

A Moving Defence

The Turkish State and the Armenian Genocide

Alexis Demirdjian*

Abstract

The crimes committed against Armenians in 1915 have been the object of painstaking and careful study over the past decades and are today commonly referred to as 'genocide' by scholars and public opinion. Against this backdrop — as well as of the various judicial decisions, including by Turkish courts, demonstrating that a policy of massacres and persecution did take place — the thesis of this article is that succeeding Turkish governments have adopted a sort of 'moving defence' to minimize, justify and ultimately deny the gravity of the campaign against Armenians for essentially political purposes. The article traces the origins of, and the turns taken throughout the past hundred years, by this 'moving defence'.

'It is the wolf accusing the lamb of muddying the stream.'¹

1. Introduction

On the night of 24 April 1915, over 200 intellectuals, businessmen and clergymen of the Armenian community of Istanbul (then Constantinople) were arrested and transferred to detention centres, where most were tortured and killed. This event was part of a plan by (part of) the Ottoman leadership to remove Armenians from the Empire's territory and marked the beginning² of

* LL.M. in International Law; Member of the Quebec Bar; Trial Lawyer, Office of the Prosecutor (ICC). Previously Trial Attorney at the ICTY (2005-2015); Director of the Centennial Project Foundation. The views expressed in this article are the author's and do not necessarily reflect those of his employer. The author wishes to thank Dr Guénaél Mettraux for useful comments on an earlier draft. [alexisdemirdjian@gmail.com]

1 'The Armenian Massacres: Compared with the Shocking Bulgarian Atrocities of 1876', *New York Times*, 16 December 1894.

2 24 April is a symbolic date. Reports of expulsions and killings equally emerged earlier in April.

a campaign of persecution, deportation, race extermination and spoliation. It is commemorated annually as the iconic moment marking the beginning of what is now generally defined as the ‘Armenian genocide.’³ As part of a veritable population engineering policy, the plan resulted in the killing of over a million Armenians who were subjects of the Ottoman Empire. The policy also included the destruction of the vast majority of the 2500 Armenian churches as well as the confiscation of private Armenian property. Reliable accounts have been given by local and foreign officials present during the execution of the policy, and masses of archival material point directly to the leadership of the Empire at the time, that is, the Committee of Union and Progress (CUP), a political party that had forcibly seized power in 1908 and decided to join Germany in the First World War. Two decades later, moved by the victimization of the Armenians and by the fate of the Jewish people in Europe, Polish lawyer Raphael Lemkin gave these crimes the definition of genocide. To this day, Turkey denies responsibility in the matter. Referred to, for a long time, as the ‘forgotten genocide’, its relevance emerged again over the last 20 years as scholars and activists have made strides in highlighting the lack of closure and pervasive denial on behalf of the Turkish state.

In modern literature, the Armenian genocide is regularly accompanied by the terms ‘recognition’ or ‘denial’, a regrettable state of affairs distracting from real issues. Indeed, much could be discovered if the search for the truth were to be honestly put at the forefront. However, the crimes committed against Armenians have gone unrecognized by their perpetrators and by the governments that have followed the CUP. One should not ignore, however, the strong movement within the Turkish intellectual community to not only accept the crimes which took place in 1915, but to vocalize the need to make amends and apologize to the Armenian community. As argued by Ungor, ‘there is a clash between official state memory and popular social memory: the Turkish government is denying a genocide that its own population remembers.’⁴ Ungor explains that to learn about Turkey’s history, one had to consult ‘the libraries constructed by the regime, and the oral tradition that was preserved in extended families in the city and the countryside.’⁵

To be sure, the policy of erasing references to the genocide from educational material and other similar policies have had an impact on public opinion. A 2011 survey showed that 78% of Turks opposed a US congressional bill to recognize the Armenian Genocide, whereas 7.4% supported it.⁶ Conversely, many intellectuals in Turkey appear to be prepared to promote

3 Several reports, however, show that Armenian soldiers had already been the subject of executions and widespread massacres in the early part of 1915, before this order. See for example H. Morgenthau, *Ambassador Morgenthau's Story* (Doubleday, Page and Co., 1919), at 302–303.

4 U.U. Ungor, ‘Lost in Commemoration: The Armenian Genocide in Memory and Identity’, 48 *Patterns in Prejudice* (2014) 147–166.

5 *Ibid.*, at 156.

6 H. Sassounian, ‘First Nationwide Turkish Survey Reveals Millions of Turks Support Genocide Bill’, *The Huffington Post*, 25 May 2011, available online at <https://www.huffingtonpost.com/harut-sassounian/first-nationwide-turkish-b.74141.html> (visited 2 May 2018).

its recognition.⁷ However, Turkish society has been polarized on the issue; while many academics, journalists, authors, and artists were pushing for initiatives such as the 2008 apology campaign to acknowledge the Genocide, a major nationalist backlash saw the prosecution of several intellectuals based on Article 301 of the criminal code criminalizing ‘insulting Turkishness’.⁸ Around the same time, the murder of Turkish-Armenian journalist Hrant Dink illustrated the strong presence of extremism as further described below in this article.⁹

Given Turkey’s official political stance, not many are aware that in 1919–1920, trials were actually held in Turkey, featuring the prosecution of members of the Ottoman leadership for crimes committed against Armenians. Not only did Turkish courts find that the CUP leadership’s behaviour was criminal, but the post-war Turkish government accepted that what took place amounted to extermination.¹⁰ However, the new Republic’s authorities, led by Mustapha Kemal Atatürk, curtailed the Istanbul trials’ legacy. Although the legal community is, for instance, familiar with the Leipzig trials as one of the first examples of modern day trials dealing with crimes committed during the First World War, the Istanbul trials deserve an equal place in the historiography of war crimes and crimes against humanity. Regrettably, their legacy has been muffled in Turkey.

Studies relating to the Armenian genocide took a sharp turn in recent decades, in particular with efforts by Turkish academics to dig up primary sources in the form of telegrams and other documents kept at the Ottoman archives in Istanbul. These documents provided an insight into the activities, instructions and mindset of the Ottoman leadership.

Today, the Turkish government’s official position includes the following arguments:

- In the waning days of the Ottoman Empire, millions died, including Muslims, Jews and Christians.
- Some of the Armenian victims were responsible for their own fate.
- There could not have been 1.5 million victims, as demographic studies show that there were less than 1.5 million Armenians in the Ottoman Empire before the war.
- Armenian losses were few in comparison to the over 2.5 million Muslim dead during the same period.
- Certain oft-cited Armenian evidence is of low value, since it comes from dubious and biased sources.¹¹

7 H. Aghbashian, ‘Turkish Intellectuals Who Have Recognized the Armenian Genocide: Temel İskit’, *Massis Post*, 12 January 2017, available online at <https://massispost.com/2017/01/turkish-intellectuals-recognized-armenian-genocide-temel-iskit/> (visited 2 May 2018).

8 S. Bayraktar, ‘The Politics of Denial and Recognition’, in A. Demirdjian (ed.), *The Armenian Genocide Legacy* (Palgrave Macmillan, 2015) 207.

9 E. Elmas, ‘Towards 2015: Media in Turkey on the Armenian Genocide’, in Demirdjian (ed.), *supra* note 8, 183, at 192.

10 National Congress of Turkey, *The Turco-Armenian Question: The Turkish Point of View* (Société Anonyme de Papeterie et d’Imprimerie, 1919), at 81–84.

11 Early attempts at collecting evidence included the often-cited telegrams gathered by journalist Aram Andonian. These were discredited by scholars supporting the Turkish government

- Armenian deaths do not constitute genocide.
- The British convened the Malta Tribunals to try Ottoman officials for crimes against Armenians. All of the accused were acquitted.¹²

These arguments will sound familiar to most jurists, lawyers and judges involved in war crime trials — past or present — before ad hoc or other internationalized criminal tribunals and courts. Accusations of wrongdoing by the victim group (*tu quoque* defence), casting doubts on the number of victims, comparing losses within the victim group to deaths within the group of which perpetrators are part, or justifying casualties due to the ‘fog of war’ have been raised by defendants before international courts. The Turkish government maintained these arguments over time likely for the reason that the recognition of the Armenian genocide would undermine decades of indoctrination of the Turkish population on external threats — what some authors have labelled ‘siege mentality’¹³ — and the myth surrounding the founding fathers of the Republic.¹⁴

Following this introduction and a brief presentation of the factual background, Section 3 of this article will look at the position adopted by the Ottoman Empire’s leadership during the First World War vis-à-vis crimes committed against Armenians living in Turkey, amidst accusations by foreign powers that Turkey was committing crimes against humanity. Section 4 will look at Turkey’s position after the First World War, including the era following the adoption of the Genocide Convention and up to the year 2000. Section 5 will address developments since the year 2000 including exchanges between Armenian and Turkish intellectuals, the relationship between Armenia and Turkey, and initiatives in Turkey by intellectuals, journalists, artists and activists on the issue of the Armenian genocide. It will also look at proceedings before courts at the national and regional levels, which have dealt with the events in question.

This article analyses the defences advanced by the Turkish government and scholars supporting the Turkish government’s narrative. As will be seen below, despite the immediate attempt at transparency at the end of the First World War, the story concocted by the Turkish government as of the creation of the Republic in 1923 was one where the victim was ignored. With time, this story was adapted — ranging from outright denial to acceptance that some crimes had been committed as collateral damage — depending on the

thesis. They are the subject of a recent volume: T. Akçam, *Killing Orders: Talat Pasha’s Telegrams and the Armenian Genocide* (Palgrave Studies in the History of Genocide, 2018).

12 Turkish Ministry of Foreign Affairs, ‘The Armenian Allegation of Genocide: The issue and the facts’, available online on the website of the Ministry of Foreign Affairs at <http://www.mfa.gov.tr/the-armenian-allegation-of-genocide-the-issue-and-the-facts.en.mfa> (visited 19 October 2017).

13 J.M. Dixon, ‘Education and National Narratives: Changing Representations of the Armenian Genocide in History Textbooks in Turkey’, 6 *International Journal of Education Law and Policy* (2010) 103, at 106.

14 T. Akçam, ‘The Genocide of the Armenians and the Silence of the Turks’, in L. Chorbajian and G. Shirinian (eds), *Studies in Comparative Genocide* (St. Martin’s Press, 1999) 125, at 143.

amount of information and evidence available at the given time. This moving defence points to a desire to shield the Turkish government, and its agents, from responsibility for damages or reparation to (and even genuine reconciliation with) Armenians. A moving defence also suggests that the Turkish government is prepared to pursue various arguments and that, therefore, its interests may not, currently, align with seeking truth and justice.

2. Factual Background

A. Armenians in Eastern Turkey

For centuries, Armenian communities and kingdoms existed in the area generally covering portions of modern day Eastern Turkey, Syria, northern Iraq, northern Iran, modern day Armenia and Azerbaijan. The events we are concerned with relate to those Armenians who lived primarily in the six so-called 'Armenian provinces' of the Ottoman Empire, present day Eastern Anatolia (in Turkey).¹⁵

The Ottoman Empire consisted of an amalgamation of different ethnic and religious groups, with Islam as the state religion and other religions co-existing with a certain degree of autonomy. During the 19th century, Armenians and other non-Muslims living in this area were 'subjects' of the sultan, with minimal safeguards, vulnerable to oppression within the boundaries of a despotic regime.¹⁶ Gradually, Ottoman Christians demanded equality and autonomy, which led to uprisings and repression, alongside a series of reforms to accommodate these demands.¹⁷ The ruling class of the Empire was made of the Turkish (Muslim) majority, for whom these demands risked resulting in loss of power and fear of European interference. The Empire was dissolved in 1922, giving rise in 1923 to the Republic of Turkey, as the successor state,¹⁸ on a somewhat diminished territory.

In 1915–1918, the Ottoman leadership included various members of the CUP political party and members of the Young Turks movement. The CUP was a movement that grew into political party that aimed at modernizing the Ottoman Empire and end its status as the 'sick man of Europe'. The party

15 The provinces of Van, Erzerum, Diyarbakir, Trabzon, Sivas and Mamuretülaziz.

16 T. Akçam, *A Shameful Act: The Armenian Genocide and the Question of Turkish Responsibility* (Metropolitan Books, 2006), at 19.

17 *Ibid.*, at 27–35.

18 *The Treaty of Peace with Turkey Signed at Lausanne*, League of Nations, Official Journal, 4 October 1924, at 1292, signed on 24 July 1923, recognized Turkey's sovereignty, while attributing to it some aspects of the Ottoman Empire, such as its public debt. A number of arbitration awards established Turkey's continuing the personality of the Ottoman Empire: *Ottoman Public Debt Arbitration* (1925), Reports of International Arbitration Awards (RIAA), vol. I, at 529; *Lighthouse Concessions* (1956), 12 RIAA 155; P. Dunberry, 'The Consequences of Turkey Being the "Continuing" State of the Ottoman Empire in Terms of International Responsibility for Internationally Wrongful Acts', 14 *International Criminal Law Review* (2014) 261–273.

gained power in the 1908 revolution by overthrowing the sultan. The CUP is often referred to as a political front of the Young Turk movement, the movement itself including a number of clandestine anti-Sultan political parties.¹⁹ By 1914, the CUP leadership included the ‘Three Pashas’ who de facto ruled the Empire during the First World War and are today considered the architects of the Armenian genocide, that is to say: Talat Pasha, Djemal Pasha and Enver Pasha.

Various factors led to the decision to uproot the Armenian people from Anatolia. Armenians had been subjects of the Ottoman Empire for centuries,²⁰ yet as of the late 19th century, demands made for better conditions, more autonomy and reforms were coupled with Armenians organizing revolutionary committees and local defence of their villages²¹ due to pre-war massacres in 1895 and in 1909 (in Adana). Simultaneously, the Empire was under pressure from Europe (various wars that had seen its territory dramatically shrinking since the second half of the 19th century) and due to defeats in the early stages of the First World War. Turkish nationalist ideologists such as Ziya Gökalp pursued the concept of a pan-Turkic nation based on race. Finally, losses in early 1915 against the Russian army with the support of Armenian volunteer units led the Ottoman leadership to consider Armenians as a whole as an internal enemy.

B. Ottoman Leadership Targeting Armenians as an Internal Enemy

At the expense of overly simplifying what is a complex narrative of events, I will not delve into the details of the genocide, which can be gleaned from existing literature.²² Suffice it to quote former American ambassador in Istanbul, Henry Morgenthau Sr., who wrote that ‘[w]hen the Turkish authorities gave the orders for these deportations, they were merely giving the death warrant to a whole race; they understood this well, and, in their conversations with me, they made no particular attempt to conceal the fact.’²³

Talat Pasha’s order to arrest Armenian intellectuals on 24 April 1915 was followed by orders of the central authorities throughout the Empire to remove Armenians. This was executed by Ottoman armed forces with the assistance of paramilitary group such as the Special Organization.²⁴ As explained by Akçam:

19 See H. Kayali, ‘The Young Turks and the Committee of Union and Progress’, in M. Heper and S. Sayar (eds), *The Routledge Handbook of Modern Turkey* (Routledge, 2012) 26–34.

20 R. Suny, *They Can Live in the Desert But Nowhere Else* (Princeton University Press, 2015), at 43.

21 *Ibid.*, at 141.

22 A good starting point would be the following publications: R. Suny, N. Naimark and E.M. Göçek (eds), *A Question of Genocide* (Oxford University Press, 2011); D. Bloxham, *The Great Game of Genocide* (Oxford University Press, 2011); R. Hovannisian, *The Armenian Genocide: History, Politics, Ethics* (Palgrave Macmillan, 1992); Akçam, *supra* note 16; T. Akçam, *The Young Turks’ Crime Against Humanity* (Princeton University Press, 2012); V. Dadrian, *The History of the Armenian Genocide* (Berghahn Books, 1995).

23 Morgenthau, *supra* note 3, at 309.

24 A good analysis of the order to remove Armenians and those involved in it can be found at Akçam, *supra* note 16, at 149–155.

[T]he expulsions and massacre proceeded in the same way everywhere In some provinces the Armenians were given two weeks' notice: in others, merely two hours ... [C]onvoys were accompanied by gendarmerie units to the provincial border and then handed over to the gendarmerie of the next province. Killings were coordinated among the gendarmerie, the Special Organization and also Kurdish tribes Usually, the male population ... were arrested at night, taken outside the city limits and killed In some areas the Armenians were forcibly converted to Islam.²⁵

The first stop to these expulsions was Aleppo. Those who survived the journey were crowded into concentrations camps until they could be sent on to their final destination. The appalling sanitary and humanitarian conditions turned these into death camps; survival was nothing short of miraculous, but meant being sent on to southern Syria and eastern Mesopotamia — that is, to the Arabian deserts and certain death These deportations continued until late 1916.²⁶

As a reaction to the above-mentioned Armenian volunteer units, Talat Pasha became convinced that Armenians constituted a fifth column within the Empire. However, instead of targeting the armed units specifically, his orders aimed at the Armenian civilian population as a whole. Separatist ambitions at the time were shared not only by Armenians, but also by Kurds and Arabs within the borders of the Empire. Furthermore, there were small pockets of Armenian resistance called *fedayeen*. The presence of Armenians in Eastern Anatolia was seen as a major inconvenience for the Ottoman army. Put bluntly by one author, under the cover of military necessity, the removal of Armenians 'did lighten the interior security and counter-insurgency duties of regular units.'²⁷

3. The Development of the Narrative from 1915 to 1923

A. Ottoman Response to Allies' Accusations

On 24 May 1915, the Allied governments issued a statement making reference to massacres committed by Kurd and Turkish populations against the Armenians 'with connivance and often assistance of the Ottoman authorities'. The Allies added that in view of 'these new crimes of Turkey against humanity and civilization', they would hold personally responsible those members of the Ottoman government and their agents involved in these massacres.²⁸

Despite the numerous telegrams and reports sent by ambassador Morgenthau, the US administration was resolved to stay out of First World War.²⁹ Morgenthau had the benefit of weekly encounters with the triumvirate

25 Akçam, *supra* note 16, at 174–177.

26 Akçam, *supra* note 16, at 182.

27 M. Uyar and E.J. Erickson, *A Military History of the Ottomans: From Osman to Atatürk* (ABC-CLIO, 2009), at 263.

28 US Department of State Telegram 867.4016/67, Washington, 29 May 1915 (American Embassy, Constantinople).

29 S. Power, *A Problem from Hell: America and the Age of Genocide* (Basic Books, 2002), at XIX.

of Pashas, in particular Talat Pasha. This enabled him to grasp fully the roots and consequences of the Ottoman policy against the Armenians. Having received reports from his 10 consuls in the various parts of the Empire, Morgenthau refers to a ‘systematic plan to crush the Armenian race’, stating that ‘a campaign of race extermination is in progress under a pretext of reprisal against rebellion.’³⁰ Morgenthau kept a diary and later published his memoirs, where he included statements made by members of the Ottoman leadership. Had a trial been held under a model similar to modern-day international tribunals, Morgenthau would have been a key witness.

The press was aware of the massacres. *The New York Times* alone published not less than 145 stories relating to the fate of the Armenians,³¹ describing the atrocities as ‘systematic’ and a ‘campaign of race extermination.’³² *The New York Times* had been reporting atrocities committed against the Armenians at least since 1894, when, under the leadership of Sultan Abdul Hamid, around 200,000 Armenians had been massacred.³³

The Ottoman Empire responded to the Allies’ statement by denying the allegations, blaming Western powers of winding up Armenians, claiming no massacres had taken place, and stating that some Armenians who lived in war zones had to be displaced.³⁴ Prof. Chorbajian unpacks the immediate response of the Ottoman leadership and explains how the Ottomans denied the charges: ‘They accuse the Armenians of treasonous activities in collusion with the Allied powers. They accuse the Armenians of massacring Muslims. They admit that Armenians were being deported but claim that the deportations were mandated by national security issues and limited to war zones on the Turkish-Russian front.’³⁵

When Morgenthau questioned Talat Pasha on the massacres of Armenians in the town of Van, his answer was that they were killed in combat and that these did not constitute massacres.³⁶ Placed in the context of other telegrams of that time, the Ottoman response appears to be prepared for public consumption. It is also in stark contrast with developments on the ground, as evidenced by many reports, such as this one by the German consul in Adana on 18 May 1915: ‘The whole Armenian population in Vilayet Adana is extremely frightened due to the actions of the government. Hundreds of families are being

30 Telegram no. 858 of Ambassador Morgenthau sent to the Secretary of State, Washington, 16 July 1915.

31 J. Kifner, ‘Armenian Genocide of 1915: An Overview’, available online at <http://www.nytimes.com/ref/timestopics/topics.armeniangenocide.html> (visited 25 October 2017).

32 ‘Tells of Horrors Done in Armenia’, *New York Times*, 4 October 1915.

33 ‘Enraged at the Sultan: Bitter Feeling Stirred up in England at Turkey’s Ruler’, *New York Times*, 1 December 1895; ‘The Armenian Massacres ...’ *supra* note 1.

34 See the response in W. Gust, *The Armenian Genocide: Evidence from the German Foreign Office Archives, 1915–1916* (Berghahn Books, 2013), at 198–203.

35 L. Chorbajian, ‘They Brought It on Themselves and It Never Happened: Denial to 1939’, in Demirdjjan (ed.), *supra* note 8, 167, at 170–171.

36 A. Sarafian, *United States Diplomacy on the Bosphorous: The Diaries of Ambassador Morgenthau 1913–1916* (Gomidas Institute, 2004), at 220 (entry for 1 May 1915).

exiled, the prisons are overfilled, and again early this morning several people were executed.³⁷

Law was partner to this destruction. The Temporary Law of Deportation (*Tehcir* law) was drafted in May 1915 to legitimize the deportations. Further, the Temporary Law of Expropriation and Confiscation was adopted in September 1915, creating 'liquidation commissions', with a view to seizing land, property, businesses, bank accounts and so on. The wartime cabinet adopted these laws, while Parliament was not in session.³⁸ This use of law is interesting, in that while the Deportation Law was drafted after the deportations had begun, it was still seen as important to have legislation to authorize it.

B. *Trials in Istanbul*

Soon after the armistice of Mudros that ended hostilities between the Ottoman Empire and the Allies, Sultan Mehmet VI promised³⁹ to establish a commission of enquiry to investigate the deeds of the CUP leadership during the war, which in fact occurred.⁴⁰ This initiative did not come out of thin air: the idea of holding to account those responsible for serious crimes during the First World War was already floating around and a special Commission was established at the Paris Peace Conference in January 1919 to that end.⁴¹ The main accused for the crimes against the Armenians, such as the Three Pashas, had however found asylum in Germany and requests for extradition were denied. However, hundreds of others were arrested and tried.⁴² Surprisingly, these proceedings were supported by parliamentarians and the media which, during the genocide, bore attitudes 'which at best may be termed as deafening silence, and at worst, endorsement'.⁴³

Holding the highest authorities and ministers accountable for crimes committed against its own population was a bit of a novelty in Turkey,⁴⁴ though

37 Telegraphic report, From the Consul in Adana (Buge) to the Embassy in Constantinople, Aleppo, 18 May 1915 (no. PA-AA: BoKon/168; A53a, 3032), reproduced in Gust, *supra* note 34, at 183.

38 U.U. Üngör and M. Polatel, *Confiscation and Destruction: The Young Turk Seizure of Armenian Property* (Continuum International Publishing Group, 2011), at 42; J. Balint, 'The Ottoman State Special Military Tribunal for the Genocide of the Armenians: "Doing Government Business"', in K.J. Heller and G. Simpson (eds), *The Hidden Histories of War Crimes Trial* (Oxford University Press, 2013), at 28.

39 'Sultan Searching Out Authors of Killings, Promises Severe Punishment and Says Masses of Turks not Responsible', *New York Times*, 7 December 1918.

40 J.E. Willis, *Prologue to Nuremberg: The Politics and Diplomacy of Punishing War Criminals of the First World War* (Greenwood Press, 1982), at 153–154.

41 J. Rikhof, 'The Istanbul and Leipzig Trials: Myth or Reality?' in M. Bergsmo, Cheah W.L. and Yi P. (eds), *Historical Origins of International Criminal Law: Volume 1* (Torkel Opsahl Academic EPublishers, 2014) 257, at 261.

42 W. Bandazian, *British Justice and Turkish Leaders Accused of War Crimes Against Armenians in World War I* (Gomidas Institute, 2015), at 29–32.

43 V. Dadrian and T. Akçam, *Judgment at Istanbul: The Armenian Genocide Trials* (Berghahn Books, 2011), at 25.

44 R. Kevorkian, *The Armenian Genocide: A Complete History* (I.B. Taurus & Co., 2011), at 751.

not a first.⁴⁵ The political climate and the outcome of the war inevitably contributed to this dramatic change in judicial policy. Simultaneously, the British attempted to prosecute Turkish suspects who had mistreated British prisoners of war. They arrested several prominent Turkish leaders and detained them at Malta, but never managed to get trials off the ground, and eventually released these suspects in a prisoners' exchange.⁴⁶

In relation to the crimes against Armenians, 10 main trials were held simultaneously across the Empire dealing with 98 suspects.⁴⁷ Their outcome is fleshed out in Dadrian and Akçam's *Judgment in Istanbul*. I will briefly canvass the salient features of some of these trials. The trial in Yozgat established the responsibility of Mehmet Kemal, the county executive, for the crime of massacre, pillage and plunder, for which he was sentenced to death by hanging. Interestingly, the verdict pointed out that Armenian provocations were 'too insignificant to justify the magnitude of the crime'.⁴⁸ The trial in Trabzon featured a number of co-accused, including civilian and military defendants such as the police chief, a lieutenant-colonel of the gendarmerie, a hotel manager, as well as the absentee governor-general of the province. The trial featured infants being loaded on barges on the Black Sea only to be executed and drowned, as well as the systematic plunder of Armenian belongings. The trial also addressed the rape of Armenian girls. All defendants were convicted with sentences varying from 1 to 10 years, whereas the governor-general was sentenced to death *in absentia*.⁴⁹

The Cabinet ministers and top CUP leaders, including the Three Pashas, were tried and sentenced *in absentia* for the crime of mass murder. The trials were held between April and June 1919 and led to hefty sentences ranging from 15 years of hard labour to the capital punishment in some cases.⁵⁰ Calls by the Grand Vizier, Damad Ferid, for Germany to extradite Enver, Talaat and Djemal to Turkey were denied.⁵¹ During the period from 1920 to 1922, the Armenian Revolutionary Federation assassinated several CUP leaders, including Talat and Djemal Pasha, in what became known as 'Operation Nemesis'.⁵²

These trials were received reluctantly by public opinion, as Atatürk's nationalist movement was gaining momentum. Nonetheless, the record they leave unequivocally establishes the responsibility of the CUP leadership. Accusations have been raised that these cases took place as a result of pressure

45 E.D. Shepard, 'Personal Experience in Turkish Massacres and Relief Work', 13 *The Journal of Race Development* (1911) 338–339. In this article, Dr Shepard explains how he witnessed investigations and courts martial after the massacre of 30,000 Armenians in the town of Adana, issuing death sentences to approximately 70 perpetrators.

46 V. Yeghiayan, *British Foreign Office Dossier on Turkish War Criminals* (Doctorian Productions, 1991).

47 Rikhof, *supra* note 41, at 274–275.

48 Dadrian and Akçam, *supra* note 43, at 111.

49 Dadrian and Akçam, *supra* note 43, at 111–113.

50 Dadrian and Akçam, *supra* note 43, at 120–121.

51 Willis, *supra* note 40, at 156.

52 'Condemned for War Role in Turkey', *New York Times*, 16 March 1921.

from the Allies.⁵³ However, there is no suggestion that witnesses lied or that evidence was forged. Notwithstanding the political circumstances under which they were organized, and despite CUP attempts to interfere with these trials, the Istanbul judgements hold an important place in the historiography of the Armenian genocide. Their work was sadly stopped in August 1920 by the Kemalist government, which held a view diametrically opposed to what Turkish courts had found in those two years.

C. Official Position of Turkey in 1919

In an effort to explain the treatment of Armenians, in 1919 the Turkish National Congress published a 157-page book. The book embellishes several aspects, such as the alleged harmonious relationship between the ruling class and the 'conquered people' within the Empire,⁵⁴ an exaggeration often found in the type of literature, such as Djemal Pasha's own memoirs,⁵⁵ attempting to discredit reports of suffering by Christians in the Ottoman Empire. The book also blames Russia and European powers for having fabricated nationalistic sentiments within the Armenian community in Anatolia, leading to tension between the Armenians and the ruling class. Nevertheless, the National Congress does, surprisingly, concede on many grounds. These include that:

- The transportation of the Armenian population in the 'interior', away from Russian territory, amounted to forcible transfer of an entire people, a measure qualified as 'cruel';
- The Turkish government perceived that, once at war, the laws of humanity were suspended and that the exigencies of war know no law;
- A campaign of extermination and robbery took place against the Armenian people;
- The main culprits for the policy against the Armenians was the CUP leadership;
- The CUP leadership were 'among the greatest criminals of humanity';
- Representatives of the CUP were arrested and tried ('justice is in full operation');
- The deported population was being compensated for its distress.⁵⁶

The publication is virtually devoid of an apology, let alone expression of remorse. The defences raised by the wartime government are repeated here: the Armenians started by arming themselves and were seduced by the Russians who had no other interest than to dismember the Ottoman Empire. According

53 G. Lewy, 'Revisiting the Armenian Genocide', *The Middle East Quarterly* (2005), at 3–12.

54 National Congress of Turkey, *The Turco-Armenian Question: The Turkish Point of View* (Société Anonyme de Papeterie et d'Imprimerie, 1919), at 11–13.

55 D. Pasha, *Memories of a Turkish Statesman, 1913-1919* (Hutchinson & Co, 1922), at 518: 'the Armenians and Turks lived together in such harmony that Ottoman histories of that period do not even mention such a thing as an Armenian question.'

56 National Congress of Turkey, *supra* note 10, at 81–84.

to some scholars, much of this, including the convenient finger-point at the CUP, may have been drafted with a view to appease European powers around the time of the negotiations of post-war peace treaties.⁵⁷ However, as for the crimes themselves, how likely is it for a government to concede that extermination took place on its territory had this not been proven beyond any doubt?

Following the end of the war, the Armenian massacres were raised at the negotiating table of the post-war treaties. However, the Turkish population perceived draconian measures imposed by victorious nations as unfair, resulting in unwillingness to hand back seized property.⁵⁸ The Treaty of Sèvres of 1920 made references to the Armenian massacres and required Turkey to handover the culprits for trial. However, the treaty was never ratified and instead, under the pressure of rising Kemalism, the Treaty of Lausanne, more favourable to the nascent Republic, was purged of any mention of the massacres.⁵⁹ As aptly noted by Susan Karamanian, '[t]he silence about the Armenian Genocide at the international level contrasts with the Allied Powers' use of international law to hold Nazis accountable for the Holocaust'.⁶⁰

D. Raphael Lemkin and the Tehlirian Trial

In the summer of 1921, a trial was held in Berlin dealing with the murder of Talat Pasha. The perpetrator, a young man named Soghomon Tehlirian, was an Armenian 'avenger' who had lost his parents and his siblings during the genocide. He shot Talat Pasha in the head in broad daylight, killing him instantly.⁶¹ Tehlirian's trial became a media sensation, in particular as the perpetrator had actually confessed, but was nonetheless acquitted.⁶²

Not too far in Lwow, Poland; Raphael Lemkin was preparing to start studying law when, during the summer of 1921, he learned of the Tehlirian case. Debating on the subject in class, he came to learn that there was no law under which the Ottoman leadership could be arrested, whereas Tehlirian could be liable for murder. Lemkin asked his teacher how was it possible that it was a crime for Tehlirian to kill one man, but not a crime for that man to have killed a million men.⁶³ Later in 1949, in an interview on CBS, Lemkin explained how he came to coin the term 'genocide'. In this interview, he described how genocide had happened often throughout history, and that the case of

57 I wish to thank Prof. Levon Chorbajian for his views on this book provided in a personal communication.

58 F. Dundar, 'When Did the First World War End for Turkey?', 141 *Revue des mondes musulmans et de la Méditerranée* [online], June 2017, §§ 10–24.

59 S. Karamanian, 'The International Court of Justice and the Armenian Genocide', in Demirdjian (ed.), *supra* note 8, at 85.

60 *Ibid.*, at 86.

61 'Talat Pasha Slain in Berlin Suburb', *New York Times*, 16 March 1921.

62 The Trial of Soghomon Tehlirian, see online at <http://www.cilicia.com/armo.tehlirian.html> (visited 21 November 2017).

63 P. Sands, *East West Street: On the Origins of Genocide and Crimes Against Humanity* (Weidenfeld & Nicholson, 2016), at 146–149.

the Armenians was one instance of genocide. With reference to the Versailles treaty, Lemkin recalls that the perpetrators were not punished.⁶⁴ Referring to Tehlirian's trial in Berlin, Lemkin condemned the fact that an Armenian terrorist organization took justice in its own hands. In his view, such a crime should not be punished by the victims, but by a court of law.⁶⁵

4. From the New Republic to the New Millennium

What perhaps best explains Turkey's position is the narrative by post-war politicians, where Turkey is presented as a victim of history, loser of the First World War, defeated and humiliated. To accept that Turkey was responsible for massacres and deportations is to accept a narrative where Turkey — conflated with the Ottoman Empire's political and military authorities due to the perceived continuity of the Turkish state — is not a victim, but rather a perpetrator.⁶⁶

Further measures were adopted after the genocide to erase all physical evidence of Armenian existence, such as the destruction or wilful neglect of churches, cemeteries and other cultural property. A primary example is that of the *Surp Giragos* church in Diyarbakir.⁶⁷ Post-war Turkish legislation, such as the 1931 Press Law, forbade the publication of memoirs of Armenian survivors.⁶⁸ A widespread campaign of breaking with the past was implemented under Atatürk's rule starting in 1923. Aspects of Ottoman history clashing with the new Republican narrative were removed. For example, the Arabic alphabet was abandoned when in November 1928, Atatürk officially announced the introduction of the Latin characters throughout the country.⁶⁹

As Ungor notes, '[a]s in the case of nation formation, the destruction of memory always went hand in hand with the construction of it.'⁷⁰ Atatürk was himself involved in historiographic interference, as illustrated by his epic, 36-hour speech (*Nutuk*) delivered in 1927 before the Turkish Grand National Assembly.⁷¹ From the end of the First World War until the 1970s, Turkish students ignored the presence of Armenians in the Ottoman Empire and about

64 While trials were slowly progressing in Istanbul, the British deported about 120 Ottoman leaders to Malta to prosecute them. However, the trials never took place as the existing law imposed territorial and subject matter restrictions.

65 Video interview of Raphael Lemkin on CBS, available online at <https://www.youtube.com/watch?v=CXliPhsI530>, starting at 23:49 (visited 22 November 2017).

66 P. Pandelé, 'Préface', in H. Cemal, 1915, *Le génocide arménien* (Les Prairies Ordinaires, 2015), at 13–14.

67 U.U. Ungor, *The Making of Modern Turkey* (Oxford University Press, 2011), at 219; N. Kebranian, 'Cultural Heritage and the Denial of Genocide Law', in Demirdjian (ed.), *supra* note 8, at 251.

68 *Ibid.*, at 220.

69 Chorbajian, *supra* note 35, at 173; E. Elmas, 'Towards 2015: Media in Turkey on the Armenian Genocide', in Demirdjian, *supra* note 8, at 186.

70 Ungor, *supra* note 67, at 227.

71 E. Muge Gocek, 'Reading Genocide: Turkish Historiography on 1915', in Suny, Gocek and Naimark, *supra* note 22, at 43–44; Ungor, *supra* note 67, at 228.

the destruction of the Armenian communities in Turkey in 1915.⁷² Gocek highlights that this ‘collective myth is also fraught with amnesia in relation to the violence of the nation’s birth and existence up to the present.’⁷³ In this section, I will select some of the significant developments since 1923.

A. *The German Connection*

In 1933, Austrian novelist Franz Werfel published his epic novel, *The 40 Days of Musa Dagh*, which depicts the resistance of Armenian villagers in Musa Dagh, a mountain in the Hatay province of Turkey. Following its success, and translation from German into English, the 900-page book was soon to be produced into a movie by MGM that same year. Upon learning of the upcoming production, the Turkish ambassador in the USA met with the US State Department and pleaded that the movie would provide a one-sided narrative of the events. The concern was raised with MGM, but was met with indignation by the American media, questioning Turkey’s right to concern itself with American films.

Around the same time, the Nazi regime banned Werfel’s book. In the end, the film was not produced at the time.⁷⁴ Germany’s relationship to the Armenian genocide is clear; as an ally of the Ottoman Empire during the First World War, German officers were on the ground guiding some of the operations of Turkish forces and were aware of the CUP plans to liquidate the Armenian population.⁷⁵

In Germany, nationalists celebrated the Young Turks revolution of 1908, held Atatürk in high regard upon his climb to power in 1923 and Hitler shared this admiration.⁷⁶ It is no wonder that, in 1939, as his troops were about to attack Poland, Hitler gave them a *carte blanche* to commit massacres by apparently proffering the now infamous words: ‘Who still talks about the extermination of the Armenians?’,⁷⁷ sending a depressing reminder of the effects of impunity.

B. *The 50th Anniversary: From Yerevan to the United Nations*

On the 50th anniversary of the Armenian genocide, a protest was held in Yerevan, the capital of what at the time was the Armenian Soviet Socialist Republic — a rare event in the Soviet era⁷⁸ — in commemoration of the

72 Dixon, *supra* note 13 at 104.

73 Gocek, *supra* note 71, at 44.

74 L. Chorbajian, *supra* note 35, at 176–178; E. Minasian, ‘The Forty Years of Musa Dagh: The Film That Was Denied’, 3 *Journal of Armenian Studies* (1986–87), at 121–132.

75 D. Dwork and J. Pelt, *Holocaust: A History* (WW.Norton & Company, 2002), at 38.

76 S. Ihrig, *Ataturk in The Nazi Imagination* (Harvard University Press, 2014).

77 M.L. Anderson, ‘Who Still Talked about the Extermination of the Armenians: German Talk and German Silences’, in Suny, Naimark and Gocek, *supra* note 22, at 199.

78 M.R. Beissinger, *Nationalist Mobilization and the Collapse of the Soviet State* (Cambridge University Press, 2002), at 71.

victims of the genocide, despite the Kremlin's disapproval.⁷⁹ Similar protests took place in Beirut, Buenos Aires, Marseilles, Teheran and various cities in the USA. Various articles and books were published around this time by the Armenian diaspora to raise awareness and qualify the events of 1915 as genocide.

Curiously, the issue surfaced before the United Nations General Assembly in the context of the Cyprus–Turkey conflict. Cyprus's independence in 1960 was followed by turmoil between the Greek and Turkish communities leading to violence and casualties. On 25 January 1965, the foreign minister of Cyprus, Mr Kiprianou, responded before the General Assembly to accusations by Turkey of massacres. In his speech, he made reference to the fact that Armenians throughout the world were observing the 50th anniversary of the massacre of 1.5 million Armenians in Turkey in 1915.⁸⁰

Turkey's response was that the Greeks, this time, were the ones provoking the Armenians. Clearly, the reference to the massacres in 1915 during a debate on possible killings in 1965 in completely different circumstances did not help in having the matter considered evenly and objectively. The Turkish media itself was entangled in the politics and 'championed the presentation of speculative theories with the effect of misdirecting and distracting the readership away from the essence of the issue.'⁸¹ Turkish media associated the commemorations with a hidden agenda, and turned its attention to Armenians living in Turkey, urging them to display their loyalty to Turkey and labelling 'good' Armenians, as opposed to Armenians living in the diaspora. Other *cliché* expressions surfaced around this time, such as the expression 'so-called genocide' and the everlasting 'leave history to historians'.⁸²

For decades, the issue of the massacres was not mentioned in schoolbooks⁸³ and Turkish scholars in the 1960s and 1970s were shocked to be confronted with the issue of the genocide when travelling abroad.⁸⁴ From the 1970s until 1991, a militant organization, the Armenian Secret Army for the Liberation of Armenia, targeted and killed members of Turkish diplomatic delegations in approximately 200 attacks, killing approximately 50 victims.⁸⁵ The group intended to compel the Turkish Government to acknowledge publicly its responsibility for the deaths in 1915.⁸⁶ This type of policy undoubtedly contributed

79 T. De Waal, *The Great Catastrophe: Armenians and Turks in the Shadow of Genocide* (Oxford University Press, 2015), at 126–149.

80 The Genocide Education Project, 'Armenian Genocide 50th anniversary UN debate, 1965' <https://www.youtube.com/watch?v=h02U7pfMOfg> from 10:07 to 15:35 (visited 15 January 2018).

81 Elmas, *supra* note 69, at 187.

82 *Ibid.*, at 188–189.

83 Dixon, *supra* note 13, at 103–126.

84 Cemal, *supra* note 66, at 40, 47–49.

85 CIA Library, *The Armenian Secret Army for the Liberation of Armenia: A Continuing International Threat*, available online at <https://www.cia.gov/library/readingroom/docs/CIA-RDP85T00283R000400030009-2.pdf> (visited 15 January 2018), at iii.

86 United States Department of State, *Patterns of Global Terrorism Report: 1989*, available online at <http://www.hsd1.org/?view&did=481506> (visited 15 January 2018), at 57.

in maintaining ‘the negative image of Armenians in the collective memory of Turkishness.’⁸⁷

C. *The New Age of Turkish Denial*

Following a period of silence on the issue of the Armenian massacres, it is the book published by Turkish secretary of foreign affairs, Kamuran Gurun, in 1983, which led to the resurgence of exchanges on the ‘Armenian question’ in Turkey.⁸⁸ For the first time, a state official was publicly admitting the death of 400,000 Armenians during the 1915 deportations. *The Armenian File*, however, was no more than an act in covering up and justifying these deaths within the framework of the party line.⁸⁹ For example, although the book concedes that Armenians had been killed, it reduces the number of casualties significantly; conceding deaths should not be a licence to play on numbers. According to Talat Pasha’s own data collected from subordinates in 1917, the number of casualties between 1914 and 1917 amounted to 1,150,000 Armenians.⁹⁰ This number is very close to the one cited by the head of the American military mission to Armenia, writing in his report that ‘[t]he official reports of the Turkish Government show 1,100,000 as having been deported ... The dead from this wholesale attempt on the race are variously estimated from 500,000 to more than a million, the usual figure being about 800,000.’⁹¹

Scholars relying on Ottoman sources dispute the intentional nature of the deaths and attribute them to war exigencies. Some do concede that massacres took place albeit outside the control of central authorities.⁹² As of the 1980s, the government of Turkey hired scholars to back their view of the Armenian massacres as part of financing of a denial campaign. Academic institutes were funded with the apparent mandate of promoting Turkish history and culture, but actually are considered by many to be one-sided and to lack objectivity on the issue of the 1915 massacres.⁹³

In the 1980s, Turkish high school history textbooks started mentioning Armenians, but as agitators who had attacked the Ottoman government and

87 Elmas, *supra* note 69, at 189.

88 K. Gurun, *The Armenian File: the Myth of Innocence Exposed* (Nicosia, Rustem, 2001).

89 Cemal, *supra* note 66 at 47.

90 A. Sarafian, *Talat Pasha’s Report on the Armenian Genocide, 1917* (Gomidas Institute Studies Series, 2011), at 6. See J. Bijak and S. Lubman, ‘The Disputed Numbers: In Search of the Demographic Basis for Studies of Armenian Population Losses, 1915–1923’, in Demirdjian, *supra* note 8, at 26–43.

91 Major-General J.G. Harbord, *Report of the American Military Mission to Armenia* (Government Printing Office, 1920), at 7.

92 Gurun, *supra* note 88; S. Shaw and E. Kural Shaw, *History of the Ottoman Empire and Modern Turkey* (Cambridge University Press, 1976–77); J. McCarthy, *Muslims and Minorities: The Population of Ottoman Anatolia and the End of the Empire* (NYU Press, 1983).

93 E. Markusen, R.W. Smith and R.J. Lifton, ‘Professional Ethics and the Denial of the Armenian Genocide’, 23 April 2015, <https://pen.org/professional-ethics-and-the-denial-of-armenian-genocide/> (last visited: 17 January 2018). This article describes the relationship between such scholars and the Turkish government.

had to be relocated during the First World War.⁹⁴ From inexistence, the Armenians were now rising as an irritating element. This appears to be an example of Turkey adapting its official position based on the state of academic research, political circumstances and challenges to its narrative.

In May 1985, the Turkish ambassador in the US published an op-ed in the *New York Times* in response to articles relating to what he labelled 'the fallacious charge of genocide'. In a response typical of Turkish state officials, he normalized the suffering of Armenians, stating that 'all the peoples of the Ottoman Empire's eastern Anatolian region' suffered death and that many Turks died at the hands of Armenian revolutionary groups. In a poor attempt at tackling one of the sources often-cited by the Armenian community, the ambassador claimed that Hitler could not have made reference to the Armenians, since the Nuremberg proceedings contain no document with that quotation.⁹⁵

Still in May 1985, Professor Bernard Lewis of Princeton University, one of the world's leading experts on modern Turkish history, signed a statement addressed to the American Congress protesting against the inclusion of the Armenian genocide in a proposed 'National Day of Remembrance of Man's Inhumanity to Man'. Lewis signed the petition with 68 other signatures in a two-page spread that appeared in the *New York Times* and *Washington Post*, financed by the Committee of the Turkish Associations.⁹⁶

Throughout the years, Turkey's campaign has also included interference with many academic conferences and cultural events relating to the Armenian genocide via Turkish embassies and representatives around the world.

D. International Support: Academic and Political Support

Academic research and publications on the issue of the genocide were initially limited to authors of Armenian origin. Gradually, the topic of the Armenian massacres gained momentum in academic circles and research supporting that the acts of 1915 amounted to genocide flourished. In the 1990s, Turkish historians opened the door to a new era in Turkish historiography: as further research progressed, and with access to several archives, notably those of the Ottoman Empire as well as the German military and diplomatic archives, the field of Armenian genocide studies developed.

In 1979, the Permanent People's Tribunal was established in Bologna, as a platform built around a network of international experts and scholars from several countries. Its creation was justified by the lack of an international jurisdiction ruling over cases on people's rights. Its statute provides competence

94 Dixon, *supra* note 13, at 104.

95 S. Elekdag, 'The *New York Times*', 23 May 1985, *New York Times*.

96 Y. Auron, *The Banality of Denial: Israel and the Armenian Genocide* (Transaction Publishers, 2004), at 226–227.

over serious and systematic violations of the rights of people.⁹⁷ To date, it has held 42 sessions. In 1984, it held a session on the question of the Armenian genocide and issued a verdict captured in a publication entitled *A Crime of Silence*, finding that the evidence established that the crime of genocide had been committed.⁹⁸

On 13 June 1997, the International Association of Genocide Scholars issued a statement announcing a unanimous resolution adopted by its members, reaffirming that: ‘... the mass murder of over a million Armenians in Turkey in 1915 is a case of genocide which conforms to the statutes of the United Nations Convention on the Prevention and Punishment of Genocide. It further condemns the denial of the Armenian Genocide by the Turkish government and its official and unofficial agents and supporters.’⁹⁹

Over the years, over 25 countries have further adopted statements and laws, recognizing the events of 1915 as acts of genocide, with notable exceptions of the USA, Israel and Turkey. The USA have tiptoed around the terminology given their strategic alliance with Turkey, by avoiding the use of the word ‘genocide’ when addressing the events of 1915. Equally, the UK adopted vague terminology, despite the fact that British politicians and historians such as Viscount Bryce and Arnold Toynbee were vocal about the plight of the Armenians during the war. Pushed by a memorandum prepared by human rights barrister Geoffrey Robertson, the UK government did change its tune, abandoning the tactless ‘not sufficiently unequivocal’ to accepting the ‘scale of the tragedy and affirming the role of HMG in supporting these two countries in addressing their common history’.¹⁰⁰ Abandoning a denialist stance, the UK still trails behind countries such as France, Italy, Sweden, Germany, Canada and Switzerland in adopting a stance that shows a stronger moral standing.

France’s legislative activity has repeatedly agitated Turkey. In 2001, France adopted a bill recognizing the Armenian genocide. It further adopted a bill in 2012 to criminalize the denial of the Armenian genocide, just as it had done in 1990 to criminalize the denial of the Holocaust. The 2012 bill was, however, struck down by the French constitutional court.

In 1987, the European Parliament recognized that the ‘tragic events in 1915–1917... constitute genocide within the meaning of the Convention on the Prevention and the Punishment of the Crime of Genocide’ and that Turkey’s membership to the European Community (at the time) was dependent on its

97 Permanent People’s Tribunal, *Statute*, available online at <http://permanentpeopletribunal.org/wp-content/uploads/2016/06/statute.pdf> (last visited 15 January 2018).

98 Permanent Peoples’ Tribunal, *A Crime of Silence* (Zed Books, 1985), at 224–227.

99 Association of Genocide Scholars, *The Armenian Genocide Resolution Unanimously Passed By The Association of Genocide Scholars of North America*, 13 June 1997, available online at <http://www.genocidescholars.org/sites/default/files/document%09%5Bcurrent-page%3A1%5D/documents/IAGSArmenian%20Genocide%20Resolution%20.0.pdf> (visited 25 October 2017).

100 G. Robertson, ‘Armenia and the G-word: The Law and the Politics’, in Demirdjian, *supra* note 8, at 69–83. HMG stands for Her Majesty’s Government.

willingness to acknowledge it.¹⁰¹ This was a major political setback for Turkey and was received by its government as a 'partisan and racist decision'.¹⁰²

Armenia's independence from the Soviet Union in 1991 also marked a new chapter in genocide recognition as Armenian victims now had an independent voice at the table of nations.

5. A New Hope: 2000–2018

A. Workshop for Armenian and Turkish Scholarship and Turkish Armenian Reconciliation Commission

In March 2000, scholars from different universities and background, including Turkish and Armenian historians, gathered to rethink their own history under difficult political conditions. The project was initiated by a group of faculty and graduate students at the University of Michigan, Ann Arbor and the University of Chicago. Named the Workshop for Armenian and Turkish Scholarship (WATS), it was held on eight different occasions, the latest one in Berlin in September 2017. This initiative, and various academic conferences that followed in subsequent years, have been the subject of relentless interference. The latest WATS in 2017 sustained attacks by right-wing political leaders in Turkey and led the Turkish government to rescind permission for Turkey-based academics to travel to the conference.¹⁰³

The purpose of the WATS was to engage scholars in a safe yet informed debate over the Armenian genocide. Their work has been widely seen as path breaking. Some of the participants contributed to a collective volume entitled *A Question of Genocide*, widely considered as a must-read on the Armenian genocide.

In 2001, the Turkish Armenian Reconciliation Commission (TARC) was created. Labeled as 'semi-official', it had the approval of both the Armenian and the Turkish governments.¹⁰⁴ TARC helped break the ice between Yerevan and Ankara and encouraged a dialogue between both states. Despite its limited scope, the Commission did reach conclusions: it recommended the normalization of relations between both states and the opening of borders. Perhaps as its greatest contribution, TARC engaged the International Centre for Transitional Justice (ICTJ) to provide a legal analysis on the application of the

101 'Resolution on a political solution to the Armenian question', *Official Journal of the European Communities* No. C 190/119, 20 July 1987.

102 S. Bayraktar, 'The Politics of Denial and Recognition', in Demirdjian, *supra* note 8, at 200.

103 See the protest letter of 15 September 2017 signed by MESA President, published at <https://mesana.org/pdf/Turkey20170915.pdf> (visited 19 November 2017).

104 The Zoryan Institute, 'The Turkish Armenian Reconciliation Commission: A Commentary by the Zoryan Institute' (10 August 2001), available at <http://zoryaninstitute.org/wp-content/uploads/2017/04/The-Turkish-Armenian-Reconciliation-Commission-A-commentary-by-the-Zoryan-Institute.pdf> (visited 19 November 2017).

Genocide Convention.¹⁰⁵ In 2002, the ICTJ concluded, among other things, that although the convention could not be applied retroactively, 'the Events, viewed collectively, can thus be said to include all of the elements of the crime of genocide as defined in the Convention, and legal scholars as well as historians, politicians, journalists and other people would be justified in continuing to so describe them'.¹⁰⁶

Despite these developments, Turkey intensified its lobbying efforts and denial campaign, in particular vis-à-vis the USA. Several resolutions to recognize the genocide before the House Committee on Foreign Affairs in 2000, 2007 and 2010 were quashed most likely as a result of Turkish threats to bilateral relations.¹⁰⁷

B. Developments in Turkey

The years 2000 saw an awakening in Turkey and the beginning of discussions revolving around Armenians and the issue of the genocide in political and university circles. Academic conference, news agencies and artists in Turkey were some of the sources of this emergence of public discussions and debates.

In September 2005, a conference was held at Istanbul's Bilgi University despite initial attempts by the Turkish government to block it. Entitled 'Ottoman Armenians during the Decline of the Empire: Issues of Scientific Responsibility and Democracy', it was a non-government affiliated event aiming at stepping outside the official state narrative. In the end, the government facilitated the holding of the conference as it was taking place a month before European Union (EU) summit talks on Turkey's accession. Bayraktar argues that this was a calculated move to argue before the EU that the Armenian genocide was no longer a taboo subject in Turkey. The conference went ahead and was seen as a major milestone in Turkey.¹⁰⁸

These developments did not stop the Turkish government from prosecuting Hrant Dink in 2006 for using the word 'genocide', pursuant to Article 301 of the Turkish penal code, which enshrines the crime of 'insulting Turkishness'. In 1996, Dink had established *Ağos* as a bilingual weekly newspaper, focusing on democratization, minority rights, coming to terms with the past, and the development of pluralism in Turkey. The newspaper openly printed articles relating to the situation of Armenians in Turkey.

Historian Taner Akçam criticized the prosecution of Dink and he, in turn, was prosecuted too. Akçam took his case before the European Court of

105 D.L. Phillips, 'Centennial of the Armenian Genocide: Recognition and Reconciliation', *Huffington Post*, 17 April 2015, available online at <https://www.huffingtonpost.com/david-l-phillips/centennial-of-the-armenia.b.7103004.html> (visited 19 November 2017)

106 ICTJ, *The Applicability of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide to Events Which Occurred During the Early Twentieth Century*, available online at <https://www.ictj.org/sites/default/files/ICTJ-Turkey-Armenian-Reconciliation-2002-English.pdf> (visited 19 November 2017).

107 Suny, Gocek and Naimar, *supra* note 22, at 5.

108 Bayraktar, *supra* note 102, at 206.

Human Rights — as Dink had — and the Court ruled in his favour. Following a statistical analysis of the use of Article 301 and appreciating the stigmatization of those targeted by this provision, the ECtHR found that there had been ‘an interference with the exercise of the applicant [Akçam]’s right to freedom of expression under Article 10 of the Convention.’¹⁰⁹ The court had this to say about Dink: ‘In the eyes of the public, particularly ultranationalist groups, Mr Dink’s prosecution and conviction was evidence that he was an individual who insulted all persons of Turkish origin. As a result of this perception or stigma attached to him, Mr. Dink was later murdered by an extreme nationalist.’¹¹⁰

Indeed, Hrant Dink had been murdered on 19 January 2007 by a 17-year-old Turkish nationalist. The killing of Dink took place in the context of, and during, multiple prosecutions of intellectuals. Over 200, 000 Istanbulites turned up to Dink’s funeral, chanting ‘We are all Hrant’, ‘We are all Armenians’. While the young perpetrator was arrested and tried — after having triumphantly yelled ‘I killed the infidel’ and having posed, during his arrest, with a policeman and a gendarme, holding up a Turkish flag — the masterminds behind this killing were free for several years and some were only arrested in January 2015 and in 2017. According to an intelligence officer who gave testimony in 2017, Dink murder was ‘deliberately not prevented.’¹¹¹

In 2008, academics and journalists initiated a public apology campaign in Turkey relating to the Armenian genocide. The campaign did not satisfy either side and was criticized by then Prime Minister Erdoğan, who stated there was nothing to apologize about. Nevertheless, the initiative made noise and received around 30,000 signatures within days.¹¹²

Despite the myriad developments in Turkey to move the discussions on the 1915 massacres forward, the government maintained its position on what it calls the ‘Armenian question’. However, according to Ungor, the Turkish government’s attempt at controlling memory has partially failed in Turkey. Although a pervasive state position dominates official talks and media clippings, the social and cultural memory of the perpetrator, bystander and victim communities’ remains.¹¹³

C. The Involvement of Courts

Courts around the world have issued rulings connected to the Armenian genocide, ranging from claims against life insurance companies to lawsuits dealing

109 *Ibid.*, § 82.

110 *Altuğ Taner Akçam v. Turkey*, Appl. no. 27520/07, Judgement of 25 October 2011, § 73.

111 ‘Hrant Dink murder was deliberately permitted, says former police intelligence branch head’, *Hürriyet Daily*, 17 January 2017, available online at <http://www.hurriyetdailynews.com/hrant-dink-murder-was-deliberately-permitted-says-former-police-intelligence-branch-head-108625> (visited 18 January 2018).

112 Bayraktar, *supra* note 102, at 207.

113 Ungor, *supra* note 4, at 149.

with freedom of expression. Guibert and Kim have conducted a useful analysis of these rulings,¹¹⁴ and I will offer some references here.

Civil and criminal cases in relation to the acts of 1915 emerged from the very outset, if anything with the court martials of 1919–1920. The idea of restitution and reparation equally dates back to that period. Fast-forward to the end of the 20th century and ideas started circulating to hold Turkey accountable under the doctrine of state responsibility. Hence, initiatives seem to range from individual attempts at recovering lost property, to a wide-ranging battle of states before the International Court of Justice (ICJ).¹¹⁵ Karamanian analyses the complexities involved with trying a case of this kind before the ICJ and concludes that the court is ill-suited for genocide cases, as was illustrated in the case of *Serbia vs. Bosnia-Herzegovina*.¹¹⁶ Indeed, the ICJ typically deals with interstate disputes of an administrative nature (border disputes, delimitation of sea zones, diplomatic immunity matters, etc.) and is not equipped for the intricacies of cases dealing with massive crimes. The question moreover remains whether, a century after the events, courts are the appropriate forum to provide justice to the victims of the Armenian genocide or their descendants.

The issue of individual criminal responsibility was addressed in part by the Istanbul trials of 1919–1920. Other possible avenues direct us to state responsibility and possibly corporate liability. The latter has received little success in the USA where claims against insurance companies have been unsuccessful, except in two rather recent symbolic settlements of \$20 million (New York Life insurance)¹¹⁷ and \$17 million (AXA SA).¹¹⁸ The lack of success relates to US stated official policy, which does not officially acknowledge the genocide. Hence, in the case of California's adoption of a rule of procedure providing jurisdiction over certain insurance claims which could have conceivably allowed claims for the 1915 crimes, courts have found that this was pre-empted by the executive branch's policy vis-à-vis the genocide.¹¹⁹

Most recently, the ECtHR was seized of the case of Dogu Perinçek, a right-wing Turkish politician who visited Turkish communities in several European countries in 2005, including Switzerland where, during a public event, he declared that the Armenian genocide was an 'international lie'. Perinçek's activities spread across a wider spectrum, including his membership in the Talat Pasha Committee, an organization considered as xenophobic and racist by the European Parliament, and established for the purpose of refuting the

114 N. Guibert and S. Kim, 'Compensation for the Armenian Genocide: A Study of Recognition and Reparations', in Demirdjian, *supra* note 8, at 102–117.

115 A. Kuyumjian, 'The Armenian Genocide: International Legal and Political Avenues for Turkey's Responsibility', 41 *Revue de Droit Université de Sherbrooke* (2011) 247, at 280–287.

116 S.L. Karamanian, 'The International Court of Justice and the Armenian Genocide', in Demirdjian, *supra* note 8, at 87–95.

117 'Insurer Settles Armenian Genocide Suit', *L.A. Times*, 29 January 2004, available online at <http://articles.latimes.com/2004/jan/29/local/me-genocide29> (visited 20 January 2018).

118 H.S. Karagueuzian and Y. Auron, *A Perfect Injustice: Genocide and Theft of Armenian Wealth* (Transaction Publishers, 2009), at 9.

119 Guibert and Kim, *supra* note 114, at 111–112.

Armenian genocide. What followed was a series of unfortunate decisions, starting with the very decision to prosecute Perinçek before Swiss courts. The ECtHR found that the Swiss court's ruling, which found him guilty of racial discrimination, violated Perinçek's freedom of expression and that there was no need to criminalize the conduct of individuals challenging the characterization of the Armenian genocide.¹²⁰ The decision was appealed before the ECtHR's Grand Chamber, which confirmed the first instance decision (though redressing certain factual inaccuracies). The unfortunate consequence of this case was the inaccurate headline, citing Perinçek's lawyer, that it was legal to deny the Armenian genocide.¹²¹ In the specifically charged event, Perinçek had merely challenged the legal qualification of the events, and not the facts themselves. Seven of the minority judges of the Grand Chamber found that the Armenian genocide was a clearly established historical fact. This was a better result than the ill-fated first decision, which went as far as stating that, as opposed to the Armenian genocide, the Holocaust has been clearly established by an international jurisdiction, placing the Armenian case 'into the second class of contested massacres'.¹²² This poor conclusion played in the hands of the denialist theory that since no court had ruled that the acts of 1915 amounted to genocide, therefore the events cannot be qualified as such. Nevertheless, it remains that the decision to prosecute Perinçek for this one statement was probably misguided in the first place.¹²³

With respect to other initiatives, some steps can be taken on an individual level. Records and titles were recorded during the Ottoman era and some of the descendants still hold those titles. Claims could be — and are still being — submitted before Turkish courts. In May 2015, the Armenian Apostolic church, for instance, filed a lawsuit to claim the return of lost property.¹²⁴ Other attempts have been made to claim back lands which belonged to Armenian families and which were confiscated during the genocide, such as the location of an old presidential palace and portions of the Atatürk Airport in Istanbul. Whether or not such initiatives succeed, the fact remains that entire communities were wiped out of Eastern Anatolia in 1915, deeply impacting the fabric of Armenian society in the region. How little is gained in this type of exercises needs to be put in the context of how much was lost.

120 *Perinçek v. Switzerland*, Appl. no. 27510/08, ECHR, Grand Chamber Judgment, 15 October 2015.

121 U. Uras, 'Europe court: Denying "Armenian Genocide" not a crime', *Al Jazeera*, 16 October 2015, available online at <http://www.aljazeera.com/news/2015/10/europe-court-backs-reject-armenian-genocide-151015104909932.html> (visited 21 January 2018).

122 U. Belavusau, 'Armenian Genocide v. Holocaust in Strasbourg: Trivialisation in Comparison', *Verfassungsblog on Matters Constitutional*, 13 February 2014, available online at <http://verfassungsblog.de/armenian-genocide-v-holocaust-in-strasbourg-trivialisation-in-comparison/> (visited 20 January 2018).

123 *Perinçek v. Switzerland*, *supra* note 120, at 82.

124 'Turkey: Armenian Church Sues for Lost Property', Armenian Church Catholicosate of Cilicia, 22 May 2015, available online at <http://www.armenianorthodoxchurch.org/en/archives/12279> (visited 21 January 2018).

D. Public Statements of State Officials in Recent Years

The Armenian genocide received much attention in the media at the time of the commemoration of its centennial, in 2015. Academic conferences, major movie productions, commemorative events of large proportions and statements made by statesmen and celebrities poured during the period around the centennial.

Inevitably, there was anticipation about the stance by the Turkish government. On 23 April 2014, Prime Minister Erdoğan unexpectedly offered condolences to Armenian victims of the First World War. He followed with a statement normalizing the situation of Armenians by mentioning that ‘millions of people of all religions and ethnicities lost their lives in the First World War’.¹²⁵ He added that ‘it was inadmissible for Armenia to use the 1915 events as an excuse for hostility against Turkey and to turn the issue into a matter of political conflict’.

This statement has to be seen as the tail end of attempts at enhancing relations between Armenia and Turkey that had given rise to two protocols in 2009, which however neither country ratified. Politicians crossed the borders and gave for a moment the impression that relationships were warming up. The protocols would have provided for the creation of a sub-commission on this historical dimension to implement a dialogue with the view to restore mutual confidence between the two nations. These somewhat positive developments all came to an end as 2015 approached. Turkey prepared large-scale events for 24 April 2015 in an unsuccessful attempt to distract news headlines from genocide commemoration events. Indeed, Turkey advanced the anniversary of the military operations in Gallipoli, normally commemorated on 25 April, to hold it on the 24th.¹²⁶ What followed the centennial commemorations were parliamentary elections in Turkey in June 2015, snap elections in November the same year, the attempted military coup in July 2016 generating extensive purges, the spillage of the war from Syria as well as the polarizing April 2017 constitutional referendum. Turkey’s relationship with Armenia was no longer on top of the priorities’ list.

6. Conclusion

Since 1915, with a few exceptions, we can observe from the Turkish official positions and stances a continuous denial, or at least minimization and dismissal, with respect to the Armenian massacres. The variations relate to the intensity of the denial campaign and the type of ‘defences’ developed over time, similar

125 ‘Turkey offers condolences to Armenia over WWI killings’, *BBC News*, 23 April 2014, available online at <http://www.bbc.com/news/world-europe-27131543> (visited 21 January 2018).

126 ‘Turkey eclipses centenary of Armenian massacre by moving Gallipoli memorial’, *The Guardian*, 16 April 2015, available online at <https://www.theguardian.com/world/2015/apr/16/turkey-armenia-1915-centenary-gallipoli-massacre-genocide> (visited 21 January 2018).

to what one would expect of a defendant in the court when confronted with hardly refutable evidence of massive wrongdoing.

During the genocidal campaign, the position was one of flat denial, with Ottoman leaders rebuking efforts by Western powers to intervene on behalf of Armenians, claiming that these were internal affairs of a sovereign state. The post-war Turkish establishment was prepared to concede that Armenians were killed as part of a plan to exterminate them, but often argued that Armenians brought this on themselves and that the sole culprits were the CUP leaders. The long period of Turkey's nation-building prevented any realistic prospect of restitution, reparation and reconciliation. Armenians were erased from history books and the Turkish population was depicted as a victim of the First World War. Every effort was made to muffle the criminal past of the founding fathers of the Republic. As the Armenian community's claim became more vocal and dug up more evidence, a barrage of defences was erected to deflect responsibility towards Western powers and Russia. Finally, when acknowledging that Armenians did in fact suffer great hardship during 1915–1918, Turkey claimed that these were consequences of the war, that victims could be found on every side, that there was no premeditated plan to annihilate the Armenian civilian population and that the number of casualties is much lower than the 1 or 1.5 million historical sources indicate. From hiring foreign academics to portray Turkey in a positive light, to interfering with commemorations and academic events, the arguments projected by Turkey advanced various theories over a century wrapped up in nuances, misguided legal positions and opportunistic use of historical facts.

A last, more general, remark that states adapt their narrative to hide state-sponsored crimes of the past — even of governments long fallen into the dusts of history such as the Ottoman triumvirate, is not uncommon. Croatia has gone to great lengths to negate or minimize the Second World War crimes committed on its territory, in particular in the Jasenovac camp.¹²⁷ In relation to much more recent crimes, the Bosnian–Serb leadership in Bosnia–Herzegovina went as far as banning the teaching of the siege of Sarajevo and the genocide in Srebrenica.¹²⁸ The reasons for these tactics are often linked to the self-image of the state and its leadership, to a lack of maturity of the same leaders, and to attempts at escaping accountability and claims for compensations. In all three above-mentioned situations, post-conflict justice in one form or another nonetheless helped recording factual and legal findings. The cycle usually started with reports by foreign observers and states, international NGOs, or the victims themselves. If not during the conflict, it is at least after the end of hostilities

127 M. Fischer and O. Simic, *Transitional Justice and Reconciliation: Lessons from the Balkans* (Routledge, 2016), at 126–129; T. Opacic, 'Selective Amnesia: Croatia's Holocaust Denier', *Balkan Insight*, 24 November 2017, available online at <http://www.balkaninsight.com/en/article/selective-amnesia-croatia-s-holocaust-deniers-11-16-2017> (visited 28 January 2018).

128 'Serb president bans teaching about Sarajevo siege, Srebrenica genocide', *Reuters*, 6 June 2017, available online at <https://www.reuters.com/article/us-bosnia-serbs-history/serb-president-bans-teaching-about-sarajevo-siege-srebrenica-genocide-idUSKBN18X1SL> (visited 28 January 2018).

that prosecutions for war crimes or crimes against humanity see the day. What is still lacking is the conveying of information to affected communities (what modern day international courts label as ‘outreach’), but more importantly, a framework that disallows politicians from marring these efforts by utilizing the outcome of judgements for political purposes. Courts will do their work, despite difficult circumstances and while navigating in political waters. But it is civil society’s work to make the best of such judgements. Perhaps it is a worthy exercise to consider the viability of holding accountable those who instigate hatred against ethnic, religious, or political groups by denying the facts established in trial judgements. This does remain a difficult endeavour, as a balancing act will have to be conducted in relation to the freedom of expression.