 34

151 Ibid.

152 Yerasimos, op. cit., p. 375. For a detailed analysis of Mustafa Kemal's reports sent from Samsun, see Mithat Sertoğlu, "Mustafa Kemal'in Samsun'dan Gönderdiği İki Mühim Rapor," *Belgelerle Türk Tarihi Dergisi*, Vol. 3, No. 14, (Yıl)

example, Admiral Bristol, who had written a significant report on the situation of Anatolia after World War I, informed the Allied Powers about his deep concern over the "anarchic environment created by Greek activities," while American Consul Ralph F. Chesbrough wrote to the US Secretary of State that some Greek bands which were operating around Samsun region were established and equipped by the British agents.[153]

Of course, the Greek insurgency movement was responded to both officially and by the inhabitants of the region. As mentioned before, the first response was the establishment of Muslim bands to protect Muslim lives and properties against the Greek bands. Among these bands, the one headed by Topal Osman Ağa (1883-1923) in the Giresun region was quite powerful. Topal Osman Ağa, the son of a local notable family, had already been accused of atrocities perpetrated against the Armenians and Greeks during World War I and was sentenced in absence by the Military Tribunals *(Divan-ı Harb)* established in Istanbul.[154] When the Mayor of Giresun resigned due to health reasons in May 1919, Osman Ağa became the mayor of that city benefiting from the weaknesses of the central government in the region.[155] After assuming such an influential post, he began to organize Muslim youngsters and lead them in their struggle against the Greek insurgency movement. Between 1919 and 1921, the irregular troops of Osman Ağa fought against Greek bands, while in 1921 they joined the Turkish army in the Sakarya Battle.[156]

It should be noted that during this period of inter-communal clash, the irregular troops of Osman Ağa sometimes engaged in criminal activities and killed innocent Greeks while suppressing Greek insurgency activities around Greek villages. Despite his cruel methods, his struggle against Greek bands created a sense of security for the Muslim inhabitants of the region who had long suffered from Greek atrocities.

Consolidation of a nationalist movement in Ankara by Mustafa Kemal and the response of Muslim bands towards the Greek insurgency movement concerned the Greek authorities, first and foremost the Greek Prime Minister Elefterios Venizelos. Therefore, towards the end of 1920, he decided to apply an active military policy by leaving Turkish troops under crossfire through the Greek army which had already been positioned in Western Anatolia and Pontic troops, which

153 Yerasimos, op. cit., pp. 379-380.

154 Süleyman Beyoğlu, "Milli Mücadele'de Giresun'un Yeri ve Önemi," in *Giresun Tarihi Sempozyumu: Bildiriler,* Giresun: Giresun Belediyesi Yayınları, 1997.

155 Çapa, op. cit., p. 109.

156 Ibid., p. 113.

would immediately be established in Northeastern Anatolia. Accordingly, in a letter dated October 5, 1920, Venizelos argued to the British authorities that in order to press the Turkish government to accept the Sevres Treaty, such a dual operation was necessary; however, since Greece was incapable of engaging in such a large scale operation, he demanded 200,000 uniforms and 3 million pounds from Britain.[157] He wrote:

> The only radical remedy would be a new campaign with the object of destroying definitely the nationalist forces around Angora and the Pontus, with the following double consequences:
>
> 1. Of driving the Turks out of Constantinople which would form, together with the zone of the Straits, a separate state the existence of which would constitute a unique efficacious guarantee of the liberty of the Straits.
>
> 2. Constitution of a separate state at the Pontus with the Greeks that have remained there, and those who having emigrated to escape from the Turkish persecution during the last fifty years are dispersed in the south of Russia, and whose total number amounts to 800,000. This state, collaborating with Armenia and Georgia, would form a solid barrier against Islamism and eventually against Russian imperialism. The forces which Greece now disposes of would be sufficient to ensure the complete success of this expedition, but for political and financial reasons the Hellenic Government would be unable to assume the exclusive initiative and responsibility thereof, as in June last.[158]

In other words, Venizelos did not only demand material support from the British, but he reversed his policy of leaving Trabzon to a prospective Armenian state which would also include Pontic Greeks. He understood that the Nationalist forces under the command of Kazım Karabekir (1882-1948) would not allow the establishment of an Armenian state; therefore he began to press for an independent Greek state in the Black Sea region. The subsequent defeat of Armenians by the Turkish troops and the conclusion of the Treaty of Gyumri in December 1920 showed that the concerns of Venizelos became a reality.

Meanwhile, because of the insufficiency of irregular bands to cope with the Greek insurgency, the Turkish government established in Ankara in April 1920 quickly planned a long-lasting solution to this problem and combined several troops to

157 Ibid., p. 413.

158 Smith, op. cit., p. 131.

establish an army called the *Merkez Ordusu* (Central Army) in December of the same year. This army was sent to the Black Sea region to investigate the activities of clandestine Greek organizations and to suppress the Greek insurgency. Nureddin Paşa (1873-1932) was appointed as the commander of the *Merkez Ordusu*.

When Nureddin Paşa arrived in the region, he immediately began to adress the issue thoroughly. His investigations conducted at the Merzifon American College revealed how these missionary schools contributed to the Greek insurgency in Anatolia. According to a letter dated on February 16, 1921, Nureddin Paşa wrote to the General Staff that in the Merzifon American College and in its hospital, some documents, including the emblem and statute of the Pontus Society, were founded. What is more, it was also understood that, a teacher teaching Turkish language at Merzifon College, Zeki Efendi, was killed by Greeks because he had been thought to inform the Turkish authorities about what had been going on in the college.[159] Among the documents found in Merzifon, it was also revealed that the director of the college and the American representative in Samsun attempted to send some Greek and Armenian students to Europe without the permission of the Ottoman Empire.[160] As a result of these allegations, the college was closed, and except for two Americans, all of its personnel were deported.[161]

In addition to the establishment of the *Merkez Ordusu*, the second significant precaution taken against the Greek insurgency was the collection of weapons and ammunition from the Greek population living in the Pontus region.[162] This decision was evaluated by Greek sources as intentionally depriving the Pontic Greeks of their basic need for security; in other words, these sources argue that this policy of disarmament facilitated Turkish atrocities perpetrated against the Greeks. However, in order to provide security for the Muslim inhabitants of the region, such a decision was perceived as essential by the Turkish National Assembly. What is more, it became evident from the investigations of Nureddin Paşa that the Greeks of the region were armed excessively through the weapons transported from Greece to the region. Hence, the issue of disarmament was designed as a precaution to sustain security in the Black Sea area.

By the spring of 1921, a significant development forced the Turkish National Assembly to adopt more radical measures to protect the Muslim inhabitants of

159 *Pontus Meselesi*, op. cit., p. 424.

160 Ibid., p. 431.

161 Yerasimos, op. cit., p. 417.

162 Balcıoğlu, op. cit., p. 87.

the region, this time not only from Greek irregular bands, but from the attack of the Greek state. Accordingly, on March 16, 1921, the Turkish government signed the Treaty of Moscow with the Soviet Union. The Russians pledged to send money and ammunition to Anatolia via the Black Sea. Informed about the treaty, the Greek state sent several warships to the Black Sea in order to prevent the transportation from Soviet Union to Turkey. These warships bombed some of the Black Sea ports, most significant of which was İnebolu, which was bombed on June 9. As a result of these attacks, fearing a combined attack of Greek troops and the local Greek insurgents, the Turkish government adopted a decision ordering the relocation of Greeks aged between 15 and 50 into the interior parts of Anatolia. On June 19, the Commandment of the Central Army issued notification which ordered the relocation of the aforementioned Greeks to Malatya, Ergani, Maraş, Gürün and Darende. What is more, the notification declared that any maladministration during the relocation would be punished severely and the security of the women, elderly and children would be provided by the Turkish troops. However, this relocation was never fully applied and in November of the same year, it was totally abandoned.[163] According to the Turkish military statistics, the total number of relocated Greeks was 63,844.[164] Of course, as a result of weather conditions, hunger, diseases and more importantly as a result of the attacks perpetrated by irregular Turkish bands, some of these relocated Greeks either died or were killed. This process of relocation was a tragic incident; however, it was perceived at that time as a necessary precaution for the provision of internal security since the Greek army had already initiated its major assault against Turkish troops and advanced in Anatolia so much so that the Great National Assembly discussed the evacuation of Ankara. Fearing a Greek rear attack, the Turkish government attempted to secure its newly established control in the east through such precautions.

The final precaution to prevent Greek insurgency was the establishment of *İstiklal Mahkemeleri* (Independence Tribunals) to try those who had engaged in the activities of Greek bands. As a result of these trials on October 10, 1921, the Tribunal established in Sivas issued 177 death sentences (174 Greeks, 3 Muslims). The Metropolitan of Trabzon, Chrysanthos, the Metropolitan of Giresun, Lavrentios, and the major propagandist of the Pontus cause in Europe, Konstantin Konstantinides, were sentenced to death in absentia.[165]

163 Sarınay, op. cit., p. 49

164 Balcıoğlu, op. cit., p. 120.

165 Ibid., p. 51.

The precautions adopted by the Turkish government seemed unduly harsh and, indeed, they were so; however, even some Western historians admit that the decisions of disarmament, relocation and the trials in the Independence Tribunals had a certain level of justification because of the solemn threat perception of the time. For example, Smith writes that:

> The Turks claimed, correctly, that there were revolutionary and separatist elements in the Pontus who were a potential threat to the rear of their army in the event of a Greek offensive. It was true that certain Pontine Greeks nourished ambitious plans of raising irregular troops with the aid of regular officers from the Greek army for the liberation of the province. They wrote long and unconvincing letters to Venizelos soliciting his help in launching their projects...It was true also that the Greek forces did their best to invite Turkish reprisals by bombarding some of the Turkish Black Sea ports from the sea.[166]

What is more, archival evidence demonstrates that the security concerns of the Turkish government were not totally exaggerated. The meeting of Colonel Sariyannis, the deputy chief of General Staff of the Greek Army, with British politician and diplomat Philip Kerr (1882-1940) on March 1, 1921, reflected that Turkish suspicion about a Greek attack on Pontus region was not an unfounded fear. According to Yerasimos, in this meeting Sariyannis offered to Kerr that if the Greek offensive towards Ankara from the West would be insufficient, the "...Greek army could land [at] Pontus, establish military bases where [the] Greek population lived and then occupy Sivas and Erzurum with the help of Armenians."[167]

As a result of these military and legal precautions in the beginning of 1923, the Greek insurgency came to an end. However, Turkish-Greek relations had been so disturbed during these volatile and turbulent years that their coexistence became almost impossible. Therefore, a final resolution was designed by the Turkish and Greek states together under the mediation of the international community, which was the Turco-Greek exchange of populations. Without a brief examination of this process, the solution of the Pontus Question cannot be understood properly. As such, the last part of this chapter of the paper is devoted to this issue.

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166 Smith, op. cit., p. 211.

167 Yerasimos, op. cit., p. 418. Yerasimos acquired this excerpt from Ksenofon Stratigos, *I Ellas en Mikra Asia (Greece in Asia Minor)*, Athens: [Uncited Publisher], 1925, p. 173.

5. The Turco-Greek Exchange of Populations

The disintegration of multi-ethnic empires after the dissemination of nationalist ideas produced population transfers or exchanges since the ethnic components of these empires, which had been living in peace for centuries, became reactant to each other. The reason for this discontent is that since these communities had been scattered within the territories of these multi-ethnic empires, each of them tried to unite all its members under the same territory. This resulted in an irredentist version of nationalism producing territorial claims for the other's living space. This was the case in the Ottoman Empire. As a result of the disintegration process, former constituent communities began to pursue irredentist policies claiming the territories even if the claimant constituted only a tiny minority. Such policies made coexistence of communities almost impossible. The solution found to ameliorate further clashes was to design an exchange of population which satisfied both sides.

The idea of exchange of populations in the Ottoman Empire first emerged after the Balkan Wars. In 1913, the Ottoman government signed a convention with the Bulgarian government as a follow up to the Treaty of Constantinople, which had been signed on September 29, 1913 ending two years of continuous conflict. According to this convention, 48,570 Muslims from the Bulgarian territory were exchanged for 46,764 Bulgarians from Eastern Thrace.[168] Indeed, such a policy was so novel for the international community that according to Harry J. Psomiades, this was the first interstate treaty in modern history providing for an exchange of population.[169] The international community had been accustomed to more bloody resolutions of the population problems throughout history and such a mild and peaceful policy surprised everyone.

The Turco-Bulgarian exchange of populations had also been perceived by Elefterios Venizelos, the then Greek Prime Minister, as a good solution for resolving the contention between Turkish and Greek populations living in Greece and in the Ottoman Empire respectively. That is why he suggested the Turco-Greek exchange of populations in 1914, when the Ottoman government decided to expel some of the Greek inhabitants of the Western Anatolian littoral in order to settle Muslim emigrants from Macedonia who had been pouring into the Ottoman Empire by the thousands. Such an offer was also welcomed by the Turkish side. According to Psomiades, "[t]he success of this exchange

168 Onur Yıldırım, *Diplomacy and Displacement: Reconsidering the Turco-Greek Exchange of Populations, 1922-1934*, New York & London: Routledge, 2006, p. 40.

169 Harry J. Psomiades, *The Eastern Question: The Last Phase: A Study in Greek-Turkish Diplomacy*, New York: Pella Publishing Company, 2000, pp. 53-54.

subsequently led the Turks to attempt to solve the much more significant problem of the large Greek minority in Turkey by legal ratification of another *fait accompli.*"[170] However, the outbreak of World War I made this initiative futile.

The idea of a Turco-Greek exchange of populations was revitalized once more after the Greek defeat in Anatolia by the Turkish forces united under the leadership of Mustafa Kemal. After the final and decisive defeat of Greeks in late August 1922, the Greek army began to retreat. When massive numbers of Greeks left Anatolia with the invading Greek army by September 1922, Greece was caught unprepared in resettling and accommodating these refugees. Even if they emulated Ottoman institutions of refugee administration, the Greek state failed to deal effectively with the incoming population.[171]

With the impossibility of coexistence of the Greek and Turkish communities due to the bitter experiences of World War I and the Turkish struggle for independence mainly against the Greeks, when the Turkish and Greek delegations came together to discuss the situation after the Turkish War of Independence, both sides were ready to revitalize the idea of exchange of populations. Accordingly, Onur Yıldırım summarizes the process as such:

> Almost a decade later than the abortive exchange plan and the two abortive diplomatic steps taken in Paris in 1919 and in Sevres in 1920 and initiated principally by the Greek statesmen (primarily by Venizelos himself), the ruling elite in Turkey and Greece which anonymously saw respective minorities as a major source of friction finally found a legitimate platform upon which to renegotiate and ultimately adopt, albeit on a compulsory basis, the earlier project of 1914. Thus under the patronage of the Allied states, the ruling classes of Turkey and Greece proceeded with the forceful removal of the minorities, silhouettes of the Ottoman past, in order to consolidate the formation of their respective states. Accordingly in the early stages of the peace negotiations at Lausanne, the two sides reached a quick agreement on an agenda to exchange the majority of their minorities and signed, to this effect, the Convention Concerning the Exchange of Greek and Turkish Populations on January 30, 1923.[172]

During the Lausanne negotiations, although it was Venizelos himself who welcomed a compulsory exchange of populations between Turkey and Greece

170 Ibid., p. 54.

171 Ibid., p. 7.

172 Ibid., p. 8.

before World War I and although he had still been aware that it would be a very plausible option to settle inter-communal clashes, he aimed "...to have it appear that such a brutal process was forced upon him by the Turks."[173] However, still, the Turco-Greek exchange of populations was concluded after a series of negotiations as a separate convention attached to the main text of the Treaty of Lausanne. The first article of the Convention stipulates:

> As from the 1 May 1923, there shall take place a compulsory exchange of Turkish nationals of the Greek Orthodox religion established in Turkish territory, and of Greek nationals of the Moslem religion established in Greek territory. These persons shall not return to live in Turkey or Greece respectively without the authorization of the Turkish government or of the Greek government respectively.[174]

However, there were exceptions to the exchange of populations. Greeks living in Istanbul and the Turks living in Western Thrace were exempted from exchange. After the conclusion and ratification of the Treaty of Lausanne, the exchange of populations had started on both sides in late December 1923 and was completed one year later in December 1924.

The process of the execution of exchange of populations is not related much to the purposes of this paper; however, reference to some details regarding the number of exchanged populations might be useful. The number of refugees who arrived in Greece from the beginning of the Balkan Wars in 1912 until the end of 1920 was 535,000 and approximately 190,000 of them were from Anatolia.[175] On the other hand, the number of Muslim refugees who arrived in Anatolia and Istanbul in the same period was 413,922 and 143,189 of them poured in from the territories lost to Greece in the Balkan Wars.[176] As a result of the exchange of populations in 1924, the number of Greek refugees coming to Greece was 1,221,849 and 1,104,216 of them had come from Anatolia and Thrace. On the other hand, the number of Muslim refugees arriving in Turkey was 388,146 and most of them came from Greek Macedonia and the Aegean islands.[177]

The legal dimension of the population exchange had not ended with the conclusion of the main convention. There were additional legal mechanisms

173 John A. Petropulos, "The Compulsory Exchange of Populations: Greek-Turkish Peace-making, 1922-1930," *Byzantine and Modern Greek Studies*, Vol. 2, pp. 135-160, p. 142, also cited in Yıldırım, op. cit., p. 45.

174 Yıldırım, op. cit., p. 109.

175 Ibid., p. 88.

176 Ibid., p. 90.

177 Ibid., p. 91.

created to solve the problems of this process. For example, on December 1, 1926, the Turkish and Greek governments signed the Athens Convention, which stipulated that the Turkish and Greek states would take the possession of the abandoned properties. This convention resulted in many problems and contentions on both sides which had finally been resolved with the Ankara Convention signed on October 30, 1930. With this convention, the exchange of populations was officially completed and the ownership of all the abandoned properties of the exchangeable and non-exchangeable was legally transferred to the respective governments.[178]

The exchange of populations was also the final resolution of the Pontus Question since the Pontic Greeks were subject to this process. Although many Greek sources claiming the occurrence of a Pontic Greek "genocide" tend to label the exchange of populations as a final phase of the extermination of this community, indeed, the exchange of populations was designed not by the Turkish government itself, but as a result of mutual understanding between Turkey and Greece. Of course, uprooting thousands of people from their homelands had been a quite traumatic experience. Both the Greeks living in Turkey and the Turks living in Greece had been residents of their respective countries for centuries. When the art of coexistence, which was a peculiar and compulsory aspect of multi-ethnic empires, had come to an end after the disintegration of the Ottoman Empire, the exchange of populations was perceived by both Turkish and Greek authorities as the only viable option to provide peace and tranquility for the respective peoples.

IV. Reflecting Upon the Pontus Question: Current Ramifications

Although the Pontus Question had been legally finalized with the exchange of populations as an annex to the Treaty of Lausanne, during the late 1980s and early 1990s, it has once more revived by the Greek state on the one hand and the Greek diaspora on the other. There are several reasons for this revival after more than half a century after the closure of this case. The first reason was the deterioration of bilateral relations between Greece and Turkey, particularly after the Turkish intervention in Cyprus in 1974 and the subsequent inter-state crises in the Aegean such as the territorial sea, continental shelf and remilitarization of the Greek islands.[179] The problems regarding the Aegean were resurfaced after the

178 Ibid., p. 117.

179 For a detailed account of Turkish-Greek relations in the post-Cold War era, see Dimitrios Costas (ed.), *The Greek-Turkish Conflict in the 1990s: Domestic and External Influences*, London: Macmillan, 1991.

codification of the Law of the Sea in the early 1980s and exacerbated by the early 1990s.

The second reason was the successful resurrection of the Armenian genocide allegations starting from the second half of the 1980s. Indeed, the Armenian diaspora, which had understood that terrorist activities would not produce the intended result, namely recognition of the Armenian genocide allegations by Turkey, began to politicize the issue in a way to provide international support for the Armenian cause so as to place pressure upon Turkey. The success of Armenian propaganda techniques, the most significant of which was the decision adopted by the European Parliament in 1987, attracted Greek attention for utilizing similar methods with Turkey. This would not only put Turkey under pressure regarding bilateral problems with Greece, but also consolidate the coherence and unity of the Greek diaspora as it had done for the Armenian diaspora.

Hence, from the early 1990s onwards, Greek propaganda claiming that the Pontic Greeks were subject to "genocide" during and after World War I just as were the Armenians began to produce significant outcomes. The activities of the Greek diaspora was so intensified outside Greece that the first official initiative regarding the recognition of the Pontic Greek genocide allegations was surprisingly not initiated by Greece but by the United States. Accordingly, on February 23, 1994, New York Senator Alphonso Marcello d'Amato submitted a draft resolution to the U.S. Senate entitled "A Call for Humanitarian Assistance to the Pontian Greeks." In this resolution it was stipulated that the Pontic Greeks escaped from the conflictual environment that they had been living in and since then they "...have found themselves alternately both discriminated against as well as innocent victims of brutal wars."[180] Although the resolution did not clearly mention Pontic Greek "genocide" it still stipulated that particularly under the Ottoman Empire and the Soviet Union, Pontian Greeks "...have been subject to severe discrimination and torture" and "...have historically been denied their right to develop their own culture and study their history." The resolution concluded that the U.S. "...should take the lead in organizing international humanitarian efforts to aid this destitute population."[181]

It was quickly understood from the resolution presented to the U.S. Senate that the effort of Senator d'Amato was an organized effort with the Greek Parliament, for just one day after the submission of the draft resolution, the Greek Parliament

180 For the full text of the resolution, see http://bulk.resource.org/gpo.gov/bills/103/sr182is.txt.pdf.

181 Ibid.

unanimously issued a law recognizing the Pontic Greek genocide allegations on February 24, 1994 and this law, No. 2193, was approved by the then President Constantine G. Karamanlis on March 7. According to Article 1 of the law, 19th of May is determined as the "Day of Remembrance of the Genocide of the Hellenes of Pontos"; whereas Article 2 states that "[t]he character, the content, the agency and the method of organization of commemorative events are defined by Presidential decree, issued on the proposal of the Minister of the Interior following the opinion of the recognized Pontian associations."[182] It was not determined in the law why 19th of May was chosen as the day of remembrance; however, the date was quite symbolic because it was the day when Mustafa Kemal landed in Samsun and, according to Turkish historiography, initiated the Turkish struggle for independence. As noted above, Mustafa Kemal was officially sent Samsun to report on the activities of the Pontic Greeks. Thus the date chosen to indicate the Pontus "genocide" was quite meaningful for the Greeks.

A second significant initiative for reflecting the Pontus Question towards the international community was concretized in 1998. As indicated in the first chapter of this paper, a written statement was submitted by the International League for the Rights and Liberation of Peoples, a non-governmental organization which had a special consultative status in the United Nations. On February 24, 1998, United Nations Economic and Social Council announced that the Secretary-General of the United Nations received that written statement entitled "A People in Continued Exodus."[183] The details regarding this written statement was discussed above; therefore, it is sufficient to recapitulate once more that although in the document the concept of "genocide" was never utilized, the claims it included could be considered as a summary of a bulk of the literature on the Pontic Greek "genocide."

Turkish-Greek relations had warmed considerably after the earthquake in Turkey on August 17, 1999. The Greek assistance to Turkey immediately after this catastrophic event and subsequent Turkish assistance to Greece in another earthquake ameliorated conflictual relations. As a result of these developments, the Greek government became more careful in utilizing the concept of "genocide" in its official documents; however, in 2001 this created as significant crisis in Greece. In 1999, a presidential decree was adopted in the Greek Parliament, which accused Turkey of massacring the Orthodox Greeks in Anatolia during the Turkish War of Independence, labeled these massacres as "genocide", and offered

182 The full text of the resolution is provided by the Turkish Ministry of Foreign Affairs.

183 For the full text of the statement, see http://daccessdds.un.org/doc/UNDOC/GEN/G98/106/67/PDF/G9810667.pdf?OpenElement

to make September 14th a remembrance day for the "...alleged mass murder of Greeks in 1922 during the war that led to Turkey's establishment as a modern state."[184] This decree would be different from the one adopted in 1994, which solely recognized the Pontic Greek genocide allegations. Rather, it recognized the alleged massacres perpetrated against the Greeks living particularly in Western Anatolia and referred to the fire in İzmir, while determining the date of September 14th as a remembrance day. Two years after its adoption, in February 2001, the decree was signed by the ministers of the Greek government. This was reacted to by the Turkish Foreign Ministry arguing that such a presidential decree would deteriorate newly ameliorating relations between Greece and Turkey.[185] Finally, the then Greek Prime Minister Costas Simitis, seeking to ease tension with Turkey asked officials to remove the word "genocide" from the decree.[186] However, he was reacted against by not only the Greek diaspora but also by some Greek non-governmental organizations, showing the degree of awareness regarding the issue in Greece.

After these developments, starting from early 2000s, particularly through the efforts of the Greek Diaspora, several U.S. states began to adopt resolutions in their local legislative bodies or the governors of these states began to make official declarations recognizing the Pontic Greek genocide allegations. Such declarations started with the proclamation made by the Governor of New York, George Pataki, on June 13, 2002, in which he stipulated that:

> ...from 1915-1923, Pontian Greeks endured immeasurable cruelty during a Turkish Government-sanctioned campaign to displace them; an estimated 353,000 Pontian Greeks died while being forcibly marched without provisions across the Anatolian plains to the Syrian border and those who survived were exiled from Turkey and today they and their descendants live throughout the Greek diaspora.[187]

As it can be seen, it was first and foremost the relocation of Pontian Greeks particularly in the years after the World War I that was labeled as "genocide" in this proclamation. As mentioned above, the number of relocated Greeks according to the Turkish archives is quite clear; 63,844 Greeks were relocated to the interior parts of Anatolia and many of them survived after the relocation and they left the country after the exchange of populations.

184 "Greek PM Moves to End 'Genocide' Row with Turkey," *Reuters*, 4 March 2001.

185 "Turkey Angered by Greek Accusations of Genocide," *Reuters*, 13 February 2001.

186 "Greek PM Moves to End 'Genocide' Row with Turkey," *Reuters*, 4 March 2001.

187 For the full text of this proclamation, see http://www.ahiworld.com/061302.html

Another significant point in the declaration of the New York Governor was his citation of a book entitled *Not Even My Name*,[188] which was not an academic publication, as one of the few English-language accounts of the Pontic "genocide".[189] This book is written by Thea Halo and includes the memoirs of a Greek woman experiencing the relocation process. Treating this book as an academic publication proving the Pontic Greek "genocide" seemed controversial; however, it would later be something like a custom to refer this book while claiming that a Pontic Greek "genocide" occurred.

Following the proclamation of the Governor of New York, either through declarations from their governors or through their legislative organs, six states in the United States recognized the Pontic Greek genocide allegations. The first one of such recognitions came from South Carolina in 2002. Accordingly the Governor of South Carolina, Jim Hodges, issued a proclamation in which he proclaimed December 8, 2002 as the "80th Anniversary of the Burning of Smyrna and Commemoration of the Persecution of the Greeks of Asia Minor."[190] In text of the proclamation, it was stated that "...tragically, hundreds of thousands of Greeks, Armenians and Assyrians were killed or displaced from 1915-1923 in areas surrounding the Black Sea coast, Pontus and Smyrna" and "...in 1922, Smyrna, the largest city in Asia Minor was sacked and burned and its inhabitants murdered."[191] Similarly, the Senate of South Carolina made almost the same proclamation sponsored by Senator André Bauer.[192] Relating Pontic Greek genocide allegations with the incidents experienced in İzmir after the Greek retreat in September 1922 was not peculiar to this proclamation but an often encountered practice. While those arguing that a Pontic Greek "genocide" happened, they also assert that the burning of İzmir by Kemalist forces was the final point in the policy of extermination of the Anatolian Greeks; yet, they tend to ignore that the reason for the fire burning much of the city has not been clearly determined. What is more, the Greeks of İzmir welcomed the Greek army invading Western Anatolia and supported it until the final days of its defeat; hence, they were fearful of Turkish revenge and retreated with the Greek army to Greece. Of course, under war conditions, some civilians might have killed or injured; however, it is quite evident that either according to the principles of international law or the historical facts, these incidents could not be labeled as "genocide".

188 Thea Halo, *Not Even My Name*, New York: Picador, 2001.

189 http://www.ahiworld.com/061302.html

190 For the full text of this proclamation, see http://www.angelfire.com/folk/pontian_net/News/proclomations.htm

191 http://www.angelfire.com/folk/pontian_net/News/proclomations.htm

192 For the full text of this proclamation, see http://www.angelfire.com/folk/pontian_net/News/proclomations.htm

Turning back to the U.S. states recognizing the Pontic Greek genocide allegations, New Jersey followed South Carolina. In a joint meeting of the Senate and the General Assembly of the State of New Jersey, a more detailed resolution compared to the proclamation of the Governor of South Carolina was adopted. Even the Pontic Greek "genocide" was considered in the resolution as "the first mass genocide of the twentieth century," in which "...353,000 Greeks living in Pontus were murdered and an equal amount forced to flee their homeland in terror by the Ottoman Empire during the period of 1914 to 1922."[193] The resolution concluded with a statement "...commemorating the Pontian Greek Genocide of 1914-1922, and commends the Pontian Greek people for their significant contributions to civilization," while there is no mention of what kind of contributions Pontic Greeks made to civilization.[194]

On December 17, 2003, this time the Senate of Pennsylvania adopted a resolution commemorating the Pontic "genocide" of 1915-1923 with almost the same wording as that of the New Jersey Resolution.[195] The Florida House of Representatives did the same on April 19 2005.[196] In 2006, there were two more recognitions. The first one was made by Rod R. Blagojevich, the Governor of Illinois, on April 15. It was stated that between 1914 and 1923, "...353,000 Pontian Greeks and an estimated 150,000 people from the rest of Asia Minor died during a "forced march without provisions across the Anatolian Plains to the Syrian border."[197] What is more, like the law adopted by the Greek Parliament, the Governor proclaimed May 19, 2006 as "Greek Pontian Genocide Remembrance Day." The final recognition was made by the State of Massachusetts through a resolution filed by Theodore Speliotis "commemorating the Pontian Greek Genocide of 1919 to 1922."[198] Meanwhile in Saloniki, a Pontic Greek "genocide" monument was erected on May 7, 2006. Attending to the ceremony for the opening of the monument were not only the Mayor of Saloniki, Vassilios Papayorgopoulos, but also other political and military figures. This was reacted to by the Turkish Foreign Ministry with a declaration on May 11 which argued that the Pontic Greek genocide allegations had been a simple and

193 For the full text of the resolution, see http://www.angelfire.com/folk/pontian_net/News/NEW_JERSEY.htm

194 Ibid.

195 For the full text of the resolution, see http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2003&sessInd=0&billBody=S&billTyp=R&billnbr=0188&pn=1327

196 For the full text of the resolution, see http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=17788&

197 For the full text of the proclamation, see http://www.library.sos.state.il.us/departments/index/register/register_volume30_issue17.pdf

198 See http://www.mass.gov/legis/journal/hj051806.pdf

intentional misreading of the historical facts and such developments disturbed Turkish-Greek bilateral relations.[199]

Similarly, in 2007 and 2008, several official and semi-official meetings were held in different cities of Greece particularly on May 19th of each year for the commemoration of the Pontic Greek "genocide." After all these meetings, the Turkish Foreign Ministry has always issued notifications stipulating that these allegations had no historical basis and served for nothing but the deterioration of bilateral relations between Turkey and Greece.[200]

In addition to these developments, on December 15, 2007, a non-governmental organization, the International Genocide Scholars Association (IAGS), issued a resolution recognizing the Pontic Greek genocide allegations. Indeed, the IAGS already recognized the Armenian "genocide" in a resolution that it had adopted in 1997. The 2007 resolution asserted that the activist and scholarly efforts have resulted in widespread recognition of the Armenian "genocide," while there has been "...little recognition of the qualitatively similar genocides against other Christian minorities of the Ottoman Empire."[201] The association further stipulated in the resolution that the "...Ottoman campaign against Christian minorities of the Empire between 1914 and 1923 constituted a genocide against Armenians, Assyrians, Pontians and Anatolian Greeks" and demanded the Turkish government to acknowledge all these "genocides" against these populations, "...to issue a formal apology, and to take prompt and meaningful steps towards restitution."[202]

All in all, the resurfacing of the Pontic Greek genocide allegations has followed a parallel course with the deterioration of the Turkish-Greek relations. Increasing reference to these allegations during the 1980s after the Turkish intervention in Cyprus resulted in the adoption of a law in the Greek Parliament in 1994 and subsequent recognition by six states of the United States due to the efforts of the Greek diaspora in this country. However, Turkish Foreign Ministry continuously responded these claims by arguing that asserting such a misreading of history would only serve for the development of a mutual enmity between the Greek and Turkish nations.

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199 For the full text of this declaration see http://www.mfa.gov.tr/no_72—-11-mayis-2006_-sozde-_pontus-helenizmi-soykirimi-aniti_-hk_-.tr.mfa

200 For some of these declarations see http://www.mfa.gov.tr/no_88—26-mayis-2008_-_sozde-pontus-soykirimi-anma-gunu_—etkinlikleri-hk_.tr.mfa

201 For the full text of the resolution see...

202 Ibid.

Conclusion

The disintegration of the Ottoman Empire, which had once controlled one of the most strategic regions in the world for centuries, had been a very problematic process; that's why the issues such as the Armenian or Pontic Greek questions are still discussed. These difficult and painful years of regional history from the late nineteenth and early twentieth centuries have become the subject matter of a plethora of literature. The disturbance of the peace and tranquility of peoples living in the same territory for centuries was compounded with a series of wars, first World War I and then the Turkish War of Independence, as a result of which thousands of people, both Muslim and non-Muslim, had lost their lives and properties. While, for example, thousands of Muslims either were killed or forced to leave their properties in the Balkans in the Balkan Wars, thousands of Armenians or Greeks experienced similar catastrophes. What should be done in studying these periods, therefore, is not to exaggerate or ignore the bitter experiences of Muslims or non-Muslims, but to evaluate the history of this problematic age as a whole without establishing extremely rival historiographies to further alienate the peoples of the region.

Unfortunately, the literature regarding the Pontic Greek genocide allegations established a radical historiography which even sometimes becomes difficult to grasp. For example, most of the Greek historians have never mentioned the massacres perpetrated by Greeks against the Muslims living on the Greek Peninsula during the years of the Greek Revolution and the Balkan Wars; they tended to ignore the war crimes against the Turks living in Western Anatolia during the Greek occupation of the region between 1919 and 1922 although these war crimes were clearly referred to in Article 59 of the Treaty of Lausanne as such: "Greece recognizes her obligation to make reparation for the damage caused in Anatolia by the acts of the Greek army or administration which were contrary to the laws of war." What is more, there were even several Greek accounts depicting the retreat of invading Greek army as a massacre perpetrated by Turkish troops against the Greeks. Of course, such accounts were attempted for an intentional misreading of history to convince the international community that Turkish history is replete with many "genocides." However, there were several more objective Greek historians who try to put forward a more objective account of what had happened in those years.

Politization of history through the quasi-academic and prejudiced works has recently resulted in the reemergence of the Pontus Question. Following in the footsteps of the Armenian lobby, the Greek diaspora tries to increase the Pontic consciousness and make the international community familiar with the Pontic

Greek allegations. Up to now, it can be said that the Greek allegations have not received international recognition. Still, Greek attempts such as the commemoration of the Pontic "genocide" through ceremonies organized by central and local authorities in Greece, publication of several books and articles on the Pontus Question, and the works of the Greek diaspora in European countries and the U.S. for a wider reception of Pontic Greek claims continued. However, such policies do not result in what they have been designed for; rather they served for further distrust between the Greek and Turkish nations. Without objective research based on archival documents and initiated not for distorting historical facts but for setting forth the truth, it would be impossible to accurately understand the maladies of the past and to locate the relevant cures to prevent their future occurrence. In sum, whatever cost it has, truth should be respected; if history becomes enslaved by politics, then the tragic moments of the past will be relegated to a simple propaganda overshadowing reason and commonsense.

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Özet: *İkinci Dünya Savaşı'ndan sonra Avrupa topraklarında en büyük soykırımın, insanlığa karşı suçların ve diğer savaş suçlarının gerçekleştiği eski Yugoslavya topraklarında kanlı savaşların kışkırtılmasında, Sırbistan Yazarlar Birliği ve Sırp Bilim ve Sanat Akademisi'nin dışında, Sırp Ortodoks Kilisesi de önemli ideolojik rolü oynamıştır. Bölgedeki savaşların kışkırtılmasında Sırp Ortodoks Kilisesi'nin rolüne ve etkisine tanıklık eden birçok belge bulunmaktadır. Ne var ki günümüzde bile Sırbistan'daki siyasi partiler, savaşlardaki rolünden dolayı Sırp Ortodoks Kilisesi'nden özür dilemesini istemediği gibi, en büyük milliyetçiler kilisenin etrafında toplanmaya devam etmektedir. Bu makalenin amacı, Sırp Ortodoks Kilisesi'nin Hırvatistan, Bosna-Hersek ve Kosova'da yaşanan savaşlardaki rolünü kanıtlara dayalı bir şekilde ortaya koymaktır.*

Anahtar kelimeler*: Sırp Ortodoks Kilisesi, milliyetçilik, savaş, Sırbistan, Kosova, Bosna-Hersek, Hırvatistan.*

ROLE OF SERBIAN ORTHODOX CHURCH IN WARS OVER FORMER YUGOSLAVIAN TERRITORY

Abstract: *It was not only the Association of Writers of Serbia and Serbian Academy of Science and Arts but also the Serbian Orthodox Church that played a significant ideological role in agitating the bloody wars on former Yugoslavian territory, which witnessed the biggest genocides, crimes against humanity and other war crimes in the post World War II period Europe. There exist many documents that testify the role and influence of Serbian Orthodox Church in provoking the wars in the region. Nonetheless, even today Serbian Orthodox Church is not asked by political parties of Serbia to apologize due to its role in*

those wars; and the deepest nationalists continue to gather around the Church. The purpose of this article is to present on the basis of evidence the role of Serbian Orthodox Church in wars that took place in Croatia, Bosnia-Herzegovina, and Kosovo.

***Keywords**: Serbian Orthodox Church, nationalism, war, Serbia, Kosovo, Bosnia and Herzegovina, Croatia.*

I. Giriş

Yugoslavya Sosyalist Federal Cumhuriyeti (YSFC) cumhurbaşkanı Yosip Broz Tito'nun ölümünün ardından, "tüm ulus ve ulusal toplulukların kardeşlik ve birliği" sloganının benimsendiği devlette 1980'li yıllarda, Sırbistan'ın öncülüğünde, daha önce bastırılmış olan milliyetçilik akımı canlanmaya başlamıştır. Milliyetçilik tohumlarının ilk işaretleri Kosova'da ortaya çıkmıştır. Büyük Sırbistan rüyasını gerçekleştirmekle görevlendirilen ve Sırp akademik çevrelerince seçilen Slobodan Miloşeviç ve diğer Sırp devlet yöneticileri, Sırp Ortodoks Kilisesi'nce propagandası yapılan "kutsal Sırp toprağı-Kosova" mitolojisinin bekçiliğine soyununca, o sıralarda tahayyül bile edilemeyen sonuçların yaşanmasına sebebiyet vermiştir.

Kosova 1987 yılında iki çeşit milliyetçilikle karşılaşmıştır. Biri Miloşeviç'in siyasi milliyetçiliği, diğeri de kilise milliyetçiliğidir (filetizm). Kilise milliyetçiliği, kilisenin birinci derecede kendi kavmini, ikinci derecede ise dini önemsediği bir durumdur. Kosova'da bir araya gelmiş olan ve yakınlıkları günümüzde bile süren bu iki milliyetçilik akımının neticesinde, Sırp Ortodoks Kilisesi kendi doğasında olmayan bir rolü siyasetçilerden devralmıştır. Kilise böyle bir rolü toplumda yer edinebilme amacıyla üstlenmiş ve en sonunda bunu başarmıştır. Kimilerine göre Sırp Ortodoks Kilisesi, bir zamanlar YSFC'nin toplumsal hayatında Komünist Birliği'nin oynadığı baskın rolü tamamen devralmıştır.[1]

II. Sırp Ortodoks Kilisesi, Kosova Mitolojisi ve Milliyetçilik

Sırp Ortodoks Kilisesi, 28 Haziran 1389 yılında Osmanlılara karşı yürütülen Birinci Kosova Savaşı'na ilişkin mitolojik söylemleri ve bu savaşta Sırpların büyük zafer elde ettiklerine dair efsaneyi, eski Yugoslavya coğrafyasında

1 "Mozda ce Bas Amfilohije Poceti Proces Otvaranja Srpske Crkve", *Vijesti,* (30 Aralık 1997).

yaşanmış olan tüm savaşlara halkı sürüklemede bir araç olarak kullanmıştır. Hatırlatmak gerekirse, Sırp Ortodoks Kilisesi 19. yüzyılın sonlarında 28 Haziran'ı Aziz Vitus günü (Vidovdan) adı altında dini bayram olarak belirlemiş, bu bayram da zamanla Sırp ulusal mitolojisinin temel unsurlarından biri haline gelmiştir. Kosova mitolojisinin ardında Kosova için intikam alınması gerektiği algısı yatmaktadır. Bir başka ifadeyle, Kosova mitolojisi alınması gereken kanlı ve acımasız intikamın bir sembolü olarak algılanmıştır.[2]

Sırplar arasında yaygın olan ancak doğru olmayan bir görüşe göre, Kosova, Sırp devletinin çöktüğü, egemenliğinin yok edildiği ve Türklere karşı köleliğin başladığı bir yerdir. Sırp kilisesi, Türk hâkimiyetinin sürdüğü dönemde kendi halkının kimliğini koruma çabalarıyla, Orta Çağ Sırp devletini hep yüceltmeye çalışmıştır. Bu çerçevede adeta mitolojik söylevler geliştirilmiştir. Örneğin, Birinci Kosova Savaşı'nda Osmanlılar tarafından öldürülen Sırp Prensi Lazar bir aziz olarak gösterilmektedir. Sultan Birinci Murad'ı öldüren Miloş Obiliç ise, kahramanlığın ve intikamın sembolü olarak değerlendirilmektedir.[3] Bu yüzden Vidovdan genel olarak, Türklere ve Müslümanlara ait olan her şeye karşı kanlı ve acımasız bir şekilde intikam almanın sembolü olarak algılanmaktadır. Orta Çağ'daki Sırp Nemanya hanedanlığının görkemleştirilmesinde Sırpların kültürel alandaki seçkinleri öncüllük etmiştir. Ancak, Kosova mitolojisinin varlığını sürdürmesinde, söz konusu mitolojik söylemlere ilişkin yorumlar ve açıklamalar geliştiren Sırp Ortodoks Kilisesi'nin rolü büyük olmuştur. 1912-1913 yıllarındaki Balkan Savaşlarının ardından Kosova Sırbistan'ın sınırları içine dahil edilmiş olmasına rağmen, Kosova mitolojisi bütün canlılığıyla sürdürülmeye devam etmiştir.[4]

1980'li yılların başlarında, Sırp Ortodoks Kilisesi bünyesinde, Amfilohiye Radoviç, Atanasiye Yeftiç ve İriney Buloviç'in başında bulundukları "Yustinovci"[5] veya "Yastrebovi" isimleriyle bilinen radikal duruşlu bir grup ön plana çıkmaya başlamıştır. Kosova'daki olayları maniple eden, kilisenin bu grubu olmuştur. Nisan 1982'de Kilise, söz konusu grubun liderliğinde, Sırbistan ile YSFC'nin en yüksek devlet organlarına ve kutsal başrahipler meclisine çağrıda bulunarak, Kosova'daki Sırp milletinin "manevi ve biyolojik varlığının"

2 Zvezdan Folic, "Kosovski Mit u Projekcijama Srpske Pravoslavne Crkve", *Montenegrina,* Karadağ kültürüne ilişkin dijital kütüphane, www.montenegrina.

3 Olga Zirojevic, "Kosovo in the Collective Memory", *The Road to War in Serbia: Trauma and Catharsis*, Nebojsa Popov içinde (Budapeşte: Central European University Press, 2000), ss. 190-191.

4 Zvezdan Folic, "Kosovski Mit u Projekcijama Srpske Pravoslavne Crkve", *Montenegrina,* Karadağ kültürüne ilişkin dijital kütüphane, www.montenegrina.

5 Yustinoviçi ismi, 1894 ile 1979 yılları arasında yaşamış olan peder Yustin Popoviç'in ekolünden gelenleri vurgulamak için kullanılmaktadır. Yustin Popoviç Çeliye manastırının arhimandriti, din bilimi doktoru ve Belgrad Üniversitesi'nin profesörlerinden biriydi.

korunması için harekete geçilmesini talep etmiştir. 1983 yılının sonunda, Sırp Ortodoks Kilisesi'nin bir yayını olan "Pravoslavle"de Atanasiye Yevtiç'in "Kosova'dan Yadovno'ya" adlı yazı dizisi yayınlanmaya başlamıştır. Yazı dizisinde Kosova'daki Sırpların saldırılara ve cinsel tecavüzlere maruz kaldıkları; kilise mensuplarına kötü muamelenin yapıldığından ayrıntılı bir biçimde bahsediliyordu. Yevtiç yazı dizisinin devamında, Kosova olaylarını bir kenara bırakıp, İkinci Dünya Savaşı yıllarında Sırpların Hırvat Ustaşalarınca[6] katledilmiş olmasından söz etmeye başlamıştır.[7]

Sırp Ortodoks Kilisesi içinde Amfilohiye, Atanasiye ve İriney'e muhalif olan Metropolit Yovan, adı geçen üçlünün Sırbistan Yazarlar Birliği bünyesinde de etkili olduğundan bahsediyordu. Oysa Sırbistan Yazarlar Birliği, Sırp Bilim ve Sanat Akademisi'yle birlikte "Sırp intikamı" anlayışının temellerini atmıştır. Metropolit Yovan'a göre, Sırp Ortodoks Kilisesi'ndeki bazı bireyler, bilerek ya da bilmeyerek tehlikeli ve kanlı bir savaş oyununa sürüklenmişti. Ortodoks Teoloji Fakültesi hocası Vladeta Yerotiç de Sırp Ortodoks Kilisesi'nin, dine hiçbir zaman değer vermeyen Sırp milliyetçilerinin oyununa geldiği uyarısında bulunmuştur.[8]

II. Eski Komünistler ile Yeni Piskoposların Koalisyonu

"Büyük Sırbistan" projesini gerçekleştirmede sonradan başrolü üstlenecek ve Sırp milis güçlerinin işbirlikçisi olacak olan Sırp Ortodoks Kilisesi'nden Amfilohiye, Atanasiye ve İriney milli kilise üzerine görüşlerini, kendi aralarında en etkili şahıslardan biri olan piskopos Nikolay Velimiroviç'in fikirlerinden esinlenerek geliştirmişlerdi. Piskopos Velimiroviç, hümanizm ve Avrupa medeniyetine getirdiği eleştirilerle tanınan, Nazi Almanya'sı tarafından bir nişanla ödüllendirilen, Adolf Hitler ile Sırp Aziz Sava arasında önemli benzerliklerin mevcut olduğunu "keşfeden" bir şahıs olarak bilinmektedir.[9]

"Aziz Sava Milliyetçiliği" isimli bir çalışmasında piskopos Velimiroviç, bir ulusal kilise için yürütülen mücadelenin "meşru, Evangelist ve yapısal milliyetçilik esasını" oluşturduğunu ve Sırp milleti için böyle bir kiliseyi Aziz Sava'nın 700 yıl

6 1918 yılında kurulan Sırp-Hırvat-Sloven Krallığı'ndan memnun olmayan Hırvatlar yurt dışına kaçıp, Krallığın yıkılması için faaliyet gösteren "Hırvatistan Kurtuluş Örgütü"nü (Ustaşalar) oluşturmuştur. Nitekim 9 Ekim 1934'te, Fransa'nın Marsilya kentinde Sırp asıllı Kral Aleksandar'a düzenlenen suikastı koordine edenler arasında Ustaşalar da bulunuyordu.

7 Milorad Tomanic, *Srpska Crkva u Ratu i Ratovi u Njoj* (Belgrad: Krug Yayınevi, 2001), s. 172.

8 Milorad Tomanic, *Srpska Crkva u Ratu...*, ss. 172-175.

9 Milorad Tomanic, *Srpska Crkva u Ratu...*, ss. 13-19.

önce oluşturduğunu iddia etmektedir. Buradan hareketle Velimiroviç, Sırp milliyetçiliğini Avrupa'nın en eski olanları arasında saymaktadır. Orta Çağ'da Balkanlar'da "büyük bir Sırp devleti" kurmuş olan Sırp Nemanya hanedanlığından derinden etkilenmiş olduğu anlaşılan piskopos Velimiroviç, Nemanya'lara ait devlet başarısının, bölgede "yeni gerçeklikler tasarlanırken" bir rehber olarak kullanılması gerektiği görüşünü savunuyordu.[10]

"Sırpların bulunduğu her yerde Sırp devletinin olduğu" teorisini savunan büyük Sırbistan ideolojisinin izlerini, 1959-1990 yılları arasında Sırp Ortodoks Kilisesi Patriği olarak hizmet etmiş olan German Çoriç'in bazı söylemlerinde de görmek mümkündür. Çoriç, 1967 yılının Eylül ayında Karadağ'daki Kosiyerevo isimli manastırın açılışı sırasında yaptığı bir konuşmada şunları söylemişti:[11]

> Biz Sırplar, tabi Karadağlıların da Sırp olduklarını düşündüğüm belli, ister Sırbistan'da, Srem'de, Başka'da, Banat'ta, Karadağ'da, Hersek'te, Bosna'da, Avustralya'da ve her nerede olursa olsun Sırp milleti olarak ... sevgi ve sadakatimizi kutsal Sırp kilisesine borçluyuz ve kilisemizin bizlerden istediklerini yerine getirmekle yükümlüyüz ... Düşüncelerimde hüzün dolu Kosova'nın cesur savaşçılarını taşıyorum. Kosova bizim ağır bir kederimiz olmuştur. Fakat "ilahi çarlığı"[12] seçen fazilet sahibi Prens Lazar ve önderliğindeki Sırplar Kosova'da kahramanca savaşmıştır.

2 Aralık 1990'da Sırp Ortodoks Kilisesi'nin yönetiminde değişiklikler gerçekleşmiştir. Gerçekleşen bir dini törenle Piskopos Pavle resmi olarak Sırp Ortodoks Kilisesi'nin yeni patriği olmuştur. Patrik Pavle dışında, aynı olağanüstü Katedral oturumunda, Morava piskopos vekili İriney Buloviç, Başka piskoposu olarak seçilmiştir. O sıralarda Banat piskoposu olan Amfilohiye Radoviç'i ise Kilise Meclisi, kilise hiyerarşisinde üst basamağa taşıyarak, Karadağ-Primorye metropoliti olarak seçmiştir. Mayıs 1991'de gerçekleşen olağan Meclis oturumunda Sırp Ortodoks Kilisesi'nin piskoposluklarına, peder Yustin Popoviç'in kalan diğer iki öğrencisi atanmıştır. Bunlardan Crna Reka manastırı başrahibi Arhimandrit Artemiye Radosavleviç Patrik Pavle'nin eski yerine geçerek Raşka-Prizren Piskoposu olmuş, Belgrad Ortodoks Teoloji Fakültesi dekanı Arhimandrit Atanasiye Yevtiç ise, Banat piskoposu olarak seçilmiştir. Buloviç, Radoviç, Radosavleviç ve Yevtiç, Patrik Pavle ile birlikte Sırp Ortodoks Kilisesi'ni temsil etmiş ve Balkanlar'da "Karlovça-Ogulin-Virovitiça-

10 Zvezdan Folic, "Kosovski Mit u Projekcijama..., www.montenegrina.

11 Zvezdan Folic, "Kosovski Mit u Projekcijama..., www.montenegrina

12 Kosova'ya ilişkin Sırp mitolojisine göre, 1389'daki Birinci Kosova Savaşı'nın arifesinde bir melek Sırp Prensi Lazar'a seslenerek, "fani çarlık" ile "ilahi çarlık" arasında bir seçim yapmasını istemiştir. Sırplara göre Lazar zafer uğruna, ilahi çarlığı yani ölümü seçmiştir.

Karlobag"[13] hattının doğusunda yer alan ve Sırplara ait olduğu iddia edilen topraklardan "tüm Sırp olmayanların etnik olarak temizlenmesi" politikalarını desteklemiştir.[14]

Sırp Bilim ve Sanat Akademisi'nin "babası" olan akademisyen Dobrica Çosiç söz konusu etnik temizlik politikalarını "halkların insani göçü" olarak nitelendirerek adeta meşrulaştırıyordu. Diğer taraftan, 1990'lı yıllarda düzenlenen ilk çokpartili seçimlerde, eski komünist partisinin bir uzantısı olan Sırbistan Sosyalist Partisi (SPS) mutlak zafer elde etti. SPS'in lideri Slobodan Miloşeviç ise oyların yüzde 65,34'ünü kazanarak, tekrar Sırbistan Cumhurbaşkanı olarak seçilmişti. Sırbistan'ın federal ortağı Karadağ'da da eski komünist partinin uzantıları iktidarı ele geçirmişti. Böylece savaş kuramcıları, Pavle ve Miloşeviç'in seçimleriyle birlikte, kendi kanlı eylemlerini başlatabilmek için uygun bir zemin yakalamıştı. Önceden tasarlanmış projeye uygun olarak Sırpların ilk hedefi, nüfusunun önemli bir kısmı Sırplardan oluşan Hırvatistan olmuştur.

III. Sırbistan Ortodoks Kilisesi'nin Hırvatistan Savaşındaki Rolü

1980'li yılların sonu ve 1990 yıllında Yugoslavya Sosyalist Federal Cumhuriyeti'nde (YSFC) değişik hadiseler yaşanmış ise de, YSFC topraklarındaki savaşın resmi başlangıcı olarak 1991 yılı kabul edilmektedir. 1991 Mart ayının ilk günlerinde Hırvatistan'ın kuzeyindeki Pakrac kentinde çatışmalar yaşandı. Aynı ayın sonlarında, Katolik Paskalyası esnasında, Hırvatistan'ın Plitvice kentinde, insan kayıplarının verilmiş olduğu çatışmalar yaşandı. Hem Sırpların hem de Hırvatların birçoğu, Plitvice'deki çatışmaları Hırvatistan'daki savaşın başlangıcı olarak kabul eder.

Sırp Ortodoks Kilisesi'nden bazı piskoposlar, YSFC'den bağımsızlığını ilan eden Hırvatların yeni devletini ve yönetimini, İkinci Dünya Savaşı yıllarında kurulan "Bağımsız Hırvatistan Cumhuriyeti" ile kıyaslamakta gecikmedi.[15] Örneğin, 15 Mart 1991 tarihli Pravoslavle dergisinde, Slavon başpiskoposu Lukiyan'ın "Ustaşa devletinin Sırp karşıtı eylemleri" isimli yazısı yayınlanmıştır.[16] Kilise

13 Karlovça-Ogulin-Virovitiça-Karlobag hattı, Sırp milliyetçilerinin Sırbistan'ın batı sınırlarını tarif ederken kullandıkları farazi bir hattır. Bu dört yer Hırvatistan sınırları içinde yer almaktadır. Milliyetçilerin tahayyül ettiği bu sınırla, dağılan Yugoslavya'nın topraklarının en büyük kısmının Sırbistan'a kalması planlanıyordu. Bu plan hayata geçirilebilseydi, Karadağ ve Bosna-Hersek topraklarının tamamı, Hırvatistan topraklarının da büyük bir kısmı Sırbistan sınırları dahil edilmiş olacaktı.

14 Milorad Tomanic, Srpska Crkva u Ratu..., ss. 28-32.

15 İkinci Dünya Savaşı yıllarında Yugoslavya'yı işgal eden faşist güçler ile işbirliğinde olan Hırvat Ustaşalar, bu konumlarından yararlanarak, 1941'de çok kısa ömürlü olan "Bağımsız Hırvatistan Cumhuriyeti"ni ilan etmişlerdi.

16 Vladika Lukijan, "Antisrpsko Nastupanje Ustaske Drzave", *Pravoslavlje*, (15 Mart 1991).

yayınlarının, yeni Hırvat yönetiminin Ustaşlık yaptığına ilişkin Sırp halkı ve Sırp kamuoyunu ikna etmek için çalıştığı söylenebilir.

Mayıs 1990'da gerçekleşmiş olan kutsal başrahipler oturumunda Kilise, devlet yetkililerinden ilginç bir talepte bulunmuştur. Daha önceki savaşlarda hayatını kaybetmiş olanların kuyulardan çıkartılıp, daha görkemli yerlerde ve şereflerine uygun bir biçimde gömülmelerine imkân yaratılması isteniyordu. Kutsal başrahipler meclisinin yazılı talebinde, "İkinci Dünya Savaşı esnasında ve sonrasında masumca katledilenlere karşı bu temel insanlık borcunun yerine getirilmesi için zaman artık gelmiştir. Çünkü ölüler ve ölüler arasında huzur yoksa canlılar arasında da huzur ve barış olamaz" deniyordu.[17]

Sırp Ortodoks Kilisesi'nin önerisi doğrultusunda Hırvatistan'da kuyuların kazılması ve İkinci Dünya Savaşı'nda Hırvatlar tarafından öldürülen Sırplara ait kafa ve kemiklerin fotoğraflarının Sırp medyası aracılığıyla gösterilmesi, Hırvatistan topraklarında kan akıtmanın bir başlangıcını oluşturmuştur. Kilisenin savaş kışkırtmacıları, Sırplara yönelik yeni bir Hırvat katliamının hazırlandığı söylentisini sürekli gündemde tutarak, Hırvatistan'daki sıradan Sırp vatandaşların, kendi Hırvat komşularını katletmeye başlamalarına yönelik zemini hazırlamıştır.

Golubinka kuyusundan kemiklerin çıkartılması esnasında, kuyunun içine Bosnalı Sırplara ait Sırp Demokratik Partisi'nin lideri Radovan Karaciç, Bosna-Hersek Cumhurbaşkanlığı Sırp üyesi Nikola Kolyeviç ve ressam Maçvalı Miliç de inmiştir. 1 Aralık 1990 tarihli Pravoslavle dergisinde yayınlanan "Günışığındaki kurbanlar" başlıklı yazıda, Ustaşalar tarafından öldürülen ve 50 metre derinliğindeki Yagodnaça kuyusuna atılan Sırpların ceset kalıntılarının çıkartılmasından bahsediliyordu. Söz konusu metinde, kurbanların öldürülme biçimleri (soğuk silahlarla, keskin olmayan cisimlerle, baltalarla kafaya yapılan darbelerle vs.) anlatılmış ve kuyu içinde bulunan kişisel eşyalar da belirtilmiştir. Jitomislic, Prebilovac, Lubinye, Trebinye, Mayevica, Banyaluka ve diğer bazı yerlerdeki kuyulardan da kurbanlara ait ceset kalıntıları çıkartılmıştır.[18] 27 Kasım 1991 tarihli bir yazısında başpiskopos Atanasiye Yevtiç, kuyularda cesetleri bulunan Sırpların sadece öldürülmekle kalmadıklarını, haysiyetlerinin de yok edildiğini, bu yüzden kurbanların ruhlarını ve bedenlerini ölüm sonrası ıstırap ve aşağılanmaktan kurtarmak için mezarlardan çıkartılan ceset kalıntılarını uygun bir merasimle yeniden defnettiklerini söylüyordu.

17 Milorad Tomanic, *Srpska Crkva u Ratu*..., s. 41.

18 Milorad Tomanic, *Srpska Crkva u Ratu*..., ss. 61-64.

1991 yılında yapılan olağan Kilise piskoposlar meclisi oturumunda, Sırp milletine şu mesaj da iletilmiştir: "Görüyoruz ki, betonlaşmış vicdanlar altından, betonlaştırılmış kuyulardan, masumca katledilen aşağılanmış ve unutulmuş binlerce insan çıkıyor. Bu iyi bir işarettir. Çünkü ölülerle barışmak ve ölülerin kendi aralarında barışması, canlı olanların kendi aralarında barışması için bir şarttır". Sırp Ortodoks Kilisesi'nin "ölülerle barışılmasına" ilişkin mesajı, Hırvatistan şehri Vukovar'ın yıkımı sonucunu getirmiştir. Ekim 1991'de, Vukovar, sözde Yugoslav Halk Ordusu'na ait birimlerin "kurtardığı" "yeni bir Gernika" olmuştur.[19]

Hırvatistan'daki savaş esnasında, uluslararası toplum Yugoslavya'daki krize karşı bir çözüm bulma arayışı içine girmiştir. Bu vesileyle Sırp Ortodoks Kilisesi Patriği Pavle, Yugoslavya Uluslararası Barış Konferansı'nın dönem başkanı Lord Karington'a gönderdiği mektupla konuyla ilgili fikir belirtmiştir. Bu mektup, 1 Kasım 1991 tarihinde Pravoslavle'nin baş sayfasında yayınlanmıştır.[20] Sırp Patriği, mektubun birinci kısmında İkinci Dünya Savaşı yıllarında Bağımsız Hırvatistan Cumhuriyeti'nde Sırp milletinin Hırvatlar tarafından katledildiğini söylemiş, bu yüzden Hırvatistan'da Sırp ve Hırvatların birlikte yaşamalarının imkânsız olduğunu belirtmiş ve Sırpların yoğunlukta yaşadığı Hırvatistan topraklarının Sırbistan'a bağlanması gerektiğine dair fikir yürütmüştür. Bu şekilde söz konusu mektubuyla, Sırp Bilim ve Sanat Akademisi Memorandumu'nda belirtilen "Büyük Sırbistan" kurma projesinin, Sırp Ortodoks Kilisesi tarafından da desteklediği açık bir şekilde ortaya koyulmuştur. Patrik Pavle, böylelikle eski Yugoslavya topraklarında yaşanan savaşlardaki Sırp Ortodoks Kilisesi'nin rolünü de açıklığa kavuşturmuştur. Bir başka ifadeyle kilise, açık bir biçimde Yugoslavya'nın parçalanmasını ve tüm Sırpların tek bir devlet çatısı altında yaşayabilecekleri yeni bir devletin kurulması yönündeki bir politikayı, etnik temizliği ve "kan ve toprak" teorisini desteklemiştir.

Eski Yugoslavya topraklarında yaşanan savaşlarda Sırp Ortodoks Kilisesi'nin rolünü tanımlamak açısından tarihi bir önem taşıyan bu mektupta, Patrik Pavle diğerleri arasında şunları da yazmıştır:[21]

> Hırvatistan'ın yeniden bağımsız devlet olarak ilan edilmesi ve Hırvat lider Franyo Tucman'ın Hırvatistan'ın varlığını kesintisiz bin yıllık süreç içinde görüyor, ayrıca Bağımsız Hırvatistan Cumhuriyeti'nin de bir devamı

19 Nisan 1937'de gerçekleşen İspanya iç savaşı sırasında Bask şehri Gernika'ya yapılan saldırı, geniş çaplı yıkıma ve pek çok sivilin ölümüne sebep vermiştir.

20 "Pismo patrijarha SPC Pavla Upuceno Lordu Karingtonu, *Pravoslavlje*, (1 Kasım 1991).

21 "Pismo patrijarha SPC Pavla...

olarak algılıyor olması yüzünden, Hırvatistan'da yaşayan Sırpların kıyımıyla ilgi yeni ve muhtemelen ölümcül bir süreç başlamıştır. Aynı din ve kanımızdan olan Hırvatistan'daki hemşerilerimiz, iki korkunç seçenekle karşı karşıyadır: Ya eline silah alarak anavatanları ile aynı devlet çatısı içinde yaşayabilmek için savaşacaklar, ya da Bağımsız Hırvatistan Cumhuriyeti'nin yeni sürümü olan devletten göç ettirileceklerdir. Üçüncü bir seçenek mevcut değildir. Bu sebepten dolayı Sırp devleti ve Sırp milleti, silahlı müdafaa dâhil olmak üzere, tüm meşru araçlarla Sırp hayatlarını ve Sırp topraklarını korumak zorundadır. Sırpların üzerinde yüzyıllarca yaşadığı ve Hırvat Kvisling yönetiminin soykırımına maruz kalmadan önce Nisan 1941'de nüfusun çoğunlunu oluşturduğu topraklar, hiçbir bağımsız Hırvatistan devleti içinde kalamaz ve diğer tüm Sırp bölgeleriyle birlikte Sırbistan devlet çatısı altında toplanmalıdır.

Soykırım kurbanları ve onun eski, hatta belki de gelecekteki mimarlarının artık bir arada yaşayamayacağı anlaşılmak zorundadır. İkinci Dünya Savaşı sonrasında, Almanlarla aynı devlet içinde yaşamaları için Yahudileri kimse zorlamamıştır. Ancak Sırplar, YSFC'nin federal birimlerinden biri olan Hırvatistan'da, Hırvatlarla birlikte yaşamak zorunda kalmıştır. Söz konusu Hırvatistan'ın sınırları ne tarihsel ne de etnik esaslara dayalı belirlenmiştir. Kendisi de bir Hırvat olan, Yugoslavya komünist devriminin öncüsü Yosip Broz Tito'nun istekleri doğrultusunda belirlenmiştir. Hırvatlar, sınırları bu şekilde belirlenmiş bir Hırvatistan'ın bağımsızlığını ilan ettikleri anda, Hırvatistan'daki Sırplar da kendi kaderini belirleme hakkını kullanarak, Yugoslavya'dan geri kalan topraklarda, daha doğrusu Sırp milletinin anavatanının bulunduğu devlette yaşamayı kararlaştırmıştır. Aksi takdirde, er ya da geç kendi milli kimliklerinin, kendi din ve isimlerinin kökü kazılacak, belki de sürgün edilecekler veya fiziksel anlamda yok edileceklerdir. Yüzyıllarca baskı uygulayanlara, zorla Katolikleştirme girişimlerinde bulunanlara ve İkinci Dünya Savaşı'nda Sırpları sadece Sırp ve Ortodoks olmaları nedeniyle fiziksel anlamda yok edenlere artık inanç yoktur. Bu korkunç gerçeği, Yugoslavya'da yaşamış olanların hepsi ve medeni Avrupa anlamak zorundadır.

Şüphesiz ki, Sırp Ortodoks Kilisesi'nin "tüm Sırpların tehlikede olduğu" ve "tüm Sırpların bir tek devletin çatısı altında toplanması gerektiği" yönündeki tutumu, Bosna-Hersek'teki kanlı savaşın da başlangıcını oluşturmuştur. Aslında bu, değişik savaş suçları ve soykırım gerçekleştiren Sırp ve Karadağlıların, "Akrepler" ile diğer askeri ve milis grupların kilise tarafından kutsanmasının başlangıcıydı.

Birleşmiş Milletler 3 Ocak 1992 tarihinde, Hırvatistan ordusu ile ayaklanmış Sırplar arasındaki çatışmaları durdurmuş, uzlaşılan barışa yönelik garantörlüğü ise 14 bin askerden oluşan barış gücü UNPROFOR'un sağlaması öngörülmüştür. 18 Ocak tarihinde Sırp Ortodoks Kilisesi'nin bünyesinde Kutsal başrahipler meclisi toplanıp güncel siyasi gelişmeleri değerlendirmiştir. Ardından yapılan bir açıklamada, Sırbistan'daki yönetimle, Yugoslavya'nın federal düzeydeki kurumlarıyla ya da Yugoslavya Halk Ordusu'yla yapılan anlaşmaların, bütün Sırpların rızası ve Sırp Ortodoks Kilisesi'nin lütfü olmadan bağlayıcı olmayacağı vurgulanmaktadır. Böylece Sırp Ortodoks Kilisesi'nin ruhban sınıfı, eski Yugoslavya topraklarında yaşayan tüm Sırpların "haklarının korunması amacıyla", Sırp ve Karadağlıların kanlı saldırılarının devam etmesini talep etmekteydi. Nitekim kısa bir süre sonra, 29 Ocak 1992'de Ratko Mladiç, Yugoslavya Halk Ordusu'nun dokuzuncu kolordusunun "Sırp kuvvetlerinin düzenli ordusuna" dönüştürüldüğünü beyan etmiştir. Onun ardından, Sırp milis yapılanmaları içinde önde gelenlerden biri olan Jelko Rajnatoviç Arkan, "Hırvatistan'daki Sırplar, Hırvat ustaşa ve faşistlerinin esiri olduğu sürece barış olmayacaktır" yönünde tehditlerde bulunmuştur.[22]

Uluslararası anlamda bağımsızlıkları tanınmış Hırvatistan ve Bosna-Hersek'e Sırp ile Karadağlıların saldırılarının devam ettiği savaş yılları boyunca, Sırp Ortodoks Kilisesi'nin dini liderleri sık sık çatışma bölgelerini ziyaret etmiştir. Örneğin piskopos Filaret (Yelenko Miçoviç) Eylül 1991'de Hırvatistan'daki Komogovina manastırında, kameralar karşısında M-53 makineli tüfeği omzuna alarak poz vermiştir. Silahlı bir rahibin ortaya çıkması dünya tarafından yadırgandığı gibi, özellikle Hırvatistan ve Bosna'da şok yaratmıştır. Bu gelişmenin karşısında Başka piskoposu İriney de piskopos Filaret'in eline silah almasının yanlış olduğunu açıkladı. Buna rağmen, silahlı poz vermekten tatmin olmayan Filaret, Sırplara yönelik gerçekleştirilmekte olan soykırıma ilişkin delillere sahip olduğunu iddia ederek, bir akşamüzeri Sırbistan Radyo ve Televizyon Kurumu'na ait bir stüdyoyu basmıştır. Bunun neticesinde akşam haberlerinin izleyicileri, aşırı öfkeli vaziyetteki rahibi, Müslümanlar tarafından öldürdüğünü iddia ettiği küçük bir kıza ait kafatayı elinde tutarak görmüşlerdir. Filaret canlı yayında bir baltayı da çıkartmış ve o baltayla suçun gerçekleştiğini iddia etmiştir. Bu olay üzerine bazı gazeteciler bu korkunç olay hakkında araştırma yapmaya kalkışmış, ancak piskopos Filaret'i evinde ziyaret ettiklerinde, kendisi canlı yayında dehşetler içinde elinde tuttuğu kafatayı "nerede bıraktığını bulamadığını" söylemiştir.[23]

22 Milorad Tomanic, *Srpska Crkva u Ratu...*, ss. 186 -191.

23 Slobodan Kostic, "Rampa za Druga Popa", *Vreme,* (23 Ağustos 2007).

IV. Sırp Ortodoks Kilisesi'nin Bosna-Hersek Savaşındaki Rolü

Bosna-Hersek topraklarında savaş esnasında yaşanmış olan cehennemde, Sırp Ortodoks Kilisesi önemli rol oynamıştır. Kilisenin başroldeki üçlüsü -Amfilohiye, Artemiye ve Atanasiye- o dönemin Bosnalı Sırp yöneticilerinden Radovan Karaciç, Momçilo Krayişnik ve Nikola Kolyeviç'e büyük destek vermiştir. Bu ülkede Boşnaklara karşı işlenen soykırım ve diğer ağır suçlara, Sırp Ortodoks Kilisesi'nin Boşnaklara yönelik yaymış olduğu söylemin büyük katkısı olmuştur.

Boşnakların Yosip Broz Tito'nun suni eseri olduklarını iddia eden Sırp Ortodoks Kilisesi rahipleri, Petar II. Petroviç Nyegoş'un dizelerini kullanarak, Boşnakları "Türkleştirilmiş olanlar" ya da "Türkler" olarak adlandırıyor ve onların özde Sırp olduklarını savunuyordu. Boşnaklar sözde asıl dinlerinden ayrılmış olmanın bedelini ise "ödemek zorundaydı". Bosna-Hersek savaşında, Sırp Ortodoks Kilisesi rahiplerinin hapsedilen Müslümanları zorla vaftiz etmeleri vakaları az görülmüş değildir.

Dalmaçya başpiskoposu Nikolay Mrda, Mayıs 1992 yılında yapılan olağan kutsal başrahipler meclisinde Dabar-Bosna metropoliti olarak seçilmiş ve böylece Sırp Ortodoks Kilisesi'nin Bosna-Hersek'teki en yüksek rütbeli başrahibi olmuştur. O zamandan sonra, Metropolit Nikolay birçok sefer savaş suçluları Radovan Karaciç ve Ratko Mladiç ile birlikte iken görüntülenmiş, ayrıca Sırpların Bosna toprakları içinde ilan ettiği Sırp Cumhuriyeti Meclisi'nin oturumlarında birinci sıralarda yer almıştır.

Saraybosna rahibi Dragomir Ubiparoviç, "Hri‰çanska Misao" isimli derginin sayılarının birinde, savaş yıllarında Kilisenin Bosna'daki Sırp liderleriyle olan ilişkisini şöyle izah etmiştir:[24]

> Kiliseye ait binalar ve törenler, Sırp Demokratik Partisi'nin (SDS)[25] yönetimindeki kişilerin tanıtımı ve halka hitapları için hizmet etmiştir. Bu tür ölçüsüz desteklerde, bizim aşırıya kaçan yatkınlığımız en fazla ortaya çıkmıştır. O kadar ileriye gidilmiştir ki, SDS'nin önde gelen kişileri bile, kendilerine verilen önem karşısında şaşırmış bulunmaktaydı. Din adamlarının, Sırp milletini kurtarmaları için SDS'lileri Tanrı'nın kendisinin gönderdiğini ima eden sözlerine ve SDS'lilere dini şarkılarla hitap ediliyor olmasına şaşırmamak mümkün değildi. Siyasete verdiği bu denli ölçüsüz hizmet ve yardımdan sonra, Kilise de SDS'lilerin başarıları

24 Milorad Tomanic, *Srpska Crkva u Ratu...*, ss. 116-119.

25 Sırp Demokratik Partisi, savaş yıllarında Bosnalı Sırpların önderliğini yapan, Bosna'da işlenen savaş suçlarında sorumluluk payı yüksek olan bir siyasi partidir.

> ve başarısızlıklarıyla birlikte anılması gerekiyor ... Benzer şekilde, savaşın beraberinde getirdiği sonuçların (yıkımlar ve kurbanların) sorumlularından bahsedilirken, siyasi ve askeri oluşumlar dışında, Kilisenin kendisi de anılmalıdır.

Sırp Ortodoks Kilisesi'nin Bosna-Hersek'teki savaş süresince halka nasıl "hizmet ettiğini", aşağıdaki alıntı gözler önüne sermektedir:[26]

> Saraybosnalılar, Bosnalı Sırplara ait televizyonun görüntülerinde gösterilen, omuzlarında birden fazla fişekliklerle sivilleri öldürme yoluna çıkmış sakallı Sırp çetnikleri tek tek öperek uğurlayan, o askeri üniformalı ve tek dişli yaşlı papazı hatırlıyor olmalıdırlar. Hırvatistan ve Bosna-Hersek'teki savaş bölgelerinde "kalaşnikof" ve "tomson" silahlarıyla fotoğraf çektiren, bedenleri nefretle kuşatılan siyah cübbeli papazların sayısının ne kadar çok olduğundan ise hiç söz etmeye gerek yok.

Nisan 1992'da uluslararası toplum resmen Bosna-Hersek devletini tanımıştır. O tarihte, Sırp ve Karadağlı yöneticilerin kafalarında önceden tasarlanmış olan korkunç savaş planları Bosna-Hersek'te uygulanmaya başlamıştır. Böylece değişik askeri ve milis birlikler Bosna-Hersek topraklarının tamamında, özellikle de Sırbistan'a bağlanması planlanan bölgelerde, Sırp olmayan nüfusu insafsızca öldürmeye başlamıştır.

Radovan Karaciç'in önderliğindeki Sırp çetnik birlikleri ve Sırbistan ile Karadağ kökenli askeri ve milis birlikleri tarafından başkent Saraybosna'nın kuşatılmasına Mayıs 1992'de başlanmıştır. Avrupa'nın kalbinde olan, elektriksiz ve susuz bırakılan bu şehir, 24 saat aralıksız bombardımanlara maruz kalmıştır. Saraybosna kuşatması boyunca, aralarında 1.600'ü çocuk olmak üzere, yaklaşık 10 bin sivil öldürülmüştür.

10 Aralık 1992 tarihinde Sırp Ortodoks Kilisesi'nin kutsal başrahipler meclisi, Sırpların Boşnak kadınların ırzına geçtiklerini inkar eden ve genel olarak Sırp askerlerinin savaş suçları işlediklerini reddeden bir beyanatla kamuoyuna seslenmiştir. Kilise Sırplara karşı yapılan suçlamaların asılsız olduğunu ve Bosna'da yaşananların normal bir savaşın beraberinde getirdiklerinin ötesine geçmediğini beyan etmiştir. Sırp Ortodoks Kilisesi Bosna-Hersek'te Sırpların toplu suçlar işlediği yönündeki suçlamaları uydurulmuş olarak nitelerken, Bosna'da bulunmuş yabancı gazetecilerin yazılarından şu satırları okumak mümkün olmuştur: "Dabar-Bosna Başpiskoposu Nikolay, Saraybosna'nın

26 Gojko Beric, "U Ime Boga i Sina Cetnika", *Svijet*, (16 Ocak 1997).

etrafındaki tepelerde bulunanlar dahil olmak üzere, Bosna'yı gezip Sırp askerlerini kutsamıştır. O tepelerden, Saraybosna acımasızca bombalanmıştır."[27]

Sırp Ortodoks Kilisesi'nin yönetici kademesindeki bazı ileri gelenler, Sırp Cumhuriyeti meclis oturumlarının neredeyse hepsinde bulunmuşlardır. Sırp Ortodoks Kilisesi piskoposları, Bosnalı Sırpların yöneticileri ve generalleri ile çok iyi bir işbirliği içindeydi. Örneğin, Dabar-Bosna Başpiskoposu Nikolay Mrda 1993 yılının Nisan ayı sonunda verdiği bir demeçte, kendisinin tüm önerilerinin general Ratko Mladiç tarafından kabul edildiğini belirtmiştir. Bosnalı Sırpların lideri Radovan Karaciç ise, 1994 yılının başlarında, Kilise ile Sırp Cumhuriyeti arasındaki ilişkilerin mükemmel olduğu değerlendirmesinde bulunmuştur. Karaciç "Ruhban sınıfımızın söyledikleri bizim tüm düşünce ve kararlarımızda mevcuttur. Kilise'nin sesine, en yüksek makamın sesiymiş gibi kulak verilmektedir" şeklinde konuşmuştur.[28]

Karaciç'in keskin nişancıları, çocuklar dahil olmak üzere, Saraybosnalı Boşnaklara ateş ederken, Sırp Ortodoks Kilisesi Patriği Pavle dünya liderlerini "Saraybosna'da yaşayan Sırp halkının sıkıntıları hakkında" bilgilendiriyordu. Dahası Patrik Pavle, 1992 yılında BM Genel Sekreteri Butros Gali ile diğer kişi ve uluslararası kurumlara göndermiş olduğu bir mektupta, Saraybosna'da Müslüman güçlerinin kontrol ettiği bölgede mahsur kalan Sırpların kurtarılması talebinde bulunmuştur. Ayrıca, Karaciç'in katillerinin Saraybosna kuşatmasının sona erdirilmesini talep edeceğine, Patrik Pavle BM'nin bir numaralı kişisinden Saraybosna'daki Sırp halkı için insani yardım talebinde bulunmayı da unutmamıştır.[29]

Uluslararası toplum Bosna-Hersek savaşını durdurma çabaları doğrultusunda 1993 yılında Vance-Owen planını gündeme getirmişti. Bosnalı Sırplar, Belgrad'daki yönetim ile birlikte söz konusu planı reddetmekle gecikmedi. Sırp Ortodoks Kilisesi de bu barış çözümüne karşı çıkmış ve savaşın devam etmesini desteklemiştir. Metropolit Amfilohiye, Bosnalı Sırpların Vance-Owen Planını reddetmiş olmasını şu sözlerle kutsamıştır:[30]

> Vuk Karaciç Sırp dilini nasıl koruduysa, onunla aynı soyadı taşıyan Radovan Karaciç, yeni Kosova kızı[31] Plavşiç ve Krayişnik'le birlikte

27 Andrew Higgins, Robert Block, "In War's Wake: Questions Arise On the Role of the Serb Church", *The Wall street Jurnal,* (24 Haziran 1999).

28 Milorad Tomanic, *Srpska Crkva u Ratu...*, ss. 116-119.

29 Milorad Tomanic, *Srpska Crkva u Ratu...*, ss. 116-119.

30 Milorad Tomanic, *Srpska Crkva u Ratu...*, ss. 110-115.

31 Kosova Kızı, 1389 yılındaki Birinci Kosova Savaşı'nın yürütüldüğü meydanda yakınlarını ararken, yaralı bir Sırp savaşçıdan onların öldüğünü öğrenen, kadın ilgi ve merhametinin bir sembolü olarak kabul edilen, destansı bir Sırp şiirin karakteridir.

> bizleri ve ruhumuzu korumaktadır. Çünkü onlar, aziz Lazar'ın yolunda yürümekteler. Çar Lazar'ın yaptığı gibi, onlar da ilahi çarlığı seçmiştir.

1994 yılının Temmuz ayında, Bosna-Hersek'e dair Temas Grubu'nun[32] barış planı Sırp Cumhuriyeti meclisinde görüşülürken, piskopos Atanasiye Yevtiç, "Sırp ulusunun büyük bir kısmının yok edilmesine" razı olamayacağını belirterek, sunulan planın kabul edilmemesi gerektiği yönünde Sırp Ortodoks Kilisesi'nin mesajını vekillere iletmiştir.

Uluslararası toplumun baskıları altında kalan Belgrad yönetimi, 4 Ağustos 1994 tarihinde Bosnalı Sırplara abluka uygulamaya başlamış ve Sırp Cumhuriyeti'yle siyasi ve ekonomik ilişkileri askıya almıştır. Kilise, bu sebepten ötürü Slobodan Miloşeviç'e sırtını dönmüş ve tüm yardım ve desteklerini Radovan Karaciç ve onun Sırp Demokratik Partisi'ne sunmuştur.

Bosna-Hersek'e yönelik sunulan barış planları yüzünden, 5 Temmuz 1994'te Sırp Ortodoks Kilisesi Piskoposlar Konferansı gerçekleşmiştir. Bu konferans, Sırp halkına ve dünya kamuoyuna yönelik yapılan savaş çağrılarıyla akıllarda kalmıştır. Ruhban sınıfı, barış planlarının kabul edilmemesi yönünde uzlaşma sağlamış ve Sırp halkına, tasarlanan Büyük Sırbistan sınırlarının gerçekleştirilmesi doğrultusunda çabalarını sürdürmesi yönünde şu sözlerle çağrıda bulunmuştur:[33]

> Tanrının, milletimizin ve insanlık tarihinin önünde taşıdığımız bütün sorumluluğumuzla, Sırpları yüzyıllık haklarını, özgürlüklerini ve hayati çıkarlarını savunmaya davet ediyoruz. Bunları savunmak, Sırpların kendi topraklarında fiziken ve ruhen var olabilmeleri için şarttır.

Bir zamanların ana muhalefet partisi olan Sırp Yenilenme Hareketi'nin lideri Vuk Draşkoviç'in eşi Danica Draşkoviç Sırp Ortodoks Kilisesi hakkında şunları söylemiştir:[34]

> Onlar bildiriler yayınlamakta, katedrallerde toplanmakta, savaşlar ve halkın hoşnutsuzluğunu körüklemekteler. Ortodoksluğun öğrettiği gibi sevgiyi, pişmanlığı, barışı, ortak yaşam ve affetmeyi teşvik etmek yerine,

32 İngiltere, Fransa, Almanya, Rusya ve ABD'nin oluşturduğu Temas Grubu" Bosna topraklarının yüzde 49'unun Bosnalı Sırplara, yüzde 51'inin ise Boşnak ile Bosnalı Hırvatlara bırakılmasını öngörmüştür. Boşnak ve Hırvatlar bu planı kabul etmiş, o sıralarda Bosna-Hersek topraklarının yüzde 70 kadarını kontrol eden Sırplar ise referandum yoluyla reddetmiştir.

33 Milorad Tomanic, *Srpska Crkva u Ratu...*, ss. 126-128.

34 Milan Nikolic, "Staradnje Srpskih Patrijarha: Gresni Pastiri, Stada Gresnoga", *Srpsko Nasledje*, Sayı 3 (Mart 1998).

> onlar (savaş suçlusu) Arkan'ın dilinden konuşmaktadır. Bu yüzden Kilise yetkililerinin arasında Arkan'ın sıkça bulunuyor olması şaşılacak şey değildir. Onlar, bir Hıristiyan kilisesinden daha çok fethedici ordulara ait savaş karargahlarına benzemektedirler. Ayrıca açık bir şekilde Ortodoks kutsal savaşı, toprak fethi, camilerin yıkımı ve etnik temizlik teşviklerinde bulunmaktadırlar. Kilise, kutsanmış vaziyette öldürmeye, çalmaya ve suç işlemeye devam etmemizi istemektedir. İşte buna ben razı değilim. Ortodoks İran'ında yaşamak istemiyorum."

Sırp Ortodoks Kilisesi yetkilileri, bazı olayların tesadüfi ve bireysel kazalar olduklarını iddia ederek, Bosna'da Müslümanlara yönelik yağmalama ve soykırımın gerçekleştirildiğine dair söylentileri sürekli yalanlamaktaydı. BM koruması altında olan Gorajde kentine yapılan saldırı örneğinde olduğu gibi, Sırp Ortodoks Kilisesi'nin bazı rahipleri, Sırp ordusunun yıkıcı baskınlarının bazılarında şahsen yer almış olmalarına rağmen, Bosna-Hersek'te Sırpların yürütmüş oldukları savaşı bir kurtuluş savaşı olarak nitelendirmişlerdir.

1994 yılı ilkbaharında Sırpların Gorajde bölgesine düzenlendikleri saldırıya Zahum-Hersek Piskoposu Atanasiye de katılmıştır. Bu saldırıda elde ettiği "savaş tecrübesi" hakkında Atanasiye 6 Mayıs 1994'te şu demeci vermiştir:[35]

> Gorajde'nin ele geçirilmesi ve Sırplara ait olmasının zamanı gelmişti. Bu yer 1924 yılına kadar bizim Zahum-Hersek piskoposluk bölgemize aitti. O tarihten sonra ise piskoposluk bölgesi bölüştürülmüş ve orası bugüne kadar Dabar-Bosna'ya ait olmuştur. Fakat bu bölge bizim ahalimize aittir. Orası eski Hersek'tir ve Gorajde ile Višegrad aracılığıyla Sırbistan'a bağlanmasının zamanı gelmişti. Ne mutlu ki Hersek'li Sırp savaşçılar Gorajde'yi kurtarmaya kalkışmış ve bunu iyi bir biçimde başarmıştır. Ne yazık ki, bizim düşmanlarımız ... o meşhur Atlantik paktı, dünyaya zalimce davranmaya devam etmekte, onların bombaları Hersek Sırp savaşçıları üzerine yağmaktadır ... Bizler Gradina'nın hemen altında birinci saflardaydık ve orada bizim kahramanlarımızın, çok kötü hava şartları ve arazi koşullarına rağmen Gorajde, Çayniçe ve Foça arasındaki saldırılara karşı nasıl direndiklerine şahit olduk. Savaşçılarımız Drina nehrinin sağ kıyısını kurtarmıştır. Tanrıya, yüzyıllarca Sırplara ait olan Drina'nın tamamen özgürleştirilmesi için duacıyım. Drina da Sırplara ait olacaktır, çünkü Sırpları birbirine bağlamaktadır. O bir belkemiğidir ve en önemli Sırp toprakları olan Sırbistan ve Bosna'yı, Eski Hersek ile Piva ve Tara'yı birbirlerine bağlamaktadır. Hersekli Sırplar muhteşem

35 "Vladika Atanasije: Video Sam te Junake", *Nevesinje*, Sayı 40 (6 Mayıs 1994), s. 4.

> kahramanlar olduklarını göstermişlerdir... Komutan Guşiç'e Nevesinye'lilerin "Burayı kurtardıktan sonra, Neretva'ya gidiyoruz, orası bizim hedefimiz" şeklinde seslendiklerini hatırlıyorum. Bunu ben tabi ki desteklemekteyim, bizler bu yüzyıllık Sırp nehrini kurtarmak zorundayız...

Verdiği bu demeçle piskopos Atanasiye Yeftiç, eski Yugoslavya topraklarında yürütülmüş olan savaşların temel hedefinin Büyük Sırbistan'ın kurulması olduğunu, Gorajde, Çayniçe ve Foça aracılığıyla Bosna-Hersek'teki sözde Sırp topraklarının Sırbistan'la birleşmesi üzerine çalışıldığını açıkça ifade etmiştir. Nitekim Sırp Ortodoks Kilisesi Büyük Sırbistan hedefini, "Sırp Ortodoks Kilisesi Memorandumu" isimli belge kapsamında, 14-28 Mayıs 1992 tarihleri arasında gerçekleşen olağan Kutsal piskoposlar meclisinde beyan etmiştir. Bu belgede, Yugoslavya federal birimlerinin sınırlarının Sırp milletinin canlı dokusunu böldüğü; yüzyıllık yurtlarını, kutsal mabetlerini, mezarlarını, manastırlarını ve kültürel yapıtlarını ayırdığı belirtilmektedir.[36]

Sırp Ortodoks Kilisesi içinde en radikal kişilik olmasa da, Karadağ'ın en radikal dini temsilcilerinden biri olan Sırp Ortodoks Kilisesi Metropoliti Amfilohiye Radoviç, 1990 yılında savaş suçlusu Radovan Karaciç'i aziz İliya'ya; Karaciç'in annesini de "kahraman" doğuran Yugoviç'ler anasına benzettip, Yugoslavya devletine ilişkin şu açıklamalarda bulunmuştur:[37]

> Sırp milletinin itibarına saygı göstermeyen, kurucusu Yosip Broz Tito'nun olduğu bu ikinci Yugoslavya bizi memnun etmemektedir. Yasenovaç, Yadovno ve Glina esir kamplarına sebep olan ya da uğruna kurbanlar verdiğimiz Kosova'mızı kendi bencil çıkarları için satmaya hazır olan bir Yugoslavya, bizi memnun eden türden değildir. Bu topraklardaki Sırp milletinin herhangi bir Yugoslavya uğruna savaşması için çok az sebebi vardır. Yugoslavya dışında gelişmiş olan kendi tarihi devlet deneyimiyle, kendi bilinçli maneviyatıyla; Doğu'yu ruh olarak ve Batı'yı da elbisesi olarak içeren kültürüyle, biraz yaratıcılığı biraz da tarihi şansıyla, Sırp milleti bu zorlu coğrafyada devamlılığını sürdürebilir... 1918 yılında millet olarak şimdiki tecrübeye sahip olsaydık, ne kendimiz ne de başkası için bu Yugoslav devletini kurmaya girişmezdik."

2008 yılında Karadağ Meclis Başkanı Ranko Krivokapiç, Karadağ Primorye Metropoliti Amfilohiye hakkında konuşurken, savaşı kışkırtan dini temsilcilerden

36 Milorad Tomanic, *Srpska Crkva u Ratu...*, ss. 110-116.

37 "Amfilohije Radovic, Mitropolit SPC u Crnoj Gori", *Politika Ekspres* (4 Haziran 1990).

hiç kimsenin Eski Yugoslavya Uluslararası Ceza Mahkemesinde yargılanmıyor olmasının haksızlık olduğunu söylemiştir. Krivokapiç, "Ne yargıç ne de savcıyım, fakat her ne görevde olursa olsun, savaşı kışkırtanların hiçbiri istisna sayılmamalıdır. Tanrının sözleri ve şeytanın yaptıklarının ardına saklananların büyük bir kısmı, yargılanmayı hak etmişlerdir" şeklinde konuştu. Krivokapiç ayrıca Amfilohiye'nin Karadağ'da yaşıyor olmasının bir talihsizlik olduğunu da belirtmiştir.[38]

V. Sırp Ortodoks Kilisesi ve Kosova

Kendilerini "ilahi millet" olarak gören Sırplar için, bütün Sırpların tek bir devlet çatısı altında yaşayabilmesi uğruna 1990'lı yılların ilk yarısında yürüttükleri üç kaybedilmiş savaş, eski Yugoslavya topraklarında kanın akıtılmasının sona erdiği anlamına gelmiyordu. Savaş çemberi, sorunların başlamış olduğu yerde, yani Kosova'da tamamlanmıştır. Sırp yönetimi ve Sırp Ortodoks Kilisesi, sözde "kutsal Sırp toprağı" olan Kosova'nın Arnavutlardan kurtarılması hedefinden vazgeçmiyordu. Kosova'nın "fethedilmesi" planı, eski Yugoslavya coğrafyasının diğer yerlerinde uygulanan planlara benzer şekilde öldürücü olmuştur. Bu sefer Slobodan Miloşeviç, Arnavutların Kosova'dan sınır dışı edilmesini ve onların yerine Bosna-Hersek ve Hırvatistan'dan gelen mültecilerin yerleştirilmesini planlamıştır.

Kosova'dan bahsederken, 27 Eylül 1997 tarihinde Chicago'nun güneyinde bulunan Aziz Simeon Mirotoçiv kilisesinde "Sloboda" isimli dergi tarafından düzenlenen bir sempozyumda, Sırp Ortodoks Kilisesi'nin Başpiskoposu Artemiye şunları söylemiştir:

> Kosova ve Metohiya sorunu uzun zamandır kendi çözümünü beklemektedir ve bunu Kosova'da yaşayan Sırplar gibi Arnavutlar da arzulamaktadır. Kosova ve Metohiya'da yaşayan Sırp halkı, bizlerden bu tarihi görevi milletimizin tamamının iyiliği ve memnuniyeti için başarıyla sona erdirmemizi beklemektedir.

Raşko-Prizren Başpiskoposu Artemiye, Metropolit Amfilohiye ile Başpiskopos Atanasiye Yeftiç yardımlarıyla ve Patrik Pavle'nin samimi desteğiyle Kosova'nın her yerini gezmiş ve muhtelif yerlerde kiliselerin inşa edilmesi için atılan temelleri kutsamıştır. Genel olarak yeni kiliseler, Arnavutların yoğunlukta yaşadığı bölgelerde inşa edilmiştir. Kiliselerin temellerinin atılması sırasında

38 Tamara Nikcevic, "Amfilohije Treba Odgovarati u Hagu", *Dani*, Sayı 587 (12 Eylül 2008).

düzenlenen dini törenleri, Matiya Beçkoviç gibi Sırp akademisyen ve yazarlar da takip etmiştir. Kosova'daki Miloşeviç diktatörlüğü süresince, 1990-1998 yılları arasında, o zamana kadar Sırbistan'da mevcut olan tüm ibadethanelerden daha büyük olan bir kilise, Kosova'nın başkenti Priştine'nin merkezi yerinde inşa edilmeye başlanmıştır.

Mart-Haziran 1999 dönemi içinde, Kosova'dan Arnavut nüfusun sürülmesi maksadıyla Sırbistan silahlı kuvvetleri ve milis birlikler Arnavut sivillere karşı ağır suçlar işlemiştir. Aynı dönemde, Sırbistan'ın işlediği bu suçlara son vermek amacıyla, Yugoslavya'ya karşı havadan bir NATO müdahalesi düzenlenmiştir.

O dönemde Kosova'da yaşananlara ilişkin Sırp kamuoyuna yönelik değerlendirmelerde bulunan Patrik Pavle, Kosova için yürütülen savaşın Sırplar açısından bir savunma savaşı olduğunu, bu yüzden Tanrı tarafından da kutsandığını belirtmiştir. Pavle yayınlanan bir mülakatında şunları ifade etmiştir:[39]

> Bir başka yolun mevcut olmadığı apaçık ortadadır. Bu yüzden bize de savaş dayatılmıştır. Yalnız bizim savaşımız adildir, çünkü savunmacı özelliktedir. Kosova'daki savaşımız ne saldırgan ne de fethedicidir. Hz. İsa şöyle buyurmuştur: "Bir kimsenin kendi hayatını bir yakını için kurban etmesinden daha büyük bir sevgi yoktur". Savaşa savunma amaçlı olarak katılanların arkasında her zaman Tanrının kutsayışı mevcuttur. Kendimize ait olanı koruyan ve başkasına ait olanda gözümüz olmayan bizler için bu savaş savunma amaçlıdır, dolayısıyla Tanrı tarafından kutsanmıştır.

Kosova'daki savaş Sırp silahlı kuvvetlerinin geri çekilmesiyle ve Sırbistan'ın mağlubiyetiyle sona ermiştir. O zamana kadar Sırbistan yönetiminin politikalarını desteklemiş olan Sırp Ortodoks Kilisesi, Sırbistan'ın kaybetmiş olduğu dördüncü savaş yüzünden Miloşeviç'i suçlamıştır. Bu çerçevede, kilise içinde, Raşko-Prizren Başpiskoposu Artemiye'nin yaptığı gibi, Miloşeviç yönetiminin yıkılması için çaba sarf eden kesimler ortaya çıkmıştır.

Başpiskopos Artemiye 6 Aralık 1999'da Patrik Pavle'ye gönderdiği bir mektupta, Miloşeviç'in savaşı kaybetmiş olması yüzünden, ruhban kesimin Sırp milletinin karşısına çıkamaz duruma düştüğünü, bu yüzden başarısızlıkla suçladığı Miloşeviç yönetimine son verilmesi, kilisenin ise bütün irtibatlarını

39 "Intervju sa patrijarhom Pavlom", *Duga,* (10 Nisan 1993).

kesmesi gerektiği yönünde tavsiyelerde bulunmuştur. Artemiye'nin Miloşeviç'e kızgınlığı, yürüttüğü savaşlarda yüz binlerce kişinin yaşamını yitirmiş olması yüzünden değil, söz konusu savaşları kaybetmiş olmasından kaynaklanıyordu.[40]

Piskopos Atanasiye Yeftiç de, "Balkanlar'da büyük Sırp krallığı" oluşturma projesini gerçekleştiremediği için Slobodan Miloşeviç'e şu sözlerle ağır eleştirilerde bulunmuştur:[41]

> En azından Sırp Cumhuriyeti'nde, Sırp Bosna-Hersek'inde tanrı adaleti ve insan itibarı, şerefli Haç ve değerli özgürlük için savaşmış ve savaşmakta olan o erdemli insanları dikkate aldığımda, bölgede kahramanca savaşın yürütüldüğünü söyleyeceğim. Bu insanlar, gururla kendi hayatlarını vermiş ve kendi komşularının açtığı yaralara ve Avrupa-Amerikan NATO'sunun bombardımanlarına cesurca göğüs gererek savaşmışlardır. Fakat en sonunda Sırp milleti, tarihinde görülmemiş bir şekilde, vatan haini Sırbistan Cumhurbaşkanı Slobodan Miloşeviç'in ihanetine uğramıştır. Miloşeviç'in ihaneti halen devam etmektedir ve muhtemelen kanlı ve bastırılmış olan Kosova'yı da kapsayacaktır.

Miloşeviç'e yapılan bu yöndeki saldırılarla Sırp Ortodoks Kilisesi'nin önde gelenleri ayrıca eski Yugoslavya topraklarında yaşanan savaşları kilisenin nasıl kışkırttığını da örtbas etmeye çalışmışlardır.

VI. Sonuç

1990'lı yıllarda Balkanlar'da yaşanan savaşların esnasında Sırp Ortodoks Kilisesi'nin başında bulunmuş olan Patrik Pavle adil bir savaşın var olabileceğine ve Sırpların bölgedeki savaşları, kötülüklerin saldırılarına karşı kendilerini savunmak maksadıyla yürüttüklerine inanmıştır. Bu yöndeki inançtan hareketle, Sırp silahlı kuvvetlerinin Hırvatistan ve Bosna-Hersek'te yürüttükleri fetih savaşlarını Patrik Pavle açık olarak desteklemiştir. Sadece Patrik Pavle değil, genel olarak Sırp Ortodoks Kilisesi Sırpların Balkanlar'da ahlaki ve insani bir hedefle savaşmakta olduklarına inanmış, bu yüzden Sırpların Hırvatistan, Bosna-Hersek ve Kosova'da işledikleri öldürme, tecavüz ve yağmalama gibi suçları

40 Milorad Tomanic, *Srpska Crkva u Ratu...*, ss. 146-149.

41 Atanasije Jeftic, "Najgori od Svih Mogucih Ratova", *Jagnje Bozje i Zvijer iz Bezdana,* ed. Rados M. Mladenovic & Hierodeacon Jovan-Culibrk (Cetinje: Svetigora, 1996), http://www.mitropolija.co.me/duhovnost/jagnje/index_1.html

görmezden gelmiş, suçluların ise kilisenin kutsal ayinlere girmelerini yasaklamamıştır. Sırp Ortodoks Kilisesi'nin yöneticileri, bölgedeki bütün Sırpların ortak bir devlet çatısı altında toplanmadığı sürece, savaşların devam etmesini istemiş ve teşvik etmiştir.

Sırp Ortodoks Kilisesi'nin anlayışından, Sırp kilisesinin, Sırp devletinin ve Sırp milletinin çıkarları için, hesabı kıyamet gününde sorulmaksızın bir Sırp asıllının "meşru" olarak öldürebildiği mesajı çıkartılabiliyordu. Hatırlatmak gerekirse, "Akrepler" isimli Sırp örgütün altı Srebrenitsalı genci katletmesi ile ilgili Haziran 2005'te yayınlanan görüntüler bütün dünyayı şoke etmişti. Srebrenitsa'da Boşnaklar üzerinde işlenen soykırıma iştirak eden Akrepler mensupları, Bosna-Hersek yoluna koyulmadan önce, video görüntülerinde de yer aldığı gibi, Sırp Ortodoks Kilisesi'nin bir rahibi tarafından kutsanmışlardır.

Sırp toplumunun büyük bir kısmı olduğu gibi, Sırp Ortodoks Kilisesi de Sırplık uğruna geçmişte işlenmiş hatalarla henüz yüzleşmiş değildir. Dahası, kilisenin yapısı içinde halen olumsuz propaganda yapan ve savaşta doğrudan yer almış olan kişiler bulunmaktadır. Söz konusu kişiler arasında, savaş suçlusu Radovan Karaciç'ten aldıkları madalya ile ödüllendirilmiş olanlar da vardır. Ne yazık ki geçmişle yüzleşmeden, eski Yugoslavya topraklarındaki savaşlarda Sırp Ortodoks Kilisesi'nin de rol aldığı açıkça itiraf edilmeden ve kilise radikal rahiplerden temizlenmeden, Balkanlar'daki insanların barışmasından ve bölgede kalıcı bir barışın sağlanmasından söz edilemez.

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THE CONSTITUTIONALIST FUNERAL OF THE AMERICAN DEATH PENALTY

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Abstract: *Although the constitutionality of the death penalty has become the subject of wide consensus, the constitutionality of the form and the proceedings with which capital punishment is engaged remains in dispute. In this article, I make several steps backwards, thus examining the constitutionality of the death penalty in itself. I address this issue from a new perspective. I present the traditional American evolution of judiciary constitutional thinking on capital punishment, and accordingly traditional constitutional arguments against the death penalty. Then, I flag sweeping comparative and international legal moves towards the abolition of the death penalty bearing in mind the problematic political compromise imbedded in Article 6 of the International Covenant on Civil and Political Rights of 1966, which sharply protects the right to life as an inherent right, as well as prohibits violation of this right in an arbitrary manner, on the one hand, and acknowledges the existence of other countries that allow for the imposition of death penalty, though by limiting it to the most serious crimes, on the other hand. Finally, I offer a new angle of reading, understanding and interpretation of the Constitution of the United States, based on a novel philosophical thesis that I name: "constitutionalism." I suggest thus a new order of basic legal thought based upon the pyramid of norms, seeking to place atop constitutionalism theory as the supreme governor of every democratic society. I argue that under a constitutionalist regime there are two absolute constitutional rights; these are the right to life and the right to dignity. Consequently, I assert the unconstitutionality of capital punishment. However, reading the Constitution of the United States within the frame of this model, it is clear that the unconstitutionality of the death penalty is the only outcome. In a world where the concept of human rights is supreme, I have more than one reason to believe that the death of the capital punishment is much closer than ever before.*

Key Words: *Death Penalty; Dignity; Human Rights; Right to Life.*

Dr. Mohammed Saif-Alden WATTAD

AMERİKAN ÖLÜM CEZASININ ANAYASALCI CENAZESİ

Özet: *Her ne kadar idam cezasının anayasallığı geniş kapsamlı bir görüş birliğine sahipse de, şekil ve işlemlerin anayasallığı üzerinde anlaşmazlıklar devam etmektedir. Bu makalede, birkaç adım geri gelerek ölüm cezasının kendisinin anayasallığını incelemeye çalışıyorum. Bu konuya yeni bir açıdan yaklaşıyorum. İdam cezası ile ilgili geleneksel Amerikan anayasal düşüncesinin evrimini ve arkasından ölüm cezasına karşı geleneksel anayasal argümanları sunuyorum. 1966 Sivil ve Siyasi Haklar Uluslararası Akti 6. maddesinde yer alan siyasi uzlaşma problematiğini göz önünde bulundurarak ölüm cezasının yasaklanmasına yönelik uluslararası yasal hareketleri karşılaştırmalı bir şekilde ele alıyorum. Söz konusu akit, yaşam hakkını katı bir şekilde koruyan, aynı zamanda bu hakka yönelik tüm eylemleri yasaklayan, fakat aynı zamanda idam cezasının bazı ülkelerdeki varlığını kabul eden, ancak bunu sadece çok ciddi suçlarla sınırlayan bir belgedir. Amerikan anayasasının farklı bir açıdan okunmasını, anlaşılmasını ve yorumlanmasını önerirken, bunun "anayasalcılık" denilen felsefeye dayanarak yapılmasını savunuyorum. Böylece, her demokratik toplumdaki en üst yönetim olan anayasalcılık teorisinin tepesine koyma çabası ile, normlar piramidi üzerine kurulu yeni bir temel yasal düşünce düzeni ortaya koyuyorum. Anayasal bir rejimde iki mutlak anayasal hak olduğunu, bu hakların yaşam ve haysiyet olduğunu savunuyorum. Sonuçta, idam cezasının anayasal olmadığını ortaya koyuyorum. Ancak, Amerikan Anayasasını bu model çerçevesinde okuyunca, ortaya tek bir sonuç çıkıyor, o da; ölüm cezasının anayasal olmadığı. İnsan hakları kavramının en yüce noktada olduğu dünyamızda, idam cezasının ölümünün şimdiye kadar hiç olmadığı kadar yakın olduğunu savunmak için bir nedenim daha bulunuyor.*

Anahtar Kelimeler: *Ölüm cezası, haysiyet, insan hakları, yaşam hakkı*

This note was a promise that all men would be guaranteed the inalienable rights of life, liberty, and the pursuit of happiness... We must forever conduct our struggle on the high plane of dignity and discipline

[Martin Luther King, Jr., "I Have A Dream"]

I. Prologue

Invoking natural law as the origin of the basic rights of human beings, Martin Luther King addressed:

> ..."unjust law is no law at all"... A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that

> is out of harmony with the moral law.... Any unjust law is a human law that is not rooted in eternal law and natural law, any law that uplifts human personality is just. Any law that degrades human personality is unjust.[1]

The notion of human rights is evident in many facets of legal discussion, especially in constitutional law.[2] Referring confidently to the notions of human rights, just law and moral values – as well as the concept of "all people were created"[3] – Martin Luther King relied on a substantial philosophical concept of the natural origin of human rights and of the need to protect this set of rights.[4] These concepts cut directly to the core of the legal thought.[5] It is, however, a biblical theme, as evidenced by the statement: "When God created man, he made him in the likeness of God."[6]

Most documents on human rights refer to an abstract power as the source of all human rights and thus the legitimacy of its protection. This assertion of an abstract power purports to ground premises of hypothetical theory on the ideal notion of human rights, where only "Good" could exist. That said, "... You may freely eat of every tree of the garden, but of the tree of the knowledge of good and evil you shall not eat, for in the day that you eat you shall die."[7] In modern times

1 Martin Luther King, "Letter from Birmingham Jail," 26 (4) *U.C. Davis Law Review,* no. 835, (1993), p. 840 On the philosophical concept of human rights, *see*: George P. Fletcher, *Basic Concepts of Legal Thought* (Oxford: Oxford University Press, 1996), pp. 11-42, 35.

2 This is also true of Criminal Law; *i.e.* Substantive Criminal Law, Evidence Law and Criminal Procedures. It is also true of legal philosophy studies.

3 Martin Luther King, Jr., "I Have A Dream," in *Martin Luther King*: *The Peaceful Warrior*, ed. Ed Clayton, (New York: Pocket Books, 1968).

4 See e.g. The English Bill of Rights of 1689; The Declaration of Independence of the United States of America of 1776; The Constitution of the United States of 1787; The Basic-Law for the Federal Republic of Germany (Promulgated by the Parliamentary Council on 23 May 1949, last amended 1990); The French Declaration of the Rights of Man and of Citizen of 1789; The French Constitution of 1958; The Canadian Charter of Rights and Freedoms of 1982; The Israeli Basic-Law: Human Dignity and Liberty of 1992; The Constitution of the Republic of South Africa of 1996.

5 Patrick Hayden, *The Philosophy of Human Rights,* (New York: Paragon House, 2001; John Rawls, *A Theory of* Justice (U.S.: Harvard University Press, 1999); The Universal Declaration of Human Rights of 1948; The Declaration on the Rights on Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms of 1998; The European Convention for Protection of Human Rights and Fundamental Freedoms of 1950; The European Union Charter of Fundamental Rights of 2000; The American Declaration of the Rights and Duties of Man of 1948; The American Convention on Human Rights of 1969; The African Charter on Human and People's Rights of 1981; The Cairo Declaration on Human Rights in Islam of 1990; The Arab Charter on Human Rights of 1994; Ian Brownlie and Guy Goodwin-Gill, *Basic Documents on Human Rights* (Oxford: Oxford University Press, 2002).

6 Genesis Book, 5. The Magna Carta (The Great Charter) of 1215 also refers to God. *See more*: Resolution on Capital Punishment of 1977 (The General Board of the American Baptist Church); Statement on Capital Punishment of 1957 (The Church of the Brethren); Statement on Capital Punishment of 1978 (The Committee on Social Development and World Peace, by the U.S. Catholic Conference); Concerning Capital Punishment (Christian Church, 1973); Resolution on Capital Punishment of 1959 (The Union of American Hebrew Congregations).

7 *Id.*, at 2. *Note*: The use of the word "die" has different meaning to that with which we are familiar. By saying "you shall die" God means "Because you have... eaten of the tree of which I commanded to you, 'You shall

– namely, the materialist world – this biblical maxim was reshaped by philosophers, who proposed the imposition of certain duties on states, as entities of organizing power, for the sake of protecting human rights.[8]

Criminal law is one of the legal fields most likely to violate human rights for the sake of *e.g.* a legitimate interest in "revealing the truth." Nonetheless, as I have expressed elsewhere:[9]

> The "Truth" is much more valuable than we imagine, and it is far from being captured, it might be even more valuable than the truth that already was found. The "Absolute Truth" is a priceless treasure, a biblical theme, and it is Eve's evil willing to reveal it. The "absolute truth" is a diamond, well sharpener and well sharpened. A truth which needs to be approved by others cannot be "absolute truth." For "absolute truth," not even the consensus of all the cosmos will add any unique value, just as its universal rejection will not detract any of its unique value. Unfortunately, we have hitherto not been granted anything like this absolute truth, as announced by Khalil Gubran: "Say not, "I have found the truth," but rather, "I have found a truth." Carrying this treasure of priceless maxims, I try to pave my way through the American Constitution, arguing for the absoluteness of the right to life and the right to dignity.

II. Introduction

In one of his famous lines on the conceptual meaning of death, Franz Kafka wrote:[10]

> To die would mean nothing else than to surrender a nothing to the nothing, but that would be impossible to conceive, for how could a person, even only as a nothing, consciously surrender himself to the nothing, and not merely to an empty nothing but rather to a roaring nothing whose nothingness consists only in its incomprehensibility.

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not eat of it,' cursed is the ground because of you; in toil you shall eat of it all the days of your life; thorns and thistles it shall bring forth you; and shall eat the plants of the field." (*See*: *Id.*, at 4). Therefore, though God punished them, God did not deprive them of their life.

8 *See e.g.* John Rawls, *A Theory of* Justice..., p. 118; Louis Henkin, *Constitutions and the Elements of Constitutionalism* (Columbia University: Center for the Study of Human Rights, November 1992).

9 Mohammed Saif-Alden Wattad, "Did God say, 'You Shall Not Eat of Any Tree of the Garden'?: *Rethinking the "Fruits of the Poisonous Tree" in Israeli Constitutional Law*," Oxford U Comparative L Forum (2005), http://ouclf.iuscomp.org/articles/wattad.shtml. Genesis Book, 3, 4; H. L. A. Hart, "Between Utility and Rights," *Columbia Law Review,* 79 (1979); Kahlil Gibran, *The Prophet* (U.S. Alfred A. Knopf, Inc., 1923), 54.

10 Franz Kafka - December 4, 1913, http://www.kafka-franz.com/kafka-Biography.htm

The American People have experienced a very complicated history, for which human rights has been a constant characteristic throughout, *e.g.* religious and ethnic issues. Step by step, they have built a constitutional regime that they can be proud of. Successfully, the Bill of Rights of 1789 was adopted within the Constitution, and a level of enlightenment was achieved. The American history has become a saga of "Good and Bad." The American People aspired to become "a more perfect union."[11] Luther King's famous speech – "I have a dream" – played a very purposive and principal role in this saga.[12] Luther King did not "dream" about equality, though this was the touchstone notion of his address. But, he dreamt about human dignity as a converse concept of humiliation. It was the biblical idea: "When God created man, he made him in the likeness of God."[13] Holding this dream, Luther King awakened the American People to a new era, where human beings should be treated as ends but not means. Case by case, the path toward Luther King's dream was paved. Adopting the Bill of Rights in 1791 in the Constitution was strictly the first step. Addressing the Due Process Clause and the Equal Protection Clause[14] as a large loophole for recognizing fundamental human rights, which are not expressly protected by the Constitution, was the major constitutional evolution.

Yet, what could have been a major development in constitutional law and criminal law has not come to pass. Keeping loyal to several "Bad" outmoded practices the protection of human rights seems to be defective; *i.e.* the ongoing validity of the death penalty.[15]

The trouble was not only that the "will of the People" was denied. That said, "[W]e hold these Truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are

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11 The Preamble of the Constitution of the United States.

12 Martin Luther King, "Letter from Birmingham ...

13 Genesis Book, 5, *Supra* note 6.

14 Section 1 of the Fourteenth Amendment of the Constitution of the United States. The ideas is of "Due Process" and "Equal Protection" are substantive concepts of every legal jurisprudence, although formally acknowledged by Anglo-American systems. Underlying these notions is the premise to guarantee the accused rights in trial. The "Due Process" principle states that the government must respect all of the legal rights that are owed to a person according to the law; it holds the government subservient to the law of the land, protecting individual persons from the state. The notion of "Equal Protection" attempts to secure the state's professed commitment to the proposition that "all men are created equal" by empowering the judiciary to enforce that principle against the state; it grants equal protection, not necessary equal rights.

15 This was an ancient English inheritance of the end of the fifteenth century. The American colonies had no uniform criminal law. The earliest recorded set of capital statutes on these shores are those of the Massachusetts Bay Colony from 1636. This early codification was titled "The Capital Laws of New-England." Hugo Adam Bedau, *The Death Penalty in America* (Chicago: Aldine Pub. Co., 1976), p. 5; Theodore Plucknett, *A Concise History of the Common Law* (Boston: Little, Brown and Company, 1956), 424-454. In other words, this was the evil of the English "Bloody Code." This title was given by Arthur Koestler. Yet, it does not mean that the Colonial Americans were blindly following the tradition. See: Stuart Banner, *The Death Penalty: An American History* (Cambridge: Harvard University Press, 2002), p. 5.

Life, Liberty, and the pursuit of Happiness."[16] The trouble is the constitutional validity that the death penalty was granted.[17]

However, this issue has long been under discussion in the American jurisprudence, as set out henceforth. Though the constitutionality of the death penalty has become the subject of wide consensus, the constitutionality of the form and the proceedings with which capital punishment is engaged remains in dispute. In this article, I make several steps backwards, thus examining the constitutionality of the death penalty in itself. I address this issue from a new perspective. In Part III, I present the traditional American evolution of judiciary constitutional thinking on capital punishment, and accordingly traditional constitutional arguments against the death penalty. In Part IV, I flag sweeping comparative and international legal moves towards the abolition of the death penalty bearing in mind the problematic political compromise imbedded in Article 6 of the International Covenant on Civil and Political Rights of 1966 (hereinafter: ICCPR) - a multilateral treaty adopted by the United Nations General Assembly. It commits its parties to respect the civil and political rights of individuals which sharply protects the right to life as an inherent right, as well as prohibits violation of this right in an arbitrary manner, on the one hand, and acknowledges the existence of other countries that allow for the imposition of death penalty, though by limiting it to the most serious crimes, on the other hand. Finally, I offer a new angle of reading, understanding and interpretation of the Constitution of the United States, based on a novel philosophical thesis that I name: "constitutionalism." I suggest thus a new order of basic legal thought based upon the pyramid of norms, seeking to place atop constitutionalism theory as the supreme governor of every democratic society, within the simple classic meaning of a political model of governing. I argue that under a constitutionalist regime there are two absolute constitutional rights; these are the right to life and the right to dignity. Consequently, I assert the unconstitutionality of capital punishment. However, reading the Constitution of the United States within the frame of this model, it is clear that the unconstitutionality of the death penalty is the only outcome.

16 *See*: The Declaration of Independence, *supra* note 4.

17 *Note*: The first constitutional challenge for the validity of the death penalty was made through the Eighth Amendment of the Constitution of the United States, which prohibits "cruel and unusual punishment." Making this argument, the Supreme Court of the United States held that the intent of the Framers of the Constitution was to rule out, once and for all, the aggravations attendant on execution, *e.g.* drawing and quartering, pressing, or burning. These practices had all but totally disappeared by 1789 and they had never taken firm root here, anyway; but their express exclusion by Jefferson, Madison and other authors of the Bill of Rights was a service to the interest of a free and human people. Except when executing spies, traitors and deserters, who could be shot under martial law, the sole acceptable mode of execution in the Eighth Amendment was hanging. *See*: *Wilkerson* v. *Utah*, 99 U.S. 130, 135 (1878).

In a world where the concept of human rights is supreme, I have more than one reason to believe that the death of the capital punishment is much closer than ever before.[18] This belief was well expressed by Raymond Bye, in the twentieth century: "There is reason to believe that in the course of the present century the use of the death penalty will finally pass away."[19]

A new century is making its first steps forward. Neither Bye's belief nor Luther King's dream was fulfilled yet. I hope that my thesis will contribute to the efforts of these distinguished dreamers, thus holding the right to life and the right to dignity straight on towards the abolition of the death penalty, waiving away one of the last bad notions that the American People still carry from their outmoded dogma – which is the established doctrine held by ideology as a matter of authoritative and not to be disputed, doubted or diverged from.

III. The Traditional Constitutional Arguments Against The Death Penalty

Vladimir Soloviev, an articulate Russian philosopher, once argued:[20]

> Death penalty is the last important position which the barbarian criminal law (direct transformation of a savage custom) still upholds in contemporary life.

In this chapter, I present solely the traditional American debate on the constitutional aspects of the death penalty. This constitutional challenge was largely issued by the American Supreme Court through landmark cases, as well as by academics.[21] Nonetheless, something was missed in this long journey. The proof is that the death penalty still survives under the American normative umbrella.

The evolution of the constitutional debate on the death penalty[22] has its origin in

18 Stuart Banner, *The Death Penalty...*, p. 89.

19 Raymond Bye, "Recent History and Present Status of Capital Punishment in the United States," *Journal of Criminal Law, Criminology and Police Science,* vol. 17, no. 2 (Aug., 1926), 239, 245.

20 This notion was held in 1906, and published in English later in 2001. *See*: Vitaly Kvashis, "Death Penalty and Public Opinion", *Russian Social Science Review* no. 40 (1999), 75–89.

21 *See*: Daniel Suleiman, "Note: The Capital Punishment Exception: A case for Constitutionalizing the Substantive Criminal Law," *Columbia Law Review,* no. 426 (2004); *Coker* v. *Georgia*, 433 U.S. 584, 586 (1977); *Enmund* v. *Florida*, 458 U.S. 782, 787 (1982); *Atkins* v. *Virginia*, 536 U.S. 304, 321 (2002); Ray W. Irwin and Edna L. Jacobsen, eds., *A Columbia College Student in the Eighteenth Century: Essays by Daniel Tompkins* (New York: Columbia University Press, 1940), p. 23.

22 The 1760s and 1770s were the beginning of the rethinking of capital punishment. In the 1780s and 1790s, it became the subject that every individual thought about; a process of public debate was carried out; and news papers carried editorials and letters arguing for and against abolition. This uncontroversial subject, until the

1791, when the Eighth Amendment of the Constitution of the United States was ratified, providing that: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[23]

The phrase "cruel and unusual punishment" has been used in three distinct but related senses.[24] The first use is related to the principle of proportionality, namely that the harshest sentences had to be reserved for the worst crimes. The second understanding refers to punishment unauthorized by law and therefore outside the authority of a court to impose. And, the third meaning of this phrase prohibits certain means of painful punishing. Nevertheless, under none of these meanings would capital punishment have been considered cruel and unusual.[25] However, no one read the Eighth Amendment as abolishing all forms of death penalty. Other parts of the Constitution indicate that those who drafted and ratified it contemplated the continued existence of the death penalty. In other words, the Fifth Amendment requires indictment by grand jury before trial "for a capital, or otherwise infamous crimes," ensures that no defendant will "be subject for the same offense to be twice put in jeopardy of life," and forbids the government to deprive a person "of life, liberty, or property, without due process of law."[26]

In *Weems*,[27] a novel interpretation of the Eighth Amendment was adopted. An American official was convicted of falsifying a minor government record and sentenced to fifteen years' imprisonment with hard labor plus lifetime disqualification from many civil rights. Justice Joseph McKenna held that the sentence amounted to cruel and unusual punishment as it was so disproportional to the crime. *Weems* promoted two novel notions:[28] (1) ignoring the Framer's

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1760s, became one of the major controversial themes. Some invoked the abolition of the death penalty (*e.g.* James Madison and DeWitt Clinton), while others sought the narrowing of the premises of capital punishment, by advocating the elimination of the death penalty for all crimes other than murder (*e.g.* Thomas Jefferson and Benjamin Franklin). Nevertheless, in the eighteenth century, no state promoted a complete abolition of the death penalty, but several did away with it for crimes short of murder. This was a revolutionary process, led, in particular, by public opinion.

23 Stuart Banner, *The Death Penalty...*, 231. This formula originally appeared in the English Bill of Rights of 1689.

24 *Id.*, at 232-234.

25 Only a small fraction of the population considered capital punishment disproportionately severe for the gravest crimes; the death penalty was hardly unauthorized by statute; and a death by hanging was often not painful at all and was not intended to be painful.

26 Hence, lawyers began to attack aspects of capital punishment under the Eighth Amendment only when governments began to depart from tradition. *See e.g. Wilkerson* v. *Utah*, 99 U.S. 130 (1878); *State* v. *Burris*, 190 N.W. 38 (Iowa 1922); *State* v. *Butchek*, 253, 253 P. 367 (Ore. 1927); *State* v. *Stubblefield*, 58 S.W. 337 (Mo. 1900); *Territory* v. *Ketchum*, 65 P.169 (N.M. 1901); *Gibson* v. *Commonwealth*, 265 S.W. 339 (Ky. 1924); *Robards* v. *State*, 259 P. 166 (Okla. 1927); *Brookman* v. *Commonwealth*, 145 S.E. 358 (Va. 1928); *United States* v. *Rosenberg*, 195 F.2d 583 (2d Cir. 1952).

27 *Weems* v. *United States*, 217 U.S. 349 (1910).

28 *See more*: In 1947, in very explicit terms, Justice Frank Murphy of the Supreme Court of the United States held that the Eighth Amendment ought to be understood with reference to current attitudes toward punishment. For as "a punishment that might be considered fair today, [it] may be considered cruel and unusual punishment

intent; and (2) investing judges with extraordinary discretion to review sentences for severity.[29] *Weems*, however, generated three largely cited cases, for which the Supreme Court of the United States shaped the basic architectural structure of the "cruel and unusual punishment" phrase.

In *Trop*,[30] the Supreme Court invalidated a section of the Nationality Act of 1940, on the strength of which a dishonorably discharged Army veteran had been held to have forfeited his citizenship for wartime desertion. The court tested the sentence not against historical precedents but against contemporary sensibilities. The peculiarity of this case is the holding that the phrase "cruel and unusual punishment" includes whatever Americans were prepared to call cruel and unusual at any time, not just what Americans of the late eighteenth century would have thought of as cruel and unusual.[31]

In a group of cases called *Furman*,[32] the Supreme Court declared the death penalty, "in these cases," unconstitutional,[33] as cruel and unusual punishment, thus holding that the application of the death penalty was discretionary, haphazard and discriminatory in that it was inflicted in a small number of the total possible cases and primarily on certain minority groups.[34] Nevertheless, what could have been a major development in constitutional law and criminal law, has not come to pass. The Supreme Court limited its holding to capital punishment as applied to Georgia and Texas.

tomorrow." He emphasized the concept that "more than any other provision in the Constitution, the cruel and unusual punishment depends largely, if not entirely, upon the humanitarian instincts of the judiciary. [We] have nothing to guide [us] in defining what is cruel and unusual punishment is apart of [our] conscience" (*Louisiana ex rel Francis* v. *Resweber*, 329 U.S. 459 (1947); Harold Burton Papers, box 171, LC).

29 Stuart Banner, *The Death Penalty...*, 236; Hugo Adam Bedau, *The Courts, the Constitution, and Capital Punishment* (Lexington, Mass.: Lexington Books, 1977), p. 32. In 1962, a similar question, under different circumstances, was brought to court, for which Robinson, a narcotic, was sentenced to a ninety-day jail term for being addicted to narcotics. Justice Potter Stewart held that it "would be a cruel and unusual punishment for the 'crime' of having a common cold." He emphasized that, though imprisonment of ninety days is not, in abstract, a punishment which is either cruel or unusual, but the Eighth Amendment also prohibits punishments that were too severe for the crime to which they were attached. *See*: *Robinson* v. *California*, 370 U.S. 660, 667 (1962). *Note*: Originally, the Eighth Amendment did not apply to the states, but only to the Federal Government. Later in the nineteenth century, the Supreme Court of the United States gradually found most of the Bill of Rights to be incorporated by the due process clause of the Fourteenth Amendment and thus applicable to the states as well. In *Robinson*, the Supreme Court of the United States expressly incorporated the Eighth Amendment to the Fourteenth Amendment, and thus it applies to the states; Larry Charles Berkson, *The Concept of Cruel and Unusual Punishment* (Lexington, Mass.: Lexington Books, 1975), pp. 71-73.

30 *Trop* v. *Dulles*, 356 U.S. 86 (1958).

31 Therefore, denationalization is unconstitutional because it exceeded the limits of civilized standards as of 1958.

32 In the middle of the twentieth century, strong voices were heard in favor of the abolition of the death penalty. It includes Supreme Court Justices, law professors and sociologists. *See*: *Williams* v. *New York*, 337 U.S. 241, 248 (1949). The law professor Herbert Packer reported in 1968 that "[T]he retributive position does not command much assent in intellectual circles." *See also*: Herbert L. Packer, *The Limits of the Criminal Sanction* (Stanford: Stanford University Press, 1968), p. 10; Robert G. Caldwell, "Why Is the Death Penalty Retained?" *Annals of the American Academy of Political and Social Science* 284 (1952) p. 52.

33 *Furman* v. *Georgia*, 408 U.S. 238 (1972).

34 *See and compare*: *McGautha* v. *California* 402 U.S. 183 (1971).

But the Supreme Court quickly realized that it had entered uncertain territory, and thus in *Gregg*[35] rejected the argument that the death penalty violates the Constitution of the United States holding that it is not a form of punishment that can never be imposed, regardless of the circumstances of the offense, the charter of the offender and the procedure followed in reaching the decision to impose it.[36]

Following *Gregg*, there grew a large consensus that the death punishment does not invariably violate the Constitution of the United States. Whereas the form and the procedures could be unconstitutional, the essence of the death penalty is deemed indisputably constitutional.[37]

IV. Comparative & International Perspectives: "Isolating" The American Death Penalty

American law – in particular American constitutional law – does not exist in a vacuum. Arguing against capital punishment, the question becomes whether there is room for considering comparative law and practices of other legal systems and international law. Whereas the answer might be plain enough as to international law, given that international law is part of American law,[38] it is not as clear as to comparative law.[39] However, Professor George Fletcher once argued that "the most interesting and significant comparative studies are precisely those that tackle these incomparable items of legal theory and doctrine."[40] Given that the main concern of this article is the American death penalty, I provide only the basic guidelines of comparative and international studies.

35 The *Furman* rule generated the enactment of a new statutory scheme in Georgia.

36 *Gregg* v. *Georgia*, 428 U.S. 153 (1976). For the concrete circumstances of this case, the Court held that the Georgia's system of sentencing focused the jury's attention on the particularized nature of the crime and the particularized characteristics of the individual defendant and provided a method for review, and thus the Georgia's statute did not violate the constitution.

37 The death penalty even survived the Due Process Clause [*See for instance*: *Griffin* v. *Illinois*, 351 U.S. 12 (1956); *Powell* v. *Alabama*, 287 U.S. 45 (1932); *Hamilton* v. *Alabama*, 368 U.S. 52 (1961); *White* v. *Maryland*, 373 U.S. 59 (1963); *Walton* v. *Arkansas*, 371 U.S. 28 (1962)] and the Equal Protection Clause [*See*: *Giacco* v. *Pennsylvania*, 382 U.S. 399 (1966)]. At most, the hard cases were limited to formal and procedural questions, *e.g.* whether death penalty was imposed with due process or whether it was imposed in a discriminatory manner.

38 As provided by Article II, clause 2, of the Constitution of the United States, treaties supersede any position under the supreme law of the United States of America.

39 Arguing basically that each legal culture has its own legal tradition, from which different legal principles are derived.

40 George P. Fletcher, "Introduction from a Common Law Scholar's Point of View" in Albin Eser, George P. Fletcher, Karin Cornils, eds., *Justification and Excuse: Comparative Perspectives* (New York: Transnational Juris Pubs., Inc., 1987), p. 9.

Curiously, the United States of America is one of the rare countries in the entire western hemisphere and Europe that continues to implement the death penalty.[41] Throughout the mid-19th century to the early 21st century, a sweeping process of death penalty abolition was carried out in many countries in the world – mainly, western European countries, *inter alia* constitutional or statutory amendment[42] The Council of Europe, a strong opponent of the death penalty, discarded even its wartime exception to this policy. Hence, any country wishing to become or to remain a member of the Council of Europe was required to abolish the death penalty.[43] Europe and Latin-America had abolished, in general, the death penalty, or at least had not enforced it.

A nutshell inquiry into international law shows a parallel movement of abolition. Accurately articulated, the ICCPR prohibits "cruel, inhuman or degrading treatment or punishment."[44] That said, "All measures of abolition should be considered as progress in the enjoyment of the right to life."[45] Yet, the question concerning the ICCPR is not easy as it might be perceived from a simple glance at the manifest words of the ICCPR.

On the one hand, Article 6(1) of the ICCPR provides a clear protection to the right to life; it further considers the right to life as inherent. Article 6(1) also prohibits arbitrary deprivation of the right to life. To this extent, note that from Article 6(1) one may not clearly infer either the permissibility of imposing death penalty or the prohibition against it. To elaborate on Article 6(1), it notable that Article 6(2) recognizes the existence of countries that allow for the imposition of death penalty. However, for these instances Article 6(2) affixes a formula of clear political compromise, whereby in such countries death penalty can be attached only to the most serious crimes, *e.g.*, murder..

One may seriously argue that Article 6 embodies a conceptual contradiction. As I shall argue in depth later on, an inherent right – such as the right to dignity or the right to life – is by nature an absolute right. Providing that the right to life is inherent – as Article 6(1) states – it is my view then that permitting the imposition of death penalty implies a relative nature of the right. I view this that inherent rights cannot be relativists; they must be absolute in.

41 Victor L. Streib, *Death Penalty in a Nutshell* (St. Paul, Minn.: Thomson West, 2003), p. 274.

42 *Id.*, at 270.

43 *Id.*, at 271.

44 Article 7 of the International Covenant on Civil and Political Rights of 1966.

45 Victor L. Streib, *Death Penalty in...*, p. 275. This is how the United Nations of Human Rights Committee interpreted the provision, in 1982.

The question remains though, why would the ICCPR allow for such contradiction? The answer is probably attached to the international community's desire to reach a large consensus on the frame side of the ICCPR. In other words, adopting a political compromise formula that allows as many states as possible to sign the Covenant. It is not my position that political compromise is an impermissible methodology so far it concerns substantive serious question of the legal thinking. In the latter cases, I prefer seriousness and determination, thus drawing a clear and sharp line between that which is permissible and that which is impermissible. But this has not been the path that the ICCPR chose to follow. To some extent, I can express certain understanding towards the ICCPR's position, for if we are not in a position to abolish all forms of death penalty, then the least we can do is to limit its imposition by affixing certain constitutional safeguards both to the procedures leading up to imposing death penalty and to the forms of execution.

If we aim at taking international law seriously, as binding law on states, the international community must focus on the equality but not the quantity; it must also focus on the principle but not solely on the decoration. It is indeed true that the many states signing a treaty, the better it is, so far of concern the large frame. But once such situation requires detracting the very core meaning of the treaty, thus striking political compromises that leaves no essence to the treaty but the bias of political compromise, then we better sacrifice quantity for quality.

The existing formula of the ICCPR causes acute damages to international law and its implementation and enforcement under national jurisdictions, as well as complicates the interaction between national jurisdictions and the international jurisprudence. For instance, although the United States ratified the ICCPR in 1992, it included many reservations in its various provisions, including the stipulation that a particular provision shall be defined by punishments acceptable or unacceptable under the Fifth, the Eighth and the Fourteenth Amendments of the Constitution of the United States.[46]

To elaborate on the problematic grounds of Article 6 of the ICCPR, I shall further highlight one of the leading cases of the United Nations Human Rights Committees *Judge* v. *Cox*.[47] *Cox* involved the deportation of a person from a country which has abolished the death penalty to a country where he is under

46 *Id.*

47 CCPR/C/78/D/829/1998 UN Human Rights Committee (HRC), 13 August 2003, available at: http://www.unhcr.org/refworld/docid/404887ef3.html [last visited on 12 December 2009].

sentence of death. Accordingly, the question concerned the legality of such deportation in light of the possible paradox between articles 6(1) and 6(2) of the ICCPR. The Committee made it clear not only that the imposition of death penalty stands in contrast to the ICCPR[48] but also:[49]

> The Committee considers that the Covenant should be interpreted as a living instrument and the rights protected under it should be applied in context and in the light of present-day conditions... Bearing in mind that the State party has abolished capital punishment, the decision to deport the author to a state where he is under sentence of death without affording him the opportunity to avail himself of an available appeal, was taken arbitrarily and in violation of article 6, together with article 2, paragraph 3, of the Covenant.

The importance of the *Cox* case is reflected not only in its international consequences but especially in the new legal conclusions imbedded within. In *Cox*, it is notable that the Committee made a sharp determination against previous precedents that gave meaningful weight to the above-mentioned political compromise.[50] In *Cox*, the Committee made several steps forward in ruling that the deportation of a person from a country where death penalty is prohibited to a country where death penalty is permissible, without seeking assurances that the death penalty will not be applied prior to extraditing the person to the state where he faces capital punishment.

For this judicial conclusion to be achieved the Committee had to adopt a new method of interpretation, whereby the ICCPR should be interpreted as a living instrument and the rights protected under it should be applied in context and in the light of present-day conditions. Such method of interpretation made it possible for the Committee to make a crucial ruling against death penalty in principle. Such interpretation paved the path before the Committee to announce that it recognizes a clear progress, both under international law and national jurisdictions, toward the abolition of the death penalty.

It is my view that the *Cox* holding was an urgent one and that the Committee made necessary steps in the right path; these steps had to be made even earlier. One shall not be confused of the political compromise provided in Article 6 of the ICCPR. Reading the Covenant words together with the Second Optional Protocol to the International Covenant on Civil and Political Rights of 1989

48 Article 6(1).

49 *Supra* note 47.

50 *Kindler v. Canada* [1991] 2 S.C.R. 779.

(hereinafter: the Second Protocol) shows clear negation for and condemnation of the death penalty, as well as a clear statement of the international community regarding the need to abolish death penalty, as provided already in the Preamble to the Protocol[51] and soon after in Article 1 to the Protocol:

> "No one within the jurisdiction of a State Party to the present Protocol shall be executed. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction."

Namely, not only that the Protocol calls passively for the abolition of the death penalty, but also does it demand taking, positively and actively, all necessary measures for the sake of achieving this goal. Abolishing death penalty therefore is not solely a fantasy of the international community, but rather a reachable goal.

So to speak of the death penalty, confronting the American law with other European legal systems and the international jurisprudence, it becomes clear that the notion of the American death penalty is highly rejected among European countries and by international law, though international treaties and documents are articulated frequently by the use of compromised language, solely for the so-called "political reasons." To this extent, the *Cox* ruling, including the Committee's reasoning, all the more so the German Federal High Court rejection of an American application for extradition – mainly because otherwise the accused would have been subject to capital punishment – best illustrate the isolation of the American death penalty around the world.[52]

Frankly, as I read the American constitutional cases of the past twenty years, in a general context, the holdings of the Supreme Court of the United States were addressed worldwide, namely to the international community and to foreign comparative jurisprudences, rather than solely to American domestic legal studies. If so, even if Americans are bound legally neither to constitutional alterations and modifications in foreign legal systems nor to international ideals, yet as once argued by Hon. Justice Ginsburg of the United States Supreme Court:

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51 "The States Parties to the present Protocol, Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights, Recalling article 3 of the Universal Declaration of Human Rights, adopted on 10 December 1948, and article 6 of the International Covenant on Civil and Political Rights, adopted on 16 December 1966, Noting that article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable, Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life, Desirous to undertake hereby an international commitment to abolish the death penalty, Have agreed as follows:"

52 S StR 183/90 *LG [Landesgericht of Hessen] Frankfurt*, NJW 1991, 3104.

"If Americans want to be heard by other legal systems, they have mutually to pay attention to foreign legal evolvements."[53]

In this part of the Article, I sought to argue that comparative national and international legal systems show a clear trend toward abolishing death penalty, all the more so convey a sharp condemnation of the imposition of death penalty. To this extent, I sought to show that the American law in this regards has turned to be the last retentionist system in a sea of abolishists.

Having said that, a note of conscience ought to be provided. Intuitively speaking, as human being we may support death penalty for those people who caused the death of our dears; we feel that this is the only way for expressing our disgust toward those who take the lives of others. At the same time, we are so concerned about the human being's likeliness to make mistakes; for it might be that the truth that had already been reached is not the absolute truth, thus executing the innocent and letting the criminal free. This is the kind of self contemplation that the death penalty saga imposes on us. This is the sort of intuitive tension that exists deep in us regarding the pros and cons of the imposition of death penalty.

The best case I can offer here in order to mirror this tension – as well as the tension between international law, arguably as a law of political compromises, and national jurisdictions – is the longstanding debate concerning death penalty under the Indian legal jurisprudence. With this I feel confident to end this part of the Article.

Article 21 of the Constitution of India of 1949 guarantees the protection of life and personal liberty, thus stating that "no person shall be deprived of his life or personal liberty except according to procedures established by law." On the one hand, the protection of life implies a ban on taking life, including the prohibition death penalty. On the other hand, the closing words of Article 21 leaves no doubt that the Constitution of India does not perceive the right to life as an absolute one, thus allowing for the violation of this right if such infringements is committed in accordance with procedures established by law. The question therefore is a query of legal interpretation, of constitutional interpretation, of contemplating the pros and cons of death penalty as well as the constitutionality of the of the death

53 Hon. Justice Ruth Bader Ginsburg made this statement within a lecture that was held at the Columbia University School of Law in 2004, in an event carried out for the celebration of fifty years of the famous decision of *Brown* v. *Board of Education*, 347 U.S. 483 (1954). *See also*: Lecture by Hon. Chief Justice K. G. Balakrishnan of the Supreme Court of India, delivered on October 28th, 2008 at Northwestern University in Illinois: "The Role of Foreign Precedents in a Country's Legal System."

penalty as imbedded in the Indian Penal Code constitutionality[54] in light of Article 21 of the Constitution of India.

In the course of this discussion one shall bear in mind that India has already ratified the ICCPR in 1979, but voted against the United Nation General Assembly Resolution for a Moratorium on the Death Penalty in 2007, though did not sign the statement of dissociation initiated by Singapore. This note already raises the initial question as to whether India seeks to follow the above-mentioned national and international movement toward abolishing death penalty or wishes to remain in retentionist side of the spectrum, together with the United States of America.

Already in 1973, the Supreme Court of India upheld the constitutional validity of the death penalty.[55] However, mindful to the graveness of such punishment a new Code of Criminal Procedure was adopted, already in the same year, whereby judges must note "special reasons" when imposing death sentences and a mandatory pre-sentencing hearing must be held in the trial court, which shall assist judges in reaching their conclusions whether the facts indicated any "special reasons" to impose death penalty.[56] It was then in the *Bachan* case that the Supreme Court of India ruled – although not unanimously – that the death penalty can only be applied in the "rarest of rare case":[57]

> A Real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.

Without delineating any clear guideline, if at all, as for the cases to be considered "rarest of rare", the Court again upheld the constitutionality of the death penalty but sought, this time, to limit the range of cases for which such punishment can be imposed.

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54 *See*: The Indian Penal Code of 1860. Note that the Code provides for capital punishment for the following offences or for criminal conspiracy to commit any of the following offences (Section 120-B): Treason, for waging war against the Government of India (sec. 121); Abetment of munity actually committed (sec. 132); Perjury resulting in the conviction and death of an innocent person (sec. 194); Threatening or inducing any person to give false evidence resulting in the conviction and death of an innocent person (sec 195A); Murder (sec. 302) and murder committed by a life convict (sec. 303); Abetment of a suicide by a minor, insane person or intoxicated person (sec. 305); Attempted murder by a serving life convict (sec. 307(2)); Kidnapping for ransom (sec. 364A); and Dacoity (armed robbery or banditry) with murder (sec. 396). In favor of the death penalty, as well as arguing for the constitutional validity of the death penalty, see: S. M. N. Raina, "The Constitutionality and Propriety of Death Penalty in India," XI *Central India Law Quarterly* 240, 243 (1998). The death penalty is provided also under several special and local laws, such as: Terrorist and Disruptive Activities (Prevention) Act 1987 (sec. 3(2)(i)) and the Unlawful Activities (Prevention) Ordinance 2004.

55 *Jogmohan Singh* v. *State of Utlar Pradesh*, A.I.R. 1973 S.C. 947.

56 *See*: Santa Singh v. State of Punjab, (1976) 4 SCC 190.

57 *See*: *Bachan Singh et al.* v. *State of Punjab*, A.I.R. 1980 SC 898.

From that stage on, the Supreme Court of India has published several death penalty cases without tangling anymore with the principle constitutionality question of the death penalty as such, but focusing on the challenge of determining whether or not the ad-hoc case falls within the "rarest of the rare case" test.[58] In each case, the Court attempted, though not with much success, to develop a list of criteria that structures the "rarest of the rare" test. And, if until the *Bachan* case the water had already been mudded, then the post- *Bachan* cases have mudded the water further. The Court has manifestly admitted its failure in the 2006 *Dutta* case, thus stating: "No sentencing policy in clear cut terms has evolved by the Supreme Court. What should we do?"[59]

To conclude on this matter, calling the Indian legal system into the discussion leaves no doubt as to the sensitivity of the constitutional debate of the death penalty, the complexity of the paradox between our legal intuition against death penalty as enlightened human beings who struggle for the protection of human rights, all the more so the right to life, and our intuition for death penalty as a means of revenge against those who rudely granted themselves the liberty to take the lives of others without any justification or excuse. In addition, the Indian experience from this perspective highlights the tension between the desire to harmonize national laws with international law as well as with comparative national trends. And finally, the Indian study mirrors the experience of the ICCPR and its attempt to settle down the tension between complete abolition of the death penalty and minimizing the damage caused by other countries that retain capital punishment by imposing constitutional procedural limits on the imposition of death penalty.

India, like the international community, has been trying to hold, unsuccessfully though, the stick from both sides.[60] This cannot been done. A clear decision ought to be made either for or against death penalty. Each decision privileges certain values and endangers others. One of the resulting questions therefore, which values do we prefer to endanger? The answer can be of a political nature but can be also of a philosophical one. A politician I am not, but to the least a scholar I can serve, and therefore I shall now turn on to inquire into the philosophical facets of the constitutionality of the death penalty dilemma.

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58 *E.g.*, *State through Superintendent of Police, CBI/SIT* v. *Nalini et al.*, (1999) s SCC 253; *State of Rajasthan* v. *Kheraj Ram* (2003) 8 SCC 224.

59 *Aloke Nath Dutta et al.* v. *State of West Bengal* (MANU/SC/8774/2006).

60 *See*: Krishna Kumari, "Capital Punishment and Statutory Frame Work in India," http://works.bepress.com/krishnaareti/9/; S. Muralidhar, "Hang Them Now, Hang Them Not: India's Travails With The Death Penalty," *Journal of the Indian Law Institution,* no. 143 (1998).

V. Constitutionalism and the Secret Principles

A) "Constitutionalism": A Theory of Legal Thinking

Addressing the legitimacy question of the death penalty, arguments are divided into two defined categories; normative arguments and arguments of principles. On the one hand, normative arguments are derived from the basic principles of the law of punishment under criminal law, *i.e.*, the goals of punishment, thus acknowledging the deterrence principle explicitly and the retribution principle implicitly. Arguments of principles, on the other hand, are a proxy of constitutional and philosophical analysis on the meaning of human rights and on the legitimacy of state power to impose death penalty.

In this section I solely discuss the arguments of principles, aiming at figuring out how a constitutional document ought to be read, understood and interpreted. As to the normative arguments, it will be sufficient to address only the guidelines, to the extent they contribute to the constitutional aspects of this paper.

On the one hand, normative arguments carry the notion that death penalty is the only means to deter criminals from committing certain offences,[61] and the premise that criminals should be put to death because they deserve it. I cannot see how these arguments may substantially be proved or supported. The deterrence argument is based on a very speculative premise. Moreover, no sufficient substantial argument has been made to assert that what can be achieved by death penalty cannot be achieved by *e.g.* life imprisonment.[62] However, there is no evidence that the abolition of the death penalty causes an increase in criminal homicide.[63] As to the retribution premise, the strongest motivation for which people support death penalty, in my view, is not – and cannot be anymore – the dominate goal of criminal jurisprudence. However, both arguments, deterrence and retribution, are constitutionally and philosophically flawed, as I provide in the next section.[64]

On the other hand, arguments of principles require further study of philosophy and political theories on the existence of the state, its responsibilities, its power

61 Hugo Adam Bedau, *The Courts, the Constitution...*, pp. 45-58.

62 Roger E. Schwed, *Abolition and Capital Punishment* (New York: AMS Press, Inc., 1983), pp. 30-42.

63 Johan Thorsten Sellin, *Capital Punishment* (New York: Harper & Row, 1967), p. 124.

64 The basic legitimacy of criminal punishment is the constitutional meaning of guilt. That is, fair condemnation. We do not punish criminals in order to deter them, but rather because of the guilt of their unlawful act – not their feeling of guilt, but the guilt attributed to prohibited actions. *See also*: Mohammed Saif-Alden Wattad, "The Meaning of Guilt: Rethinking Apprendi," *New England Journal on Criminal & Civil Confinement* no. 33 (summer 2007) pp. 533-543.

and limits, and its premises of protecting and infringing human rights. Therefore, both arguments require a timeless theory. This is a philosophical-constitutional model that applies precisely in the same way to the present, the future and the past, regardless of the ad-hoc cultural and social interactions.

All philosophers recognize the distinction between pre-state nature, where persons act as individuals, and post-state conditions, where persons act as a society thus subjecting themselves to a political power called "state." Though philosophers may dispute upon the conditions with which individuals in pre-state nature interact between each other, they still agree that the incentive to the transition from this nature to statehood is an issue of cost and benefit analysis. The state provides a notion of collective "Good," which is different from the concept of individual "Good" that they have in the pre-state nature. This analysis is based on deep studies of the nature of human being behaviors, interactions and superiorities. Henceforth, I seek to stand on the threshold between both natures, thus aiming at understanding the meaning of "Good"[65] that exists in each situation, and the difference that it makes.

Imagine a life of three men on an isolated island in the middle of the ocean. No concept of collective life exists. Each is concerned with his own interests, wealth and happiness. Potentially, each has absolute rights and freedoms – although in this situation such expressions are not required in the first place, for they might not have any meaning, or substantial meaning, under these circumstances. Nonetheless, mankind is a combination of good and evil. This is an inevitable outcome of a simple reading of the human manner through all stages of man's life.[66] Therefore, the absolute good each has is subject to certain risks imposed by other individuals, but also by nature.

The notion and political theory of establishing a state purports to provide the kind of security which individuals cannot achieve individually. The trouble is that such security demands certain limitations on the "Absolute Good" – limited but not abolished rights and freedoms. All for the purpose of protecting these rights and freedoms from any threat or risk. Under this political entity called "state," there is neutral Good, namely the Good which individuals choose regardless or in ignorance of their position in post-state life.

This transition process I call "Constitutionalism." Literally, constitutionalism is "constitutional government, or a belief in the practice of such a system;"[67]

65 On the meaning of "Good," *see*: John Rawls, *A Theory of* Justice..., pp. 347-396.

66 P. T. Geach, "Good and Evil," *Analysis*, vol. 17 (1956).

67 *Oxford Advanced Learner's Dictionary* (Oxford: Oxford University Press, 1995), p. 247.

"Constitutional" means "allowed by or limited by a constitution;"[68] and "Constitution" is "a system of laws and principles according to which a state or other organization is governed."[69] Constitutionalism, therefore, is a social fact. Under this dome, there is a special mechanism of interactions with which the Absolute Good is transformed from pre-state conditions to post-state nature, to become limited, but not abolished. The basic logic of this mechanism, which constitutes a state, should be the supreme guide of the state in treating human rights under statehood conditions. In order to understand this mechanism, we need first to understand to what extent Good could be limited in the post-state era. Constitutionalism establishes an umbrella that governs the whole meaning of the law, under which the state performs. This complicated question invites a discussion on the legitimacy of this umbrella called "constitutionalism."

In my view, constitutionalism is a process derived from the People as individuals, and for the People as a collective, union, nation and society. Under statehood, the state's main desire is to protect human rights (the establishment desire), and to avoid imposing any limitation on these rights unless so required for the sake of the establishment desire. Yet, whereas the state has the power to limit rights and freedoms, it does not have the power to deprive its citizens entirely from any right or freedom. The state is not allowed to abolish the right to speech,[70] but it has the power to limit this right for the sake of protecting other important and legitimate acknowledged rights and interests of the collective. However, there might be certain rights for which limitation means abolition of the right entirely. As far as I can imagine, these are the right to life and the right to dignity. These are the kind of "creatures" that either exist or do not.

But, conceivably one may ask from where the notion springs that rights and freedoms may only be limited but not abolished. In my view, this is the only plausible way to understand the People's consent in the pre-state nature as a condition to move to statehood conditions. Otherwise, it will be better for them, as individuals, to remain under pre-state conditions. This is true as to all rights, but in particular as to the right to life and the right to dignity. But still, why is that so?

In pre-state conditions, individuals are aware of the cost of the constitutionalism process, namely the limitation of their rights and freedoms. They give their

68 *Id.*

69 *Id.*

70 On the right to speech and the possible limitation of this right, see my contribution: Mohammed Saif-Alden Wattad, "The Meaning of Wrongdoing: A Crime of Disrespecting the Flag: Grounds for Preserving 'National Unity'?" *San Diego International Law Journal* no. 5 (2008).

assent for this limitation as they are promised by the political power[71] that limitation would not be imposed arbitrarily. This ability to give their consent is based on their ability to make free choices, regardless of the correctness of these choices. The ability to make free choices is derived from a combination between two inherent rights, namely the right to life and the right to dignity. Both demand that individuals shall be treated as ends but not as means, otherwise they are humiliated. Only when treated as ends, a person may make free choices, such as the choice to move to statehood conditions. In the absence of the absoluteness of these rights, individuals cannot make free choices. If so, why would they concede their rights to life and to dignity? They simply would not.

In addition, as simple as it may sound, persons, as individuals, have no incentive to concede these two inherent rights. In the transition process toward statehood, individuals do not know on which side of the barricade they will be. Giving this ignorance, the question is to what extent they may agree to limit the "Good" they had in pre-state conditions. Persons are rational creatures, both under pre-state conditions and in post-state life. They are aware of the fact that in statehood life they might be on the good side to the same extent as on the bad side. Limiting their rights and freedoms seems to be the only plausible cost they may agree upon, for the benefit of securing these rights and freedoms by the state. But, their life and dignity are too expensive to pay for such benefit, bearing the risk of being on the bad side. However, both rights together construct the human being shape, and in the absence of any of them a person loses this unique privilege. The unique value of being a human being, in distinction from animals or other creatures, is their inherent right not to be killed under any circumstances and thus not be humiliated.

Drawing this model, the president question is how to apply the constitutionalism theory under statehood conditions. How would constitutionalist mechanism work in practice?

Almost every state has a written formal document usually called "Constitution," or "Basic Law," which sets forth the forms and the institutions of government, including the principles governing relations between individuals and society. Though constitutions may have different forms, focuses and languages,[72] all hold the same theme of governing relations between the state and individuals, sometimes by imposing duties on the state, but sometimes by articulating a list of rights that individuals enjoy. However, the constitutionalist mechanism is not

71 Namely, the state.

72 Louis Henkin, *Constitutions and the Elements...*

limited to written constitutional regime. But rather, it applies to any democratic regime with which the "rule of Law" takes supreme place, namely the "rule of Law" as also the rule of unwritten principles,[73] and not as statutory principles.[74]

I suggest a pyramid model of norms for which the constitutionalism theory applies to every constitutional state, whether or not it has a written constitution or constitutional regime.[75] The constitutionalism theory is a social fact, and thus establishes the Ground Norm, positioned on top of the pyramid of norms. According to the Ground Norm, all governmental branches shall obey the "will of the People" being the sovereign power of the state.[76] This is the aspiration sought to be achieved according to the constitutionalism theory. The pyramid of norms, thus, is comprised of several layers. In the first layer from the top, it is the constitution. In the second layer, ordinary statutes are placed. In the third layer regulations, and so on. The higher we ascend in this pyramid the more powerful the norms become. However, a lower norm is subject to the higher norm, and thus shall not stand in contrast from it. Above all norms, stands the theory of constitutionalism, with which all lower norms, including the constitution, shall be in complete harmony, namely with the "will of the People."[77] This is the normative framework with which all legislative and executive norms shall work.[78] This is the normative constitutionalist umbrella that limits the state's power, whereby it purports to maintain the transition from pre-state conditions to post-state life.

73 David Jenkins, "From Unwritten to Written: Transformation in the British Common-Law Constitution," *Vanderbilt Journal of Transnational Law*, vol. 36, 863, 2003; Nathan N. Frost, Rachel Beth Klein-Levine, and Thomas B. McAffee, "Courts Over Constitutions Revisited: Unwritten Constitutionalism in the State," *Utah Law Review*, no. 333 (2004); Luc B. Tremblay, "A Round Table on American Constitutional Law: Marbury v. Madison: History, Legitimacy, Influence: Marbury v. Madison and Canadian Constitutionalism: Rhetoric and Practice," 37 *R.J.T.* 375 (2003). *See also*: George P. Fletcher, *Basic Concepts of...* pp. 11-27. Professor George Fletcher argues, and thus I support, that the rule of law seems to flourish when power is expressed in orderly bureaucratic behavior. Therefore, the law takes the place of the authority expressed by parents, teachers, and philosophers. The philosophy of the human rights is the basis for the supremacy of the "rule of law" as the "Good and Just Law." Searching for the sources of the idea of "Law," he presents three basics: (1) the analogy between scientific laws and human laws, which lends certain formal criteria to the laws that govern social life; (2) the notion of higher law that brings an element of morals to living under law, for which it renders life under law an aspiration for all people everywhere; and (3) the ancient idea that law is the path on which the community travels as an organic unit, on which its communal vision of law stresses the element of social solidarity that is induced in societies that live peaceably under law. In his opinion, in any given society, such as that of the United States of America, all three of these sources converge in generating a complex legal culture.

74 Antonin Scalia, "The Rule of Law as a Law of Rules," *University of Chicago Law Review* no. 56 (1989); Joseph Raz, "The Rule of Law and its Virtue", in *The Authority of Law*, ed. Joseph Raz (1979), p. 210.

75 *E.g.* England and Israel.

76 In parallel to the pyramid of norms there is a pyramid of institutions that enforces respectively the norms. Positioned on top of the pyramid of institutions is the sovereign power, namely the "will of the People."

77 Within each layer, where two norms of the same layer stand in contrast, there is another normative mechanism to generate. But, this is not the issue at this stage.

78 Consider and compare: Hans Kelsen, *General Theory of Law and State,* translated by Anders Wedberg, (Cambridge: Harward University Press, 1945).

To complete the whole puzzle that assembles all the components of the constitutionalism theory, there are two other questions to be addressed. The first question concerns the components of the constitutionalist constitution. The second question concerns the constitutionalist interpretation method.

What shall a constitution contain in order to fit the normative constitutionalist umbrella? In the modern constitutional era, I may focus on two impressive constitutional documents as touchstone cases: these are Henkin's Paper of 1992[79] and the Constitution of the Republic of South Africa of 1996. Recalling the constitutionalist spectrum, I would place these documents very close to the ideal end of constitutionalism, namely the constitutionalist constitution.[80] Drafting a model constitutionalist constitution, Professor Henkin suggests the following elements: government according to the constitution, separation of powers, popular sovereignty and democratic government, constitutional review, an independent judiciary, controlling the police, civilian control of the military, individual rights; *i.e.* the right to life, liberty and security of person, freedom of religion, press and expression, property and economic enterprise, equality, economic and social right, worker's rights, permissible limitation on rights. This is, more or less, the model that was adopted by the new South African constitution of 1996, which even drills down to the tiny details of the Henkin's elements.

It is interesting that both documents, like other constitutional documents worldwide, devote separate chapter to human rights, as distinguished from structural sections that concern *e.g.* separation of powers, controlling police power, and judicial review. In my view, a quick glimpse on the elements of these documents shows that they are all about human rights.[81] The main desire of the constitution is to acknowledge and to grant explicitly certain rights and freedoms, on the one hand, and to protect human rights, implicitly, through structural provisions, on the other hand. It is my view that a constitution is one form of guarantee of the constitutionalism transition, for I deem constitutionalism as a realm of human rights. It is about the essence of human rights and the protection of human rights. Basically, every constitution is divided into two major chapters. One chapter lists down a set of protected human rights, the essence and the extent of these rights, and even the possible limitations that can be imposed on such rights. The other chapter structures the constitutional

79 *Supra* note 8.

80 *Note*: I emphasize the words "very close."

81 *Note*: The topic of human rights is a separate and large issue that cannot be discussed within the limits of this paper. "Human Rights" is an idea and an ideology. It is a philosophical theory that has been the subject of much discussion between philosophers.

safeguards for human rights, namely invoking a vast domain of constitutional measures. This might be done either by explicitly acknowledging these human rights, or by imposing duties and prohibitions on the state upon any violation of the human rights.

Unlike the Constitution of the Republic of South Africa of 1996, which was drafted with high sensibility to the principles of the constitutionalism theory, most of the constitutions worldwide were written centuries ago, thus embracing constitutional structure but not constitutionalist spirit. Nevertheless, the constitutionalism theory offers a model of constitutionalist interpretation that allows for the adaption of such outmoded constitutions to the substantive principles of the constitutionalism theory.

General legal studies offer several rules of interpretation. Among these rules, famously known is the textual approach of interpretation,[82] which focuses on the simple words of the legal text. Another well known approach focuses on the historical context, namely the historical evolution of the legal text, trying to locate the intent of the legislature as deemed to bind forever.[83] A third known approach is the purposive interpretation, which treats the legal text as a quasi-living text, focusing on what the legal text desires to achieve.[84]

Constitutionalism embodies its own anatomy of interpretation, which is derived basically from the mechanism of the constitutionalist pyramid of norms. This mechanism is controlled by the constitutionalism theory as the Ground Norm, for which it demands the obedience of the will of the People. As said, the "will of the People" does not purport the materialist meaning of the phrase, namely under statehood conditions, but rather the abstract meaning under pre-state conditions. Recalling the "will of the People" goes beyond the simple statutory words, away from the intent of the legislature and against the historical context of the enactment. The "will of the People" reflects the consent that they might have given in the transition process. Searching for this "will" refers to an inter-era interpretation that applies to the same degree to any constitution under any circumstances. This "will," as I present it, is not changeable over time. This is what could have been desired a year ago, today and tomorrow. This is right only under the philosophy of the constitutionalism theory as I present it, namely by not referring to *e.g.* the Founding Father's will but to the abstract will of the People under the conditions of the transition to statehood. Only under this theory, would the constitution have its own life.

82 Justice Scalia of the Supreme Court of the United States is well known for his strong support of this approach.

83 *E.g.* Americans would refer to the Founding Fathers' intent.

84 This rule was adopted in Canada, Israel and South Africa.

B) A New Path Toward the Constitutional Rights of Life and Dignity

Addressing the constitutionality of the death penalty, based on the expansive analysis provided in this paper, it is obvious that the constitutionalism thesis strongly rejects capital punishment. This strong rejection is based on two parallel pillars: (1) the absoluteness of the right to life; and (2) the absoluteness of the right to dignity. However, in my view, treating criminals as ends would mean to punish them for the guilt of their wrongdoing, but not for the sake of other collateral social and public interests, *e.g.* deterrence.

In 1787 the United States decided to subject itself to a written constitutional document. The Constitution of the United States imported constitutional ideas from many people and several existing documents, including the Articles of Confederation and Declaration of Independence. This is certainly one of the most influential legal documents in existence. It is one of the world's oldest surviving constitutions. This constitution is a living document that has been holding the crown of the United States for untold generations, governing grandfathers' grandfathers' grandfathers![85]

Challenging the constitutionality of the death penalty, the Supreme Court did not sit idly by. Nonetheless, the Supreme Court limited itself to the explicit outmoded words of the Constitution and to the ancient intent of the Founding Fathers. This approach might be constitutionally sufficient, but constitutionality is flawed for two reasons: (1) imposing the death penalty is opposed to the "will of the People." The will of the Founding Fathers reflects only the materialist will of the People in post-state conditions, but not the constitutionalist meaning of the "will of the People." (2) The Constitution is the "supreme **L**aw," and not the "supreme **l**aw," of the United States, as a democratic state.[86] Applying the constitutionalism theory, the Constitution of the United States is certainly the highest and the supreme norm in the pyramid of norms. Nevertheless, it is subject to the constitutionalism theory as the ground norm, which demands obedience to the sovereign power institution, namely the "will of the People."[87] Therefore, the theory on constitutionalism does not permit any form of capital punishment, because death penalty as such opposes the "will of the People."

Holding the constitutionality of the death penalty, the Supreme Court of the

85 *The U.S. Constitution And Fascinating Facts About It* (U.S.: Oak Hill Publishing Company, 2004), pp. 1-4.

86 Mohammed Saif-Alden Wattad, "*The Meaning of Guilt*: Rethinking *Apprendi*," *New England Journal on Criminal & Civil Confinement* no. 33(2), (2007).

87 It is worthwhile mentioning that the notion of "People" as the legitimacy of the constitution is well addressed in the Preamble of the Constitution of the United States.

United States relied on the explicit and implicit recognition of the Constitution to capital punishment, as arguably presented by two major Amendments: (1) the Fifth Amendment provides that "No person shall be held to answer for a **capital**, or otherwise infamous crime...;"[88] and (2) the Fifth and the Fourteenth Amendments provide that "... deprived... of **life** ... without due process of law."[89]

In my view, these specific parts of the Amendments are manifestly unconstitutionalist, and thus shall be pronounced as so.[90] As if an ordinary statute that is inconsistent with the constitution is unconstitutional, a constitutional norm that is inconsistent with the constitutionalism theory, as the Ground Norm, is unconstitutionalist. Being unconstitutionalist, it shall be either amended or abolished.[91]

However, within the Constitution of the United States I recognize two loopholes with which the Supreme Court can make serious steps toward constitutionalist determination against the death penalty dilemma. These are the Eighth Amendment and the Ninth Amendment. Applying the constitutionalism theory to these amendments, I argue, the Supreme Court of the United States may pave a constitutionalist path towards the abolition of the death penalty.

The Eighth Amendment provides that "cruel and unusual punishment" shall not be inflicted. Whereas the Supreme Court interpreted this phrase as concerning only the constitutionality of the form the execution takes, I argue that the word "cruel" concerns the form of the execution, but the word "unusual" concerns the type of punishment, namely that certain punishments are unconstitutional. Literally and conceptually, both words have different meaning. "Cruel" means "having or showing a desire to cause pain and suffering."[92] "Usual" means "expected based on previous experience."[93] But, is it unusual according to the Americans' history? Is it unusual as to what Americans believe nowadays? Or, is it unusual as to what the international community may assert?

88 The Fifth Amendment of the Constitution of the United States.

89 *See*: The Fifth and the Fourteenth Amendments of the Constitution of the United States.

90 In my opinion, under the principle conception of the power of judicial review, the Supreme Court shall have the power to do so. On the origin of the judicial review power, *see*: *Marbury v. Madison*, 1 Cranch (5 U.S.) 137 (1803).

91 Another possibility could be abolishing all federal and state statutes that impose criminal punishment. Thus, the constitution's words on "capital" and "deprive life" turn to be dead letters. This is a plausible step under the constitutionalism theory.

92 Oxford Dictionary, *supra* note 55, at 281.

93 Bryan A. Garner, ed., *Black's Law Dictionary* (St. Paul, Minn: Thomson, West, 2001), p. 740.

The term "unusual punishment" is covered by the American Constitution. This term and the American Constitution are both governed by the theory of constitutionalism. Applying the constitutionalist mechanism of interpretation, focusing on the "will of the People," requires granting this phrase immaterialist meaning. Would the People, under pre-state conditions, consider death penalty to be usual punishment? Simply I argue that the answer is: "No." If they do not agree to limit, namely to be deprived of, their right to life, as I argue, how could death penalty be considered usual! A constitutionalist reading of the Eighth Amendment provides that the death penalty is an unusual punishment and thus is unconstitutional and unconstitutionalist.

The second constitutionalist loophole in the American Constitution is the Ninth Amendment, which provides that "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the People."[94] Does that include the right to life? In my view, though the Ninth Amendment has received almost no serious attention by the Supreme Court of the United States, it may establish the core of my constitutionalist theory under the American Constitution, for which it recognizes unlisted rights that are retained by the People.[95]

Hitherto, the Ninth Amendment has been successfully invoked in *Griswold*,[96] where the Supreme Court held that the state anti-birth control statute was an unconstitutional invasion of the right of marital privacy. This right, though not specified under the Bill of Rights, was nevertheless among those rights "retained by the people," to which the Ninth Amendment alludes. Following this holding, on its face, if the right of marital privacy was recognized as a retained right by the People, all the more so the right to life may plausibly be so invoked. This is a conceivable reading of the Ninth Amendment, as a general recognition of inherent or natural rights.[97] The right to life is an inherent and natural right, expressly recognized by Hobbes, Locke, Rousseau and Paine,[98] and also by the American Declaration of Independence of 1776.[99]

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94 The Ninth Amendment of the Constitution of the United States.

95 This idea gives even normative power to the Preamble, which refers to "the People" as the legitimacy of the Constitution of the United States.

96 *See*: *Griswold et al.* v. *Connecticut*, 381 U.S. 479 (1965).

97 Norman Redlich, "Are There 'Certain Rights... Retained by the People'?" *New York University Law Review* 37/787 (1962).

98 Hugo Adam Bedau, *The Courts, the Constitution...*, p. 42.

99 *Supra* note 4: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness."

Given that, the death penalty should have no life, neither under a pure constitutionalist regime nor under the American constitutional regime.

VI. Epilogue

The language of human rights arises in different contexts, among them the relations between a state and its citizens. Rightly and conceivably, a question of whence this idea comes from is strongly addressed. Philosophers like Hobbes, Locke, Rousseau, Rawls, Paine and Kant led this discussion. Each of them, in his magnificent way and language, succeeded to articulate a formula of legal thinking, a theory of hypothesis, a theory of logic and a theory of rationales. Carrying this package of human rights, they tried to understand how far these rights are independently owned by individuals and to what extent they can be limited by the state.

The question I raised in this article is whether we are talking truly about one package of human rights or that we have to draw a clear line between certain rights. Though it is a debatable issue, curiously, many constitutions refer to "The People" as the legitimacy of constituting a state and others refer to God.[100] Referring to God or to the People does not mean that both or either should be asked about any constitutional issue that is raised. It is merely a hypothetical reference for purposes of emphasizing a notion of the All Good that people are willing to have, as if they were in pre-state conditions. This is the rhetoric of enlightenment. The notion of enlightenment may appear as a legal question, but in its core it is a philosophical concept, and to some extent an intuitive notion.

Philosophical hypotheses, moral theories and intuitive beliefs are not odd to our legal system. Law has its own life. It is a living entity. It has internal and external interactions. The words of any legislative norm might be the starting point in understanding the norm, but not the ultimate. There are higher principles that we appeal to, especially in all complicated and sensitive cases where issues of morality, life, dignity and the human being's shape are involved. This is right in my view, but also in the Americans' implicit view. Incorporating certain fundamental rights in the Due Process Clause or "locating" the right to dignity in the Equal Protection Clause, might be legally justified as an act of interpretation. Nonetheless, I frankly think it cannot be anything but an appeal to a higher set of

100 Though the Constitution of the United States refers solely to "The People," it is interesting to see that all Americans' deeds and coins are labeled with the strong religious statement "In God We Trust." That is to say, it is an institutional belief. These deeds and coins are printed by governmental institutions authorized by state laws. This is, therefore, a state action, namely the state's belief.

principles. In my opinion, approaching any question on human rights requires a fundamental understanding of the philosophy of human rights.

The peculiarity of the human beings is their inherent and undoubted rights to life and to dignity. This is why human beings are distinguished from other creatures. When they lose this dignity, they cannot be human beings anymore, as there will be no supreme value to distinguish them from other creatures. This dignity can no longer survive where human beings are humiliated, namely treated as means rather than ends. Humiliation is the grossest mean of depriving human beings of what they are. In a world where there is no special meaning to the inherent right to life, I doubt if any dignity may exist. And so, I doubt if any sense of liberty may exist.[101] Such a destruction of the human being's unique entity occurs when a state grants itself the power to impose the death penalty. This is in my view a barbarian way of treating human beings. Such barbarian treatment shall have no life under any constitutionalist society.

The American Constitution, as far as it was interpreted by the Supreme Court of the United States, permits such barbarian means. This is not to say that the American Constitution has no sensitivity to human rights. Nevertheless, it is not yet a constitutionalist constitution. All constitutions, even if for decoration matters, include language of human rights, and thus the American Constitution. All constitutions have something unique and we only need to find it. But, for that we need the uniqueness to do so, and thus we are yet to have it all. This uniqueness is called "Constitutionalism." Whereas many states had purchased this uniqueness, and others are making serious efforts to follow this path, the United States has consistently avoided this avenue of enlightenment.

Americans do not lack the concept of constitutional law, but rather the right understanding of constitutional law. Like Criminal Law, Constitutional Law is a universal concept. It is surrounded by high principles and by international law. It does not live in a vacuum. It is not limited even to certain eras or to certain nations. Neither is it limited to certain literal words and phrases. *E.g.*, the meaning of "Due Process" is not limited to the phrase combined of two words, starting with "D" and ending with "S." Its meaning goes beyond this limited view. It has a wide universal meaning. Unfortunately, this is not the path the Supreme Court of the United States decided to take as to the death penalty discussion.

101 Mohammed Saif-Alden Wattad, *Revisiting Plessy and Brown: Why "Separate But Equal" Cannot Be Equal* (Toronto: The Munk Centre for International Studies, University of Toronto, 2007), pp. 20-22.

It is true that the American constitutional law is not static. Yet its dynamism is very slow; it is a lazy system. The basic feature of this dynamism, which admittedly cuts throughout all the cases, is the evolution toward the future through history. If constitutions and the protection of human rights are about enlightenment, this cannot be the way constitutional evolution should occur. History is a place that we can never visit, and thus shall not visit. History is the opposite meaning of constitution. Constitution is ultra-cultural and ultra context. It is a timeless notion. Constitution is a notion of a new beginning, namely leaving the darkness for the sake of the lightness. Asked of his opinion on the death penalty, Hon. Justice Haim Cohen,[102] God bless his memory, once said, he would never sign a capital decision, not even in dissent.[103] This is the right way to follow for a democracy that purports to protect human rights, because if not, it shall not flaunt feathers that do not fit it.

> So Jacob went near to Isaac his father, who felt him and said, "The voice is Jacob's voice, but the hands are the hands of Esau." And he did not recognize him, because his hands were hairy like his brother Esau's hands; so he blessed him. He said, "Are you really my son Esau?" He answered, "I am." Then he said, "Bring it to me, that I may eat of my son's game and bless him...[104]

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102 Former justice of the Israeli Supreme Court.

103 This was said in a television interview with Cohen when he reached the age of ninety.

104 Genesis Book, 27 (21-25).

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THE PROSECUTION OF THE RWANDESE PATRIOTIC FRONT/ARMY (RPF/A) FOR CRIMES COMMITTED DURING AND AFTER THE RWANDA GENOCIDE

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Abstract: *The Prosecutor of the International Criminal Tribunal for Rwanda (ICTR) recently announced that the Rwanda authorities were in the process of arresting and indicting some elements of the RPF/A who are suspected to have committed war crimes during the 1994 genocide in Rwanda. The Rwanda authorities shortly thereafter announced that they had arrested some army men who are suspected to have engaged in perpetrating war crimes during the genocide. This paper explores the prospect of bringing the RPF/A elements to justice. Up to now, any suggestion that the RPF/A committed atrocities during and after the genocide is met with the full force of denials by the Rwandan authorities. The judicial institutions set up to redress the genocide have not dealt with any case involving RPF/A alleged crimes. The paper's conclusion is that to insist on the right of justice for all victims, is not to deny the genocide, nor does such insistence equate war crimes with genocide; it simply asserts that all victims of genocide, crimes against humanity and war crimes regardless of their affiliation, and regardless of the affiliation of the perpetrator, must have equal opportunity to seek redress for the wrongs done to them.*

Key Words: *RPA/F; ICTR; Genocide; Prosecution; Completion Strategy; Genocidaires*

RUANDA YURTSEVER CEPHESİ/ORDUSU'NUN (RPF/A) RUANDA SOYKIRIMI SIRASINDA VE SONRASINDA İŞLEDİĞİ SUÇLAR NEDENİYLE KOVUŞTURULMASI

Özet: *Ruanda için Uluslararası Ceza Mahkemesi Savcısı, Ruandalı yetkililerin 1994 yılındaki soykırımda savaş suçu işlediğinden şüphelenilen Ruanda Yurtsever*

Cephesi/Ordusu'nun (RPF/A) bazı elemanlarına yönelik iddianame hazırlama ve tutuklama süreci içinde olduklarını açıkladı. Kısa süre sonra Ruandalı yetkililer soykırım sırasında savaş suçu işlediğinden şüphelenilen bazı ordu mensuplarının tutuklandığını duyurdu. Bu makale RPF/A unsurlarının adalet önüne çıkarılması olasılığını incelemektedir. Bugüne kadar, soykırım sırasında ve sonrasında RPF/A tarafından mezalimler yapıldığına dair iddialar Ruanda yetkilileri tarafından kesin bir şekilde inkar edilmişti. Soykırımı doğrulamak amacıyla kurulan yargı kurumları RPF/A ile ilgili suç iddiaları ile ilgilenmemişti. Bu çalışmada varılan sonuç, tüm kurbanlar için adalet istemenin, ne soykırımı inkar ne de savaş suçlarının soykırım ile eş tutulması anlamına geldiğini göstermektedir. Makalede savunulan nokta; kimin yaptığına, failin hangi tarafta olduğuna bakılmaksızın, tüm soykırım, insanlığa karşı suçlar ve savaş suçları kurbanlarının, kendilerine yapılanların kanıtlanması konusunda eşit fırsata sahip olmaları gerektiğidir.

Anahtar Kelimeler: *Ruanda Yurtsever Cephesi/Ordusu, RPF/A, Ruanda için Uluslararası Ceza Mahkemesi, Soykırım, Adli Kovuşturma, Tamamlanma Stratejisi, Soykırımcılar*

I. Introduction

While addressing the United Nations Security Council (UNSC) on the latest Completion Strategy for the International Criminal Tribunal for Rwanda (ICTR), the Prosecutor Hassan Jallow announced that some progress in the investigation of allegations against the members of the RPF has been made.[1] He announced that the ICTR in collaboration with the Rwandan authorities had been able to establish a prima facie case that on 5 June 1994, RPF soldiers killed some thirteen clergymen, including five Bishops and two other civilians at the Kabgayi Parish in Gitarama.[2] Whilst observing that some of the perpetrators of this crime are reported to have died while others are now serving within the Rwanda Army, he also averred that following inquiries, the Rwanda Prosecutor General had communicated his decision to shortly indict and prosecute

1 Hassan Jallow, "Prosecutor of the ICTR to the United Nations Security Council (UNSC)," (statement presented to the United Nations Security Council, June 4, 2008) at http://69.94.53/ENGLISH/speeches/jallow080604.htm (visited on June17, 2008).

2 Hassan Jallow, "Prosecutor of the ICTR to the UNSC." cf. Amnesty International (AI), "Rwanda: Reports of Killings and Abductions by the Rwandese Patriotic Army (RPA), April-August 1994," (AI Index: AFR 47/16/94, October 1994) (reported this case as follows. Around 5 June 1994, four members of the RPA killed 13 Roman Catholic priests, including the Archbishop of Kigali, Vincent Nsengiyumva and three other bishops at Byimana a few kilometres south of Kabgayi Roman Catholic church near Gitarama. The RPF subsequently declared that the combatants had been assigned to the bishops as their bodyguards. On June 9, 1994, RPF leaders announced that one of the killers had been shot dead by fellow soldiers as he fled and that the other three had escaped).

four serving senior military officers of the Rwandan Army with murder and complicity to murder, as war crimes in connection with this incident.[3] Towards the end of October 2008, two officers at the rank of captain (John Butera and Dieudonne Rukeba) were found guilty of this crime and sentenced to eight years in prison.[4] The other two (Brigadier Gumisiriza and Major Ukwishaka) were acquitted.

The prosecution of the RPF/A elements for crimes committed during the genocide has been very contentious in post-genocide Rwanda. The authorities in Kigali have been vehement in denying and resisting any attempt to infer that the RPF/A committed crimes in its drive to stop the genocide. In fact, one of the un-stated reasons why the former Prosecutor for the ICTR Carla del Ponte was removed from her position was her crusade to have RPF/A elements alleged to have committed crimes during the genocide to face prosecution.[5] In the past, any suggestion that RPF/A elements committed crimes during the genocide was met with the full force of Kigali denials. Since the end of the genocide, no official figures have been produced of the killings by the RPA before and after the genocide.[6] When the *Gacaca* jurisdictions[7] were instituted to prosecute genocide perpetrators and thereafter promote reconciliation in Rwanda, the suggestion that the jurisdictions also prosecute the RPA crimes was not accepted by the Rwandese authorities.

When confronted with questions about the RPA crimes during the genocide, the Kigali authorities have always claimed to have prosecuted RPA elements

3 Hassan Jallow, "Prosecutor of the ICTR to the UNSC." Subsequently the four were named as: Brigadier-General Wilson Gumisiriza, Major Wilson Ukwishaka, Captain John Butera and Retired Captain Dieudonne Rukeba. Butera and Rukeba pleaded guilty for the murders. *The New Times*, June 18, 2008. See story "RDF Officers before Court."

4 *BBC News*, "Rwandans jailed for priest deaths," October 24, 2008 at http://ewsvote.bbc.co.uk/mpapps/pagetools/print /news.bbc.co.uk/2/hi/africa/7689871.stm (visited on October 25, 2008).

5 See Marlise Simons, 'Rwanda is said to seek new Prosecutor for War Crimes Court,' *New York Times*, July 28, 2003; Rory Carroll, 'Genocide tribunal's ignoring Tutsi crimes,' *Guardian*, January 13, 2005.

6 The Kibeho camp incident clearly demonstrates this. The Kibeho Internally Displaced Peoples (IDPs) camp in Southern Rwanda was attacked in April 1995 by the RPA. The estimated number of people killed was given by the Rwanda government as 300. However, the Australian contingent in UNAMIR gave the figure of 8,000. Official UN figures put the dead initially at 4,000 a figure which was later revised to 2,000. See Howard Adelman and Astri Suhrke, "The International Response to Conflict and Genocide: Lessons from the Rwanda Experience," *Journal of Humanitarian Assistance*, (April 14, 1996) at http://reliefweb.int/library/nordic/book2/pb021.html (visited on October 14, 2008).

7 Organic Law No. 40/2001 of 26 January 2001 setting up <<*Gacaca* Jurisdiction>> and Organizing prosecutions for Offences constituting the crime of Genocide or Crimes against Humanity committed between October 1, 1990 and December 31, 1994 under which the *gacacas* were first introduced, they were known as "Jurisdictions". However, when this law was revised by Organic Law No. 16/2004 of 19 June 2004 Establishing the Organization, Competence and Functioning of *Gacaca* Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes Against Humanity Committed Between October 1, 1990 and December 31, 1994 [Official Gazette of the Republic of Rwanda, Special Official Journal No. 43 of 19 June 2004] they were renamed "Courts." In this paper we will use the new name of "Courts."

suspected of committing war crimes during the genocide. However, these prosecutions -besides not being open to the public-, ended with token sentences being handed down (see *infra*). In interviews as part of doctorate research I conducted in Rwanda with government officials in October-November 2004 and December 2005, I was informed that there is no such thing as the RPF/A committing war crimes during the genocide. Nevertheless, accusations have persisted from researchers such as Gerard Prunier and Alison des Forges among others, as to the culpability of the RPA.[8] This paper attempts to piece together from secondary sources the story of the allegations against the RPA. It explores the possibility of finally bringing the authors of human rights violations within the ranks of RPF/A to trial. From the outset it must be emphasized that this paper's aim is not to debate whether the RPA crimes were genocide, crimes against humanity or war crimes. The paper simply presents the argument that these crimes must thoroughly be investigated and their authors prosecuted, just like the alleged *genocidaires*.[9]

II. Origins of Allegations Against the RPF/A: Some Findings

A. Findings of Amnesty International

As early as October 1994, Amnesty International (AI) had already compiled a report detailing killings, massacres and abductions by the RPA.[10] In its report, AI had observed that "hundreds-possibly thousands-of unarmed civilians and captured armed opponents of the RPF, have been summarily executed or otherwise deliberately and arbitrarily killed, since countrywide massacres and other acts of violence flared up after the death of former President Habyarimana on 6 April 1994."[11] It added, "many of the killings took place in a series of arbitrary reprisals mainly against groups of Hutu civilians, some of which occurred in some [instances] before 6 April [1994]. There were also deliberate and arbitrary killings as the RPA took control, [and] on uncovering evidence of genocide, took indiscriminate revenge on unarmed Hutu civilians."[12] The report

8 See also Boniface Rutayisire, 'Open Letter to IRC on RPF killings in 1994,' Radio Katwe, (Brussels: August 12, 2008) at http://www.radiokatwe.com/baruhakwadunianirpf080924.htm (visited on October 15, 2008).

9 *Genocidaires* refers to all those persons who are suspected of having participated in the Rwanda genocide especially those who have been arrested and are being prosecuted for the crime of genocide by the International Criminal Tribunal for Rwanda (ICTR), the national courts in Rwanda and the *Gacaca* courts. It also includes those persons who participated in the genocide but who are yet to be arrested and charged with the crime of genocide.

10 AI, "Rwanda: Reports of Killings and Abductions by the Rwandese Patriotic Army RPA)."

11 AI, "Rwanda: Reports of Killings and Abductions by the Rwandese Patriotic Army (RPA)."

12 AI, "Rwanda: Reports of Killings and Abductions by the Rwandese Patriotic Army (RPA)."

concluded that "there were also deliberate executions carried out in the course of screening."[13] A former Rwandan Minister of Interior [Seth Shendasonga] estimated that some 60,000 persons were killed by the RPA soldiers between April 1994 and August 1995.[14]

B. Findings of Gerard Prunier[15]

According to Gerard Prunier, "the RPA carried out a large number of killings first, during the genocide itself and then later during the end of 1994 and even early into 1995, with a diminishing intensity."[16] To him, there were three periods in the RPA killings: "first, a period of frequent and large [scale] killings, [which] seems to have started right at the beginning of the genocide in April 1994 and lasted up till around mid-1995 ...; second, a period of semi-respect of human rights between mid-1995 and early 1996; and third, a period of renewed killings (for quite different reasons) seems to have started around March 1996."[17]

Prunier further contends that there are specific reasons for the RPA killings in all the three periods.[18] According to him, "during the first period, the RPA seems to have been content with letting its men clear a lot of "suspects" in a process of rough retribution for the genocide. During the second period, an effort seems to have been made to control the worst excesses. And during the third period, as cross-border raids from the camps in Kivu[19] became more frequent, the RPA started to kill civilians after failing to catch guerrillas during military sweeps ..."[20]

13 AI, "Rwanda: Reports of Killings and Abductions by the Rwandese Patriotic Army (RPA)."

14 Human Rights Watch (HRW), "Law and Reality: Progress in Judicial Reform in Rwanda," (New York: July 2008), p. 89.

15 He is among one of the authors that have documented the atrocities committed by the RPF/A by giving the number(s) of people affected. He has been banned from the territory of Rwanda due to his efforts.

16 Gerard Prunier, *The Rwanda Crisis: History of a Genocide*, (Kampala: Fountain Publishers, 2001), p. 359. According to Prunier, "the number of people killed by the RPF in these massacres remains polemical. Some estimates have put the number as high as 100,000 while others advance a more conservative figure of 10,000." Gerard Prunier, *The Rwanda Crisis: History of a Genocide*, p. 360. cf. Helena Cobban, "The Legacies of Collective Violence: The Rwandan Genocide and the Limits of Law," *Boston Review: A Political and Literary Review*, (April/May 2002) (observing that "between 120,000 and 150,000 people were killed in anti-Hutu massacres committed by the government forces inside Rwanda since 1994; more than 200,000 Hutus disappeared in Eastern Democratic Republic of Congo (DRC) (then Zaire) during massacres carried out by the Rwandese army in 1996; and the Rwanda government is implicated in the disappearance of an additional 300,000 Hutus in the DRC in the months after its Congolese ally, Laurent Desire Kabila took over power there in May 1997").

17 Gerard Prunier, *The Rwanda Crisis: History of a Genocide*, p. 361.

18 Gerard Prunier, *The Rwanda Crisis: History of a Genocide*, p. 361.

19 The provinces of North and South Kivu are found in Eastern DRC. After the RPF/A had ended the genocide in Rwanda, the suspected *genocidaires* ran to then Zaire. They established camps inside Zaire and started launching military raids into the territory of Rwanda. The RPF/A in turn launched counter-insurgency operation on the territory of the DRC.

20 Gerard Prunier, *The Rwanda Crisis: History of a Genocide*, p. 361.

C. Findings of the United Nations High Commissioner for Refugees (UNHCR)

Sadako Ogata -the United Nations High Commissioner for Refugees (UNHCR)- commissioned Robert Gersony, to advise the organization as to whether it should encourage the refugees who had fled Rwanda in the wake of the genocide to return. In his report, Gersony stated that he had unearthed evidence showing that there had been "calculated, pre-planned, systematic atrocities and genocide against Hutus by the RPA whose methodology and scale (30,000 massacred) could only have been part of a plan implemented as a policy from the highest echelons of government."[21] In his view, these were not individual cases of revenge and summary trials (*sic*) but a pre-planned [and] systematic genocide against the Hutus.[22] The Gersony Report was embargoed by the United Nations Secretary General (UNSG) out of sympathy for the newly formed interim RPF/A government.[23]

D. Findings of the United Nations Independent Commission of Experts (CoE)

In his report of 31 May 1994 on Rwanda to the UNSC, Boutros Boutros Ghali had stated "[the RPF has] acknowledged that armed persons in civilian clothing have been killed by RPF personnel."[24] Although evidence of genocide being committed in Rwanda was abundant, the UNSC decided to follow the step-by-step approach it had adopted in the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY), and requested the UNSG to establish a Commission of Experts (CoE)[25] to provide him with evidence of serious violations of international humanitarian law and acts of genocide committed in Rwanda.[26]

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21 UN, Outgoing Code Cable, *The Gersoni Report Rwanda*, October 14, 1994. Exhibit No: AK 112, Case No: ICTR-98-41-T, November 16, 2006, p. 2. (hereinafter *The Gersony Report*) (On file with the author). cf. Alana Erin Tiemessen, "After Arusha: *Gacaca* Justice in Post-Genocide Rwanda," *African Studies Quarterly*, vol. 8 (Fall 2004): p. 69 (observing that the RPF organized massacres of tens of thousands of civilians as it soldiers advanced in Rwanda with an estimated death toll of 25,000 to 45,000 from April through August of 1994

22 UN, The Gersony Report Rwanda...

23 According to Filip Reyntjens, "Rwanda, Ten Years On: From Genocide to Dictatorship," in *The Political Economy of the Great Lakes Region*, eds. Stefaan Marysse and Filip Reyntjens (Basingstoke: Palgrave Macmillan, 2005), p. 16 (the report was not published because "a strong feeling prevailed in the international community that some latitude needed to be given to [the RPF] regime [that was] facing the colossal task of reconstructing the country in human and material terms").

24 United Nations Security Council (UNSC), "Report of the Secretary General on the Situation in Rwanda," (May 31, 1994), para. 7.

25 Secretary General of the United Nations (SGUN), "Report of the SGUN pursuant to Paragraph 5 of the UNSC Resolution 955 (1994)" (February 13, 1995) S/1995/134, pp. 5-8.

26 UNSC, "Report of the Secretary General pursuant to Paragraph 5..., para. 2. See also Daphna Shraga and Ralph Zacklin, "The International Criminal Tribunal for Rwanda," *European Journal of International Law*, vol. 7(4) (1996): pp. 502-3.

The CoE was established under Resolution 935, "to examine and analyze information, investigate and provide the UNSG with its conclusions on the evidence of grave violations of international humanitarian law, including the evidence of possible acts of genocide in Rwanda."[27] In its final report in October 1994, the CoE stated that "it had received information containing extensive evidence of systematic killings and persecution of Hutu individuals by the RPF army."[28] The CoE added that the Government of Rwanda (GoR) has acknowledged that some 60 to 70 Hutus were killed by the RPF army soldiers in various parts of the country, although it described these killings as "isolated incidents."[29] The CoE further posited that "there existed substantial grounds to conclude that mass assassinations, summary executions, breaches of international humanitarian law and crimes against humanity [have] also been perpetrated by Tutsi elements against Hutu individuals and that allegations, concerning these acts should be investigated further."[30] It added that "while the massacres perpetrated by RPF were less systematic than those of the Rwandese armed forces and Hutu militia, certain crimes against humanity are alleged to have been carried out by RPF."[31] In the aftermath of the genocide, the predominantly Hutu *genocidaire* government in exile had also submitted a list[32] of RPF atrocities to the CoE. The broad conclusion of the CoE was that "on the basis of ample evidence, individuals on both sides of the armed conflict in Rwanda in the period of 6 April to 15 July 1994 had perpetrated serious breaches of international humanitarian law and crimes against humanity."[33]

The CoE considered the relative merits of municipal prosecutions-Rwandan courts-for these international crimes and found that "international prosecutions were preferable, [because they would ensure] independence, objectivity, impartiality, and the perception (both in Rwanda and abroad) that convictions [would] have been fairly reached."[34] The CoE also noted that the gravity of the violations had extended beyond Rwanda, and therefore, "the development of international criminal law to better deter such crimes from being perpetrated in the

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27 UNSC Res. 935 (1 July 1994), UN Doc S/RES/935, para. 1.

28 UNSC, "Preliminary Report of the Independent Commission of Experts established in accordance with the Security Council Resolution 935 (1994)" (October 4, 1994) S/1994/1125, para. 30.

29 UNSC, "Preliminary Report of the Independent Commission of Experts..., para. 30.

30 UNSC, "Preliminary Report of the Independent Commission of Experts..., para. 82.

31 UNSC, "Preliminary Report of the Independent Commission of Experts..., para. 79.

32 For details see C. Scheltema and W. Van Der Wolf, *The International Tribunal for Rwanda: Facts, Cases and Documents*, (Nijmegen, Netherlands: Global Law Association, 1999), pp. 251-2.

33 UNSC, "Preliminary Report of the Independent Commission of Experts..., para. 146.

34 Koula Papanicolas, *Genocide in Rwanda: Documentation of Two Massacres during April 1994, US Committee for Refugees Report*, (Washington: USCR, November 1994), p. 21.

future, not only in Rwanda but anywhere, would be best fostered by international prosecutions rather than by domestic courts."[35]

In evidence submitted to the CoE, Kagame admitted the RPA's personnel engagement in massacres. He averred that "the government [had] detained 70 RPF soldiers, including three [at the rank of] Major, [whom it] intended to try and punish for private acts of revenge exacted against Hutus."[36] Nevertheless, despite the assurances, up to now government officials rarely, if ever, refer to RPF massacres in their speeches, and very few trials of those allegedly responsible have been held.[37]

F. Findings of the Commission on Human Rights (CHR)

On 25 May 1994, the Commission on Human Rights (CHR) appointed Degni-Segui as Special Rapporteur to investigate at first hand the human rights situation in Rwanda and to receive relevant, credible information on the human rights situation there from governments, individuals and intergovernmental and non-governmental organizations.[38] In his report of 28 June 1994, the Special Rapporteur stated that "in the area controlled by the RPF, the cases of massacres reported are rather rare, indeed virtually non-existent, perhaps because little is known about them."[39] Nevertheless he added, "what is certain, however, is that the RPF has been guilty of summary executions."[40] The Special Rapporteur further averred that as far as the organs or authorities involved in the recent atrocities are concerned, some responsibility can be apportioned immediately to "RPF organs, particularly those in charge of its military activities."[41] In another report on 12 August 1994, the Special Rapporteur said that "there are also reports of disappearances and abductions, as well as summary executions. The latter acts are according to persistent rumour, the work of the RPF. The members of the

35 Koula Papanicolas, *Genocide in Rwanda...*, p. 21.

36 Koula Papanicolas, *Genocide in Rwanda...*, p. 21. See also Philip Gourevitch, *We wish to Inform you the Tomorrow we will be Killed with our Families: Stories from Rwanda*, (London: Picador, 1998), p. 246 (noting that in conversations with Kagame, he had told him that more than one thousand RPA soldiers had been thrown in military jails for killings and indiscipline).

37 Timothy Longman and Theoneste Rutagengwa, "Memory, Identity and Community in Rwanda," In *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein (Cambridge: Cambridge University Press, 2004), p. 167.

38 United Nations Economic and Social Council, Commission on Human Rights (UNESC-CHR), "Resolution E/CN. 4/S-3/1" (25 May 1994), para. 20.

39 UNESC-CHR, "Report on the situation of Human Rights in Rwanda submitted by Mr R. Degni-Segui, Special Rapporteur of the CHR, under paragraph 20 of Commission Resolution E/CN. 4/S-3/1 of 25 May 1994" (28 June 1994) E/CN. 4/1995/7, para. 22.

40 UNESC-CHR, "Report on the situation of Human Rights in Rwanda..., para. 22.

41 UNESC-CHR, "Report on the situation of Human Rights in Rwanda..., para. 63.

government, who implicitly acknowledge the facts, do not attribute responsibility to the RPF. They do not, however, deny the fact that rogue elements of the RPF or the army may engage in such acts as reprisals."[42]

In his report on 11 November 1994, the Special Rapporteur analyzed various cases of summary executions carried out by the RPA. He concluded that "RPA soldiers and civilians are indeed guilty of massacres of Hutu in various places in Rwanda ... Persons suspected of having taken part in the [genocide] have been executed either by the civilian population itself, by soldiers [of RPA] on at the civilian population's request or on their own initiative."[43] He added that, "concordant and reliable testimony describes nearly the same scenario. Men, children and elderly people have been accused of being traitors and massacred following so-called information meetings convened by RPA elements."[44]

The RPF government never denied allegations against the RPA but gave two reasons for the latter's behaviour. First, that the main reason for its soldiers carrying our massacres was private revenge. Secondly, that the RPF had hastily recruited juvenile delinquents during its drive to Kigali and even former militiamen, on what was not a very selective basis. Thus these were the persons responsible for the massacres. The question that remained un-answered was: Why wasn't the leadership of the RPF exercising effective control on them?

G. Findings of the International Panel of Eminent Personalities

The International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events (*hereinafter* "The Panel") was created in 1998 by the Organization of African Unity (OAU) with a mandate *inter alia* to investigate the 1994 genocide in Rwanda and the surrounding events in the Great Lakes Region as part of efforts aimed at averting and preventing further widespread conflict in the region. The Panel -as part of its mandate- also looked at the allegations of human rights violations made against the RPA/F. It concluded that it had been persuaded by evidence that RPA human rights violations had

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42 UNESC-CHR, "Report on the situation of Human Rights in Rwanda submitted by Mr R. Degni-Segui, Special Rapporteur of the CHR, under paragraph 20 of Commission Resolution E/CN. 4/S-3/1 of 25 May 1994" (12 August 1994) E/CN. 4/1995/12, para. 9.

43 UESC-CHR, "Report on the situation of Human Rights in Rwanda submitted by Mr R. Degni-Segui, Special Rapporteur of the CHR, under paragraph 20 of Commission Resolution E/CN. 4/S-3/1 of 25 May 1994" (11 November 1994) E/CN. 4/1995/70, paras. 39 and 40.

44 UNESC-CHR, "Report on the situation of Human Rights in Rwanda submitted ... (11November 1994), para. 40.

taken place before, during and after the genocide.[45] The Panel added that "in its successful drive to win the war and halt the genocide, the RPF/A had killed many non-combatants. As it sought to establish its control over the local population, the RPF/A had killed civilians in numerous summary executions and in whole-scale massacres."[46] It must be noted that the Panel never did independent research on the allegations against the RPF/A, but rather reviewed evidence already presented by individuals and organizations, which we have presented above.[47] In making its conclusions, the Panel conceded that anyone seeking the truth on the RPF/A human rights violations will find disturbingly contradictory data.[48] It added as a broad conclusion that "it is quite unrealistic to deny RPF responsibility for serious human rights abuses in the months during and after the genocide."[49] From our exposition above, the contradiction in terms of the different findings by the different individuals and organizations is well established. Nevertheless, all the findings point to the fact that RPF/A elements committed crimes during the genocide.

H. Making Sense of all the Findings

Whilst all the above individuals and organizations make claims about the RPA crimes, there is no agreed figure of the number of people massacred by the RPA soldiers during and after the genocide. What generally is agreed is that RPF soldiers are guilty of killing civilians, often in large numbers, although exactly how many is in serious dispute.[50] The dispute over numbers will continue until research is done to establish the exact figure. This will not be possible unless the RPF/A authorities allow such studies to be undertaken. In this connection we need to quote the Panel which succinctly noted that "at the start of its campaign to capture power the RPF exhibited a recurrent pattern of behaviour, of, while professing a policy of openness and commitment to human rights, it at the same time hindered any investigation into abuses committed by its elements and made it impossible for any investigator to speak freely and privately with any potential witness(es)."[51] The Panel added that "even during the months towards the end of

45 African Union (AU), *Rwanda: The Preventable Genocide - The Report of the International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events*, (Addis Ababa: OAU, 2000), p. 257.

46 African Union (AU), *Rwanda: The Preventable Genocide...*, p. 258. According to the anonymous reviewer of this paper, apropos of non-combatants, "enemy combatants/fighters, if any, would also have to be considered in the same category of protected persons" (Communication on file with the author).

47 For details see AU, *Rwanda: The Preventable Genocide...*, pp. 258-261.

48 AU, *Rwanda: The Preventable Genocide...*, p. 258.

49 AU, *Rwanda: The Preventable Genocide...*, p. 261.

50 AU, *Rwanda: The Preventable Genocide...*, p. 257.

51 AU, *Rwanda: The Preventable Genocide...*, p. 257.

and after the genocide, the RPF was remarkably successful in restricting access by foreigners, including journalists and human rights investigators, to certain parts of the country, a pattern it has followed today."[52] In other words, the exact figure of how many people were killed by the RPF/A elements will never be known if the Rwandan government will have its way. What is nevertheless clear is that these crimes are crying out for justice in the various justice processes that have been instituted to deal with the issue of genocide in Rwanda.

III. The ICTR and the Allegations Against the RPA

In the past, the ICTR has had run-ins with the government of Rwanda on its insistence that all war crimes committed from January to December 1994 must be investigated, as per its remit.[53] The second ICTR Chief Prosecutor, Louise Arbour observed in 1999 that "for the [tribunal] to be able to fulfil its mandate, every serious crime committed on both sides will have to be examined."[54] At a press conference held at Arusha in December 2000, the new Prosecutor Carla del Ponte had promised that she was going to arrest some criminals in Kagame's hierarchy before the end of 2001.[55] It must be noted that the ICTR Statute gives the Prosecutor authority to "prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda ..."[56] This competence clearly covers even those violations committed by the RPF/A. Subsequently in April 2002, Del Ponte had indicated that in order for the ICTR to render impartial and equitable justice to the Rwandan people, investigations were underway to indict by the end of the year (2002), members of the RPA who organized systematic massacres against the Rwandan people.[57] In fact, by the time she made this declaration, she had secretly launched "Special Investigations" into the 1994 activities of the mainly Tutsi RPA as it fought to overthrow both the Habyarimana and the *genocidal* government.[58] Although the RPF dominated government had prevented investigators from interviewing anyone inside Rwanda, she is believed to have had four cases ready to go.[59]

52 AU, *Rwanda: The Preventable Genocide...*, p. 257.

53 Eugenia Zorbas, "Reconciliation in Post-Genocide Rwanda," *Africa. Journal. of Legal Studies*, vol. 1 (Spring 2004): p. 34.

54 Cited in Luc Cote, "Reflections on the Exercise of Prosecutorial Discretion in International Criminal Law," *Journal of International Criminal Justice*, vol. 3 (March 2005): p. 176.

55 Jacques Niyezimana, *Ce que Kagame prepare pour le TPIR*, Juin 28, 2002 (On file with the author).

56 Statute of the International Criminal Tribunal for Rwanda (ICTR), art. 1.

57 Jacques Niyezimana, *Ce que Kagame prepare pour le TPIR.*

58 Steven Edwards, 'Del Ponte says UN caved to Rwandan Pressure,' *National Post*, September 17, 2003.

59 Steven Edwards, 'Del Ponte says UN caved to Rwandan Pressure ...

As soon as Del Ponte announced the opening of her investigations, the government's hostility towards the ICTR broke into the open.[60] President Kagame issued a statement in which he stated his often repeated mantra that:

> [a]ny crimes committed by individuals within the RPA were investigated and punished. They [the ICTR] know that very well. [...] How then does the ICTR attempt to place the RPA, who actually put an end to the genocide, at the same level as the *genocidaires*, the very perpetrators of the genocide? [...] They [the international community] ran away from responsibility and left people to be killed in the thousands. [...] So what moral authority do they have?[61]

In another instance of defending the RPA, Kagame asked rhetorically, "shouldn't we be trying those people for allowing genocide to take place in Rwanda, when they had full responsibility to prevent that, let alone stop it? If people stood by watching genocide take place, why can't they be tried?"[62] He concluded by noting that "those of the UN who are saying that [the RPF should be tried for war crimes and crimes against humanity] are [the] ones who allowed the genocide to take place in Rwanda."[63] Again in another interview to a French Magazine in February 2005, Kagame was asked why he had consistently refused to have members of his army and party investigated by the ICTR. His response was that:

> the Arusha Tribunal prosecutes genocide crimes, and our war in 1994 was devised to liberate the country from the *genocidaires*. There is therefore no common measure, possible comparison, or any parallel to be drawn between us and them. At Nuremberg in 1945, it is the Nazi's who were judged and not those who had defeated them [...], there is no offence that has been committed by our men which has not been punished, sometimes very severely; yesterday, today or tomorrow.[64] (Translation from French by the author).

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60 In fact it has been observed that is was one of the reasons why the government advocated her removal from the employment of the tribunal. See Marlise Simons, 'Rwanda is said to seek new Prosecutor for War Crimes Court,' *New York Times*, July 28, 2003; Rory Carroll, 'Genocide tribunal's ignoring Tutsi crimes,' *Guardian*, January 13, 2005.

61 Cited in Eugenia Zorbas, "Reconciliation in Post-Genocide Rwanda," p. 34.

62 Cited in Eugenia Zorbas, "Reconciliation in Post-Genocide Rwanda," p. 34.

63 Cited in Eugenia Zorbas, "Reconciliation in Post-Genocide Rwanda," p. 34.

64 *Jeune Afrique/L'Intelligent*, no. 2302, February 20th-26th, 2005, p. 42. The Federation International de Droits de L'Homme (FIDH), "Rapport de Situation- Entre Illusion et Desillusions: Les Victimes devant le Tribunal Penal International pour le Rwanda (TPIR)," No. 343, Octobre 2002, p. 17 (has observed that "President Kagame confirmed that the RPA has already severely punished those responsible for crimes. It quoted him as

Of course, President Kagame is right. It is the RPA which stopped the genocide when the international community was looking on. It could be construed that the alleged crimes of the RPA were an unfortunate but necessary acts perpetrated in the pursuit of a just war to stop one of the 20th Century's most terrible crimes. Here parallels can be drawn for example, with the lack of desire to prosecute the Allied elements responsible for bombing the German towns of Dresden and Hamburg during the Second World War. The argument for the lack of desire to prosecute was that the bombing was a necessary evil carried out to defeat the Nazi regime.

In an interview with Johnstone Busingye, one time Permanent Secretary in the Ministry of Justice,[65] he intimated to me that the government of Rwanda had never refused to allow the tribunal to investigate suspected RPA personnel. Rather what it had refused was for the suspect RPA officers "to be mixed with the *genocidaires* in Arusha."[66] According to him, Del Ponte had to be replaced as Prosecutor of the ICTR because "she was a stooge of the French. She tried to promote the latter's theory of "double genocide" by insisting that the perpetrators of genocide and the RPA suspects were equal." To him, this was totally unacceptable, although he added that "the government [of Rwanda] was ready to hand over indicted RPA suspects to a third country for prosecution." He told me that this position had been communicated to the current Prosecutor of the tribunal, although he was yet to respond.

According to statistics and documents from the Office of the Prosecutor (OTP) of the Military Court Martial, between 1996 and 2000, eight cases involving 49 RPA men were prosecuted for the offences of murder, non-assistance to persons in danger and looting.[67] A further four cases involving 30 soldiers were

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saying that the Military Court Martial had seriously investigated and found some of our soldiers guilty. The guilty soldiers had been sentenced and executed. He added that it is a very grave error to want to make a parallel between the crimes committed by the RPA elements and the crime of genocide. Our forces fought to prevent the *genocidaires* from killing the innocent people"). (Translation from French by the author). cf. Dan Saxon, "Exporting Justice: Perceptions of the ICTY among the Serbian, Croatian, and Muslim Communities in the Former Yugoslavia," *Journal of Human Rights,* vol. 4 (2005): pp. 563-4 (noting that as regards the ICTY, many Bosnian Muslims could not understand, and still cannot understand, how their soldiers and officers could be accused of war crimes, because they believe that their nation was the victim of genocide perpetrated by Serb and Croat forces. This perspective is also common among the Kosovo Albanian community, which, for similar reasons, reacted negatively to the first indictments of Kosovo Liberation army (KLA) soldiers).

65 He is currently the President of the High Court of Rwanda.

66 Personal Interview Kigali, November 30, 2005.

67 FIDH, "Rapport de Situation- Entre Illusion et Desillusions ...," p. 17. The breakdown was as follows: 1996, two cases for crimes of murder and non-assistance, involving three soldiers were prosecuted; 1997, two cases for crimes of murder of civilians, involving ten soldiers were prosecuted; 1998, two cases for crimes of murder of civilians, involving twenty-five soldiers were prosecuted; and 2000, eight cases for crimes of murder and looting, involving eleven soldiers were prosecuted. See also Human Rights Watch, "Law and Reality," p. 90 (noting that in government documents listing RPA prosecutions, the crimes charged are called "crimes of revenge" or "human rights violations", and not war crimes or crimes against humanity).

investigated,[68] with 29 senior officers being prosecuted between 1995 and 2002.[69] Of these, six cases involved the violations of human rights, six for criminal negligence, and one for manslaughter. Only one case of Major Nyirahakizimana involved the crime of genocide.[70] The rest of the officers were prosecuted for various offences such as: theft, corruption, fraud, embezzlement and traffic accidents. Nevertheless, it has been noted that apart for Major Bigabiro who was prosecuted for offences committed during the 1994 genocide, all the other prosecutions have been for crimes that were committed after 1994, hence falling outside the *rationae temporis* of the ICTR.[71] To some, this record is reminiscent of the domestic trials of German war criminals at Leipzig after WWI, where those who were found guilty were given ridiculously light sentences, and then set free soon afterwards.[72] To Filip Reyntjens, the token prosecutions go a long way to show that in post-genocide Rwanda, "organized massacres of civilians are never recognized as the responsibility of the commanding officers."[73] To-date, no RPA suspect has been brought to account by the ICTR for genocide or war related crimes.

In a 26 July 2002 letter to the President of the UNSC, the government of Rwanda argued that "the ICTR is politically motivated to bring legal action against members of the RPA, and in its view this is not the way to bring stability and national reconciliation in Rwanda."[74] According to some, the main reason why the government was against the investigation of RPA activities is, "the risk that such investigations would un-earth the fact that the RPA crimes were not individual acts of vengeance or error, but crimes which were organized and authorized by the high command of the RPA."[75] Such investigations, it is opined will put the current Rwandan authorities in great difficulty. Nevertheless, the continued failure to conduct the investigation, has led some to re-name the TPIR (the French acronym of the ICTR), the TPIH-*Le Tribunal Penal International pour les Hutus*.[76]

68 FIDH, "Rapport de Situation- Entre Illusion et Desillusions," p. 17.

69 FIDH, "Rapport de Situation- Entre Illusion et Desillusions ...," p. 17. cf. HRW, "Law and Reality ...," p. 90 (noting that after 1998, Rwanda military courts prosecuted no soldiers accused of crimes allegedly committed in 1994).

70 Statistics of Human Rights Abuses by RPA Soldiers. He was convicted and demoted. (On file with the author).

71 FIDH, "Rapport de Situation- Entre Illusion et Desillusions ...," p. 18.

72 Kingsley Chiedu Moghalu, *Rwanda's Genocide: The Politics of Global Justice*, (New York: Palgrave Macmillan, 2005), p. 143. See also Ann Tusa and John Tusa, *The Nuremberg Trial*, (London: McMillan, 1983) (generally noting that when several of the convicted escaped from prison, public congratulations were offered to the prison warders).

73 Filip Reyntjens, "Rwanda, Ten Years On ...," p. 38.

74 FIDH, "Rapport de Situation- Entre Illusion et Desillusions ...," p. 17.

75 FIDH, "Rapport de Situation- Entre Illusion et Desillusions ...," p. 18.

76 Eugenia Zorbas, "Reconciliation in Post-Genocide Rwanda," p. 34.

IV. Selective Prosecutions by the ICTR

Jean-Marie Kamatali has observed that "Rwandans will judge the ICTR's achievements not only on how it has prosecuted the members of the defeated Hutu government, but also on how well it prosecuted the victors of the 1994 war, who also committed war crimes and crimes against humanity."[77] Impartiality is a core dimension of international criminal justice, yet one in which international criminal tribunals continue to be tested.[78] While conducting prosecutions for mass atrocity, Edward Newman has cautioned that "there should be a non-selective, balanced and independent prosecution policy."[79] According to Larry May, "selective prosecution is only justified-if it is at all-when the selection of cases is based on administrative issues rather than the characteristics of the victims or perpetrators."[80] Apropos of the ICTR, the Prosecutor is given the sole responsibility to investigate and prosecute offences covered by the Statute.[81] So far, the Prosecutor has acknowledged that "prosecutorial activity has tended to concentrate on the genocide-with the result that the accused persons have tended to be Hutu,"[82] a policy that has come under challenge from some defendants and observers. Timothy Kalyegira, a columnist with the Ugandan newspaper The Daily Monitor has wondered: "In every single world news report on the arrest of suspects in the 1994 Rwandan genocide, it is almost always a Hutu that is arrested. Never a Tutsi."[83] Kalyegira asks: "might the international criminal justice never stop to ask whether the Tutsi might have taken part in the genocide either initiated or as part of RPF reprisals?"[84] For the defendants, they have alleged that the policy of selective prosecution is biased, discriminatory and being improperly exercised, and have thus, requested the tribunal to stay proceedings or intervene in some other judicial way, to put it to an end. While dismissing their allegations, the tribunal has held that in challenging the prosecutorial discretion based on selective prosecution, the applicant must establish: that his own

77 Jean-Marie Kamatali, "From the ICTR to ICC: Learning from the ICTR Experience in Bringing Justice to Rwandans," *New England Journal of International and Comparative Law*, vol. 12 (2005) available in LEXIS-NEXIS Library.

78 Kingsley Chiedu Moghalu, "Image and Reality of War Crimes Justice: External Perceptions of the ICTR," *The Fletcher Forum of World Affairs*, vol. 26 (2002): p. 38.

79 Edward Newman, "Transitional Justice: The Impact of Trans-national Norms and the UN," in *Recovering from Conflict: Reconciliation, Peace and Development*, eds. Edward Newman and Albrecht Schnabel (London: Frank Cass, 2002), p. 44.

80 Larry May, *Crimes against Humanity: A Normative Account*, (Cambridge: Cambridge University Press, 2005), p. 212.

81 Article 5.

82 Hassan Jallow, "Prosecutorial Discretion and International Criminal Justice," *Journal of International Criminal*, vol. 3 (March 2005): p. 156.

83 *Daily Monitor*, July 19, 2008. See story, "Can the ICC deliver true Justice across the world?"

84 *Daily Monitor*, July 19, 2008.

prosecution was for improper motives; and, second, that those similarly situated persons were not so prosecuted.[85] I cite the case law here.

In *Ntarikutimana*, the tribunal declared, while citing the decision of the ICTY's Appeal Chamber in *Delalic*[86] that "where an appellant alleged selective prosecution, he or she must demonstrate that the Prosecutor improperly exercised her prosecutorial discretion in relation to the appellant himself or herself. [...] The accused must show that the Prosecutor's decision to prosecute them or to continue their prosecution was based on impermissible motives, such as ethnicity or political affiliation, and that she failed to prosecute similarly situated suspects of different ethnicity or political affiliation."[87] In *Ndindilimana*,[88] the defence had submitted that there existed prosecutorial abuse of process and non-compliance with the Statute and Rules of the Tribunal in the prosecution's selective and discriminatory policy of not prosecuting the RPF, and instead prosecuting only Hutus. The defence had alleged that the prosecution had done this for "political rather than evidentiary reasons." Further, it had contended that the OTP had "a culture of impunity towards the RPF." In its ruling the tribunal held that "[...] consistent with the Tribunal's jurisprudence, the Prosecution has broad discretion in relation to the [...] preparation of indictments. The breadth of discretion of the Prosecutor, and the fact of [his] statutory independence, imply a presumption that the prosecutorial functions [...] are exercised regularly."[89] However, despite the Tribunal's assertions of the independent powers of the Prosecutor to bring indictments and jurisprudence, it has failed to demonstrate that its justice "is not part of 'victors' justice".[90] Other than Georges Henri Yvon Joseph Ruggiu,[91] a Belgian national, all the other defendants at Arusha have been Hutu.

V. The ICTR's Completion Strategy and the Allegations Against the RPA

Under the guidelines issued by the UNSC in 2003, the ICTR should have completed all pending investigations by the end of 2004, all trial activities at first

85 Hassan Jallow, "Prosecutorial Discretion ...," p. 160.

86 *Prosecutor v. Delalic et al.* (The Celebici case) (Appeals Chamber Judgement) IT-96-21-A (20 February 2001).

87 *Prosecutor v. Ntarikutimana & Ntarikutimana* (Trial Chamber) ICTR-96-10 & ICTR-96-17-T (21 February 2001), paras. 870-887.

88 See Decision on Urgent Oral Motion for a Stay of the Indictment, or in the Alternative a Reference to the Security Council, *Ndindilimana* (Trial Chamber) ICTR-2000-56-I) (26 March 2004), para. 2.

89 *Ndindilimana* (Trial Chamber) ICTR-2000-56-I (26 March 2004), para. 22.

90 Jean-Marie Kamatali, "The Challenge of Linking International Criminal Justice and National Reconciliation: The Case of the ICTR," *Leiden Journal of International Law*, vol. 16 (March 2003): p. 120.

91 ICTR 97-32-I, Indictment (1998) and Judgement and Sentence (2000).

instance by the end of 2008, and all its work in 2010.[92] This is what has been called the "Completion Strategy."[93] It must be recalled that the tribunal "was never intended to be a permanent institution."[94] The Completion Strategy as formulated, "is composed of three interlocking components."[95] These are: first, completing investigations by the end of 2004, all trial activities at first instance by the end of 2008, and all of its work (including appeals) in 2010; second, concentrating on the prosecution and trial of the most senior leaders suspected of being most responsible for crimes within the ICTR's jurisdiction; and third, transferring cases involving those who may not bear this level of responsibility to competent national jurisdictions,[96] as appropriate, as well as strengthening of the capacity of such jurisdictions.[97]

Mundis has pointed out that "despite its merits, the Completion Strategy has

92 UNSC Res. 1503 (28 August 2003) S/RES/1503 (2003); UNSC Res. 1534 (26 March 2004) S/RES/1534 (2004). See also UNSC Res. 1878 (7 July 2009) S/RES/1878 (2009).

93 Larry Johnson, "Closing an International Criminal Tribunal while maintaining International Human Rights Standards and Excluding Impunity," *American Journal of International Law*, vol. 99 (Jan. 2005): p. 159. See also A. Mundis, "The Judicial Effects of the 'Completion Strategies' on the *Ad hoc* International Criminal Tribunals," *American Journal of International Law*, vol. 99 (Jan. 2005): pp. 142-158. The complete list of the reporting sequence of the Completion Strategy can be found at http://www.ictr.org/default.htm (visited on 27 July 2009).

94 Larry Johnson, "Closing an International Criminal Tribunal ..., p. 159.

95 Larry Johnson, "Closing an International Criminal Tribunal ..., p. 159.

96 This would be in accordance with Rule 11 *bis* of RPE which states: (A) If an indictment has been confirmed, whether or not the accused is in the custody of the Tribunal, the President may designate a Trial Chamber which shall determine whether the case should be referred to the authorities of a state: i) in whose territory the crime was committed; or ii) in which the accused was arrested; or iii) having jurisdiction and being willing and adequately prepared to accept such a case so that those authorities should forthwith refer the case to the appropriate court for trail within that state; (B) The Trial Chamber may order such referral *proprio motu* or at the request of the Prosecutor, after having given to the Prosecutor and, where the accused is in the custody of the Tribunal, the accused, the opportunity to be heard; (C) In determining whether to refer the case in accordance with paragraph (A), the Trial Chamber shall satisfy itself that the accused will receive a fair trial in the Courts of the state concerned and that the death penalty will not be imposed or carried out; (D) Where an order is issued pursuant to the Rule: (i) the accused, if in the custody of the Tribunal, shall be handed over to the authorities of the State concerned; (ii) the Trial Chamber may order that protective measures for certain witnesses or victims remain in force; (iii) the Prosecutor shall provide the authorities concerned all of the information relating to the case which the Prosecutor considers appropriate and, in particular, the material supporting the indictment; (iv) the Prosecutor may send observers to monitor the proceedings in the courts of the State concerned on his or her behalf. (E) The Trial Chamber may issue a warrant of arrest for the accused, which shall specify the state to which he is to be transferred for trial. Larry Johnson, "Closing an International Criminal Tribunal ..., p. 169 (has pointed out that "the rule provides for the Tribunal to refer a case to the authorities of the state, not directly to a domestic court. The domestic authorities are then "forthwith" to refer the case to an "appropriate court" for trial within that state. The states that are eligible include: a state in whose territory the crime was committed; a sate in which the accused was arrested; and, a state having jurisdiction and being willing and adequately prepared to accept such a case").

97 Larry Johnson, "Closing an International Criminal Tribunal ..., pp. 170-171 (observing that "the tribunal has drawn up a tentative checklist of criteria that a trial chamber might examine, to ascertain if a state is adequately prepared to receive a case under Rule 11 *bis* and to satisfy itself that the accused will receive a fair trial. The checklist includes measures such as: that the accused answer in the national courts for all the crimes specified in the indictments brought by the Prosecutor and confirmed by the judges of the Tribunal; that the national courts respect the protective measurers ordered by the Tribunal for the victims and witnesses; and that the national trials are conducted in accordance with the international norms for the protection of human rights, among others").

brought forth some un-intended and even unfortunate consequences."[98] According to him, "it has raised very serious issues of justice, among which, possibly is the fact that no RPA element(s) might be brought to account by the tribunal, notwithstanding its acknowledgement that it has taken account of its mandate to investigate reports of violations by the [same]."[99] Also, the closure of all investigations means that the prosecution has to limit the number of its indictments so that the tribunal can meet the Completion Strategy timetable.[100] According to Hassan Jallow, the RPF waged a "war of liberation" against the governments of Habyarimana and that which presided over the genocide.[101] Based on this therefore, it is highly unlikely that it will bring any RPA suspect to account before ending its operations. According to Luc Reydams, "instead of openly and thoroughly addressing the issue, the Prosecutor tiptoes around it in rather general terms and has evidenced a rather somewhat disturbing partiality by calling the RPA offensive 'a war of liberation'"[102] Luc Cote has summarized the situation thus:

> [a]s hard as one can try to explain the lack of eagerness on the part of the Prosecutor to initiate investigations about crimes committed by members of the RPF, no explanation will seem satisfactory in the eyes of the vanquished [Hutu]. Beyond the appearance of bias, [this] situation also challenges the image of the independence of the Prosecutor.[103]

98 Mundis, "The Judicial Effects ..., p 147. Mundis's discussion generally centres on the ICTY. But however, he also pointed out among others, that "the tribunals (ICTY and ICTR) in their quest to meet the deadlines set by the Completion Strategies, must ensure that the rights of the accused to a fair and expeditious trial must be respected throughout the tribunals' remaining life spans, notwithstanding any eventual pressure to stress the latter at the expense of the former; and, that since the completion strategies rely very heavily on the referral of cases to national courts, the International Tribunals must work closely with the international community and local authorities to see that these local courts have the resources necessary to ensure that the rights of the accused are respected." *id.*, p. 155. cf. Larry Johnson, "Closing an International Criminal Tribunal Johnson ..., pp. 159-160 (arguing that "the Security Council has not decided definitively [by the establishment of the Completion Strategies], when the Tribunal[s] will close. The suggested dates in the Completion Strategies are "target dates" or goals, [and] not definitive decisions on when certain activities of the [Tribunals] must cease. [...] The council did not decide that the Tribunal [s] must complete all activities in 2010, but that [they] should do so").

99 Completion Strategy of the ICTR, June 1, 2006, S/2006/358, para. 35.

100 Carla del Ponte, "Prosecuting the Individuals bearing the Highest Level of Responsibility," *Journal of International Criminal Justice*, vol. 2 (June 2004): p. 518.

101 Hassan Jallow, "Prosecutorial Discretion ...," cf. Luc Reydams has argued that this is a startling description of the strife in Rwanda by someone who ought to avoid any semblance of partiality.

102 Luc Reydams, "The ICTR Ten Years on: Back to the Nuremberg Paradigm?" *Journal of International Criminal Justice*, vol. 3 (Sept. 2005): p. 986.

103 Luc Cote, "Reflections on the Exercise ..., p. 177. cf. Anonymous reviewer of this paper (observing that one must separate *jus ad bellum* and *jus in bello* issues. Qualification of an armed conflict as a liberation conflict does not grant any party any immunity to commit war crimes, crimes against humanity, or genocide. Therefore, this kind of terminology, legally, has no limiting effect on criminal investigations or prosecutions. The selectivism in the functioning of ad hoc international criminal tribunals is resulting from their limited nature. Therefore, the real question relates to whether prosecutorial strategies are based on reasonable policies and criteria. In brief, selectivism is inherent in feasibility of other courses of action).

VI. Prosecutions in Rwanda-The *Gacaca* Courts and RPA "Crimes"

Gacaca Courts have continued to suffer from the charge of "victors' justice" due to their failure to address the issue of RPA "crimes". When the *gacaca* courts were first introduced in 2001, the law provided for the courts to prosecute war crimes, which would have covered the crimes committed by the RPA, but when the law was revised in 2004, that provision was removed.[104] Since then, there has been a systematic campaign to the effect that the RPA crimes are not to be entertained in the *gacaca* process.

Whilst the Hutu population, which bore the brunt of the RPA crimes, and some international human rights groups, have continuously argued that these crimes must be punished, President Kagame and other government officials have insisted that "*gacaca* is not the forum for hearing cases involving RPA soldiers who committed war crimes or crimes against humanity in the aftermath of the genocide, crimes, which occasioned ... tens of thousands to 100,000 [Hutu] civilian casualties."[105] This is notwithstanding the fact that the *gacaca* law provided for the courts to deal with war crimes and crimes against humanity cases. The government's argument is that the crimes alleged to have been committed by the RPA elements in retaliation and revenge, are not genocide offences under the *gacaca* law.[106] It is claimed that such abuses were carried out by renegade troops in violation of RPF policy and, as such, have no moral equivalence to the genocide.[107] While inaugurating the *gacaca* courts on 18 June 2002, Kagame stated that "there should be no amalgamation between genocide [crimes], and crimes committed during or after [the genocide]. Isolated individuals committed acts of vengeance. Every time they are (*sic*) known about, they were punished severely."[108] However, the perception of RPA impunity continues to fester as punishments meted out to rogue RPA elements continue to be shrouded in secrecy.

The failure of the courts to prosecute the RPA (read Tutsi) offences portrays the process in the eyes of the Hutus as a farce. Human Rights Watch (HRW) in a

104 HRW, "Law and Reality ...," p. 90.

105 Lyn Graybill, "Pardon, Punishment, and Amnesia: Three African Post-Conflict Methods," *Third World Quarterly*, vol. 25 (2004): p. 1124.

106 Legally this is the correct position. cf. Constance Morrill, "Show Business and 'Law-fare' in Rwanda: Twelve Years after the Genocide," *Dissent* (Summer 2006) available online at http://dissentmagazine.org/article/?article=651 (visited on 1 May 2006) (observing that *gacaca* jurisdictions are disproportionately biased toward the prosecution of genocide perpetrators (as opposed to perpetrators of other crimes against humanity, such as war crimes).

107 Longman and Rutagengwa, "Memory, Identity and Community in Rwanda ...," p. 166.

108 R.M. Borland, *The Gacaca Tribunals and Rwanda after Genocide: Effective Restorative Community Justice or Further Abuse of Human Rights*? available online at http://american.edu/sis/students/sword/current_Issue/essay1.pdf (visited on 25 May 2006).

document released in November 2002 noted that there was low participation in the process due to the fact that:

> the government [had] refused to allow the *gacaca* courts to deal with crimes allegedly committed by the RPF, the Tutsi-led rebel military army that ultimately toppled the Hutu government and ended the genocide. As a result, many Hutus say they feel the trials are not addressing the whole story of what happened.[109]

According to the human rights organisation African Rights, even among those who accept the need to prosecute genocide suspects ... there is a belief that this is merely treating one side of a wider problem.[110] During their training, many of the *gacaca* judges expressed surprise that they would not be hearing such cases and questioned why the genocide should be treated separately, when those crimes took place during the period covered by the genocide law.[111]

There is little doubt that the limitation on the *gacaca* law erodes the commitment of some judges to their assignments. For example, some have reached the conclusion that *gacaca* is an example of the needs of the survivors being privileged above others.[112] Whilst some judges are of the view that the remit of the law should be expanded to cover RPA crimes, when it was last revised in June 2004, this proposal was not considered. The situation is exacerbated by the fact that even in the memorials that have been erected all over Rwanda in remembrance of the genocide victims, there is not a single site commemorating the Hutu victims of RPF massacres.[113] Anyone, who criticizes the government for its human rights abuses or for its perceived record of exclusion, is accused of sowing divisionism and is brutally silenced.[114] This has prompted some to opine that "by referring to the crimes of the Tutsi as 'crimes of war' and the crimes of the Hutu as 'crimes of genocide,' the government has established a moral high ground for all Tutsis."[115] However, they do also conclude that "without the equal

109 *Ibid.*

110 African Rights, *Gacaca: A Shared Responsibility*, (Kigali: Africa Rights, January 2003), p. 24.

111 African Rights, Gacaca ..., 24.

112 African Rights, Gacaca ..., 24.

113 Longman and Rutagengwa, "Memory, Identity and Community in Rwanda ...," p. 166.

114 For an excellent exposition on this see The International Foundation for the Protection of Human Rights Defenders, *Disappearances, Arrests, Threats, Intimidation and Co-optation of Human Rights Defenders 2001-2004*, (Dublin: Front Line, 2005). See also Jennie Burnet, "Gender Balance and the Meanings of Women in Governance in Post-Genocide Rwanda," *African Affairs* vol. 107(428) (July 2008): p. 371 (observing that when human rights observers present evidence of serious human rights violations, such as extrajudicial executions or 'disappearances', diplomats often respond with an attitude of 'at least, it's not genocide'...").

115 Allison Corey and Sandra F. Joireman, "Retributive Justice: The *Gacaca* Courts in Rwanda," *African Affairs* vol. 103(410) (Jan. 2004): p. 86.

application of the process to both Hutu and Tutsi, it will be interpreted more as revenge than as reconciliation."[116]

VII. The "Genocidal Ideology" (Divisionism/Sectarianism) Law

Since coming to power, the RPF government has sought to eradicate what it calls "sectarianism" and "divisionism."[117] In 2002, a law criminalizing sectarianism was enacted stating that the crime of sectarianism was a punishable offence. The crime of sectarianism is committed "by any oral or any act of division that [can] generate conflicts among the population or cause disputes."[118] The 2003 Rwanda Constitution commits the Rwandan people to fight the genocidal ideology, and in particular specifies that "revisionism, negations (denial) and the minimization of genocide,"[119] are punishable offences under the law. Under the 2002 law, persons convicted of the offence of sectarianism are liable to imprisonment for up to 5 years and loss of civil rights.

According to the RPF, there is an established "objective truth" about the 1994 Rwanda genocide. Included in this "truth" is the fact that although some RPA soldiers may have killed civilians, these crimes were an unfortunate result of warfare or were occasional acts of revenge and have been punished.[120] Any insinuation(s) to the contrary is deemed to imply divisionism and genocidal ideology, which the Rwanda Parliament has dealt with in four commissions. The first commission set up in 2003 interpreted the offence of genocidal ideology to include "... speaking of crimes by the RPA soldiers as if they were genocide."[121] The Second Commission in its June 2004 also included in its definition of genocidal ideology "... speaking of RPA war crimes."[122] The Third Commission again included in its definition of genocidal ideology any reference(s) to "unpunished RPF crimes."[123] As a result of the findings of these commissions,

116 Allison Corey and Sandra Joireman, "Retributive Justice ...," p. 86.

117 This could possibly be explained by the fact that the Museveni government in Uganda has crusaded against sectarianism and even included a provision in the 1995 constitution prohibiting it. So the RPF government is merely copying. See Article 21, Constitution of Uganda 1995 (as amended in 2005).

118 Article 3, Law no. 47/2001.

119 Article 13.

120 National Unity and Reconciliation Commission (NURC), *Manuel pour les Camps de Solidarite et autre Formations*, (Kigali, October 2006) see especially pp. 81, 83, 154 and 162.

121 Republique Rwandaise, Assemblee Nationale, *Rapport de la Commssion Parlementaire de Controle mise en place le 27 Decembre 2002 pour enqueter sur le problemes du MDR*, accepted by the National Transitional Assembly, (Kigali, 14 April 2003), p. 19.

122 See generally Republique Rwandaise, Assemblee Nationale, *Rapport de la Commssion Parlementaire ad hoc cree en date du 20 Janvier 2004 par le Parlement, Chambre de Depute, chargee d'examiner les tueries perpetrees dans le Province de Gikongoro, l'ideologie genocidaire et ceux qui la propagent partout au Rwanda, accepted by the National Assembly,* (Kigali, 30 June 2004).

123 Rwanda Senate, Rwanda, Genocide Ideology and Strategies for its Eradication, 2006, p. 18.

government officials denounced hundreds of people and dozens of Rwandan and international organizations accusing them of possessing genocide ideology.[124]

The Rwandan courts in the judicial year of 2007-8 were inundated with cases concerning genocide ideology. Deputy Prosecutor General Alphonse Hitiyaremye is quoted as saying that in this period the courts initiated 1,304 prosecutions involving genocide ideology, including acts of violence such as murder, damage to property, discrimination and other undefined threats.[125] A further 243 persons were charged with the crimes of negationism and revisionism, of whom 8 were convicted and sentenced to life in prison, 2 sentenced to more than 20 years in prison, 36 sentenced to between 10 and 20 years in prison, 96 drew sentences of between 5 and 10 years in prison, and 91 sentenced to less than five years in prison.[126] Out of the 243 persons charged, 102 were acquitted. One prosecution that needs to be pointed out concerned a one Celestin Sindikubwabo who challenged the official "truth" about the RPF crimes.[127] At a *gacaca* trial in October 2006, Sindikubwabo had posited that the defendant had fled to Burundi because he had seen RPA soldiers killing local people. The defendant was acquitted, but Sindikubwabo was arrested. In May 2007 he was convicted and sentenced to 20 years in prison for "gross marginalization of the genocide."[128]

In June 2008, the Rwandan Parliament adopted a new law criminalizing genocide ideology. The crime of genocide ideology is defined as "any manifested behaviour characterized by evidence aimed at depriving a person or group of person of common interest of humanity like in the following manner: a) threatening, intimidations, degrading through defamatory speeches, documents or actions which aimed at propounding wickedness or inciting to hatred; b) marginalize, laugh at one's misfortune, defame, mock, boast, despise, degrade, create confusion aimed at negating the genocide which occurred, stirring up ill-feelings, taking revenge, altering testimony or evidence of the genocide that occurred; and, killing, planning to kill or attempting to kill someone following the genocide ideology.[129] It must be stated that this criteria

124 HRW, "Law and Reality ...," p. 39. It must be noted that many of these groups and organizations were selected by state security agents or identified through accusations at public meetings. See also IRIN In-Depth, *Justice for a Lawless World: Rights and Reconciliation in a New Era of International Law* (Part I), July 2006, p. 37 (noting that criticising the *gacaca* process, or even the regime in Rwanda, can have serious consequences. Several NGOs were forced to move out of Rwanda as the government accused them of having genocidal ideology). (Internal quotation marks omitted).

125 HRW, "Law and Reality ...," p. 40.

126 See Foundation Hirondelle, *Rwandan Official proposes Rehabilitation of Persons convicted for Genocide Ideology*, 30 May 2008.

127 Cited in HRW, "Law and Reality ...," p. 41.

128 See Court of Higher Instance, Huye, No. RP 0015/07/TGI/HYE RPGR 40832/S2/06/MR/KJ, *Prosecutor v. Celestin Sindikubwabo*, 24/4/07.

129 HRW, "Law and Reality ...," p. 41.

is really wide and as Human Rights Watch has observed is "imprecise and confusing."[130]

The punishments proposed under the 2008 law are harsh.[131] For first time offenders, on conviction they would be sentenced to between 10 and 25 years in prison and a fine of 200,000 to 1 million Rwandan francs, with the penalties doubled and even increased to life imprisonment for recidivists. Persons occupying or who have occupied leadership positions in the government, private sector, NGOs or the church may be sentenced from 15 to 25 years in prison with a fine of 2 to 5 million Rwandan francs. Political parties[132] and NGOs may be dissolved and fined 5 to 10 million francs. Children are held criminally responsible at the age of 12 and may be sent away to a rehabilitation centre for a year, and parents, guardians, teachers and headmasters may be punished by 15 to 25 years in prison. Children between the ages of 12 and 18 will receive one half penalty meted out to adults.

VIII. RPA Arrests, the French and Belgian Investigations

The announcement by the ICTR Prosecutor of the investigation of some RPA elements was welcomed, even if it happened fourteen years after the event. However, the arrest of these elements has elicited doubts as to whether the accused will "really" be prosecuted. This is in-spite of the assurances given by the Prosecutor that the Tribunal will be monitoring the trial, and should it find the prosecutions a sham then it (ICTR) will take action. These assurances have not assuaged the doubting Thomases, however. According to press reports, the current Archbishop of Kigali Thadee Ntihinyurwa who is a Hutu has doubted whether his murdered colleagues will actually receive justice. He suspects that the Rwandan authorities will interfere with the prosecution. He is reported to have observed that "justice can only be rendered by foreigners not Rwandans that are most likely to be compromised by the establishment."[133]

Consistent with the argument we have advanced in this paper is the view that the Rwandan population continues to be divided about the genocide, and the

130 HRW, "Law and Reality ...," p. 41.

131 See Article 4-13.

132 The Democratic Republican Movement (MDR) political party was destroyed by accusations that it was a vehicle for promoting genocide ideology and divisionism. See generally Republique Rwandaise, Assemblee Nationale, *Rapport de la Commission Perlementaire de controle mise en place le 27 Decembre 2002 pour enqueter sur les problems du MDR*, accepted by the National Transitional Assembly, 14 April 2003.

133 *Hirondelle News Agency* (Lausanne), June 16, 2008. See story, "Catholic head wants RPF soldiers trial outside the country."

prosecutions that have been carried out so far. Reacting to the Archbishop, President Kagame is reported to have retorted that "the Catholic Church failed the people of Rwanda in 1994", and that "he was surprised that opposition [to the prosecution of the suspects in Rwanda] was coming from someone who in the past, had been subject to investigations into his personal role in the genocide."[134]

President Kagame himself has been investigated for crimes committed during the genocide. In 2006, French Judge Jean-Louis Bruguière issued a warrant of arrest for Kagame and nine other top RPF/A leaders for genocide related crimes. Specifically Kagame was charged with ordering the shooting down of Habyarimana's plane in April 1994, an event that sparked off the genocide.[135] The UN started investigation into the shooting down of the plane in 1997. According to one of the UN investigators, information was gathered pointing to the culpability of President Kagame but the then Prosecutor of the ICTR Louise Arbor decided to abruptly halt the investigation.[136] This was after the investigators had collected information from four "credible" witnesses, and written a memorandum as to the people responsible for bringing down the plane. When Del Ponte who succeeded Justice Arbor was asked about the investigation into the shooting down of the plane she reiterated that "[the ICTR] only had jurisdiction over cases concerning crimes against humanity, such as genocide, and not murders as such."[137] This is not withstanding the fact that the UN investigators cited above had been tasked with *inter alia* "identifying the person(s) responsible for the fatal rocket attack on 6 April 1994 killing President Habyarimana and all others on board."[138] When the UN investigation was halted, Judge Bruguière picked up the issue.

Judge Bruguière's investigation looked *inter alia* into the source(s) of the missiles that brought down the plane and the people who could have possibly been involved. Incidentally, one person who was mentioned in connection with the missiles is President Museveni of Uganda.[139] However, when the judge issued his

134 *Hirondelle News Agency* (Lausanne), June 20, 2008. See story, "President Kagame attacks Catholic head over remarks on RPF trial."

135 BBC, 'Rwanda gives ex-leaders immunity', July 17, 2008 at http://news.bbc.co.uk/2/hi/africa/7511094.stm (visited on July 17, 2008).

136 Nick McKenzie, *Uncovering Rwanda's Secrets*, February 10, 2007 at http://www.theage.com.au/articles/2007/02/09/1170524298439.htlm (visited on October 1, 2008). See also ICTR, Affidavit of Michael Andrew Hourigan, 27 November 2007 at http://www.theage.com.au/ed_docs/statement%20... (visited on October 1, 2008).

137 Bjorn Willum, ICTR Prosecutor rejects allegations of Kagame arrest warrant, Rwanda Newsline, October 30-November 5, 2000 at http://willum.com/articles/rwanda30oct2000/indexright.htm (visited on October 1, 2008).

138 ICTR, "Affidavit of Michael Andrew Hourigan..."

139 Bjorn Willum, "ICTR Prosecutor rejects allegations of Kagame arrest warrant ..."

warrants, Museveni was not indicted. It appears thus that the judge was biased. President Kagame and one time Prosecutor General of Rwanda have maintained that it is actually France which is culpable in the shooting down of Habyarimana's plane. President Kagame is quoted to have posited in connection with Judge Bruguière's investigation that "the judge should rather look to where he is (meaning France)".[140] On his part, Gahima posited that "the allegations against the RPF are suspicious since the French were [at Kanombe airport] when the plane was downed".[141] Thus accusations and counter-accusations have characterized this investigation. Both the UN and Judge Bruguière have not helped matters as the former has clearly demonstrated that it is not interested in finding out who did this heinous act, while the latter has clearly manifested bias in indicting President Kagame.

On 6 February 2008, Judge Fernando Abreu Merelles of Spain issued warrants of arrest for 40 top RPF/A leaders[142] including Kagame, for genocide, war crimes and crimes against humanity offences committed prior to, during and after the 1994 genocide. The Rwandan authorities reacted to Judge Merelles' warrants by threatening to prosecute him for genocidal ideology.[143] Both judges' Merelles and Bruguière accusations were received with fury in Kigali. Apropos of Judge Bruguière's accusations, Rwanda reacted by severing its diplomatic relations with France. It also invited the International Court of Justice (ICJ) to adjudge France to have violated international law with regard to diplomatic immunity as well as the sovereignty of Rwanda.[144] France is yet to respond to a request by the ICJ to accept the jurisdiction of the court to hear the case. The Rwandan authorities argued that neither of the judges had carried out any investigations in Rwanda, interviewed the alleged suspects, or involved the Rwandan justice system in the process as is usually required by law and principles of natural justice.[145] Indeed, throughout their investigations, both judges never set foot in Rwanda or gave an opportunity to

140 Bjorn Willum, "ICTR Prosecutor rejects allegations of Kagame arrest warrant ..."

141 Bjorn Willum, "ICTR Prosecutor rejects allegations of Kagame arrest warrant ..."

142 Some of the indicted persons have actually challenged their arrest warrants in France and Belgium courts. These include: Rose Kabuye (Head of State Protocol), Brigadier-General Sam Kaka (Former MP), Major Jacob Tumwine, Lt. General Charles Kayonga and Brigadier-General Jack Nziza. *The New Times* (Kigali), July 2, 2008; *Focus Media* (Kigali), July 7, 2008.

143 HRW, "Law and Reality ...," p. 93.

144 ICJ, The Republic of Rwanda applies to the International Court of Justice in a dispute with France, *Press Release 2007/11* at http://www.icj-cij.org/common/print.php?pr=1909&pt=1&1=6&p2=1 (visited on October 25, 2008).

145 *Daily Nation*, July 18, 2008. See story, "Africa must challenge abuse of international jurisdiction.' Some to the grounds that the Rwanda government has advanced to reject the indictments include *inter alia* that: both judges used same witnesses most of whom have since died, and this was done in a way that finding the truth will not be easy; and both judges have claimed that there was double genocide in Rwanda.

the suspects to present their side of the story. Although Judge Merelles has averred that throughout his investigation he had tried without success to obtain cooperation from Rwandan authorities.[146]

In addition to severing relations with France, President Kagame reacted to Bruguière's indictments by setting up an Independent National Commission to probe the role of France in the 1994 Genocide in Rwanda. The Commission headed by Jean de Dieu Mucyo, was tasked with gathering the facts on the involvement of France and other key players in the genocide. The Commission's Report has now been made public and it calls for further investigation and possible prosecution of selected individuals in France, including the former President Francois Mitterand.[147] But as a way to water down the French and Spanish indictments, President Kagame attended the Eleventh African Union (AU) Summit held in Sharm El Sheik Egypt in which he called on all the African leaders to condemn the "European" indictments.[148] Prior to that, the Minister of Justice of Rwanda had described the warrants as "racist and negationist" and had asked the African Union Ministers of Justice to condemn what he characterized as "a neo-colonial attempt to reassert control over African states by a judicial *coup d'etat*."[149] The AU Commission came out with a report on the abuse of the Principle of Universal Jurisdiction.[150] In its decision on the matter, the Summit of the AU noted *inter alia* that "the abuse and misuse of the principle of universal jurisdiction by judges from non African States against African leaders, *particularly Rwanda* (emphasis added) is a clear violation of the sovereignty and territorial integrity of these states."[151] The AU thus unanimously resolved that "the warrants (against President Kagame and senior officials in his government) shall not be executed in [any] member state."[152]

146 HRW, "Law and Reality ...," p. 92.

147 See Republique du Rwanda, *Commission Nationale Independente Chargee de Ressembler les Prevues Montrant L'implication de L'etat Francais dans le Genocide Perpetre au Rwanda en 1994*, (Kigali, November 15, 2007) (On file with the author).

148 *The New Times* (Kigali), July 2, 2008. See story, "Foreign Indictments now a continental issue-Minister."

149 HRW, "Law and Reality ...," p. 93.

150 Report of the Commission on the Abuse of the Principle of Universal Jurisdiction Pursuant to the Recommendation of the Misters of Justice/Attorneys General in Addis Ababa, Ethiopia, April 18, 2008.

151 AU, *Decision on the Report of the Commission on the Abuse of the Principle of Universal Jurisdiction*, " (2008) Doc. Assembly/AU/14 (XI), para. 5 (ii).

152 AU, "Decision on the Report of the Commission on the Abuse ...," para. (iv).

X. Conclusion

The investigation and prosecution of the RPA crimes during and after the genocide continues to be a sensitive and controversial issue. There is no systematic official investigation that has been carried out to establish the extent of the RPA's culpability. Whatever allegations have been made against the RPA have been based on un-official sources. There is therefore a need for the Rwanda government to institute or to allow to be instituted, a commission to investigate these allegations. The investigation will establish the facts and impute responsibility on those who are responsible for these crimes. This will go a long way to show that the current RPF led government is not practicing victor's justice. Token prosecutions of RPF/A elements will not promote justice and reconciliation, which Rwanda badly needs.

The announcement that some arrests have been made in Rwanda, and prosecution will follow for crimes perpetrated by the then rebel forces of RPF/A, has gone a long way to demonstrate that the post-genocide justice in Rwanda is impartial. The failure of the *Gacaca* courts, the ICTR and National Genocide Trials (NGTs) to look into the allegations against the RPF/A has tainted the reputations of these processes/institutions. Whilst the alleged crimes of the RPF/A may not reach the threshold of genocide, this should not absolve these processes'/institutions' of their responsibility to look into them. Specifically for the ICTR, as HRW has observed, "it should complete its mandate by also prosecuting RPA soldiers accused of war crimes and crimes against humanity [because the alleged crimes] fall within its jurisdiction *rationae temporis* and *rationae materiae*."[153]

Finally, if we may echo what HRW has said, to insist on the right of justice for all victims, is not to deny the genocide, nor does such insistence equate war crimes with genocide; it simply asserts that all victims of genocide, crimes against humanity and war crimes regardless of their affiliation, and regardless of the affiliation of the perpetrator, must have equal opportunity to seek redress for the wrongs done to them.

153 HRW, "Law and Reality ...," p. 94.

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Kitaplar

[D] Guénaël Mettraux, *International Crimes and the Ad Hoc Tribunals* (Oxford: Oxford University Press, 2005), s. 114.

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[D] Rebekah Lee ve Megan Vaughan, "The Future of Human Rights in Europe," *The Journal of African History*, cilt 49 (Kasım 2008): s. 348.

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[D] Ian Scobbie, "Wicked Heresies or Legitimate Perspectives? Theory and International Law," *International Law, ed.* Malcolm D. Evans içinde (New York: Oxford University Press, 2006), s. 87.

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Ansiklopedi Makaleleri

Not: İyi bilinen ansiklopedi kitapları tercihen kaynakçada gösterilmemelidir.

[D] The New Encyclopaedia Britannica, Micropaedia, 15. ed., s.v. "Vietnam war."

Raporlar ve Tebliğler

Konferans Tebliğleri

[D] Ferdan Ergut, "Surveillance and the Public Order in the Late Ottoman Empire, 1908-1918," (Central Eurasian Studies Society, Fourth Annual Conference, Harvard Üniversitesi'nde sunulan tebliğ, 2-5 Ekim 2003), s. 8.

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Resmi Belgeler

[D] U.S. Congress, Senate, Committee on Armed Services, *Defense Organization: The*

Need for Change, Staff Report, 99th Cong., 1st sess. (Washington, DC: GPO, 1985), ss. 521-522.

[K] U.S. Congress. Senate. Committee on Armed Services. *Defense Organization: The*

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[D,K] UNSC Res. 1373 (28 Eylül 2001) UN Doc S/Res/1373.

[D,K] UNGA Sixth Committee (56th Session) "Report of the Working Group on Measures to Eliminate International Terrorism" (29 Ekim 2001) UN Doc A/C.6/56/L.9.

Uluslararası ve Bölgesel Antlaşmalar

Uluslararası Antlaşma

[D] Convention Relating to the Status of Refugees (28 Temmuz 1951 tarihinde kabul edilmiş, 22 Nisan 1954 tarihinde yürürlüğe girmiştir) 189 UNTS 137 (Mülteci Sözleşmesi), madde 33.

[K] Convention Relating to the Status of Refugees (28 Temmuz 1951 tarihinde kabul edilmiştir, 22 Nisan 1954 tarihinde yürürlüğe girmiştir) 189 UNTS 137.

Bölgesel Antlaşma

Not: Avrupa bölgesel antlaşmaları belirtilirken, tarihler genellikle yazılmaz; zira bunların tarihlerinin birçok defa değişikliğe uğramış olması muhtemeldir. Antlaşmanın başlığında mevcut ise, tarihin belirtilmesi uygun olacaktır.

[D] Convention for the Protection of Human Rights and Fundamental Freedoms (Avrupa İnsan Hakları Sözleşmesi), madde 3.

[K] Convention for the Protection of Human Rights and Fundamental Freedoms.

Uluslararası Mahkeme Kararları ve Davalar

Uluslararası Adalet Divanı

[D] *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (Judgment) General List No. 91 [2007] ICJ 1 (26 Şubat 2007), para. 189.

[K] *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (Judgment) General List No. 91 [2007] ICJ 1 (26 Şubat 2007).

Eski Yugoslavya ve Ruanda Uluslararası Ceza Mahkemeleri

[D] *Prosecutor v. Akayesu* (Judgment) ICTR-96-4-T, T Ch I (2 Eylül 1998), para. 42.

[K] *Prosecutor v. Akayesu* (Judgment) ICTR-96-4-T, T Ch I (2 Eylül 1998).

Sonraki Atıflar

Kaynaklara yapılan ilk atıflar yukarıdaki gibi gösterilecek; daha sonraki atıflarda Latin kısaltmaların hiçbir şekilde kullanılmaması ve aşağıdaki iki örnekte gösterildiği üzere, yazarın ilk ve soy ismi ile çalışmanın kısaltılmış başlığının kullanılması tercih edilmektedir.

Guénaël Mettraux, *International Crimes*..., s. 115.

Rebekah Lee, "The Future of Human Rights..., s. 349.

IV. Kısaltmalar

Referans belirtirken, uygun olduğu takdirde, aşağıdaki kısaltmaların kullanması rica olunmaktadır:

UNGA Res.: United Nations General Assembly Resolution (Birleşmiş Milletler Genel Kurul Kararı)

UNSC Res.: United Nations Security Council Resolution (Birleşmiş Milletler Güvenlik Konseyi Kararı)

UNCHR:	United Nations Commission on Human Rights (Birleşmiş Milletler İnsan Hakları Komisyonu)
UNTS:	United Nations Treaty Series (Birleşmiş Milletler Antlaşmalar Serisi)
YILC:	Yearbook of the International Law Commission (Uluslararası Hukuk Komisyonu Yıllığı)
ICJ:	International Court of Justice (Uluslararası Adalet Divanı)
ICC:	International Criminal Court (Uluslararası Ceza Divanı)
ICTY:	International Criminal Tribunal for the Former Yugoslavia (Eski Yugoslavya Uluslararası Ceza Mahkemesi)
ICTR:	International Criminal Tribunal for Rwanda (Raunda Uluslararası Ceza Mahkemesi)
T Ch:	Trial Chamber (Duruşma Dairesi)
A Ch:	Appeals Chamber (Temyiz Dairesi)
IMT:	International Military Tribunal for the Major War Criminals, Nuremberg (Nüremberg Uluslararası Askeri Ceza Mahkemesi)
para., paras:	paragraf, paragraflar
ed., eds.:	editör, editörler

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Authors are asked to pay particular attention to the accuracy and correct presentation of references. As a rough guideline, authors may refer to the Chicago Manual of Style with the exception of subsequent references.

For a guide to the preferred citation style of the *Journal of International Crimes and History* please find below examples of materials cited as footnote entry [N], followed by a bibliographic entry [B].

Books

[N] Guénaël Mettraux, *International Crimes and the Ad Hoc Tribunals* (Oxford: Oxford University Press, 2005), p. 114.

[B] Mettraux, Guénaël. *International Crimes and the Ad Hoc Tribunals.* Oxford: Oxford University Press, 2005.

Articles

[N] Rebekah Lee and Megan Vaughan, "The Future of Human Rights in Europe," *The Journal of African History*, vol. 49 (Nov. 2008): p. 348.

[B] Lee, Rebekah and Megan Vaughan. "The Future of Human Rights in Europe." *The Journal of African History*, vol. 49 (Nov. 2008): pp. 341-359.

Edited Books

[N] Ian Scobbie, "Wicked Heresies or Legitimate Perspectives? Theory and International Law," in *International Law,* ed. Malcolm D. Evans (New York: Oxford University Press, 2006), p. 87.

[B] Scobbie, Ian. "Wicked Heresies or Legitimate Perspectives? Theory and International Law." In *International Law,* edited by Malcolm D. Evans, pp.159-180. New York: Oxford University Press, 2006.

Encyclopedia Articles

Note: Well-known reference books should preferably not be listed in the bibliography.

[N] The New Encyclopaedia Britannica, Micropaedia, 15th ed., s.v. "Vietnam war."

Reports and Papers

Conference Papers

[N] Ferdan Ergut, "Surveillance and the Public Order in the Late Ottoman Empire, 1908-1918," (paper presented at Central Eurasian Studies Society, Fourth Annual Conference, Harvard University, October 2-5, 2003), p. 8.

[B] Ergut, Ferdan. "Surveillance and the Public Order in the Late Ottoman Empire, 1908-1918." Paper presented at Central Eurasian Studies Society, Fourth Annual Conference, Harvard University, October 2-5, 2003.

Ph.D. Dissertations

[N] Frederick Carleton Turner, "The Genesis of the Soviet 'Deep Operation': The Stalin-era Doctrine for Large-scale Offensive Maneuver Warfare" (Ph.D. diss., Duke University, 1988), p. 54.

[B] Turner, Frederick Carleton. "The Genesis of the Soviet 'Deep Operation': The Stalin-era Doctrine for Large-scale Offensive Maneuver Warfare." Ph.D. diss., Duke University, 1988.

Government Documents

[N] U.S. Congress, Senate, Committee on Armed Services, *Defense Organization: The*

Need for Change, Staff Report, 99th Cong., 1st sess. (Washington, DC: GPO, 1985), pp. 521-522.

[B] U.S. Congress. Senate. Committee on Armed Services. *Defense Organization: The Need for Change*. Staff Report. 99th Cong., 1st sess. Washington, DC: GPO, 1985.

Legal Materials/Law Sources

UN Documents

Note: Cite UN documents in the following order: author, title, date, document number. Italicize the title of a UN document only if it has been published as a book. After the first citation, abbreviate "United Nations" to "UN"; "UN Security Council" to "UNSC"; "UN General Assembly" to "UNGA"; and "Resolution" to "Res".

[N,B] UNSC Res. 1373 (28 September 2001) UN Doc S/Res/1373.

[N,B] UNGA Sixth Committee (56th Session) "Report of the Working Group on Measures to Eliminate International Terrorism" (29 October 2001) UN Doc A/C.6/56/L.9.

International and Regional Treaties

International Treaty

[N] Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention), art. 33.

[B] Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

Regional Treaty

Note: Dates are generally not given when citing European treaties, as they may have been changed several times. Include the year if it appears in the standard title of the treaty.

[N] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), art. 3.

[B] Convention for the Protection of Human Rights and Fundamental Freedoms.

International Cases and Decisions

International Court of Justice

[N] *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (Judgment) General List No. 91 [2007] ICJ 1 (26 February 2007), para. 189.

[B] *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (Judgment) General List No. 91 [2007] ICJ 1 (26 February 2007).

International Criminal Tribunals for the Former Yugoslavia and Rwanda

[N] *Prosecutor v. Akayesu* (Judgment) ICTR-96-4-T, T Ch I (2 September 1998), para. 42.

[B] *Prosecutor v. Akayesu* (Judgment) ICTR-96-4-T, T Ch I (2 September 1998).

Cross References

When referring to the same work previously cited in the manuscript, avoid all Latin abbreviations and use the shortened form as provided:

Guénaël Mettraux, *International Crimes*..., p. 115.

Rebekah Lee, "The Future of Human Rights..., p. 349.

IV. Abbreviations

Where appropriate please refer to the abbreviations provided for below when citing references:

UNGA Res.:	United Nations General Assembly Resolution
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UNCHR:	United Nations Commission on Human Rights
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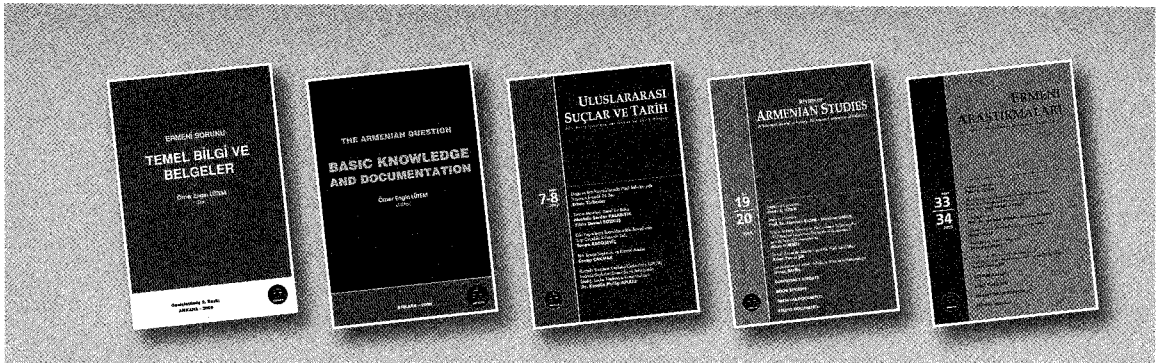

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