A detailed historical map of the region of the Armenian Genocide, showing the Caucasus and Mesopotamia. The map includes major cities like Kars, Erzurum, Van, and Erivan, as well as numerous smaller towns and villages. It also depicts the Tigris and Euphrates rivers, and various mountain ranges and peaks. The map is color-coded with red and black lines indicating borders and routes. The title "RESOLUTION WITH JUSTICE" is prominently displayed in large, bold, black letters across the upper half of the map.

RESOLUTION WITH JUSTICE

REPARATIONS FOR THE ARMENIAN GENOCIDE

*THE REPORT OF THE ARMENIAN GENOCIDE
REPARATIONS STUDY GROUP*

March 2015

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CONTENTS

- EXECUTIVE SUMMARY i
- INTRODUCTION..... 1
 - 1. AGRSG FORMATION AND MISSION..... 1
 - 2. THE ARMENIAN CASE IN GLOBAL HISTORICAL CONTEXT3
 - 3. TIMING OF FINAL REPORT4
 - 4. REPORT OVERVIEW 9
 - 5. ASSYRIANS AND GREEKS..... 10
 - 6. CHALLENGES..... 10
 - 7. POTENTIAL MISREPRESENTATIONS AND MISUSES OF THE REPORT 12
 - 8. IS REPAIR FEASIBLE? 13
- TERMINOLOGY..... 15
- PART 1: HISTORICAL BACKGROUND 17
- PART 2: THE HARMS INFLICTED THROUGH THE ARMENIAN GENOCIDE..... 20
- PART 3: THE FIVE COMPONENTS OF REPARATIONS FOR GENOCIDE 25
- PART 4: REPARATIONS IN INTERNATIONAL LAW AND THE ARMENIAN CASE 27
 - 4.1 GENERAL LEGAL CONSIDERATIONS FOR PROPERTY SEIZURE
WITHIN THE CONTEXT OF HUMAN RIGHTS ABUSE..... 29
 - 4.2 APPLICABILITY OF THE UNITED NATIONS GENOCIDE CONVENTION..... 31
 - 4.2.2 NON-PRESCRIPTION OF THE CRIME OF GENOCIDE 34
 - 4.2.3 UNIVERSAL JURISDICTION AND ‘THE PROTECTIVE PRINCIPLE’..... 43
 - 4.3 THE DOCTRINE OF STATE SUCCESSION 44
 - 4.4 THE RIGHT TO RESTITUTION HAS NOT LAPSED DUE TO THE DEATHS OF POTENTIAL CLAIMANTS OR
TIME PASSAGE 45
 - 4.5 FROM INTERNATIONAL LAW TO DOMESTIC CASES..... 49
- PART 5: HISTORICAL OBLIGATIONS AND REPARATIONS..... 50
 - 5.1 BACKGROUND 51
 - 5.2 SÈVRES AND LAUSANNE 53
 - 5.3 WILSON’S ARBITRATION 56
 - 5.3.1 THE PROCESS AND REPORT..... 57
 - 5.3.2 VALIDITY OF THE ARBITRAL AWARD 59
 - 5.3.3 FURTHER CONSIDERATIONS REGARDING THE VALIDITY OF THE ARBITRAL AWARD 62
 - 5.3.4 IMPLICATIONS FOR LAND STATUS TODAY 63
- PART 6: ETHICAL DIMENSIONS OF THE REPARATIONS QUESTION..... 65
 - 6.1 APPLICATION OF MAJOR ETHICAL THEORIES TO REPARATIONS 73
 - 6.2 REFINING THE MORAL ARGUMENTS: RESPONDING TO CHALLENGES, OBJECTIONS, AND
ALTERNATIVES 82
 - 6.2.1 CHALLENGE: THE PASSAGE OF TIME..... 82

6.2.2 CHALLENGE: RESTORATION OF THE PRE-GENOCIDE STATE OF AFFAIRS IS IMPOSSIBLE AND UNDESIRABLE, AND CREATION OF THE STATE OF AFFAIRS HAD THE GENOCIDE NOT OCCURRED IS IMPOSSIBLE	86
6.2.3 CHALLENGE: A FULL AND ACCURATE ACCOUNTING OF WHAT IS DUE TO ARMENIANS AND TO WHOM SPECIFICALLY IT IS DUE IS IMPOSSIBLE.....	88
6.2.4 OBJECTION: MATERIAL REPARATIONS WILL BE UNACCEPTABLY DISRUPTIVE, HARM THE INNOCENT, AND BENEFIT THE UNDESERVING	90
6.2.5 OBJECTION: THE NOTION OF PRE-GENOCIDE ‘ARMENIAN TERRITORY’ IS UNTENABLE	94
6.2.6 ALTERNATIVE: RECOGNITION AND/OR APOLOGY ADEQUATELY ADDRESS THE LEGACY OF THE ARMENIAN GENOCIDE	95
6.2.7 ALTERNATIVE: GOVERNMENTAL OR CIVIL SOCIETY DIALOGUE WITH TURKISH PEOPLE TOWARD RECONCILIATION IS A BETTER PATH TO ARMENIAN WELL-BEING THAN REPARATIONS	98
6.2.8 ALTERNATIVE: DEMOCRATIZATION OF TURKEY, NOT REPARATIONS, WILL LEAD TO THE OPTIMAL RESOLUTION OF THE LEGACY OF THE ARMENIAN GENOCIDE	100
6.2.9 OBJECTION: GRANTING OR EVEN CALLING FOR REPARATIONS WILL PRODUCE A COUNTERPRODUCTIVE BACKLASH	101
6.2.10 OBJECTION: LAND REPARATIONS ARE AN UNACCEPTABLE EXISTENTIAL ASSAULT ON TURKISH STATEHOOD AND IDENTITY	104
PART 7: THE REPARATION PROCESS AND THE PROCESS AS REPARATION.....	107
7.1 LEGAL CASES AND POLITICAL NEGOTIATION AS PATHS TO REPAIR.....	107
7.2 THE TRUTH COMMISSION APPROACH.....	107
7.3 THE TURKISH TRANSITION.....	108
7.4 THE TRUTH COMPONENT.....	110
7.5 THE REPARATIVE COMPONENT	114
7.6 AGTRC STRUCTURE AND PROCESS	118
7.6.1 COMPOSITION.....	118
7.6.2 ORIGIN OF THE COMMISSION	119
7.6.3 FRAME OF REFERENCE	120
7.6.4 POWERS AND LIMITATIONS	120
7.6.5 SOURCE OF RESOURCES FOR REPARATIONS	121
PART 8: RECOMMENDATIONS FOR A COMPREHENSIVE REPARATIONS PACKAGE.....	122
8.1 PUNISHMENT	122
8.2 RECOGNITION, APOLOGY, EDUCATION, AND COMMEMORATION	123
8.3 SUPPORT FOR ARMENIANS AND ARMENIA	124
8.4 REHABILITATION OF TURKEY	124
8.5 RETURN OF PROPERTY AND COMPENSATION FOR PROPERTY, DEATH, AND SUFFERING.....	125
8.5.1 WHO SHOULD BEAR THE COSTS OF MATERIAL REPAIR?	125
8.5.2 HOW SHOULD MATERIAL REPARATIONS BE DISTRIBUTED?.....	126
8.5.3 DETERMINING THE TERRITORY TO BE RETURNED AND ITS POST-REPARATIONS STATUS...	127
8.5.4 CALCULATION OF COMPENSATION FOR UNAVAILABLE MOVABLE PROPERTY AND FOR DEATH AND SUFFERING	132
CLOSING REMARK.....	137
ABOUT THE ARMENIAN GENOCIDE REPARATIONS STUDY GROUP.....	139

EXECUTIVE SUMMARY

This is the final report of the Armenian Genocide Reparations Study Group (AGRSG). The report offers an unprecedented comprehensive analysis of the legal, historical, political, and ethical dimensions of the question of reparations for the Armenian Genocide of 1915-1923, including specific recommendations for the components of a complete reparations package.

The present time is optimal for the release of the report. The 100th anniversary of the beginning of the Genocide—2015—will see greatly heightened international political, academic, media, artistic, and public interest in the Genocide. In addition, in the past few years, reparations for the Genocide have gone from a marginal concern to a central focus in popular and academic circles. Much of that focus has been on piecemeal individual reparation legal cases. This report represents a decisive step toward a much broader and all-embracing process of repair that is adequate to resolve the extensive outstanding damages of the Genocide. Furthermore, genuine, non-denialist engagement with the legacy of the Genocide is growing in Turkey. Finally, in the past decade, a global reparations movement has emerged, involving numerous victim groups across an array of mass human rights violations. The Armenian case has a place within that movement.

The AGRSG recognizes that Assyrians and Greeks were also subjected to mass violence and property expropriation in the same overarching genocidal process that targeted Armenians. Because AGRSG members' expertise and scholarly or policy-making histories have been focused on the Armenian Genocide, they have not presumed to analyze or make recommendations regarding the other cases; scholars and policy analysts with expertise on the vast specifics of the Assyrian and Greek cases are far better situated for such work.

The case for reparations is complicated by many practical obstacles. For instance, the possession by the perpetrator group of expropriated property over time has become the normalized status quo, such that return of property and compensation appear unwarranted. In addition, the sacrosanct principle of "territorial integrity" of existing states is a particularly significant obstacle to land reparations. This principle, which is taken as basic to the global political order, makes nearly impossible the international border changes the AGRSG sees as central to a comprehensive and effective reparations package.

The AGRSG also recognizes there are those who would object to this report not on the grounds that its analysis is wrong or inadequate, but that the quest for reparations for the Armenian Genocide, especially a return of land, is very unlikely to succeed and is thus impractical. At the same time, history offers many examples of those seeking fundamental social and political change who were similarly dismissed as impractical and as having no chance of success, such as leaders of the U.S. civil rights movement; yet, in time, the naysayers were proven wrong, and dramatic change did occur. The AGRSG operates with the view that, where law and ethics support change, however far-reaching, change is possible.

PART 1: HISTORICAL BACKGROUND

In the main phase of the Armenian Genocide (1915-1918), the Committee of Union and Progress (CUP; also referred to as Young Turk regime), which had seized power in the Ottoman Empire, planned and directed the murder of up to 1.5 million of its Armenian citizens and dispersed nearly all of the remaining million into a worldwide refugee diaspora. The genocidal process entailed infliction of great suffering, including extensive rape, as well as the expropriation of virtually all Armenian material resources, from

money, jewelry, and land, to kitchen pots and pans and clothes. In the second phase (1919-1923), Turkish nationalist military forces invaded the Armenian Republic, established in 1918 as a haven for Armenian reconstitution, and took much of its territory for the emerging Turkish Republic while forcing the rump Republic into the Soviet Union. Nationalist forces and supporters also prevented return of Armenians to their former lands after the end of World War I.

PART 2: THE HARMS INFLICTED THROUGH THE ARMENIAN GENOCIDE

The Genocide devastated every aspect of Ottoman-Armenian existence and later profoundly harmed Russian Armenians as well. Damages can be broken into two categories: “permanent” and “material.” Permanent damages cannot ever be rectified fully or directly. These include the killing, torture, and rape of Armenians, the destruction of families and community structures, and the consequent psychological trauma. For instance, there is no way to bring the dead back to life or to bring into existence the people who would have been their descendants living today, nor can the suffering of rape be erased once experienced. Indirect partial reparation for permanent harms is possible, through for instance, compensation that helps support the demographic increase of Armenians. Material harms include the expropriation of movable and immovable property, including businesses. These can be returned or compensated for through a cash equivalent, plus appreciation and inflation adjustments and compensation for lost use (*usufructus*). There are also hybrid harms, such as enslavement, some part of which (labor) can be compensated and some part of which cannot fully be (psychological harm).

PART 3: THE FIVE COMPONENTS OF REPARATIONS FOR GENOCIDE

A comprehensive reparations package for any genocidal complex comprises the following components:

- (1) Trials of all accused major perpetrators and assessment of the responsibility of other perpetrators.
- (2) Return of all available expropriated property; payment of death insurance benefits; and compensation for the death and suffering of persons, destroyed or unavailable property, and loss of cultural, religious, and educational institutions and opportunities.
- (3) Recognition and apology.
- (4) Measures designed to support the reconstitution and long-term viability of the victim group.
- (5) Rehabilitation of the perpetrator society.

PART 4: REPARATIONS IN INTERNATIONAL LAW AND THE ARMENIAN CASE

International law and human rights law require a reduction of the impact of harm through a combination of affirmative measures, including an investigation of the events, recognition of the crime, expression of

regret for the crimes, punishment of the guilty, restitution of properties, compensation schemes, and rehabilitation of the victims and their descendants.

Pursuant to the general principle of law prohibiting “unjust enrichment,” it is necessary to deprive the perpetrators of the crime and the persons inheriting their rights of the fruits of genocide. The general principle that reparations are appropriate and required in cases of gross human rights violations such as genocide has been affirmed by the United Nations (U.N.) General Assembly, in the 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

The legal obligation to provide material reparations for the Armenian Genocide does not depend on the case being genocide. The general principle of law *ubi jus ibi remedium* (“where there is a right, there is a remedy”) already indicates that a crime must be repaired, whether it is a crime under common law, a war crime, or a crime against humanity. This is a fundamental legal basis for reparation. Moreover, international law is clear that illegitimate expropriation of movable and immovable property through or as a consequence or part of human rights abuse, whether genocide or not, is not acceptable. The Permanent Court of International Justice enunciated this principle in the *Chorzow Factory case* as follows: “It is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation.” This requirement to repair depends on the violation of an obligation of the perpetrator state. The Ottoman Empire had assumed such an obligation to Armenians prior to the Genocide, by accepting agreements starting in the mid- to late-19th century that required it to end its widespread human rights violations against Armenians. This obligation was confirmed by (1) the Empire’s trials of some of the major perpetrators of the Genocide for violating the laws of the Empire in destroying the Armenians, and (2) an Ottoman deputy’s November 1918 statement in support of the trials that what was done to Armenians was a violation of the “rules of law and humanity,” to which Turkey and every other state is bound. Importantly, other states also have an obligation not to recognize illegal property seizures as those in the Armenian case: Article 41 (2) of the Articles of the International Law Commission (ILC) on the Responsibility of States for Internationally Wrongful Acts stipulates that “no State shall recognize as lawful a situation created by a serious breach” of an obligation arising under a peremptory norm of general international law (*jus cogens*).

The U.N. Genocide Convention is a second legal basis that justifies reparation. Beyond restitution and compensation for the discriminatory confiscation of private and community property, there is an obligation to make amends for the death and suffering caused by grave crimes committed against the Armenian population of the Ottoman Empire. Although the Armenian Genocide occurred before entry into force of the Convention and the coining of the term “genocide” in 1944, the Convention is declaratory of pre-existing international law that made the Genocide clearly illegal when it occurred. The doctrine of state responsibility for genocide and crimes against humanity already existed at the time of the Ottoman massacres against Armenians. Such state responsibility entailed both an obligation to provide restitution and/or compensation and the personal criminal liability of the perpetrators.

State responsibility does not lapse with time; the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity makes clear that there is no prescription on the prosecution of the crime of genocide, regardless of when the genocide occurred, and that the obligation of the responsible state to make restitution or pay compensation for properties obtained in relation to a genocide does not lapse with time.

An important objection to the current Turkish Republic's responsibility for reparations is the argument that it represents a different state from that which perpetrated the Genocide. Even setting aside the fact that Mustafa Kemal Atatürk's forces perpetrated the second phase of the Genocide, as described above, this objection still fails. The report of the independent expert on the right to restitution, compensation, and rehabilitation for victims of grave violations of human rights, Professor M. Cherif Bassiouni, reiterates a basic principle of succession:

In international law, the doctrine of legal continuity and principles of State responsibility make a successor Government liable in respect of claims arising from a former government's violations.

Nor do the deaths of survivors entail an end to this obligation. The standing of genocide survivors to advance claims of restitution, both individually and collectively, extends to their descendants, as made clear in the 1997 U.N. Basic Principles and Guidelines on the Right to Reparation for Victims of [Gross Violations] of Human Rights and International Humanitarian Law, which provide in part:

Reparation may be claimed individually and where appropriate collectively, by the direct victims of violations of human rights and international humanitarian law, the immediate family, dependents or other persons or groups of persons closely connected with the direct victims.

Options for the pursuit of reparations suits not only include international legal bodies, such as an ad hoc tribunal, the U.N. Compensation Commission, or the International Court of Justice (ICJ), but also extend to domestic courts as well, based both on existing laws allowing such a use and on the possibility of passage of "enabling legislation" granting the decisions of international courts and tribunals status in the domestic legal order, which would in turn translate the principles underlying the decisions into domestic legal norms.

PART 5: HISTORICAL OBLIGATIONS AND REPARATIONS

The first Armenian Republic, which included lands previously in both the Ottoman Empire and Russian Empire, was established in 1918. On April 26, 1920, the Allied Powers of World War I submitted a compromis (application) to U.S. President Woodrow Wilson asking him to determine the border between the Armenian Republic and Turkey. On May 17, 1920, the U.S. Secretary of State informed the American Ambassador in France that the President had agreed to act as arbitrator. Article 89 of the August 20, 1920, Treaty of Sèvres confirmed the referral to the arbitration of President Wilson. The resulting Wilsonian Arbitral Award fixed the border between Turkey and Armenia in the *vilayets* (provinces) of Erzerum, Trebizond, Van, and Bitlis, which required transfer of territory in these areas to Armenia, and provided Armenia access to the sea.

While the treaty itself required ratification by signatories to go into full effect, under international arbitration law, once an arbitration application is made and accepted, the arbitration decision becomes binding on referring parties, regardless of whether other related instruments, such as a treaty, go into effect, provided that the arbitration process meets the four criteria for a valid, legally binding arbitral award. The Wilsonian Arbitral Award process did.

(1) The arbitrator(s) must not have been subjected to any undue external influence such as coercion, bribery, or corruption. There can be no question of U.S. President Wilson’s freedom from coercion, bribery, and corruption.

(2) The production of proofs must have been free from fraud and the proofs produced must not have contained any essential errors. A brief examination of the committee and its operation confirms this criterion to have been met. The U.S. President convened a committee of experts, the Committee upon the Arbitration of the Boundary between Turkey and Armenia. The committee’s chair was William Linn Westermann, then Professor at the University of Wisconsin and soon after Professor at Columbia University until 1948. He was a specialist in the history and politics of the Near and Middle East and, in 1919, had been the chief of the Western Asia Division of the American Commission to Negotiate Peace in Paris. The principal collaborators and contributors were Major (and Professor) Lawrence Martin of the Army General Staff, who had participated as the geographer of the Harbord Mission, and Harrison G. Dwight of the Near Eastern Division of the Department of State. Each committee member was a knowledgeable, experienced, and impartial expert. What is more, their work continues to stand out and be highly regarded by international lawyers as a model for such processes. They used a wealth of valuable information provided from a range of reliable sources and took account of

the need for a “natural frontier” [and] “geographical and economic unity for the new state,” [while] ethnic and religious factors of the population were taken account of so far as compatible[, and] security, and the problem of access to the sea, were other important conditions.

(3) The compromis must have been valid. This is confirmed by the fact that all relevant parties, including the governments of Armenia and Turkey, consented to the arbitration. The Turkish government, in fact, had a formal opportunity to object to the arbitration as part of its review of the Sèvres Treaty, but did not object. The compromis itself was signed by the authorized representatives of the lawful government of the Ottoman Empire.

(4) The arbitrators must not have exceeded their powers. The compromis asked the arbitrator to (a) fix the frontier between Turkey and Armenia in the *vilayets* of Erzerum, Trebizond, Van, and Bitlis, (b) provide access for Armenia to the sea, and (c) prescribe stipulations for the demilitarization of Turkish territory adjacent to the Turkish-Armenian frontier. The Arbitral Award did exactly these things and did not address any other territorial concerns.

Thus, the Wilsonian Arbitral Award of territory to the Armenian Republic was binding at the time, regardless of the fact that the Treaty of Sèvres was never ratified.

It follows that Turkey’s current occupation of “Wilsonian Armenia” constitutes a breach of an international obligation and is legally actionable, for instance, by referral to the ICJ, under Article 36 (2) of the ICJ Statute, which allows it to decide “the nature and claim of the reparation to be made for a breach of an international obligation.” Consequently, in spite of Turkey’s long-standing occupation of the land in the Arbitral Award, it does not possess legal title to that territory; its *de facto* sovereignty is merely administrative control by force of arms. Belligerent occupation does not yield lawful rule over a territory. Continuous occupation since 1920, demographic changes (forced or otherwise) in the territory

in question, and elimination of the outward cultural signs and designations of the territory have no effect on the legality of Turkish control of the territory.

The July 24, 1923, Treaty of Lausanne is often considered to be the replacement for the unratified Treaty of Sèvres. This is not the case, however. The former was not a treaty among the Sèvres signatories but a different set, while a treaty can only be amended by the agreement of all its signatories. What is more, the Treaty of Lausanne was and is not binding for any Armenian entity, because no Armenian entity was a party to it, despite the continued existence of the Armenian delegation that signed the Sèvres Treaty. Finally, the scope, objectives, and context of the two treaties were quite different: the Sèvres Treaty was meant to end that part of World War I that concerned Turkey and to establish peace, while the Lausanne Treaty concerned only the Greek-Turkish conflict of 1919-1922.

The Wilsonian Arbitral Award has special importance for Armenian Genocide reparations. The original award can be seen as the central component of a reparations scheme worked out by relevant representatives of the international community in the aftermath of the first phase of the Armenian Genocide. The goal was to provide Armenians a territory adequate for their post-genocide reconstitution and future viability as a people. If reparations for the Armenian Genocide are justified, then it is reasonable to see the previously determined reparations scheme that includes the Arbitral Award as still valid. Second, the present enforcement of the award can be viewed as repair for the damage done by Turkish nationalist forces that blocked its full implementation and violently seized the awarded territory, including that part already under Armenian political sovereignty. In this sense, enforcement of the award is reparation for Turkey's violation of a binding obligation, a violation that was part of the second phase of the Armenian Genocide pursued by nationalist forces through 1923.

PART 6: ETHICAL DIMENSIONS OF THE REPARATIONS QUESTION

Reparations must be not only legally right, but also consistent with the political context in which claims are made. Typically there is strong resistance to reparations within the geopolitical realm, where “realism” based on the interests of powerful states dominates. Short of substantial shifts in the power hierarchy or interests of political players, ethical commitments are the key mechanism of change. Indeed, ethics-based movements have in some cases succeeded in driving profound positive changes despite the resistance of powerful interests. The successes of the Indian independence movement for freedom from British rule, the U.S. civil rights movement, and the anti-Apartheid movement are examples. Law/politics and morality are not opposed forces; on the contrary, ethical commitments can be crucial to implementation of human rights-respecting laws, legal decisions, and political orders. Ethical imperatives are the key to changing attitudes within a perpetrator group. An understanding of why Armenian Genocide reparations are morally right can foster broad and effective support for the legal and political decisions that are necessary to implement them. The AGRSG thus includes consideration of the ethical dimensions of the Armenian Genocide reparations issue in this report, as a complement to legal and political considerations.

The major traditions of Western philosophical ethics—Aristotelian, Kantian, Utilitarian, and Rights-based—all generally support reparative justice. Ethical theories focused specifically on oppression often go further, to include repair of damage done through human rights abuse as a priority issue. At the same time, modern Western philosophical thought, particularly in its liberal forms, tends to deemphasize or

reject a key aspect of repair: the repair of groups. But genocide is aimed at the destruction of groups as groups, more than simply aggregates of individuals. Thus, a comprehensive and effective reparations package should focus on repair of the victim group (for instance, reconstitution of the economic and political life and the identity of the group) rather than on individual reparations. While the latter can have a role in an overarching process of repair, only through group reparations are the harms of genocide addressed directly and adequately.

Despite general ethical support for reparations, alternatives exist and complexities arise when detailed ethical analyses are developed, especially when general principles are applied to specific cases. This report addresses 10 such complexities and alternatives relevant to the Armenian case.

(1) Does the passage of time eventually nullify reparations claims? This is the case only when the relevant groups are no longer identifiable and the damage done originally has no traceable impacts on the present. Armenians and Turks as peoples with associated political entities quite clearly exist today, with lineages directly back to the Genocide period. The injuries done by the Genocide continue to have significant impacts on Armenians; for example, the widespread poverty of Armenians in the Armenian Republic; the political, military, and economic weakness and precariousness of the Republic; the continuing loss of Armenian identity and community cohesion in the global Armenian Diaspora; the physical insecurity and vulnerability of various Diasporan communities around the globe; and the small size of the Armenian population relative to groups such as Turks.

(2) Restoration of the pre-Genocide state of affairs is impossible and undesirable. This is true because, for instance, (a) nothing at the present time can bring back those killed in the Genocide or their descendants who would be alive today and (b) it is highly unlikely that any Armenian today would wish to live under the same conditions in which Armenians lived before the 1915 Genocide, or even the earlier 1894-1896 Hamidian Massacres of Armenians. But the push for reparations is not a call for a complete reversal of harms or the impossible and undesirable return to the pre-harm state. It calls for present-day measures that can mitigate the continuing impact of the harms done in the Genocide, in a manner that will support the reconstitution of Armenians as a group, as well as their identity and political viability into the future.

(3) A full accounting of what reparations are due Armenians is impossible. This might be true, because of incomplete records of deaths, suffering, and property expropriations; however, it is possible to determine—directly and by extrapolation—much that is due based on extensive existing records. Where records are unclear, conservative estimates can be used. That not every loss or injury can be addressed does not mean none should be.

(4) Will material reparations be unacceptably disruptive, harm innocent Turks today, and benefit underserving Armenians? Clearly, Turks today are not to blame for the Genocide. But, many families, individuals, and businesses still benefit greatly from property expropriated in the Genocide, while the large amount of property going to the state—as well as other gains made through the genocide, such as increased military power, political consolidation and geopolitical importance, and identity solidity, that might correlate to harms done to Armenians that are also subject to repair—still significantly benefits Turks in general today. Contemporary Turks are responsible for reparations to the extent that their state and society and particular individuals still benefit from the Genocide. What is more, the vast majority of Turks today identify with the same national group that committed the Genocide. If they are willing to

accept and celebrate the positive aspects of that identity, they must accept responsibility for the negative aspects of that identity, including its history of Genocide.

Group reparations to Armenians are not meant to profit particular Armenians in personal terms, but rather to support reconstitution and the future viability of Armenians as a group, which Armenians deserve in the face of the legacy of the Genocide that continues to undermine and degrade Armenian group existence.

(5) Is the notion of pre-Genocide “Armenian territory” untenable? Although the six traditionally Armenian provinces within the Ottoman Empire had mixed populations, they were long identified and associated with Armenians, and many areas had Armenian majorities. What is more, their Armenian populations had been reduced through deliberate policies. Armenians also had a substantial demographic presence in other areas of the Ottoman Empire, including the Cilicia region and many urban areas. The determination of lands to be included in a final reparations package could offset pre-Genocide demographic interspersal on the land to be given with the fact that Armenian lands in other areas would remain in Turkey. Resistance to the identification of lands as Armenian is not the result of an objective analysis of the facts, but instead of the persistence of the genocidal ideology that excluded Armenians even conceptually from the Ottoman Empire and the subsequent Turkish Republic, and saw the Turkification of Armenian land as justified.

(6) Do recognition and/or apology adequately address the legacy of the Genocide? While both are essential components of a comprehensive reparations package, alone they are (a) inadequate to address the full extent of the continuing impact of the Genocide, especially its material elements, and (b) inherently unstable unless connected to material forms of repair, as they are merely rhetorical and can be withdrawn at a later date.

(7) Is Armenian-Turkish dialogue toward reconciliation a better path than reparations? While dialogue can be positive and the AGRSG considers use of a truth commission as an avenue for dialogue to be an essential mechanism of the reparative process, dialogue alone cannot address the outstanding legacy of the Genocide. There is a deep power asymmetry between the groups that is the legacy of the Genocide and can only be mitigated by material measures. Dialogue will not only leave the power asymmetry intact but will likely exacerbate it, to the detriment of Armenians. While dialogue might result in improved relations, these will be at the cost of Armenians giving up material and even symbolic reparations claims and accepting their subservient position relative to the Turkish state and society.

(8) Democratization of Turkey would be a positive development. But, while it might change attitudes toward minority groups in Turkey, including Armenians, and even promote recognition of the Armenian role in Turkish history, it would not in itself repair the bulk of Genocide injuries. Only an explicit reparations process can do that. What is more, as a multitude of historical examples show, democratic political institutions and practices are perfectly consistent with bad treatment of minority and external groups; mere democratization of Turkey does not entail a change in attitudes toward and treatment of Armenians within or outside Turkish borders.

(9-10) Will granting or calling for reparations produce a backlash among Turks? And, do land reparations represent an unacceptable existential assault on Turkish statehood and identity? If the answer is “yes” to either question, the reason for this is not because Armenians are exercising a right

to repair or are being aggressive in any way; it is because the post-Genocide political and property status quo and subjugation of Armenians have become so entrenched in the culture and institutions of the Turkish state and society that a call for just repair is misperceived as an unfair victimization of Turks, or as an aggressive threat to Turks.

PART 7: THE REPARATIONS PROCESS AND THE PROCESS AS REPARATION

The AGRSG proposes a novel approach to the reparations process—the use of an Armenian Genocide Truth and Rectification Commission (AGTRC). A truth commission would increase the likelihood of reparations being made, and of those reparations being genuine and sincere, as well as encouraging the rehabilitation of the Turkish state and society, which is not a concern in the legal or treaty analyses and just touched on in the discussion of ethical issues. It therefore offers a path toward repair that includes the benefits of recognition and apology, dialogue, and democratization of Turkey, without sacrifice of material and other reparations components. The AGTRC would engage Turkish individuals and institutions to be active participants in the reparative process, thus allowing the freedom of ethical decision-making to come into relation with the legal and ethical requirement for repair. Instead of reparative measures being imposed on the Turkish population from outside, reparations would flow out of the truth commission experience. The AGTRC would offer a unique opportunity to invest material reparations with the meaning they should have but which is often excluded from legal and political processes. Next, not only will the truth commission process foster the awareness and reflection necessary to bring about the rehabilitative transformation of the Turkish state and society away from the legacy of genocide, but the process itself would also be rehabilitative. A truth commission is the best mechanism for bringing about the rehabilitation of the Turkish state and society.

The AGTRC is not meant to open legitimate discourse on the events starting in 1915 to denial and obfuscation. On the contrary, the AGTRC is predicated on the veracity of the Armenian Genocide. It is not a mechanism for determining whether the Genocide happened—the historical evidence that it did is incontrovertible—but rather (1) for consolidating the historical record as to the details of what happened and the impacts of what happened going forward, (2) for helping contemporary Turkey and Turks to come to terms with the accurate history of the Genocide, and (3) for engaging Armenians and Turks in a deliberative process regarding repair of the damage done. It is a mechanism for dealing with the legacy of the Genocide, not a means for questioning whether the Genocide occurred. It is thus quite different from what the unofficial “Turkish-Armenian Reconciliation Commission” (TARC) that operated from 2001-2004 was, and what many fear the historical sub-commission called for in the 2009 diplomatic protocols between Armenia and Turkey could become, despite assurances to the contrary. As a broad-based, public process, the AGTRC offers Turkish society its first opportunity to engage the history of the Genocide—and thus its own history—in an open, forthright, and comprehensive manner freed from the pressure of denial and legally enforced adherence to an inaccurate and damaging state narrative of the past. It is thus a mechanism for the “deeply divided” Turkish society, with continuing ethnic fractures and hierarchies, to develop a new understanding of itself that can help it overcome the divisions. In this sense, the AGTRC could be a highly effective engine of democratization for Turkey, accomplishing what methods that sidestep the legacy of the Genocide would fail to do.

The corrective impulse of long-term solutions is necessary but often misguided in connection to truth commissions. The resolution of the Armenian Genocide, as with many other mass killings and atrocities,

must focus primarily on justice based on truth, and not simple conciliation. The goal of resolution efforts must place energy in revelation and reparation. It is not that conciliation is unimportant, but that meaningful conciliation cannot be achieved until the parties have moved beyond the contestation of the Genocide toward justice for it. Conciliation by acceptance of an unjust status quo is not a productive resolution of the Genocide, but instead consolidates its harms and further weakens and marginalizes the victims. Proper conciliation is a by-product, not a focus or ultimate goal, nor a necessary outcome of the AGTRC. If the AGTRC achieves justice for the Armenian Genocide but does not result in Armenian-Turkish conciliation, it will have been successful, and at the very least will have opened up the possibility of a future conciliation.

The practical implementation of the AGTRC will be complex. The politicized and idiosyncratic nature of the TARC membership offers an important caution. The logistics of how members of the AGTRC would be selected will always be controversial. Armenians, Turks, and persons not directly connected to either group ought to serve on the commission. Just as importantly, its members should represent a wide cross-section of interests and not be dominated by political brokers on either side. Given the origination point of the AGTRC—recognition of the fact of the Armenian Genocide and the need to engage its legacy—deniers have no role on the AGTRC.

The AGTRC's powers and limitations must be decided on, clearly stated, and fully supported by Turks and Armenians. In general, truth commissions are not judicial bodies and therefore do not have the powers of subpoena or prosecution. They often make recommendations based on their findings but are normally limited in their ability beyond that. Additionally, all truth commissions must answer the question as to who will be held liable by its findings and who will be charged to implement its recommendations.

A crucial consideration of the AGTRC will be who will provide resources for reparation. This issue is likely to be controversial within the Turkish state and society and will require deliberations among Turks. The AGTRC offers an open process for these deliberations.

PART 8: RECOMMENDATIONS FOR A COMPREHENSIVE REPARATIONS PACKAGE

The AGRSG makes the following recommendations for reparations for the Armenian Genocide, based on the five elements of a comprehensive reparations package:

(1) Punishment

Punishment of direct perpetrators of a genocide is an important measure for establishing the dignity and worth of the victims by officially marking the injustice of what was done to them. In the case of the Armenian Genocide, however, no direct perpetrators are alive for prosecution, and so this aspect of repair is not applicable.

(2) Recognition, Apology, Education, and Commemoration

The Turkish government and complicit non-governmental entities should officially recognize and apologize for the Genocide. These acts should contain precise details of the Genocide, including accounts of who committed what acts and who was victimized. They should explicitly identify the nature of the connection of contemporary Turkey to the Genocide and explain its responsibilities to Armenians today.

Extensive educational initiatives, including making the Genocide a major component of public education curricula in Turkey, should be pursued by Turkey domestically and internationally at all levels. Finally, Turkey should create multiple museums and fund commemorative events on the Genocide across Turkey, and support such initiatives in other areas, including the Republic of Armenia. Historically Armenian place names should be restored in areas not to be given as territorial reparations to Armenians.

(3) Support for Armenians and Armenia

The Turkish state should provide political and other support for the long-term viability of the Armenian state and Armenian identity globally. Beyond material reparations and cessation of additional harmful activities, such as the two-decade blockade of the present Turkish-Armenian border, Turkey should take positive steps, including providing diplomatic advocacy for the Armenian Republic and protection of the Republic against external security threats.

(4) Rehabilitation of Turkey

Beyond an end to all denial activities and promotion of respect for Armenians and all non-Turkish groups in Turkey, the Turkish state and society should extirpate from all institutions, cultural elements, etc., vestiges of the attitudes and practices connected to the genocidal ideology and process of genocide against Armenians, such as Article 301 of the Turkish Penal Code.

(5) Return of Property and Compensation for Property, Death, and Suffering

Land, buildings, businesses, and other currently available immovable and movable property expropriated through the Genocide should be returned. Property destroyed or otherwise legitimately unavailable should be compensated for. For returned and compensated property, there should also be usufructus compensation for lost use and benefits during the period the property was held. As discussed below, individual and group land reparations should be adjusted to allow political transfer of contiguous lands to Armenians. Compensation for the deaths and suffering of victims of the Genocide should also be made. All expropriated Armenian Apostolic Church, Armenian Protestant Church, and Armenian Catholic Church property, regardless of location, should be returned.

With the exception of property now held by direct heirs of those who seized it in the Genocide, the Turkish government is responsible for paying compensation and developing a program for property return, which should include compensation to Turkish citizens whose land is given in repair. The costs of this process should be distributed across Turkish society in a fair manner, which might be determined through the AGTRC process.

With the exception of Armenians with complete documentation of specific expropriated property, property return and compensation as well as all compensation for death and suffering should be given to Armenians as a group. Assignments of these resources to the Armenian government, global and local Armenian institutions and organizations, and individuals across the global Armenian population must be made through a fair process that prioritizes immediate and long-term group viability and the needs of individual Armenians. Armenians from all locations and statuses should have full voices in the process, and special care should be taken to prevent powerful elites from hijacking the process.

Multiple approaches can be used to determine the territory designated for political transfer. The AGRSG views the Wilsonian Arbitral Award to be optimal for determining the territory to be politically transferred. The determination of this territory took into account precisely the factors related to the

future viability of an Armenian state, which is the key concern of this report. What is more, comprising parts of four of the six traditional Armenian provinces that were contained in the Ottoman Empire, it represents a reasonable reduction of a full award of the six provinces plus Cilicia, in order to account for mixed pre-Genocide populations in the provinces. While a complete political transfer of land to the Armenian Republic is optimal, the AGRSG recognizes the alternative of demilitarizing the Wilsonian zone and allowing for free Armenian economic activity and residential status in it.

Financial compensation for property unavailable for return and related usufructus could be estimated based on extrapolations from (a) documented property losses and (b) historical records of general levels of pre-Genocide material possessions of Armenians in various locations. Because of the extensive analysis necessary for this calculation and the need for an analysis of records that are just now emerging and being studied, the AGRSG cannot provide a figure at this point for this compensation. As for compensation for death and suffering, either of two methods related to the *Marootian et al. v. New York Life Insurance Company* case could be used, yielding US\$33,358,953,125 and US\$10,450,000,000, respectively. The former figure might be adjusted using the U.S. Bureau of Labor Statistics Dollar Inflation Calculator in place of that in the New York Life case, yielding a final figure of US\$70,030,167,080.

As an alternative, it is possible to use the calculations of property losses and compensation for deaths and suffering determined by the Paris Peace Conference in 1919. Using the New York Life method, the adjusted 2014 figure is approximately US\$41,500,000,000; the U.S. Bureau of Labor Statistics Dollar Inflation Calculator would yield US\$87,120,217,000. If these figures are further adjusted by adding 20 percent to account for losses and deaths and suffering for the second phase of the Genocide from 1919 to 1923, the totals would be US\$49,800,000,000 and US\$104,544,260,400, respectively.

In addition to the New York Life and U.S. Bureau of Labor Statistics methods, other methods for calculating losses and death and suffering compensation at the time of the Genocide as well as forward valuation are possible. The actual reparations figure would have to be selected from what is given in this report or through another method, as decided in the legal decision, political agreement, or AGTRC recommendation used to determine the final reparations package.

INTRODUCTION

1. AGRSG FORMATION AND MISSION

This is the report of the Armenian Genocide Reparations Study Group (AGRSG). Prior to the establishment of the AGRSG in 2007, the limited discourse on reparations for the 1915-1923 Armenian Genocide included abstract notions of territorial return,¹ consideration of limited aspects such as insurance lawsuits,² academic and other works focused on a specific part of the overall topic,³ and sometimes valuable short works treating the issue but without comprehensive or detailed analysis.⁴ The AGRSG was formed by four experts in different areas of reparations theory and practice. Their mission was to produce the first systematic, comprehensive, in-depth analysis of the reparations issues raised by the Armenian Genocide.

After early agreement that some form of repair is an appropriate remedy for the legacy of the Armenian Genocide as it stands today, the AGRSG prepared a preliminary report, which was released for limited distribution in 2009. Completion of the draft was followed by three symposia. The first was a panel discussion featuring three of the report authors, held on May 15, 2010, at George Mason University in the United States, in conjunction with the university's Institute for Conflict Analysis and Resolution.⁵ The second was a major day-long symposium featuring the four co-authors and a number of other experts on reparations for the Armenian Genocide, conducted at the University of California Los Angeles School of Law through its International Human Rights Law Association, on October 23, 2010.⁶ The third was a panel by two of the report authors held in Yerevan, Armenia, on December 11, 2010.⁷ The AGRSG is now issuing for broad distribution its final report, an extensive revision and updating of the 2009 preliminary report.

The AGRSG final report remains the only systematic, all-encompassing, in-depth approach to Armenian Genocide reparations. The report examines the case for reparations from the legal, historical, and ethical perspectives (Parts 4, 5, and 6, respectively); offers a plan for a productive reparative process drawing on transitional justice theory and practice (Part 7); and proposes a concrete reparations package (Parts 3 and 8). The report also includes background on the Armenian Genocide (Part 1) and the damages inflicted by it and their impacts today (Part 2). Through its broad dissemination, this report fills a crucial gap in the scholarly work and policy discourse on the Armenian Genocide. Not only will those outside of Turkish and Armenian circles benefit from the analysis provided in the report as they consider their

- 1 See, for example, "Document Two: Four Questions to Vazgen Manukian," in Gerard J. Libaridian (ed.), *Armenia at the Crossroads: Democracy and Nationhood in the Post-Soviet Era – Essay, Interviews, and Speeches by the Leaders of the National Democratic Movement in Armenia* (Watertown, MA, USA: Blue Crane Books, 1991), pp. 39-46 at 40-42; Monte Melkonian, *The Right To Struggle: Selected Writings of Monte Melkonian on the Armenian National Question*, Markar Melkonian (ed.), 2nd ed. (San Francisco, CA, USA: Sardarabad Collective, 1993), pp. 13, 61-62.
- 2 See, for example, Henry Weinstein, "Insurer Settles Armenian Genocide Suit: New York Life Will Pay \$20 Million to Victims' Heirs and to Nine Civic Organizations," *Los Angeles Times*, January 29, 2004, <http://articles.latimes.com/2004/jan/29/local/me-genocide29> (accessed September 9, 2014); Vince Lovato, "Genocide Families to Receive \$17M Payout," *The Burbank Leader*, October 15, 2005, http://articles.burbankleader.com/2005-10-15/news/blr-genocide15_1_armenian-genocide-armenian-americans-axa-group (accessed September 9, 2014).
- 3 See, for example, Kevork K. Baghdjian, *La Confiscation par le Gouvernement Turc des Biens Arméniens Dits 'Abandonnés'* (Montreal, Quebec, Canada: K. K. Baghdjian, 1987).
- 4 Dickran Kouymjian, "Confiscation of Armenian Property and the Destruction of Armenian Historical Monuments as a Manifestation of the Genocidal Process," *Armenian Forum* 1:3 (1998): 1-12.
- 5 "Beyond the Protocols: The Armenian Genocide Reparations Study Group and Armenian-Turkish Relations," Institute for Conflict Analysis and Resolution, George Mason University, Arlington Campus, May 15, 2010.
- 6 "The Law, Ethics, and Politics of Making Amends," International Human Rights Law Association, School of Law, University of California Los Angeles, USA, October 23, 2010.
- 7 "The Armenian Genocide Reparations Study Group," Erebuni Hall, Yerevan, Armenia, December 10, 2010.

own roles in and policy options for a resolution process, but Turkish and Armenian individuals as well as civil society and political institutions will also be given the information, analysis, and tools to engage the Armenian Genocide issue in a systematic manner that supports meaningful resolution.

The AGRSG members' early consensus that reparations are essential to the contemporary resolution of the legacy of the Armenian Genocide was based on their shared general position that reparations are an important part of redress for any large-scale violation of human rights, their agreement on three specific reasons why this is true, and their recognition that the Armenian case satisfies these three criteria. First, in many cases, because of the nature of the damage done and/or the length of time that has passed between violation and remedy, repair is the primarily or exclusively appropriate form of redress. So much time has passed since, for instance, the 1904-1907 Herero Genocide,⁸ that no direct perpetrators are alive today to be prosecuted. All that remains are reparations, understood as material (financial compensation and support, security guarantees, investment, etc.) as well as symbolic (recognition, apology, education, etc.) measures meant to address the damages done by the Genocide. The situation is quite similar for the Armenian Genocide.

Second, the harms done by a mass human rights violation such as genocide are inevitably debilitating. Without some measure of substantive repair, a victim group typically faces insurmountable challenges on the individual and group levels. Individuals can be reduced to poverty and face long-term traumatic effects, while the group becomes unable to sustain itself into the future. Genocide in particular aims at the annihilation of a group through the murder and traumatization of individuals, but also through the destruction of its self-sustaining social, political, economic, cultural, educational, and spiritual institutions and relations. The force of this destructive process compounds over time. The damage can only be (partially) addressed through reparations aimed at reconstruction and support for the long-term viability of the victim group. Review of the outstanding harms to Armenians as a group (Parts 2 and 6) supports the applicability of this criterion.

Third, through a mass violation of human rights, the perpetrator group imposes on itself an obligation to rectify as much as possible the harms it did. As elaborated in Part 4, there is no statute of limitations on mass human rights violations such as genocide. The obligation remains open until the perpetrator group discharges it through reparations. Aside from an aborted series of prosecutions of a small number of Armenian Genocide perpetrators starting in 1919,⁹ which was prior to the second stage of the Genocide, the Turkish state and society has provided no redress for the Genocide. It has, in fact, rejected even recognition of the historical facts through an extensive, decades-long, systematic denial campaign.¹⁰

8 On this case, the first genocide initiated in the 20th century, see Horst Drechsler, "The Herero Uprising," in Frank Chalk and Kurt Jonassohn (eds.), *The History and Sociology of Genocide: Analyses and Case Studies* (New Haven, CT, USA: Yale University Press, 1990), pp. 231-248; Dominik Schaller, "The Genocide of the Herero and Nama in German South-West Africa, 1904-1907," in Samuel Totten and William S. Parsons (eds.), *Centuries of Genocide: Essays and Eyewitness Accounts*, 4th ed. (New York, NY, USA: Routledge, 2013), pp. 89-114.

9 Vahakn N. Dadrian, *The History of the Armenian Genocide: Ethnic Conflict from the Balkans to Anatolia to the Caucasus* (Providence, RI, USA: Berghahn Books, 1995), pp. 303-343; Taner Akçam, *A Shameful Act: The Armenian Genocide and the Question of Turkish Responsibility* (New York, NY, USA: Metropolitan Books/Henry Holt, 2006), pp. 207-376; Vahakn N. Dadrian and Taner Akçam, *Judgment at Istanbul: The Armenian Genocide Trials* (New York, NY, USA: Berghahn Books, 2011).

10 See, as just a few examples of the many scholarly works on the overall history and specific incidents in this long Armenian Genocide denial campaign, Richard G. Hovannisian, "The Armenian Genocide and Patterns of Denial," in Richard G. Hovannisian (ed.), *The Armenian Genocide in Perspective* (New Brunswick, NJ, USA: Transaction Books, 1986), pp. 111-133; Speros Vryonis, Jr., *The Turkish State and History: Clio Meets the Grey Wolf*, 2nd ed. (New Rochelle, NY, USA: Aristide D. Caratzas, 1993), pp. 79-118; Roger W. Smith, Eric Markusen, and Robert Jay Lifton, "Professional Ethics and the Denial of the Armenian Genocide," *Holocaust and Genocide Studies* 9:1 (1995): 1-22; William H. Honan, "Princeton Is Accused of Fronting for the Turkish Government," *The New York Times*, May 22, 1996, <http://www.nytimes.com/1996/05/22/nyregion/princeton-is-accused-of-fronting-for-the-turkish-government.html> (accessed September 10, 2014); Eric Schmitt, "House Backs Off on Condemning Turks' Killing of Armenians," *The New York Times*, October 20, 2000, <http://www.nytimes.com/2000/10/20/world/house-backs-off-on-condemn->

2. THE ARMENIAN CASE IN GLOBAL HISTORICAL CONTEXT

In order to develop a comprehensive and deep-reaching analysis, this report engages the array of rich international law, transitional justice, political theory, and ethics literatures on mass human rights violations, justice, and reparations. It does not treat the Armenian Genocide as a special case, but instead situates consideration of it within general legal, political, and ethical principles. This theoretical contextualization of the Armenian Genocide reflects its place in world history. No longer is it possible to treat any case of mass human rights abuse in isolation; as expressed in the term “crime against humanity,” which was first used in a prominent international political context in reference to the Armenian Genocide,¹¹ mass human rights violations affect not just their victims, but all of humanity. As much as the often-celebrated political, social, and technological innovations of the past half-millennium have shaped the world we share today, so has the vast gamut of mass human rights violations over that same period. So much of the social, political, economic, and military state and structure of the world today is the effect of recent centuries of incessant genocide, slavery, colonialism, apartheid, human trafficking, mass rape, economic exploitation, odious debt, aggressive war, and gender, racial, religious, and other oppressions. These forces operate unabated today. Group after group contends with the consequences of their particular victimization in the context of a global order whose institutions and structures reinforce it. Demographics the world over reflect these processes, and numerous international borders can be traced directly to genocide, colonialism, or aggressive war. For individual groups and across groups, victimization produces more victimization, while widespread historical impunity is the frequent basis of power, wealth, and security. The contemporary Armenian situation as a legacy of genocide parallels many others and is joined with them in an overarching historical process.

Recognition that the global order incorporates and consolidates damage to a host of groups has inspired the recent emergence of a global reparations movement.¹² This movement has brought into contact and solidarity, beyond the Armenian case, a variety of reparations efforts focused on different instances of mass human rights violation, from the Holocaust, genocides of indigenous peoples in the Americas and Australia, and Japan’s sexual enslavement of “Comfort Women,” to U.S. slavery and Jim Crow, South African Apartheid, and debilitating debt imposed on vulnerable “Third World” populations by corrupt leaders and exploitative international players.¹³ From the perspective that this movement has fostered, it has become clear that the mere ending of a given human rights violation, criminal justice measures occasionally taken after it, the acknowledgment of past violations in historical narratives, and even the establishment of better political arrangements in the aftermath of or long after a violation, still leave intact the damage done to particular groups and the broader human community. Only through reparations can the ways in which the world order and local conditions have been warped, compromised, and made into

ing-turks-killing-of-armenians.html (accessed September 10, 2014); Kim Willsher and Sam Jones, “Turkey Warns France over Armenian Genocide Law,” *The Guardian*, January 24, 2012, <http://www.theguardian.com/world/2012/jan/24/turkey-warns-france-armenian-genocide> (accessed September 10, 2014; this article addresses the backlashes against both the 2001 French recognition of the Genocide and the 2012 law imposing criminal sanctions for denying it).

11 See Akçam, *A Shameful Act*, p. 221 (see Note 9 for full citation).

12 This was perhaps first identified at the “Whose Debt? Whose Responsibility?” symposium, Center for the Study of Human Rights, Worcester State University, USA, December 10, 2005.

13 See, for example, articles in the special issue on “The Global Reparations Movement” of *The Armenian Review* 53:1-4 (2012): Henry C. Theriault, “Introduction: The Global Reparations Movement”: 1-10; Jermaine McCalpin, “Reparations and the Politics of Avoidance in America”: 11-32; Kibibi Tyehimba, “Reparations to People of African Descent in the United States”: 33-51; Haruko Shibasaki, “Reparations and Comfort Women Victims of the Japanese Army”: 53-61; Diana Lenton, Walter Delrio, Pilar Pérez, Alexis Papazián, Mariano Nagy, and Marcelo Musante, “Argentina’s Constituent Genocide: Challenging the Hegemonic National Narrative and Laying the Foundation for Reparations to Indigenous Peoples”: 63-84; M. P. Giyose, “The Debt to the Indebted: Reparations, Odious Debt, and Their Global Implications”: 167-191; Patrick K. Sargent, “Debt Cancellation as Reparation: An Analysis of Four Cases”: 193-205.

mechanisms of oppression and destruction be reversed or changed. It is not enough to acknowledge that key aspects of our world have been shaped by forces of social and political destruction and oppression; these forces must be reversed or overcome. The reality of history is not revealed through what is written about it, but through its enduring and deep structural and material effects on the world as we know it. Addressing the long-standing problems of today in an adequate manner always must include addressing the legacy of historical wrongs: contemporary justice is historical justice. Reparations as a global process is necessary to rework the world away from destructive and oppressive structures and patterns, and toward the human rights-promoting global order pointed to in international human rights law and the best of our political and ethical thought.

Given the unlikelihood of an immediate universal reparative process, reparations for single groups can have an important role. Each repair shifts the global order more toward an overarching justness and builds momentum for additional reparations. Reparations for the Armenian Genocide are thus essential to a global justice process. Without it, global justice will be incomplete. Through it, as a preliminary case, it can provide a useful model for movements addressing other mass human rights violations. Reparations function as a deeper transformative process to address the profound harms inherent in the global status quo that has resulted from parallel and often interconnected processes of genocide and other mass harms as listed above. Each particular group reparations process is part of the above-described broader global process of repair—away from the world as structured by these oppressive and destructive forces and toward a fairer, human rights-respecting world order.¹⁴

Understanding the Armenian case as part of a geographically and historically broad set of mass human rights violations has an important implication for Turkey. Turkish progressive scholars and activists typically focus exclusively on this case. This is a laudable approach that prevents evasion of Turkish responsibility through emphasis on the many other genocides of recent centuries. In presenting this report, however, the AGRSG wishes to stress that the Armenian case is one among many and that Turkey, while responsible for reparations, is not exceptional in this regard. The list of perpetrators of genocide just in the 19th and 20th centuries is long; to name just some: the United States (Native Americans), Canada (Native Canadians), Australia (Tasmanians, Aborigines), Argentina (Mapuche and other groups), Germany (Herero, Holocaust), Soviet Union (Ukraine), Japan (Nanjing Massacre), Indonesia (“communists,” East Timor), Bangladesh (Bengalis), Paraguay (Ache), Khmer Rouge (Cambodia), Guatemala (Mayans), various South American countries (indigenous people of the Amazon region), China (Tibet), Serbians (Bosnian), Hutu (Rwanda), Russia (Chechnya), and Sudan (Nuba Mountains, Darfur). Only regarding the Holocaust and Native Canadians (very partially) have meaningful reparations been made. Far from this report and other efforts calling on Turkey to account for the Armenian Genocide representing an unfair demonization of Turkey, they provide an opportunity for Turkey to take the lead in establishing a new, more just global order, as a beacon for human rights.

3. TIMING OF FINAL REPORT

Release of the final AGRSG report at this point is especially timely for a number of reasons. Most obviously, 2015 is the 100th anniversary of the beginning of the Armenian Genocide. The year will sustain great interest among Armenians and Turks as well as generate significant global attention on the issue.

¹⁴ See Henry C. Theriault, “Against the Grain: Critical Reflections on the State and Future of Genocide Scholarship,” *Genocide Studies and Prevention* 7:1 (2012): 123-144 at 141-142.

As a result, 2015 will provide a unique opportunity for genuine movement on the issue. Furthermore, the fact that a century has passed since the Genocide began makes clear the need for decisive action to resolve its legacy now.

In the current period, there is also the opportunity to move beyond a focus on denial. For decades, the key concern regarding the Genocide was denial. The goal of most activism on the issue was recognition of the Genocide as a historical fact. Beyond the Wilsonian Arbitral Award, reparations were rarely mentioned at all, and a comprehensive approach to reparations was not part of official platforms of most Armenian organizations, political parties, and so forth. Things have now changed. In a development beginning more than a decade ago, the Armenian Genocide has gone from a controversial case undercut by an aggressive denial campaign, to a central reference case in the field of genocide studies and beyond.¹⁵ It is recognized the world over by responsible scholars, activists, and policy makers, and discussed routinely in comparative histories of genocide. It is now possible to shift the focus away from the secondary phenomenon of denial, and consider the actual Genocide itself and what needs to be done to address it.¹⁶ So long as denial remained central to consideration of the Genocide, reparations were marginalized. Now the focus has shifted, and reparation is on the agenda. This is confirmed by the fact that one of the main points of criticism of the 2009 diplomatic protocols,¹⁷ meant as a step to normalizing Armenia-Turkey relations, was the clause confirming the present border between the two countries as settled:¹⁸ if adopted by Armenia, this clause of the protocols would prevent the Armenian government from making territorial reparations claims. The explicit stipulation in the protocols that confirms the existing border between Armenia and Turkey also reveals how central reparations have been in Turkish thinking about the legacy of the Armenian Genocide. The attempt to prevent territorial reparations through the protocols suggests the Turkish government's fear that territorial claims will be seen to have validity.

Following reparations claims in the 1990s against Swiss banks for funds due to Holocaust victims and heirs,¹⁹ the 2000s saw lawsuits against insurance companies and banks for payment of claims and release of abandoned account funds to beneficiaries of victims of the Armenian Genocide.²⁰ These efforts generated attention in the Armenian community and popularized the idea of reparations for the Genocide. The suits focused on individual losses, but they helped open the door for public engagement with the much more comprehensive issue of group reparations.

15 This is reflected in a variety of ways, from the prominence of the Armenian case (comprising about 10 percent of all pages) in the standard reference work, *Encyclopedia of Genocide* (Israel W. Charny [ed.], 2 vols. [Santa Barbara, CA, USA: ABC-CLIO, 1999]) and its importance in Samantha Power's Pulitzer Prize-winning *A Problem from Hell: America and the Age of Genocide* (New York, NY, USA: Basic Books, 2002), to inclusion not just of courses on the Armenian Genocide but a professorial chair on it in Clark University's Strassler Center for Holocaust and Genocide Studies.

16 Henry C. Theriault, "From Unfair to Shared Burden: The Armenian Genocide's Outstanding Damage and the Complexities of Repair," *The Armenian Review* 53:1-4 (2012): 121-166 at 125-127.

17 The two protocols are the "Protocol on the Establishment of Diplomatic Relations Between the Republic of Turkey and the Republic of Armenia" and the "Protocol on Development of Relations Between the Republic of Turkey and the Republic of Armenia," http://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-tr/dv/1006_10_/1006_10_en.pdf (accessed September 16, 2012). The clause confirming the "existing border between the two countries" is in the former document.

18 "Poll: Over 90% of Armenian Americans Oppose Protocols," *Asbarez*, October 2, 2009, <http://asbarez.com/71343/poll-over-90-of-armenian-americans-oppose-protocols/> (accessed September 10, 2014).

19 See Michael J. Bazyler, *Holocaust Justice: The Battle for Restitution in America's Courts* (New York, NY, USA: New York University Press, 2003).

20 On these, see Hrayr S. Karagueuzian and Yair Auran, *A Perfect Injustice: Genocide and Theft of Armenian Wealth* (New Brunswick, NJ, USA: Transaction Publishers, 2009); "Heirs of Armenian Genocide Victims Vile Lawsuit against German Banks," *Asbarez*, January 17, 2006, <http://asbarez.com/53109/heirs-of-armenian-genocide-victims-file-lawsuit-against-german-banks/> (accessed September 10, 2014).

Official attitudes in the Armenian Republic have recently shown a new openness to the issue of reparations. Although the 2009 protocols supported strongly by Armenian President Serzh Sargsyan²¹ contain clauses according to which Armenia appears to relinquish any territorial claims and that present the history of the Genocide as being in doubt and in need of further study through a joint Armenian-Turkish historical sub-commission of the “intergovernmental bilateral commission” that is to be established through the protocols, statements by the President have shown support for reparations: (1) In defending the protocols against the concern about the existing border confirmation clause, the President stated, “The issue of the existing border between Armenia and Turkey is to be resolved through prevailing norms of the international law. The Protocols do not go beyond that.”²² Even though the statement could be seen as suggesting that the protocol clause is a legal method of determining the border, it acknowledges that the border is still an unsettled issue to be resolved through international legal mechanisms. (2) In a November 11, 2009 response to concerns raised by the president of the International Association of Genocide Scholars regarding the protocols, President Sargsyan stated that not only would “the fact of the Genocide itself . . . in no way become a subject of discussion within the agenda of the [bilateral] commission,” but the historical sub-commission’s goal should be “the elimination of the Genocide[s] consequences,” that is, a process of reparation.²³ (3) A year after this statement, on the 90th anniversary of President Woodrow Wilson’s Arbitral Award giving the first Armenian Republic legal title to extensive territories in what is now eastern Turkey (see Part 5 of this report), President Sargsyan went considerably further, describing the Arbitral Award as

one of the most momentous events for our nation in the 20th century which was called up to re-establish historic justice and eliminate consequences of the Armenian Genocide perpetrated in the Ottoman Empire. The Arbitral Award defined and recognized internationally Armenia’s borders within which the Armenian people, who had gone through hell of *Mets Eghern* [the Armenian Genocide], were to build their statehood.²⁴

The lands granted to the first Armenian Republic through the Arbitral Award were thus a method of reparation for the Genocide, addressing the injuries done by it and establishing justice and supported recovery of the Armenian people. The Arbitral Award gave “legal force” to “the aspiration of the Armenian people for the lost Motherland.”²⁵ President Sargsyan’s remarks further stressed that the fact those territories were lost to Armenians was the result of “perfidy and brutal force,”²⁶ not a legal process. He went further still, stating that “[s]cientific studies and analysis of that historic ruling are of utmost importance.”²⁷ Not only did this statement suggest that the Arbitral Award has legal relevance today, but that he considers re-examination of it—as provided in the present report—a very high priority. Other

21 Emil Sanamyan, “President Sargsyan Promotes Turkey Protocols in Diaspora Meetings,” *The Armenian Reporter*, October 6, 2009, <http://www.reporter.am/go/article/2009-10-06-president-sargsyan-promotes-turkey-protocols-in-diaspora-meetings--updated-> (accessed September 10, 2014).

22 Serzh Sargsyan, “Address of the President of Armenia to the People of the Republic of Armenia and All Armenians,” press release, October 10, 2009, <http://www.president.am/en/press-release/item/2009/10/10/news-751/&> (accessed September 10, 2014).

23 Serzh Sargsyan, “The Letter of the President Serzh Sargsyan to Prof. William Schabas, Ph.D., President, International Association of Genocide Scholars,” November 11, 2009, <http://www.president.am/en/press-release/item/2009/11/13/news-824/> (accessed September 14, 2014).

24 Serzh Sargsyan, “Address of President Serzh Sargsyan to the Conference Dedicated to the 90th Anniversary of Woodrow Wilson’s Arbitral Award,” Yerevan, Armenia, November 22, 2010, <http://president.am/en/press-release/item/2010/11/23/news-1316> (accessed September 10, 2014).

25 *Ibid.*

26 *Ibid.*

27 *Ibid.*

officials have also made clear the importance of reparations. For example, the Armenian Prosecutor General, Aghvan Hovsepyan, speaking at the 2nd Pan-Armenian Forum of Lawyers in Yerevan, emphasized that resolution of the Genocide issue requires going beyond recognition, to include compensation and land claims.²⁸

Greater public, scholarly, and policy interest in reparations generally and group reparations in particular is reflected in the emergence in recent years, for the first time, of academic symposia, conferences, and panels focusing on Armenian Genocide reparations, rather than historical issues and denial. Important examples include the global reparations conference of 2005,²⁹ which featured a paper on the Armenian Genocide,³⁰ the three 2010 programs held by the AGRSG, and the November 2010 conference devoted to the study of President Wilson's Arbitral Award,³¹ opened by President Sargsyan's remarks discussed in the previous paragraph. This was followed in December 2010 by the Armenian Ministry of Foreign Affairs' conference in Yerevan, "The Crime of Genocide: Prevention, Condemnation, and Elimination of Consequences," which included discussion of reparations.³² Among other programs considering reparations was the October 2011 "Presence of the Past in Legal Dimensions" symposium at the University of California Berkeley;³³ the February 2012 conference in Antelias, Lebanon, on Armenian Genocide reparations convened by the Armenian Apostolic Church Catholicos of the Great House of Cilicia, which brought together international law experts to consider legal avenues for pursuit of reparations;³⁴ the March 2013 international meeting of scholars hosted in Yerevan by the national Armenian Genocide Museum Institute to help plan 2015 activities, which emphasized reparations as an important topic;³⁵ and the above-mentioned July 2013 2nd Pan-Armenian Forum of Lawyers, entitled "Ahead of the 100th Anniversary of the Armenian Genocide," which resulted in a declaration that the main objective of Armenian lawyers related to the Genocide should be "elimination of consequences," that is, reparations.³⁶

Similarly, in the past five years, there has been a number of publications on reparations for the Armenian Genocide. Hrayr S. Karagueuzian and Yair Auron's *A Perfect Injustice: Genocide and Theft of Armenian Wealth* was published in 2009.³⁷ The book focused on unpaid insurance claims for decedents killed in the Genocide, with attention also on deposits of confiscated Armenian assets in foreign banks. The next two years saw two additional relevant works, Kevork K. Baghdjian's *The Confiscation of Armenian*

28 Aghvan Hovsepyan, "Recognition of the Armenian Genocide Shall Have a Perfect International-Legal Provision," speech at the 2nd Pan-Armenian Forum of Lawyers, "Ahead of the 100th Anniversary of the Armenian Genocide" Yerevan, Armenia, July 5-6, 2014, on July 5, <http://www.genproc.am/en/169/item/7894/> (accessed September 14, 2014).

29 See Note 12.

30 Henry C. Theriault, "Land-based Reparations: The Case of the Armenian Genocide and Its Comparison to Native American Land Claims," paper presented at the "Whose Debt? Whose Responsibility?" symposium, Center for the Study of Human Rights, Worcester State University, USA, December 10, 2005., though again the focus has been individual reparations. Meetings,"e, October 1-7. 2009, New York and Los Angeles,"

31 "90th Anniversary of Woodrow Wilson's Arbitral Award" conference, Yerevan State University, November 22, 2010.

32 See Aram Harutyunyan (ed.), *The Crime of Genocide: Prevention, Condemnation and Elimination of Consequences – Proceedings of International Conference, December 14-15, 2010* (Yerevan, Armenia: Ministry of Foreign Affairs of the Republic of Armenia, 2011), http://mfa.am/u_files/file/the_crime_of_genocide.pdf (accessed September 14, 2014).

33 "Presence of the Past in Legal Dimensions" symposium, University of California Berkeley Armenian Studies Program and Organizing Committee of the Congress of Western Armenians, University of California Berkeley, USA, October 2, 2011.

34 "The Armenian Genocide: From Recognition to Reparation" international conference, Armenian Catholicosate of Cilicia, Antelias, Lebanon, February 23-25, 2012.

35 "Armenian Genocide: Challenges on the Eve of the Centenary" international conference, State Commission on Coordination of the Events Dedicated to the 100th Anniversary of the Armenian Genocide, Ani Plaza Hotel Hall, Yerevan, Armenia, March 22-23, 2013.

36 Ministry of Diaspora of the Republic of Armenia, "2nd Pan-Armenian Forum of Lawyers Draws to an End," <http://www.mindiaspora.am/en/News?id=2577> (accessed September 14, 2014).

37 See Note 20.

*Properties by the Turkish Government said to be abandoned*³⁸ and Uğur Ümit Üngör and Mehmet Polatel's *Confiscation and Destruction: The Young Turk Seizure of Armenian Property*.³⁹ The former is the updated English translation of Baghdjian's 1987 French work on this topic,⁴⁰ and provides important estimates of wealth confiscated. The latter is a landmark historical study of the process of confiscation at the national and local levels and a detailing of the confiscated properties in two areas, Adana and Diyarbakir. Each of these works, especially *Confiscation and Destruction*, provides important historical accounts of the expropriations from Armenians. *The Confiscation of Armenian Properties* also offers some argumentation supporting the view that Turkey today has an obligation to return confiscated property. None of these works, however, offers analysis of reparations in a comprehensive manner, including both the range of losses and injuries and legal, political, and ethical perspectives on reparations.

More than one-third of the 2012 special issue on "The New Global Reparations Movement" of *The Armenian Review*⁴¹ was devoted to consideration of the Armenian Genocide through articles by two of this report's co-authors.⁴² And, in 2014, the *International Criminal Law Review* published a special issue on "Armenian Genocide Reparations" based on the papers from the 2012 Catholicosate conference. The articles treated the full range of international law relevant to reparations for the Armenian Genocide and examined the applicability of Turkish domestic law and the possibility of use of domestic cases in other countries.⁴³

These publications have attracted keen interest. This is especially relevant in the case of *The Armenian Review*, because both articles contained material from the 2009 AGRSG draft report that is included in this final report.

On December 14, 2011, the Armenian Genocide reparations issue finally reached the level of international policy, through passage of the U.S. House of Representatives Resolution 306 (H.Res. 306), which called for Turkey to return Christian church properties that had been confiscated, in the Genocide and after.⁴⁴ While this resolution concerned only a portion of expropriated Armenian property and did not call for political transfer of territories, it did focus on communal property—property at the core of Armenian identity, and of an institution that has been historically definitive of Armenian peoplehood. This advocacy for reparations was echoed in the April 24, 2013 public statement by His Holiness Karekin II, Supreme Patriarch and Catholicos of All Armenians, and His Holiness Aram I, Catholicos of the Great House of Cilicia, which called on Turkey to return confiscated church properties, as well as to engage in a broader reparative process.⁴⁵

38 Kevork K. Baghdjian, *The Confiscation of Armenian Properties by the Turkish Government said to be abandoned* (Antelias, Lebanon: Printing House of the Catholicosate of Cilicia, 2010).

39 Uğur Ümit Üngör and Mehmet Polatel, *Confiscation and Destruction: The Young Turk Seizure of Armenian Property* (London, UK: Continuum International Publishing Group, 2011).

40 See Note 3.

41 See Note 13.

42 Alfred de Zayas, "The Genocide Against the Armenians 1915-1923 and the Relevance of the 1948 Genocide Convention," *The Armenian Review* 53:1-4 (2012): 85-120; Theriault, "From Unfair to Shared Burden" (see Note 16). One of the other co-authors of the present report, Jermaine McCalpin, also published an article in the special issue, but focused on reparations to African Americans (see Note 13).

43 Special Issue: "Armenian Genocide Reparations," *International Criminal Law Review* 14:2 (2014).

44 U.S. House, 112th Congress, "Urging the Republic of Turkey to safeguard its Christian heritage and to return confiscated church properties," December 13, 2011.

45 His Holiness Karekin II and His Holiness Aram I, "We Urge Turkey to Return Confiscated Armenian Churches and Church Estates," public statement, April 24, 2013, <http://www.armenianchurch.org/index.jsp?sid=3&nid=2358&y=2013&m=3&d=24&lng=en> (accessed September 8, 2014).

Even in Turkey there are signs of increased openness to the issue. It is true that statements earlier this year by Turkish Prime Minister Recep Tayyip Erdoğan continue Turkish state resistance to a full and honest engagement with the Genocide,⁴⁶ and that governmental and academic denial efforts continue.⁴⁷ The recent “apology campaign” for the suffering of Armenians has been widely criticized as inadequate.⁴⁸ But at the same time, noteworthy steps are being taken. Perhaps the most significant conference event regarding reparations for the Armenian Genocide was not one of those already mentioned, but the inclusion of multiple panels on material reparations at the April 2010 conference on the 1915 Genocide held in Ankara, Turkey.⁴⁹ As evidenced by this, the authorship of Polatel,⁵⁰ and public statements,⁵¹ it is clear that some Turkish researchers, journalists, and others have begun to take the reparations issue very seriously.

4. REPORT OVERVIEW

The present report begins with background information on the Armenian Genocide (Part 1). It then provides:

- a schematic description of the harms inflicted on Armenians through the Genocide (Part 2),
- an outline of the different components appropriate to a comprehensive reparations package for a mass human rights violation (Part 3),
- a legal analysis of the Armenian Genocide reparations issue focused on international legal statutes, principles, and precedents (Part 4),
- an analysis of the post-Genocide treaty history as it relates to the issue of material reparations, with a focus on President Wilson’s Arbitral Award (Part 5),
- a philosophical examination of the ethical aspects of reparations, including analysis of various problems that arise in relation to reparations for mass human rights violations generally and/or the Armenian Genocide specifically (Part 6),
- development of a transitional justice reparations process that encourages participation by Turkish individuals and institutions and addresses the complexities of repair beyond material reparations (Part 7),
- a determination of the specific lands that constitute proper repair as well as options on what should actually comprise the land portion of a reparation package (Part 8),
- a calculation of the general monetary restitution due Armenians for the loss of life and suffering in the Genocide (Part 8),
- a framework for the calculation of specific movable material wealth expropriated through the Genocide and other economic impacts that require restoration or compensation (Part 8), and
- a detailed breakdown of other elements of a full reparations package (Part 8).

46 “Turkey Offers Condolences to Armenia over WWI Killings,” *BBC News Europe*, April 23, 2014, <http://www.bbc.com/news/world-europe-27131543> (accessed September 10, 2014).

47 M. Hakan Yavuz of the University of Utah is probably the most active academic denier in the United States. See, for example, M. Hakan Yavuz, “Orientalism, the ‘Terrible Turk’ and Genocide,” *Middle East Critique* 23:2 (2014): 111-126, http://www.academia.edu/7174427/Orientalism_the_Terrible_Turks_and_Genocide (accessed September 10, 2014).

48 Ayda Erbal, presentation, “From Democracy to Justice: Turks, Kurds, and Armenians in the 21st Century,” panel, Center for Holocaust and Genocide Studies, Ramapo College of New Jersey, November 11, 2010; Khatchig Mouradian, lecture, PH 290-01/SO 299-01/UR 430-01 “Violence, Peace, and Conflict Resolution,” class session, Worcester State University, USA, April 29, 2014.

49 “1915 within Its Pre- and Post-historical Periods: Denial and Confrontation” symposium, Ankara Freedom to Thought Initiative, Princess Hotel, Ankara, Turkey, April 24-25, 2010.

50 See Note 38.

51 See, for example, Ragip Zarakolu, presentation, “The Armenian Genocide: Intersections of Scholarship, Human Rights, and Politics,” Greater Boston Committee to Commemorate the Armenian Genocide, Armenian Cultural and Educational Center, Watertown, MA, USA, April 24, 2007; Temel Demirer, presentation, “The ‘Armenian Issue’: What Is and How It Is to Be Done?” panel, “1915 within Its Pre- and Post-historical Periods: Denial and Confrontation” symposium, Ankara, Turkey, April 25, 2010.

5. ASSYRIANS AND GREEKS

Though their demographic distributions in Asia Minor were partly different from that of Armenians, Assyrians and Greeks were subjected to genocide alongside Armenians, as part of an overarching genocidal process.⁵² Their people were killed, enslaved, and tortured, and their material resources and land stolen. While the trajectories of violence and expropriation employed against each group sometimes differed from the Armenian case, both groups have legitimate reparations claims. At the same time, the focus of the present report is solely on the Armenian case. Because of the AGRSG members' particular expertise and scholarly or policy-making histories, they have not presumed to analyze or make recommendations regarding the other cases; other scholars and policy analysts with expertise on the extensive specifics of those cases are far better situated for such work. Once such work is done, in conjunction with the AGRSG's report and the further work it will likely generate, it will also become possible to consider the relationships among the potential reparative processes for each of these groups.

6. CHALLENGES

This report was written in a way different from the usual manner of national and international governmental bodies or non-governmental organizations. Typically, reports produced by such entities avoid controversial issues to the extent possible and present a minimally provocative set of findings. The present report directly acknowledges and engages the difficult issues raised by reparations for mass human rights violations and the Armenian Genocide in particular. For instance, Subsection 6.2.4 addresses such questions as, How do the rights of Turkish people on formerly Armenian territory "Turkified" through the Genocide figure into the settlement of land claims? How does the resistance by some Turkish people, including those in positions of governmental and religious leadership,⁵³ to the Genocide affect the responsibility of Turkish individuals as citizens of the Turkish state and members of Turkish society today, especially those descended from the resisters?

Reparation is an aspect of justice but not a simple and easy principle of justice. Arguing that various forms of reparations should be made, as this report does, requires an intricate and nuanced concrete determination of precisely what those reparations should be. It is in the details that complex theoretical tensions emerge. This is due to the very nature of genocide and other destructive mass human rights violations. The destructiveness of genocide goes far beyond mass killing and even destruction of the social fabric of the victim group's existence. It ruptures the human world itself, at once fundamentally and permanently altering it and creating imbalances, tensions, and deteriorations that persist over time. These impacts become deeply embedded in the social fabric of perpetrator and victim groups. If reparations represent the best (and perhaps only) way to mitigate the harms done, they do so in an inherently conflicted and imperfect way. Because of its destructiveness, there is no way to correct for or fix the

52 On these cases, see, for example, Hannibal Travis, *Genocide in the Middle East: The Ottoman Empire, Iraq, and Sudan* (Durham, NC, USA: Carolina Academic Press, 2010), pp. 237-292; David Gaunt, *Massacres, Resistance, Protectors: Muslim-Christian Relations in Eastern Anatolia During World War I* (Piscataway, NJ, USA: Gorgias Press, 2006); Anahit Khosroeva, "The Assyrian Genocide in the Ottoman Empire and Adjacent Territories," in Richard G. Hovannisian (ed.), *The Armenian Genocide: Cultural and Ethical Legacies* (New Brunswick, NJ, USA: Transaction Publishers, 2007), pp. 267-274; George N. Shirinian (ed.), *The Asia Minor Catastrophe and the Ottoman Greek Genocide: Essays on Asia Minor, Pontos, and Eastern Thrace, 1912-1923* (Bloomington, IL, USA: The Asia Minor and Pontos Hellenic Research Center, 2012); Speros Vryonis, Jr., "Greek Labor Battalions in Asia Minor," in Richard G. Hovannisian (ed.), *The Armenian Genocide: Cultural and Ethical Legacies* (New Brunswick, NJ, USA: Transaction Publishers, 2007), pp. 275-290.

53 See, for instance, Racho Donef, "Righteous Muslims during the Genocide of 1915," November 2010, <http://www.atour.com/history/1900/20101105a.html> (accessed September 10, 2014); Raffi Bedrosyan, "The Real Turkish Heroes of 1915," *The Armenian Weekly*, July 29, 2013, <http://www.armenianweekly.com/2013/07/29/the-real-turkish-heroes-of-1915/> (accessed September 10, 2014).

effects of genocide: the victim group is always permanently harmed. At best, reparations can mitigate the harms, ensure that the victim group will recover as much as possible in the circumstances, and support the long-term viability of the group.

Adding to the difficulty of the situation is that, once a genocide is accomplished and members of the perpetrator population and others are made dependent on its results—for instance, Muslim refugees from persecution in Russia are settled onto lands once inhabited by Armenians killed through the Genocide—then any corrective mitigation will be disruptive. Reparations are inherently disruptive because they upset the post-genocide status quo—an illegitimate status quo that nevertheless has the appearance of legitimacy because it is the state of the world as it is. It is the seemingly reasonable though not morally right resistance to the disruption resulting from repair of harms that is the key force holding these harms in place and denying victims relief through repair.

One element of many post-genocide status quo situations bears special mention because it depends on an important political assumption of the modern world order. Territory incorporated into a state through external conquest and the destruction of the subjugated population, or expropriated internally through the destruction of an internal minority occupying territory within the state, is usually soon considered by international political and legal institutions and other states as an integral part of the perpetrator state, through the principle of “territorial integrity.” The principle provides an automatic justification for the current set of state borders, regardless of how they were produced and without regard to the claims of the victim group. Even when their establishment was through egregiously unjust, violent means, the territorial integrity principle protects the borders and thus the perpetrator state. Victim groups pursuing land reparations must therefore overcome not only the greater power of the perpetrator state (a power differential that allowed it to commit genocide and that was then augmented as a consequence of genocide), but one of the most fundamental principles of the modern world political system.⁵⁴

One result of the normalization of the post-genocide order is the appeal of many arguments against reparations. Because reparations are disruptive of the status quo and “justice” is mistaken as that which does not disrupt the status quo, there are apparently reasonable arguments against disruption. The status quo, however, should not be taken as a default situation, such that it needs no justification, while proposed changes to it require overwhelmingly convincing justification. Both status quo and proposed reparative changes are equally in need of justification. The issue should be decided by balancing these justifications against one another, not by determining whether there are possible reasonable objections to reparations without regard to the potentially greater objections to the status quo. If a proposed set of reparations is more justified than retaining the status quo, and no other set of reparations is yet more supported by evidence and logic, then the proposed reparations should be made. Only by recognizing that the status quo is not inherently legitimate is it possible to give possible reparative measures and the arguments supporting them a fair hearing.

That a set of reparations is justified does not mean that the disruptive consequences of implementing it can be ignored. Reparations should be limited to the extent they are consistent with justice for the victims. Yet, the burden for this limitation falls predominantly on the group making reparations, as heirs of the direct perpetrators and the party responsible for addressing the past harms. The messiness of a common post-genocide situation means that any solution will be complex and imperfect. The way to avoid this resulting messiness is not to avoid any attempt at resolution, but to try to address the mess

54 See Subsection 6.2.10 for a full analysis of and response to the problem posed by unconditional adherence to the principle of territorial integrity in the aftermath of genocide.

created by genocide. The path of reparations is not from an imperfect world to a perfect one, but from a very harmful status quo for victims to a less harmful and degrading situation for them. That the resulting state of affairs will inevitably be imperfect should not be used as an excuse to reject the very possibility of substantive repair, if it results in a better (yet still imperfect) state of affairs.

Recognition of the complexity of the reparations issue regarding the Armenian Genocide has not resulted in the AGRSG shying away from making specific recommendations about what reparations should be made. It has, however, resulted in a decision not just to treat the harms done and the reparations appropriate to them and why, but also to lay out a scheme for a political process that can transform the unjust status quo to a more just state of affairs (Part 7). The political process discussed would function not just as a means to the end of repair, but as a form of repair itself. Just as importantly, it would provide a rehabilitative process for a perpetrator society still mired in denial and in a genocide-produced relation of domination over the progeny of the victims. Advocating an Armenian Genocide Truth and Rectification Commission as the central mechanism of this transformation is risky, in that the recent flurry of truth commissions and truth and reconciliation commissions—even the often-touted South African Truth and Reconciliation Commission—have been criticized for excluding, displacing, or subverting the victims’ expectations of justice.⁵⁵ At the same time, as Margaret Urban Walker has pointed out, in certain cases, truth commissions have been important facilitators of a reparations process.⁵⁶ It is crucial not to assume an opposition between truth commissions and justice (reparative or otherwise), but instead to construct a truth commission model that promotes repair.⁵⁷ The AGRSG’s goal has been to reorient the general truth commission model to focus on reparations.

7. POTENTIAL MISREPRESENTATIONS AND MISUSES OF THE REPORT

Despite the emphasis on a comprehensive reparations process and package, there is danger of misuse or subversion of this report by those committed to preventing a just resolution of the legacy of the Armenian Genocide. Such subversion is likely to misconstrue the AGRSG’s support for a truth commission as a call for something like the flawed and failed “Turkish-Armenian Reconciliation Commission” (TARC)⁵⁸ or a “joint historical commission” between Turkish and Armenian scholars that was featured in the 2009 diplomatic protocols between the governments of Armenia and Turkey.⁵⁹ Yet, it is worth running that risk to present a new possible path.

Even beyond the truth commission component, there are those who are likely to misrepresent the openness of the report with regard to the complexities of the issue against its spirit, in order to rationalize

55 See Emily H. McCarthy, “Will the Amnesty Process Foster Reconciliation among South Africans,” in Roy L. Brooks (ed.), *When Sorry Isn’t Enough: The Controversy over Apologies and Reparations for Human Injustice*, “Critical America” book series (New York, NY, USA: New York University Press, 1999), pp. 487-491 at 488-490; Eric K. Yamamoto and Susan K. Serrano, “Healing Racial Wounds? The Final Report of South Africa’s Truth and Reconciliation Commission,” in Roy L. Brooks (ed.), *When Sorry Isn’t Enough: The Controversy over Apologies and Reparations for Human Injustice*, “Critical America” book series (New York, NY, USA: New York University Press, 1999), pp. 492-500 at 493-494, 496-497.

56 Margaret Urban Walker, “Restorative Justice and Reparations,” *Journal of Social Philosophy* 37:3 (2006): 377-395 at 384-386, 390.

57 See, for instance, Amy Gutman and Dennis Thompson, “The Moral Foundations of Truth Commissions,” in *Truth v. Justice: The Morality of Truth Commissions* (Princeton, NJ, USA: Princeton University Press, 2000): pp. 22-44.

58 See Theriault, “From Unfair to Shared Burden,” pp. 127-147 (see Note 16).

59 “Protocol on Development of Relations Between the Republic of Turkey and the Republic of Armenia,” http://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-tr/dv/1006_10_1006_10_en.pdf (accessed September 16, 2012).

the least possible reparations package. One approach would be to seize on the least challenging parts of the proposed reparations package and to ignore the more difficult, typically material, elements. The resulting process of repair would then be presented as being in accordance with the AGRSG's recommendations, whereas in reality it would be undermining them and rendering even those parts acted on ineffective as genuine reparations. Another approach would be to elide the difference between symbolic and material reparations in a way that produces the appearance but not actuality of substantial reparations. Such a tactic might manipulate the report's complex treatment of the symbolic-material relationship—in particular the point that symbolic repairs can, in effect, function materially as well—to claim that, for example, educational initiatives (see Part 3) satisfy the material requirements of reparations. It might also misrepresent in the other direction, by, for instance, asserting that a cash payment to Armenians is sufficient to satisfy the symbolic requirements of repair.⁶⁰ Some will likely take out of context and exploit the AGRSG's consideration of the contemporary inhabitants of Turkified Armenian land, in order to advance the goal of blocking land reparations. And, some will insinuate that the discussion of measures meant to ensure that corruption does not enter the distribution of reparations on the side of the victim group is evidence of the untrustworthiness of the victims and their reparations claims. Although each misrepresentation and exploitation is groundless, such rhetorical manipulation can make the achievement of justice for the victims yet more difficult.

Despite the price to be paid for it, without an honest appraisal of all aspects of the reparative process, the likelihood grows that the path laid out in this report—as for any path—will not achieve true repair. Rather than attempting to foreclose such abuse of this study, the AGRSG has opted for a format that will encourage responsible reflection and debate. It is only through an honest examination of every aspect of the reparations issue, including the fallibility of victims, that those concerned about an inherently unsettled issue such as reparations for genocide can hope to construct an approach that addresses it meaningfully, toward achievement of a just resolution.

8. IS REPAIR FEASIBLE?

The AGRSG recognizes that reparations claims and initiatives are typically met with skepticism by those outside the victim group, including individuals who are sympathetic to the suffering of the victim group. Reparations efforts are often rejected as unrealistic. The Armenian case is typical in this regard. There are those who would object to this report not on the grounds that its analysis is wrong or inadequate, but that the quest for reparations for the Armenian Genocide, especially a return of land, is very unlikely to succeed. This objection does not concern the moral rightness, necessity, or calculability of reparations, but rather the probability of success irrespective of these issues. It correctly recognizes the level of difficulty of any legal or political program toward reparations, given the geopolitical, economic, military, and other forces that support the status quo. Even the suspension of the Wilsonian arbitration decision is a lesson that power politics very often trump what is agreed upon, what is legal, and what is right. That is reality. The line of reasoning goes on: fairness has little role in international politics. Armenians face not just a much larger and more powerful Turkey, but its even more powerful geopolitically and business-minded supporters. Armenians must work within the constraints of reality, not base political programs on groundless expectations of an ideal world. Armenians before the Genocide paid the price of

⁶⁰ An apt example of such a tactic is the establishment of the Asian Women's Fund as a private charity to provide social service funding to former Comfort Women, without official recognition of or adequate apology by the Japanese government for the atrocity committed against these women. See Yoshimi Yoshiaki, *Comfort Women: Sexual Slavery in the Japanese Military During World War II* (New York, NY, USA: Columbia University Press, 2000), pp. 23-25.

bitter disappointment and vulnerability for holding on to fantasies of European intervention against the oppression they faced.

There is merit to this line of realist thinking. Armenians must recognize what they are facing and decide whether their efforts are better spent on political programs with greater prospects for success. At the same time, the desperation of the Armenian situation, particularly as regards the vulnerability and future viability of the Armenian political state and identity, means that *not* pursuing reparations is not an option for Armenians. What is more, the bleak picture (for victim groups) presented as reality by those advocating this “realist” line of thinking might not be accurate, and reality more complicated than this objection assumes. This line of thinking takes account of only the surface of the political, economic, and military reality, and reflects what is in fact a limited perspective on that reality characteristic of great powers in the face of challenges by weaker. First, it incorrectly views the current geopolitical and political state of affairs to be static. For instance, as discussed above, it sees international borders as unchanging and unchangeable, and so land reparations a nonstarter. Yet, throughout human history, including the 20th century, borders were frequently altered through legal political processes, such as decolonization, the breakup of the Soviet Union, and other progressive evolutions. Turkish states themselves have had highly fluid borders. In the 1980s, few anticipated or even could have imagined the imminent breakup of the Soviet Union, and yet by 1992 it was accomplished. It is always the case that the status quo appears to be the final and unbreakable reality—right until an historical rupture transforms it dramatically.

Geopolitical adjustments, such as altered lines of international alliance and affinity, changes in the global power hierarchy, and so forth, might also spur financial reparations as well as other aspects, such as apology. It is also possible that internal changes in Turkish politics, society, economics, and culture will play a role. As noted above, recently in Turkey there have emerged scholars and activists committed to material reparations to Armenians. Their reasons are sophisticated and grounded on what appears to be a sincere attempt to address the legacy of the Armenian Genocide. Especially through the political process laid out below, it is possible that they will have an impact on broader Turkish attitudes toward reparations.

Even if potential geopolitical and political changes are excluded from consideration, it is still the case that, if no attempt to achieve a just resolution for the Armenian Genocide is made, then there will be no just resolution. It is precisely when nothing is pursued that nothing happens. Surely full civil rights appeared as distant to many pursuing them in the United States in the 1950s, as racism was embedded in the very fabric of that society. Yet, in the next decade, activists and others achieved major strides forward. If the process was short of the ultimate goal of eliminating racist oppression, its positive effects were impressive. It is important also to keep in mind that those who wish the status quo maintained always tell those who wish to transform it that the changes they advocate are impossible, as those advocating land reparations for the Armenian Genocide face today. If this were really true, however, there would of course be no need to insist so strongly on the point. Quite the reverse is the case: achievable reparations can be prevented if those pursuing that outcome can convince those advocating for reparations that they are impossible and thus it is not worth making the effort. Only through that effort can it be determined whether reparations are possible. This report offers a pathway for that effort. The AGRSG operates with the view that, where law and ethics support change, however great, that change is possible.

TERMINOLOGY

The original version of this report has been prepared in English, and clarifications of terminology made within an English-language context.

While scholarly use of **“reparations”** and numerous related terms varies, the report attempts to be consistent with generally recognized legal usage of this term and terms related to it. **“Reparation”** and **“repair”** cover actions and payments that address the damages sustained by victims, which can range from human casualties to material losses and assaults on human dignity. Repair is not limited to restitution or financial or other material compensation, but can include symbolic acts that address harms done and inequalities (damages to status) introduced through those harms. This last distinction is important, as genocide does not only end lives or impose material losses on victims, but also adversely impacts the identity of the victim group by forcefully lowering their political and ethical status. Thus, raising the status of members of the victim group through a push for equality through a form of affirmative action can be a form of reparation and should be understood as a potential component of the meaning of the term.

While this suggests that reparation is a general term, **“redress”** is a broader term denoting the overall means of addressing a harm, which includes but is not necessarily exhausted by reparations for damages.

“Remedy” is a general category of various ways in which specific damages can be addressed in a manner that mitigates the impact of the given harms. It should be noted that only certain harms, such as monetary losses, can be reversed or balanced, but even then the full impact of the harm cannot be completely erased. Compensation for wrongful deaths through genocide is not a remedy for those deaths, but has some other role, such as functioning punitively or as a means of supporting reconstitution of the target group. **“Rectification”** is a specific correction of a harm that nullifies it. Similarly, **“restoration,”** or **“restitution in integrum,”** means providing to victims that which was lost; this could mean producing the approximate state of affairs that existed before a harm was done, although a new context might require something different. Hence, the restoration of dignity would not necessarily mean returning to a previous state, but rather constructing a new order in which victims are treated in a way that rehabilitates them and promotes their dignity. To avoid confusion with the fairly broad term **“Restorative Justice,”** however, justice conceived as return to the status quo ante will be referred to as **“Corrective Justice.”**

“Restitution” is the return of property wrongfully seized. **“Compensation”** is a monetary or other payment made to (partially) counterbalance a harm inflicted. **“Usufructus”** is an amount due to victims for the denial of use of property, including lands and cultural sites.

It is important to note that this report treats these terms as elements of an overall notion of “justice” that requires redress of harms. The section offering a general philosophical-ethical grounding for reparations assumes this basic notion of justice for harm and argues that it is common to the mainstream Western ethical systems typically invoked in contemporary legal and political discourse. While some ethical theories and applications might redefine the terms discussed here, including “justice” itself, as part of their philosophical conceptualization process, all sections of this report feature use of the terms in a manner consistent with their legal meanings. **“Justice”** then denotes the concrete outcome of a process of addressing injuries done to victims in a way that supports the various dimensions of their recovery and vindicates them—that is, emphasizes recognition of their human status and their security in it—and that imposes substantive responsibility on the perpetrator group.

“Victim progeny” and “perpetrator progeny” are those members of identity groups—in the present case, the Armenian and Turkish groups—that are successors of the victim and perpetrator generation(s), respectively. They need not be direct descendants, but in the present would (1) be generally viewed to share the group identity of the victims⁶¹ and (2) bear some part of the negative or positive consequences of the Genocide. Clearly, Turkish and Armenian identities and their relationship to the Armenian Genocide are very complex. For instance, many Armenians who ended up on territory controlled by Russia and then the Soviet Union, which is today’s Armenian Republic, were refugees from the Genocide, while many other refugees became part of the Armenian Diaspora, outside of the traditional Armenian homeland in the Ottoman and Russian Empires. Still other (Russian) Armenians were not directly targeted in the Genocide, but their political fate was determined by the subsequent Ataturk invasion. It is possible to argue that some Armenians in today’s Armenian Republic and pre-existing Diaspora should not be considered as part of the “victim progeny” for purposes of discussing the Armenian Genocide, because they do not trace their lineage to any of these segments of the Armenian community directly targeted in the Genocide. At the same time, the situation of the Republic of Armenia today vis-à-vis Turkey is in part a legacy of the Genocide and impacts many aspects of Armenian international politics as well as domestic life. Thus, it would be difficult to find in the Republic individuals not affected in some way by the legacy of the Genocide. As for Diasporan Armenians whose families predate the Genocide, to the extent they identify with Armenians in relation to the Genocide, they can be said to share that legacy. Yet, even this claim can be contested, given Ataturk’s invasion and destruction of the 1918 Armenian Republic and the contemporary Turkish Republic’s aggressive policies toward the Armenian Republic, including its active blockade of the Turkish-Armenian border since the early 1990s. Despite such complexities and exceptions, it is clear that in general most Armenians around the world have been affected in some substantive way by the Genocide.

Because there has been a long-running Turkish state that promotes a unifying Turkish identity, the situation of Turks is less complex. But, Turkey does have its own growing diaspora, which includes large “guest” communities in Germany and growing immigrant communities in the United States. Given that Turkish migrations have been for the most part post-Genocide, those outside the country still qualify as having Turkish identity in relation to the Genocide. At the same time, because the Turkish state is the main responsible party regarding reparations, those within the state boundaries, as well as with formal connections to the state, will bear the burden of reparations.

61 In practice, determining the group identity of a person can be quite complex, as explained regarding racial identity in Charles W. Mills, *Blackness Visible: Essays on Philosophy and Race* (Ithaca, NY, USA: Cornell University Press, 1998), pp. 41-66. While subjective identification and objective features such as ancestry usually coincide, when there is a conflict, the various factors must be weighed in relation to one another to make a determination, though it might be that some exceptional cases allow no unambiguous determination (*ibid.*, pp. 54-66).

PART 1: HISTORICAL BACKGROUND

Through the main phase (1915-1918) of the Armenian Genocide of 1915-1923,⁶² the Committee of Union and Progress (CUP; also referred to as Young Turk regime) controlling the Ottoman Empire's government attempted to "Turkify" the remaining empire that existed roughly on the territory of Asia Minor. The perpetrators (1) systematically murdered up to 1.5 million Armenians,⁶³ (2) raped, often numerous times, a vast number of women and children in the victim community, (3) kidnapped or otherwise forcibly transferred a great number of children to be "Turkified"⁶⁴ or to serve as domestic or sexual servants, (4) kidnapped or coerced a large number of women into sexual and/or domestic slavery, (5) forcibly converted numerous Armenian women to Islam, and (6) through murder of owners, theft, extortion, and government manipulations, expropriated virtually all of the individually and institutionally owned land, movable property, and financial assets of Armenians in the Ottoman Empire. Through genocide, the CUP effectively removed the Armenian presence from the 2,500-year-plus Armenian homeland in eastern Asia Minor.

The main phase of the Genocide was planned and directed by the CUP.⁶⁵ It used the broad apparatus of the Ottoman-Turkish state, from government administrators, national police, and the Ottoman Army, to local police and administrators. In addition, the CUP leadership created and directed the so-called "Special Organization" killing squads comprised of released violent felons and other such individuals to commit a significant amount of the direct killing, rape, and other torture. Finally, the government supported and encouraged members of the local populations, including Turks and Kurdish tribal groups, to participate in various aspects of the destruction of Armenians.

62 For general accounts of the main phase of the Armenian Genocide, see, for example, Richard G. Hovannisian, "The Historical Dimensions of the Armenian Question, 1878-1923," in Richard G. Hovannisian (ed.), *The Armenian Genocide in Perspective* (New Brunswick, NJ, USA: Transaction Books, 1986), pp. 19-41 at 19-34; Dadrian, *The History of the Armenian Genocide* (see Note 9), pp. xviii-355; Raymond Kévorkian, *The Armenian Genocide: A Complete History* (New York, NY, USA: I.B. Taurus, 2011); Permanent Peoples' Tribunal (ed.), *A Crime of Silence: The Armenian Genocide* (London, UK: Zed Books, 1985), pp. 10-131; Henry Morgenthau, *Ambassador Morgenthau's Story* (Reading, UK: Taderon Press/Gomidas Institute, 2000), pp. 193-257; Grigoris Balakian, *Armenian Golgotha: A Memoir of the Armenian Genocide, 1915-1918*, Peter Balakian and Aris Sevag (trans.) (New York, NY, USA: Albert A. Knopf, 2009); Katharine Derderian, "Common Fate, Different Experience: Gender-Specific Aspects of the Armenian Genocide, 1915-1917," *Holocaust and Genocide Studies* 19:1 (2005): 1-25; Matthias Bjørnlund, "'A Fate Worse Than Dying': Sexual Violence During the Armenian Genocide," in Dagmar Herzog (ed.), *Brutality and Desire: War and Sexuality in Europe's Twentieth Century* (New York, NY, USA: Palgrave Macmillan, 2009), pp. 16-58; Asya Darbinyan and Rubina Perroomian, "Children: The Most Vulnerable Victims of the Armenian Genocide," in Samuel Totten (ed.), *Plight and Fate of Children During and Following Genocide*, "Genocide: A Critical Bibliographic Review" book series, Vol. 10 (New Brunswick, NJ, USA: Transaction Publishers, 2014), pp. 57-83; Vahakn N. Dadrian, "Children as Victims of Genocide: The Armenian Case," *Journal of Genocide Research* 5:3 (2003): 421-437. For comprehensive sets of primary U.S. and German government documents on the Genocide, see Ara Sarafian (comp.), *United States Official Records on the Armenian Genocide, 1915-1917* (Princeton, NJ, USA: Gomidas Institute, 2004); Wolfgang Gust (ed.), *The Armenian Genocide: Evidence from the German Foreign Office Archives, 1915-1916* (New York, NY, USA: Berghahn Books, 2014). For presentation and analysis of representative survivor accounts of the Genocide, see Donald E. Miller and Lorna Touryan Miller, *Survivors: An Oral History of the Armenian Genocide* (Berkeley, CA, USA: University of California Press, 1993). A representative survivor memoir is Armen Anush, *A Passage Through Hell: A Memoir*, Ishkhan Jinbashian (trans.) (Studio City, CA, USA: H. and K. Manjikian, 2005).

63 Assyrians and Greeks were the other targets of the Ottoman-Turkish genocidal process. As explained in the Introduction, this report concerns the Armenian case for reparations, and the discussion of genocide in it focuses on Armenians. It is crucial to keep in mind, however, that Assyrians and Greeks suffered similar violence and destruction. It is estimated that at least 250,000 of about 550,000 Assyrians were killed by 1919 (Gaunt, *Massacres, Resistance, Protectors*, pp. 300-301 [see Note 52]; Travis, *Genocide in the Middle East*, pp. 261-262 [see Note 52]), but estimates run to 500,000 and even 750,000 (of a larger initial population) (Khosroeva, "The Assyrian Genocide," pp. 271-272 [see Note 52]). Shirinian cites estimates of Anatolian and Pontic Greek deaths totaling about 1 million (Shirinian, *The Asia Minor Catastrophe*, p. 37 [see Note 52]), while Travis provides different estimates from about 700,000 to more than 1 million (Travis, *Genocide in the Middle East*, pp. 286-287 [see Note 52]).

64 This action falls under Article II (e) of the United Nations Convention for the Punishment and Prevention of Genocide (U.N. General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, December 9, 1948, United Nations, Treaty Series, Vol. 78, p. 277 [A/RES/260]; hereafter, "U.N. Genocide Convention" or "Genocide Convention").

65 See Hovannisian, "The Historical Dimensions," pp. 19-34 (see Note 62); Dadrian, *The History of the Armenian Genocide* (see Note 9); Akçam, *A Shameful Act* (see Note 11); Dadrian and Akçam, *Judgment at Istanbul* (see Note 9).

The main phase of the Armenian Genocide was carried out in a four-part process. (1) In early 1915, an estimated 250,000 Armenian men who volunteered for or were conscripted into the Ottoman Army were disarmed and either worked to death as slaves or outright massacred. (2) On the night of April 23-24, 1915, hundreds of Armenian political, religious, and cultural leaders were rounded up in Istanbul, and nearly all were ultimately murdered. (3) Deprived of the agents and leaders of potential broad-based resistance, most remaining Armenians were deported from their villages or urban homes onto death marches toward the Syrian desert. Often the deportations began with massacres, tortures, and rapes—types of violence that continued during the deportations. Typically, any remaining non-elderly Armenian men and teenage boys were separated from the others and killed soon after, often after being marched out of the town or village. Then women, children, and the elderly were force-marched, usually with only what they could carry on their backs, for weeks and months at a time. Violent rape, sometimes to death, was incessant for women and girls. Turkish villagers, bands of Kurds, “Special Organization” forces, and Turkish gendarmes leading the caravans preyed on their Armenian victims. Many children were stolen and girls and women forced into “marriages” or sexual slavery. It is impossible and perhaps disrespectful to summarize the horrors of the deportations, but providing some idea is helpful. Deportees often were stripped naked by theft and acts of degradation, to march around the blistering heat of the desert. Thirst, starvation, and disease claimed many lives, as did bayonets, bullets, and bludgeons. (4) Those who reached the terminus of a deportation route might be thrown into underground caves and burned alive, gradually starved to death, or subjected to some other horror. Sports such as tossing living Armenian babies into the air and trying to catch them on bayonets, and slitting open pregnant women’s abdomens after bets on the gender of the fetus, are documented. As part of this process, Armenians’ immovable and movable property was confiscated by the government and/or looted by locals and the direct killers. Numerous eyewitnesses—Western missionaries, U.S. consular officials, Germans in various capacities, and others—recorded the horrors in consistent and comprehensive detail.⁶⁶

The second phase of the Armenian Genocide,⁶⁷ perpetrated in the 1919-1923 period by the emergent Turkish ultranationalist forces directed by Kemal Atatürk, consolidated the destruction of Armenians. This was accomplished through two primary means. The nationalist army invaded and conquered through brute military force the lands in today’s eastern Turkey that had been granted to the new Armenian Republic established in 1918. Second, the ultranationalists murdered many thousands of Armenians who attempted to return to their homes in today’s Turkey, and drove out tens of thousands of Armenians who had remained throughout the Genocide period, the most obvious case being the destruction of Smyrna, because a sustained Armenian presence there would have undermined the achieved results of the first phase of the Genocide and related genocides and expulsions, that is, the “Turkification” of Asia Minor through the destruction of Armenian and other non-Muslim minorities.

The ultranationalists under Atatürk also minimized the impact of attempts to try major perpetrators of the Armenian Genocide, by prematurely ending the judicial process begun in 1919 by the legitimate

66 See Sarafian, *United States Official Records* (see Note 62); Gust, *The Armenian Genocide* (see Note 62).

67 On the second phase of the Genocide, see, for example, Levon Marashlian, “Finishing the Genocide: Cleansing Turkey of Armenian Survivors, 1920-1923,” in Richard G. Hovannisian (ed.), *Remembrance and Denial: The Case of the Armenian Genocide* (Detroit, MI, USA: Wayne State University Press, 1999), pp. 113-145; Hovannisian, “The Historical Dimensions,” pp. 33-38 (see Note 62); Dadrian, *The History of the Armenian Genocide*, pp. 356-374 (see Note 9). While not specifically about the Genocide, Richard G. Hovannisian, *The Republic of Armenia*, 4 vols. (Berkeley, CA, USA: University of California Press, 1971-1996) offers much on the impact of the Genocide on Armenians in the 1918 Republic and the continuation of mass violence against Armenians, leading to significant destruction in and an end to the 1918 Republic (see especially Vol. I, “The First Year, 1918-1919,” pp. 126-155 and Vol. IV, “Between Crescent and Sickle: Partition and Sovietization,” pp. 180-292, respectively).

Ottoman government and by freeing numerous accused perpetrators prior to or after conviction.⁶⁸

It should be noted that, in 1894 to 1896, the prior Ottoman government, under Sultan Abdul Hamid II, systematically killed at least 100,000—and possibly more than 200,000—Armenians as part of a campaign to terrorize the Armenian population into continuing to accept a denial of their basic civil rights. This campaign of mass killing is considered by some to be part of the dynamic of the overall Armenian Genocide, and by others as a precursor event that should be considered separately. The focus of this proposal is the 1915-1923 Armenian Genocide.

⁶⁸ On the trials in Turkey, see Dadrian, *The History of the Armenian Genocide*, pp. 303-43 (see Note 9); Akçam, *A Shameful Act*, pp. 206-376 (see Note 9); Dadrian and Akçam, *Judgment at Istanbul* (see Note 9).

PART 2: THE HARMS INFLICTED THROUGH THE ARMENIAN GENOCIDE⁶⁹

There are two general categories of harms that were done through the Armenian Genocide: those whose impacts cannot be substantively remedied, and those that can at least be partially remedied through present action. The former might be characterized as “permanent damages,” and the latter as “material damages.” While permanent damage can be compensated, redress can only indirectly address the harm. For instance, to address mass killing, indirect redress might be helping the surviving population of the group to increase. The permanent damage category is comprised of (1) the deaths of Armenians through genocidal violence or the measures imposed, such as the deportation marches through the desert, that increased their vulnerability to attack and the likelihood of starvation, disease, physical failures such as heat exhaustion, injury, etc., and resulted in Armenian fatalities, (2) the suicides by Armenians in order to avoid certain rape, other torture, enslavement, and especially cruel processes of murder during the deportation marches and other parts of the Genocide, (3) the Armenian fetuses prevented from birth through the killing of their mothers, their destruction directly, or the imposition of conditions (starvation, physical exertion, etc.) that resulted in their deaths, (4) the potential Armenians prevented from birth who would have been born had their future parents not been murdered or otherwise prevented from having (Armenian) children, (5) and the physical suffering, permanent physical injuries, and pain and suffering of psychological trauma through rape and other sexualized and gender-based violence, other torture, deprivation, material and social degradation (being treated as an animal or object, for instance), enslavement, abuse, loss of family members (including children), loss of basic life security, loss of social structures and institutional supports, destruction of elements of cultural and religious identity, witnessing of horrific violence to others, and related experiences in the context of genocide.

This damage is permanent because there is nothing that can be done to bring to life those killed or prevented from being born, and nothing that can be done to erase the suffering experienced by those who died and those who survived, as if it had never occurred.⁷⁰ Permanence is sometimes the function of passage of time. For instance, while in 1918 or 1923 steps might have been taken to repair Armenian political and economic structures, so that the damage could be addressed before the destruction had compounding impacts on other aspects of Armenian existence, after nearly a century the destruction

69 Unless otherwise specified, the elements of this account of harms are developed from the analysis of Hovannisian, “The Historical Dimensions” (see Note 62); Dadrian, *The History of the Armenian Genocide* (see Note 9); Permanent Peoples’ Tribunal, *A Crime of Silence* (see Note 62); Morgenthau, *Ambassador Morgenthau’s Story* (see Note 62); Balakian, *Armenian Golgotha* (see Note 62); Derderian, “Common Fate, Different Experience” (see Note 62); Bjørnlund, “A Fate Worse Than Dying” (see Note 62); Darbin-yan and Peroomian, “Children: The Most Vulnerable Victims of the Armenian Genocide” (see Note 62); Dadrian, “Children as Victims of Genocide” (see Note 62); Sarafian, *United States Official Records* (see Note 62); Miller and Miller, *Survivors* (see Note 62); Marashlian, “Finishing the Genocide” (see Note 67); Hovannisian, *The Republic of Armenia* (see Note 67); Philip Mason Burnett’s account of the report of the Special Committee of the First Sub-Committee of the Paris Peace Conference’s Commission on Reparations of Damage (Valuation of Damage) (see Philip Mason Burnett, *Reparation at the Paris Peace Conference from the Standpoint of the American Delegation*, 2 vols., Vol. II [New York, NY, USA: Octagon Books, 1965], pp. 583-590); Kouymjian, “Confiscation of Armenian Property and the Destruction of Armenian Historical Monuments” (see Note 4); Karagueuzian and Auron, *A Perfect Injustice* (see Note 20); Baghdjian, *The Confiscation of Armenian Properties* (see Note 38); Üngör and Polatel, *Confiscation and Destruction* (see Note 39); as well as consideration of the basic facts of the situation of Armenians since the Genocide to the present day.

70 While such things as the passage of time, spirituality, and psychotherapy can and, at least regarding the first two, did help some survivors blunt the force of the trauma in their later lives, such things cannot change the facts of what the survivors suffered, nor of the effort required to deal with that suffering in their lives. In addition, for many, the pain of that suffering remained or has remained significant throughout their lives. See Anie Kalayjian and Siroom P. Shahinian, “Recollections of Aged Armenian Survivors of the Ottoman Turkish Genocide: Resilience Through Endurance, Coping, and Life Accomplishments,” *Psychoanalytic Review* 85:4 (1998): 489-504; Anie Kalayjian, Siroom P. Shahinian, E. L. Gergerian, and L. Saraydian, “Coping with Ottoman Turkish Genocide: An Exploration of the Experience of Armenian Survivors,” *Journal of Traumatic Stress* 9 (1996): 87-97; Miller and Miller, *Survivors*, pp. 155-181 (see Note 62).

has had such widespread consequences on Armenian peoplehood, identity, and viability that the effects cannot be fully and directly repaired.

Material damage consists of wealth taken or destroyed through the Genocide as well as the value actually built on, or that would have been built on, that wealth since the Genocide, including that which has accrued to the perpetrators and their progeny. There are three general types: (1) land and buildings either occupied after the deportation of Armenians or seized through coerced “sales” at partial value, and buildings destroyed through the Genocide or when held by non-rightful owners after the Genocide, (2) businesses, religious institutions, etc., and (3) movable wealth, including livestock, machinery, commercial products, commodities, raw materials for manufacturing, foodstuffs, furniture and other household goods, jewelry, artwork and other valuable artifacts, clothing and footwear, money, and other financial instruments. These types consisted of the personal property of individuals and families, commercial property of individual Armenians and groups of Armenians, Armenian Apostolic Church property (as well as the property of other Armenian denominations, such as Catholic and Protestant groups), and Armenian community property. The value of the loss of such property should be understood as the sum of the actual value at the time of expropriation, plus appreciation and usufructus compensation for revenues that would have subsequently been generated through use of that property, as well as compensation for denial of use of spiritual and other sites. It should be noted that, while most of the land seized by Atatürk by 1921 was land initially depopulated of Armenians in the main phase of the Armenian Genocide and then awarded to the 1918 Armenian Republic, Atatürk did seize additional land in the area of Kars, which had been an Armenian part of the Russian Empire, compounding the Armenian land loss.

Harm to property continues to increase in the present in another way as well, through the destruction of Armenian cultural property that has continued since 1923 right to the present. Such acts have been intended to perpetuate and secure the work of the Genocide by destroying memory—the historical proof of the more than 2,500-year presence of Armenians in Asia Minor. Available evidence indicates that the majority of the more than 2,000 religious sites in Turkey have been actively destroyed or allowed to fall into ruin.⁷¹ Besides the deliberate destruction, the Turkish government has allowed the decay and ruin of Armenian buildings by denying building permits needed to carry out repairs.⁷² The scale of devastation of the Armenian cultural heritage has been so widespread and systematic over the decades that these few examples should not be misinterpreted as minimizing the severity and thoroughness of the continuation of the Genocide.

The material damage category contains an additional loss, that of the productive work and wealth creation by Armenians killed or by probable Armenians prevented from being born through the Genocide, the reduced labor possible for survivors because of physical and/or psychological damage or the situational impact of the Genocide (such as poverty, reduced access to education, reduced access to jobs because of immigrant status, etc.), and the further wealth that would have been built on this created wealth. This loss has two dimensions. The simple dimension is the loss of the work that would have been done as fair-valued labor. The complex dimension is the increased value that would have accrued to

71 Kouymjian, “Confiscation of Armenian Property and the Destruction of Armenian Historical Monuments,” pp. 7-10 (see Note 4); Dickran Kouymjian, “The Destruction of Armenian Historical Monuments as a Continuation of the Turkish Policy of Genocide,” in Permanent Peoples’ Tribunal (ed.), *A Crime of Silence: The Armenian Genocide* (London, UK: Zed Books, 1985), pp. 173-185; Robert Bevan, *The Destruction of Memory: Architecture at War* (London, UK: Reaktion Books, 2007), pp. 55-59.

72 See, for instance, Christopher J. Walker (ed.), *Armenia and Karabagh* (London, UK: Minority Rights Group, 1991), pp. 38-39; Sait Çetinoğlu, “Foundations of Non-Muslim Communities: The Last Object of Confiscation,” *International Criminal Law Review* 14:2 (2014): 396-406.

affected Armenians had the above-mentioned material wealth served as an investment base for the labor of Armenians who fled, were killed, or were prevented from being born.

There is also a hybrid set of losses with material impacts yet that also transcend material calculation. First, many Armenians were used as slave laborers⁷³ or as domestic servants or sexual slaves.⁷⁴ Not only were such individuals denied compensation for their work, but they were denied free choice and often brutalized. Second, in addition to direct economic losses and their traceable future impacts, there is also the more complex impact on Armenian economic cohesion through the loss of commercial infrastructure development and intra-Armenian trade, commerce, and productive economic interdependence. Third, the mass killings, rapes, other torture, sexual and domestic enslavements, and forced assimilations of women and children in conjunction with the destruction or dramatic reduction of familial, community, political, educational, literary/artistic, and religious structures had a dramatic effect on (a) social and family cohesion and (b) Armenian identity and cultural cohesion. Stated simply, the maintenance of Armenian social and familial bonds in the post-Genocide era has taken far greater effort than before and far greater effort than is usual for typical ethno-national groups (such as the Turkish), while the preservation of Armenian identity/ies—let alone new development and enrichment of that/those identity/ies—has been precarious and difficult, with elements of Armenian identity already lost.

Third, the net impact of the psychological trauma of survivors has increased through time, even affecting victims' descendants. The overwhelming blow of the Genocide could not be absorbed by survivors without overflowing into successive generations. The great excess of immediate emotional trauma became embedded in the social relations and institutions developed or reconstructed in the Genocide's aftermath. Internalized in Armenian culture, family dynamics, and social structures, the shared trauma has dramatically affected the psychologies of later generations, as described in work on the intergenerational transmission of genocidal trauma.⁷⁵ The overall impact here should be considered "psychosocial" to emphasize that it is far more than a function of or problem for individuals. It should also be stressed that this impact is not "subjective," that is, relative to and meaningful only in reference to individual psychologies and perceptions, with the implication that it has no objective meaning. The kinds of trauma referenced here are the typical psychological results of the experience of mass violence by rational, psychologically normal individuals, and have impacts on the functioning of such individuals that can affect their social relations, economic productivity, political functioning, and more.

Finally, the reduced population, economic losses, land losses, individual physical and psychological damage, and weakened social structures have markedly reduced Armenian political power, security, and global and regional relevance. This reduction has its inversion in a net increase in Turkish political and military power resulting in part from the Armenian Genocide. While not all of Turkey's ascendancy since the Genocide is due to this one source, the Genocide has been a significant factor. It restructured Turkish society in a way conducive to the elite-driven, ultranationalist, militarist political culture with limited democratic potential. The destruction and suppression of Armenians and other minority groups not only undercut what could have been a healthy pluralism, but made easier the later repression of other groups such as Kurds, fostered a culture of fear of the state that has reduced dissent, and helped shape

73 Morgenthau, *Ambassador Morgenthau's Story*, pp. 200-201 (see Note 62).

74 Keith David Watenpaugh, "Origins of Armenian Genocide Denial and League of Nations' Humanitarianism, 1920-1922," *The Armenian Review* 52:1-2 (2010): 45-63 at 46, 51-52, 55, 57-58.

75 Levon Z. Boyajian and Haigaz M. Grigorian, "Reflections on Denial of the Armenian Genocide," *Psychoanalytic Review* 85:4 (1998): 505-516; Levon Boyajian and Haigaz Grigorian, "Psychosocial Sequelae of the Armenian Genocide," in Richard G. Hovannisian (ed.), *The Armenian Genocide in Perspective* (New Brunswick, NJ, USA: Transaction Publishers, 1986), pp. 177-185 at 181-184.

the governmental, police, and military institutions that have maintained power since. Turkey's relative power in the region has also been enhanced by its increased size due to the depopulation of historically Armenian lands and its re-seizure of those lands that had come under the control of the Armenian Republic, and by the absence of a much larger, substantial Armenian population and political entity on its eastern border.

An important factor in the post-Genocide consolidation and compounding of Armenian losses and Turkish gains has been each successive Turkish government's denial that the Armenian Genocide, as commonly understood, occurred.⁷⁶ There are four central impacts of the sustained denial campaign that are relevant to the reparations issue. First, for four decades, successive Turkish governments have committed tremendous governmental resources to create falsified historical studies and to pressure other governments, media outlets, and educational institutions and publishers around the world to reject the veracity of the Armenian Genocide as a historical event. The struggle against this nearly overwhelming political and economic force has required numerous individual Armenians and Armenian organizations and institutions to expend significant amounts of time, effort, and monetary funds. Second, this campaign of denial has prevented any reparative process during the nine decades since the Armenian Genocide. As a result, funds addressing permanent damages that should have long ago been paid have continued to accrue interest. In addition, the perpetrators' extensive material gains, particularly expropriated property and the resulting financial benefits to Turkey, have been allowed to stand and to continue to produce dividends for the Turkish state and society; these represent direct losses to survivors and their progeny. Denial has thus caused the just reparations package due Armenians to increase substantially.

Third, the denial campaign, while it has not succeeded universally and might eventually fail, has changed the definition of "resolution" for many Armenians and others concerned about the legacy of the Armenian Genocide. Political, academic, and civil society initiatives seeking a resolution have focused almost entirely on acknowledgment of the truth of the Armenian Genocide and a reduction of tension in relations between "Armenians" and "Turks," especially between the Armenian and Turkish states. Most political, social, and academic capital is spent to achieve one or both of these goals, with reparation receiving almost no attention or support.⁷⁷ Through denial, confusion has crept in, where for many people the impact of the actual events of the Armenian Genocide has been displaced by ongoing denial as the principal harm to be engaged. Acknowledgment and less tense Armenian-Turkish relations have replaced reparation—a major concern in the years after the Genocide⁷⁸—as what many involved see as the proper resolution of the Genocide issue. The actual violence, suffering, and damages of the Armenian Genocide are being excluded from consideration. The discontinuation of denial has become a final end in itself. Denial, however, is an ancillary to the Genocide itself, which prevents proper consideration of its legacy. Ending denial, however important in its own right, merely removes an obstacle to addressing the harms done by the Genocide. Ending denial does not actually address those injuries; this requires a reparative process.⁷⁹

76 For works on this issue, see Note 10.

77 As evidenced by the intense efforts to get agreement on the 2009 diplomatic protocols and the focus on TARC and other such initiatives, such as the work of the Turkish Economic and Social Studies Foundation (TESEV) and the Caucasus Institute (see, for example, Aybars Görgülü, Alexander Iskandaryan, and Sergey Minasyan, "Turkey-Armenia Dialogue Series: Assessing the Rap-prochement Process," working paper [Istanbul, Turkey: TESEV Publications, 2010]; Aybars Görgülü, SABIHA Senyücel Gündoğar, Alexander Iskandaryan, and Sergey Minasyan, "Turkey-Armenia Dialogue Series: Breaking the Vicious Circle," TESEV-Caucasus Institute joint report [Istanbul, Turkey: TESEV Publications, 2009]).

78 See, for example, Vahé Tachjian, "An Attempt to Recover Armenian Properties in Turkey through the French Authorities in Syria and Lebanon in the 1920s," *International Criminal Law Review* 14:2 (2014): 343-357.

79 This argument follows Theriault, "From Unfair to Shared Burden," pp. 127-129 (see Note 16).

Finally, genocide denial exacerbates and extends the psychosocial trauma discussed above. Genocide denial is a celebration of a genocide and reassertion of the power of the perpetrators and their progeny over survivors and their progeny.⁸⁰ It can reinvigorate the trauma caused directly by the genocide itself and inflict new traumas by publicly humiliating the victims and their progeny, undermining their credibility and fostering prejudicial attitudes against them, all of which have been evidenced in the Armenian case. In essence, denial extends the force of the direct acts of killing and other violence in time, making the impacts of these acts more immediate than they would otherwise have been in the absence of denial, particularly when it is produced through a large-scale campaign countenanced by major governments and educational institutions.⁸¹

Thus, denial increases the harms related to the Genocide done to Armenians. An end to denial is not repair of the harm done by the Genocide, but merely the ending of a subsequent, additional harm. Stopping it does not even address this additional harm, let alone the primary harms of the Genocide itself. Whatever its political and psychological motives, for reparative purposes, denial should be treated as a distinct harm requiring repair in its own right.

80 Israel W. Charny, “A Contribution to the Psychology of Denial of Genocide,” in *Genocide & Human Rights: Lessons from the Armenian Experience*, special issue of *Journal of Armenian Studies* 4:1-2 (1992): 289-306.

81 Henry C. Theriault, “Denial and Free Speech: The Armenian Case,” in Richard G. Hovannisian (ed.), *Looking Backward, Moving Forward: Confronting the Armenian Genocide* (New Brunswick, NJ, USA: Transaction Publishers, 2003): pp. 231-261 at 242-248.

PART 3: THE FIVE COMPONENTS OF REPARATIONS FOR GENOCIDE

Based on the harms characteristic of genocide, as illustrated in Part 2, five dimensions of comprehensive ethical, political, and legal redress for any genocidal complex can be asserted:

(1) There must be a judicial process to try all accused major perpetrators as well as to assess the responsibility of all other perpetrators, including those who participated at a local level or gave support that did not involve direct killing. As part of this process, there must be a legal and political decision about how many and what kinds of perpetrators to indict or otherwise sanction legally, and what alternative punishments and rehabilitative efforts should be made with perpetrators not put on trial. While primarily a punitive measure, prosecutions are reparative as well, by addressing the general need for a restoration of victims' sense that there is some measure of justice and security in the world. The impunity of perpetrators reinforces the feelings of powerlessness of victims and re-assaults their dignity by sending the message that their suffering is unworthy of the basic criminal justice that routinely meets much lesser, even trivial, crimes.

(2) The perpetrator group must return all expropriated individual and community land and all other available expropriated property, as well as compensate victims as individuals and a group for (a) death and suffering of persons, (b) material expropriations that cannot be directly rectified, including destroyed or expropriated businesses and economic structures and networks, (c) slave labor, and (d) loss of cultural, religious, and educational institutions and opportunities.

(3) The perpetrator group must fully admit all aspects of the genocide and its ethical wrongness through sincere apology, ensure meaningful knowledge and engagement with the history among its population, and promote substantial awareness of it globally.

(4) The demographic destruction of the victim group, its dispersion, and the physical and psychological effects of violence, dislocation, loss, community and family destruction, and intentional torment all permanently reduce the size, viability, and vibrancy of the victim group, typically reducing it to a shadow of what it was or would have become otherwise. Its identity and material survival become not merely difficult but permanent questions. Even with comprehensive material reparations, these impacts are still powerful and often debilitating. To address this, the perpetrator group must create conditions and take actions designed to support the reconstitution and long-term viability of the victim group. Not only would this require direct support to the victim group—financial investment and so forth—but, given its role in weakening the victim group dramatically, the perpetrator group should also assume responsibility for the future security of the victim group until such time as the victim group is fully capable of ensuring its own security and not subject to threat by the perpetrator group or others. The long-term survival of the victim group is the responsibility of the perpetrator group, which inflicted harms on the victim group intended to prevent that survival.

(5) The perpetrator society must go through a rehabilitative process to root out all elements of genocidal ideology, propaganda, institutional forms, etc., and to transform the society's attitudes toward the victim group, including elements of the perpetrator group's national, religious, ethnic, etc., identity(ies). This process should include engagement with the issues of gender domination and violence against women and children, where rape, sexual slavery, and other such acts, systematic or otherwise, played a role in

the genocide, as these can negatively affect gender relations in the perpetrator society.⁸² It is important to note that, unlike the other four components, rehabilitation is an outcome rather than a specific measure. The type of truth commission delineated in Part 7 of this report is the optimal pathway for a rehabilitative process. Implementation of each of the four other reparation components can also support rehabilitation.

These five elements of a comprehensive reparations program include three distinct forms: punishment, material repair, and symbolic repair. The focus regarding reparations is typically material, especially return of expropriated property and compensation for death and suffering. But it is important not to neglect the symbolic aspects of repair. Symbolic acts—recognition of the genocide and its wrongness, apology for it, etc.—are also important. Symbolic acts of repair are not insubstantial nor truly opposite from material acts. They include concrete actions that require significant material resources, such as major educational initiatives within the perpetrator society and beyond it. An essential criterion for the proper use of symbolic acts for reparation is that they correspond to harms that they can actually address. For instance, a symbolic act of apology does not repair expropriation of land. In this sense, to be appropriate and effective, symbolic acts of repair must be part of a broader framework of reparations that includes the material acts necessary to addressing material injuries.

Symbolic acts should not be taken as supplemental to material acts. While clearly the future survival of a victim group depends on the meeting of basic material needs first and foremost, without symbolic dimensions, a reparations package still does not repair the full damage of genocide. This is clear with consideration of financial compensation for death and suffering of those killed in and survivors of genocide. There has been a long-running debate about this issue, especially in regard to the Holocaust, but also other cases of mass violence, such as the Comfort Women system. The concern is that, if direct victims and/or victim groups accept payments as compensation for death and suffering, they will be equating the lives of victims with a sum of money and will in effect be accepting “blood money,” that is, trading the lives of those who died and the suffering of all victims for cash. They rightly point out that by its very nature money cannot offset the death and suffering of human beings. The response of the AGRSG is that this is true, but the compensation itself can be giving meaning when two conditions are met:

(1) The compensation must be explicitly identified as reparation for genocide.

(2) More importantly, the funding must have a substantial positive effect on the conditions of the victim group that supports recovery, however partial, and the long-term viability of the group and its identity.

The general point indicated here is that both material and symbolic reparations are inadequate alone: both are necessary for a reparative process to adequately address the harms of a mass human rights violation. Monetary compensation without a corresponding acknowledgment of what happened, why compensation is being paid, and what it signifies is simply a payoff, while an apology that is not supported by a genuine material commitment by the perpetrator group is mere rhetoric and cannot address the deep harms done by genocide. What is more, material repairs require concurrent symbolic measures in order to give the material elements meaning as reparations, while symbolic acts are empty discourse without corresponding material acts that anchor them and provide them suitable weight. With the exception of criminal prosecutions, the elements of reparations are not separable, but work as an integrated whole: it is not possible to act on some but not others, and still produce a genuinely reparative process.

82 Catharine A. MacKinnon, “Rape, Genocide, and Women’s Human Rights,” in Alexandra Stiglmayer (ed.), *Mass Rape: The War against Women in Bosnia-Herzegovina* (Lincoln, NE, USA: University of Nebraska Press, 1994), pp. 183-196 at 188.

PART 4: REPARATIONS IN INTERNATIONAL LAW AND THE ARMENIAN CASE

Reparations for mass human rights violations are legal matters covered by various international and human rights laws and legal principles, political matters, and ethical issues. Thus, they have a basis in law, in political principle, and ethical principle. Consideration of the legal issues regarding reparations is central to this report for four reasons. First, a formal legal case through international mechanisms is the most direct avenue open to the Armenian Republic or another party, such as an interested state or international organization, in pursuing justice for the Armenian Genocide. Second, a legal basis for reparations provides a compelling reason for reparations irrespective of political and geopolitical agendas and power dynamics. Ideally, the law stands above the political realities of a given situation and in theory is designed to protect and support the powerless in equal measure to the powerful. Thus, it is particularly well suited as a means of remedy for oppressed groups further weakened through mass violence such as genocide. Third, even if a legal case is not pursued, the potential for and validity of a legal case can provide support for a political reparations process. A legal justification for reparations not only makes a political solution more acceptable to the victim and perpetrator groups as well as outside parties, but it also can provide a conceptual groundwork and concrete elements for a political settlement. Fourth, while the views presented in this report on relevant international law have been contested based on differing interpretations of the law,⁸³ the challenges depend on technical issues such as the timing of legal instruments relative to the Armenian case. As a number of scholars have commented, international human rights law *should* support reparations for such an egregious violation of human rights; if it does not, this signals the imperfection of the law, not the unworthiness of the case.⁸⁴ This worthiness is attested by the extent to which international law, as presented in this section, does support reparations for a case such as the Armenian.

International human rights law has been developed in response to the moral outrage and devastating consequences of human rights violations. In international law, the general approach is “*restitutio in integrum*,” that is, return to the status quo ante, the state of affairs prior to the injury. This, of course, can seldom be achieved and is impossible in the case of genocide. But it expresses a general principle of law that requires an effective remedy, and there is an obligation pursuant to international law and to human rights law to reduce the impact of a harm through a combination of affirmative measures, including an investigation of the events, recognition of the crime, expression of regret for the crimes, punishment of the guilty, restitution of properties, compensation schemes, and rehabilitation of the victims and their descendants, since the psychological damage of genocide continues through several generations.

Pursuant to the general principle of law prohibiting “unjust enrichment,” it is necessary to deprive the perpetrators of the crime and the persons inheriting their rights of the fruits of genocide. Punishment of the guilty was ordered in Article 230 of the Treaty of Sèvres of 1920, and restitution and compensation to the victims were also foreseen in Article 144 of that treaty.⁸⁵ Had these provisions been carried out, this would not have balanced or undone the enormity of the Armenian Genocide, but would have vindicated the victims and their descendants and mitigated some of the harms done.

83 See, for instance, William A. Schabas, “Retroactive Application of the Genocide Convention,” *University of St. Thomas Journal of Law & Public Policy* 4:2 (2010): 36-59.

84 This was the position taken by many participants during the open discussion after the last panel on the second day of the “The Armenian Genocide: From Recognition to Reparation” conference (see Note 34).

85 Treaty of Peace with Turkey, Signed at Sèvres, August 10, 1920, United Kingdom, Treaty Series, Vol. 11 (1920), p. 1, <http://treaties.fco.gov.uk/docs/pdf/1920/TS0011.pdf> (accessed September 21, 2014) (hereafter, “Treaty of Sèvres”).

The general principle that reparations are appropriate and required in cases of gross human rights violation such as genocide has been affirmed by the United Nations General Assembly, in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.⁸⁶ This resolution includes various provisions supporting a right to reparation for gross human rights violations. Three of central importance to a case of genocide are contained in Section IX, “Reparation for Harm Suffered”:

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

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

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

- (a) physical or mental harm;
- (b) lost opportunities, including employment, education and social benefits;
- (c) material damages and loss of earnings, including loss of earning potential;
- (d) moral damage;
- (e) costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

There are three broad legal justificatory approaches to reparations for the Armenian Genocide: (1) use of contemporaneous and subsequent but retroactive international law on property seized and suffering and death inflicted unjustly on a victim group (without specific regard for the genocidal nature of the expropriation and violence), (2) application to the Armenian Genocide of the 1948 U.N. Genocide Convention, and (3) application of the 1920 Treaty of Sèvres’ provisions relevant to the Armenian Genocide.⁸⁷ This part of the report focuses on the first two; the next part deals with treaty issues.

86 U.N. General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, March 21, 2006 (A/RES/60/147).

87 Treaty of Sèvres, Articles 88-91 (see Note 85).

4.1 GENERAL LEGAL CONSIDERATIONS FOR PROPERTY SEIZURE WITHIN THE CONTEXT OF HUMAN RIGHTS ABUSE

The general principle of law *ubi jus ibi remedium* (“where there is law, there is a remedy”) already indicates that a crime must be repaired, whether a crime under common law, a war crime, or a crime against humanity. This is a first and fundamental legal basis for reparation. Moreover, international law is clear that the illegitimate expropriation of movable and immovable property through or as a consequence or part of human rights abuse is not acceptable. A general principle of international law stipulates that a state is responsible for injuries caused by its wrongful acts and bound to provide reparation for such injury.⁸⁸ The Permanent Court of International Justice enunciated this principle in the *Chorzow Factory* case as follows: “It is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation.”⁸⁹ This requirement to repair depends on the violation of an obligation of the perpetrator state. While at that time there was no explicit international legal instrument regarding genocide, the Ottoman Empire had assumed the obligation not to harm Armenians, as confirmed in multiple ways. First, the Empire had accepted different agreements starting in the mid- to late-19th century that required it to stop its widespread human rights violations against Armenians.⁹⁰ Second, after World War I, the Empire held trials of some of the major genocide perpetrators, confirming that, by its own understanding, the destruction of Armenians violated the laws of the Ottoman Empire.⁹¹ Third, in the post-war aftermath, an Ottoman leader stressed that what was done to Armenians was a violation of the “rules of law and humanity,” to which Turkey and every other state is bound.⁹²

The importance of this avenue of analysis is two-fold. First, it sidesteps the issue of whether what happened to Armenians was genocide or not. While the violence clearly fits the U.N. definition of genocide, this approach is immune to many Armenian Genocide denial arguments, as it is difficult to deny that Armenian property was expropriated and Armenians were victimized by widespread human rights abuses.⁹³ Second, it sidesteps the issue of whether the U.N. Genocide Convention can be retroactively applied to require reparations from the Turkish Republic today. At the same time, this approach should not be seen as an alternative to the Genocide Convention approach, but rather a complement, which further strengthens the overall legal imperative for Armenian Genocide reparations.

88 Malcolm Shaw, *International Law* (Cambridge, UK: Cambridge University Press, 1977), p. 481: “A breach of an international obligation gives rise to a requirement for reparation”; Wladyslaw Czapinski, “State Succession and State Responsibility,” *Canadian Yearbook of International Law* 28 (1990): 339-358 at 339: “State responsibility is a legal relationship created through the violation of an international legal obligation by a State; that violation gives rise to the duty to compensate for any resulting damage, one of the oldest principles of international law and universally recognized in international practice”; Karl Zemanek, “Responsibility of States: General Principles,” in Rudolf Bernhardt (ed.), *Encyclopaedia of Public International Law*, 4 vols., Vol. 4 (Amsterdam, The Netherlands: North-Holland, 2000), pp. 219-229; Mohammed Bedjaoui, “Responsibility of States: Fault and Strict Liability,” in Bernhardt (ed.), *Encyclopaedia of Public International Law*, Vol. 4, pp. 212-216; Irwin Cotler, “Confiscated Jewish Property: The Holocaust, Thefticide, and Restitution: A Legal Perspective,” *Cardozo Law Review* 20:2 (1998): 601-624 at 610.

89 *Case concerning the Factory at Chorzów (Claim for Indemnity) (Germany v. Poland)*, September 13, 1928, Permanent Court of International Justice, Merits, Collection of Judgments, Series A, No. 17, p. 29; Ignaz Seidl-Hohenveldern, “German Interests in Polish Upper Silesia Cases,” in Rudolf Bernhardt (ed.), *Encyclopaedia of Public International Law*, 4 vols., Vol. 2 (Amsterdam, The Netherlands: North-Holland, 1995), pp. 550-553.

90 For discussion of these breaches and how this supports Turkish state responsibility for the Genocide, see Marco Roscini, “Establishing State Responsibility for Historical Injustices: The Armenian Case,” *International Criminal Law Review* 14:2 (2014): 291-316 at 303-308.

91 Dadrian, *The History of the Armenian Genocide*, pp. 303-343 (see Note 9); Akçam, *A Shameful Act*, pp. 206-376 (see Note 9); Dadrian and Akçam, *Judgment at Istanbul* (see Note 9).

92 Dadrian, *The History of the Armenian Genocide*, p. 319 (see Note 9).

93 See, for example, Üngör and Mehmet Polatel, *Confiscation and Destruction* (see Note 39).

An important focus of relevant international law is on the obligation of other states not to recognize illegal property seizures. On December 12, 2001, the U.N. General Assembly adopted Resolution 56/83 concerning the Articles of the International Law Commission (ILC) on the Responsibility of States for Internationally Wrongful Acts.⁹⁴ Article 41(2) stipulates that “no State shall recognize as lawful a situation created by a serious breach” of an obligation arising under a peremptory norm of general international law (*jus cogens*). Such are the norms from which no derogation is permitted under international law, for example, the prohibition of aggression, slavery, slave trade, racial discrimination, and apartheid. The ILC has also recognized that the prohibitions of genocide and of crimes against humanity are *jus cogens*. Accordingly, the consequences emanating from a violation of *jus cogens*, including the expropriation of land (confiscation of churches, monasteries, private property, etc.) and movable property must not be recognized by other states. Their recognition or acquiescence by other states violates international *ordre public*.⁹⁵

One necessary consequence is the non-recognition of Turkey’s continued occupation of property expropriated through the Armenian Genocide, including the Armenian cultural heritage in the form of churches, monasteries, and other public buildings of the Armenian Apostolic, Catholic, and Protestant Churches and of the Armenian people. Besides land and buildings, other categories of private property, including holdings in banks and rights under insurance policies, are also subject to restitution. This is the particular strength of this approach—its focus on specific property unjustly expropriated. At the same time, on its basis reparation claims can also be formulated for the loss of life, for the pain and suffering inflicted on the murdered victims, and for the psychological trauma and dislocation endured by survivors and by the progeny of survivors. The issues of how these repairs might be made in the present time and of how these principles apply to the political transfer of territories will be discussed in Part 8 of this report.

Recent developments in the United Nations with regard to the right of restitution for victims of gross violations are relevant to Armenian claims. This right to restitution is affirmed in the final report of the Special Rapporteur of the U.N. Sub-Commission on the Promotion and Protection of Human Rights, Awn Shawkat Al-Khasawneh, on the Human Rights Dimensions of Population Transfers.⁹⁶ It is affirmed in the Declaration on the Illegality of Population Transfers appended thereto that there is a right of the victims to return to their homelands and to compensation and restitution. This right to restitution is further affirmed in U.N. Sub-Commission on the Promotion and Protection of Human Rights’ Resolutions 2002/30⁹⁷ and 2005/21,⁹⁸ and in the famous *Pinheiro Principles* of 2005.⁹⁹ These principles are based on the recognition

94 International Law Commission, *Titles and Texts of the Draft Articles on Responsibility of States for Internationally Wrongful Acts Adopted by the Drafting Committee on Second Reading*, July 26, 2001 (A/CN.4/L.602/Rev.1).

95 These points follow Stefan Talmon, “The Duty Not to ‘Recognize as Lawful’ a Situation Created by the Illegal Use of Force or Other Serious Breaches of a *Jus Cogens* Obligation: An Obligation Without Real Substance?,” in Christian Tomuschat and Jean-Marc Thouvenin (eds.), *The Fundamental Rules of the International Legal Order: Jus Cogens and Obligations Erga Omnes* (Leiden, The Netherlands: Koninklijke Brill NV, 2006), pp. 99-125 at 99-101, 103. As explained by Talmon, as early as “11 March 1932, in the wake of the Manchurian conflict between Japan and China, the Assembly of the League of Nations declared that ‘it is incumbent upon the members of the League of Nations not to recognize any situation, treaty, or agreement which may be brought about by means contrary to the Covenant of the League of Nations or to the Pact of Paris’” (p. 101). In addition, the United Nations has called upon members not to recognize illegal states such as Rhodesia, the South African Bantustans, and the Turkish Republic of Northern Cyprus (p. 101).

96 U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Freedom of Movement: Human Rights and Population Transfer: Final Report of the Special Rapporteur, Mr. Al-Khasawneh*, June 27, 1997 (E/CN.4/Sub.2/1997/23).

97 U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Resolution 2002/30 on the Right to Return of Refugees and Internally Displaced Persons*, August 15, 2002 (E/CN.4/Sub.2/RES/2002/30).

98 U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Resolution 2005/21 on Housing and Property Restitution for Refugees and Displaced Persons*, August 11, 2005 (E/CN.4/Sub.2/RES/2005/21).

99 U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Principles on Housing and Property Restitution for Refugees and Displaced Persons: Final Report of the Special Rapporteur, Paulo Sérgio Pinheiro*, June 28, 2005 (E/CN.4/Sub.2/2005/7).

that a state cannot keep the fruits of its crimes. A state that has perpetrated ethnic cleansing or committed genocide cannot be allowed to be unjustly enriched with the properties of those murdered.

Beyond the United Nations, the same principle holds. For instance, regarding northern Cyprus, Turkey's possession of Greek Cypriot churches and properties has been repeatedly condemned by the European Court of Human Rights, notably in the 1996 and 1998 judgments in the *Loizidou v. Turkey*¹⁰⁰ case and in the Judgment of May 10, 2001, in the *Cyprus v. Turkey* case.¹⁰¹

4.2 APPLICABILITY OF THE UNITED NATIONS GENOCIDE CONVENTION

The U.N. Genocide Convention is a second legal basis that justifies reparation. The Genocide Convention is particularly well suited to address as a reparations issue the death and suffering inflicted on Armenians as well as expropriated property. In this sense, it overlays but somewhat reverses the emphasis of general international law on the expropriation of property through human rights abuse as just discussed. Relevant to the issue of reparations, it is crucial to stress that one aspect of the Convention is prevention through means such as deterrence. Not only does this entail the importance of prosecuting perpetrators of past genocides, but it also proscribes the perpetrator group from benefitting from the crime by keeping its fruits. Confiscated Jewish properties have thus been returned to the survivors or to their heirs, or appropriate compensation has been paid. This illustrates the principle that, together with the recognition of genocide as a crime under international law, there is also an international duty to undo its effects and to grant restitution and compensation to the victims and their heirs.

International law cannot be taken à la carte. What applies for the Holocaust also must apply for the Armenian Genocide and other cases of genocide. The 1948 Genocide Convention was adopted three years after the Holocaust. No one would doubt that it applies to the Holocaust, even if the term was coined by Raphael Lemkin only in 1944,¹⁰² and the Genocide Convention was adopted in 1948, that is, *ex post facto*. Does the Convention also apply to the Armenian Genocide, and other cases?

What is crucial to affirm is that Armenian rights did not originate with the Genocide Convention; this Convention merely confirmed existing international law and thereby strengthened the pre-existing rights of Armenian victims.

There is no valid argument in international law that would allow the exclusion of Armenians from the application of the Convention. Nor is there any argument that would allow discriminating against Armenians in the processing of their claims for restitution. Any such discrimination would be contrary to general principles of law, and in particular to the human rights prohibition of discrimination contained in Article 26 of the International Covenant on Civil and Political Rights.¹⁰³

100 *Lloizidou v. Turkey*, December 18, 1996, European Court of Human Rights, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58007#{%22itemid%22:\[%22001-58007%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58007#{%22itemid%22:[%22001-58007%22]}) (accessed September 16, 2014).

101 *Cyprus v. Turkey*, May 10, 2001, European Court of Human Rights, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59454#{%22itemid%22:\[%22001-59454%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59454#{%22itemid%22:[%22001-59454%22]}) (accessed September 16, 2014).

102 Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, 2nd ed., "Foundations of the Laws of War" book series (Clark, NJ, USA: Lawbook Exchange, 2008), pp. 79-90.

103 U.N. General Assembly, *International Covenant on Civil and Political Rights*, December 19, 1966, United Nations, Treaty Series, Vol. 999, p. 171 (A/RES/6316), <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf> (accessed September 16, 2014).

4.2.1 The Genocide Convention Is Declaratory of Pre-Existing International Law

The Genocide Convention does not create a new offense in international criminal law, but is declaratory of pre-existing international law. As reflected in the relevant provisions of the Treaty of Sèvres, particularly Articles 226-230 and 235-236, the doctrine of state responsibility for genocide and crimes against humanity already existed at the time of the Ottoman massacres against the Armenians. Such state responsibility entailed both an obligation to provide restitution and/or compensation.¹⁰⁴ The norms were clear. Non-compliance with said norms by Turkey does not mean that the norms were meaningless; it only means that effective international enforcement machinery did not exist yet. Even today, international law is violated with impunity because the enforcement mechanisms remain largely ineffective.

At the end of World War II, the victorious Allies, pursuant to the London Agreement of August 8, 1945,¹⁰⁵ adopted the Charter of the International Military Tribunal,¹⁰⁶ which provided in Article 6(c) for the prosecution of the crime of genocide (“murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population”) as an international crime within the newly formulated offense of “crimes against humanity.” A key passage in the *History of the United Nations War Crimes Commission* shows that the Genocide against the Armenians was very much in the minds of the drafters of the London Agreement:

The provisions of Article 230 of the Peace Treaty of Sèvres were obviously intended to cover, in conformity with the Allied note of 1915 . . . offences which had been committed on Turkish territory against persons of Turkish citizenship, though of Armenian . . . race. This article constitutes, therefore, a precedent for Articles 6(c) and 5(c) of the Nuremberg and Tokyo Charters, and offers an example of one of the categories of “crimes against humanity” as understood by these enactments.¹⁰⁷

On December 9, 1948, the U.N. General Assembly adopted the Genocide Convention, in which the parties “confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”¹⁰⁸ Here the statement uses the term “confirm”—not “declare” or “proclaim”—meaning that it recognizes that the illegality of genocide was already an international legal norm. If its intent was to recognize the Nuremberg prosecutions, where the term was developed and made illegal after many of the prosecuted acts were committed, then this confirmation would have to extend to every other case of genocide prior to the adoption of the U.N. Genocide Convention, at least where such genocides were already illegal under existing international law.

104 For instance, in the context of international armed conflict, Article 3 of the 1907 Hague Convention IV on land warfare stipulates: “A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces” (Convention [IV] Respecting the Laws and Customs of War on Land, Article 3, in James Brown Scott (ed.), *The Hague Conventions and Declarations of 1899 and 1907* [New York, NY, USA: Oxford University Press, 1915], pp. 100-106 at 103, <https://ia700404.us.archive.org/35/items/hagueconventions00inteuoft/hagueconventions00inteuoft.pdf> [accessed September 20, 2014]).

105 United Nations, *Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis*, August 8, 1945, United Nations, Treaty Series, Vol. 82, p. 280, <http://www.refworld.org/docid/47fd34d.html> (accessed September 16, 2014) (hereafter, London Agreement).

106 *Ibid.* (Hereafter, “Nuremberg Charter” or “Charter of the International Military Tribunal.”)

107 United Nations War Crimes Commission (comp.), *History of the United Nations War Crimes Commission and the Development of the Laws of War* (London, UK: His Majesty’s Stationery Service, 1948), p. 45.

108 Genocide Convention, Article I.

In the classic Oppenheim/Lauterpacht treatise on international law, Professor Hersch Lauterpacht noted that the Convention not only was forward-looking but had a primary retrospective significance:

It is apparent that, to a considerable extent, the Convention amounts to a registration of protest against past misdeed of individual or collective savagery rather than to an effective instrument of their prevention or repression. Thus, as the punishment of acts of genocide is entrusted primarily to the municipal courts of the countries concerned, it is clear that such acts, if perpetrated in obedience to national legislation, must remain unpunished unless penalized by way of retroactive laws. On the other hand, the Convention obliges the Parties to enact and keep in force legislation intended to prevent and suppress such acts, and any failure to measure up to that obligation is made subject to the jurisdiction of the International Court of Justice and of the United Nations. With regard to the latter, the result of the provision in question is that acts of commission or omission in respect of genocide are no longer, on any interpretation of the Charter, considered to be a matter exclusively within the domestic jurisdiction of the States concerned. For the Parties expressly concede to the United Nations the right of intervention in this sphere. This aspect of the situation constitutes a conspicuous feature of the Genocide Convention—a feature which probably outweighs, in its legal and moral significance, the gaps, artificialities, and possible dangers of the Convention.¹⁰⁹

While this statement might be interpreted as saying that only after the entry into force of the Convention could laws in states that have committed genocide be developed that retroactively make the acts of genocide illegal, the subsequent lines distinguish the requirement that, as of the entry into force of the Convention, states then had an obligation to enact and keep in force legislation prohibiting genocide.¹¹⁰ Not doing so rendered states culpable in a distinct way from the pre-Convention situation of states maintaining laws that made genocide legal. Thus, the prior lines must apply to conditions before the entry into force of the Convention.

Moreover, in the view of leading publicists in public international law, the Genocide Convention of 1948 was not constitutive of a new offense in international law termed “genocide,” but was declaratory of the pre-existing crime;¹¹¹ in other words, the Convention merely codified the prohibition of massacres, which was already binding international law. In this sense, the Genocide Convention is necessarily both

109 L. Oppenheim, *International Law*, 8th ed., H. Lauterpacht (ed.), 2 vols., Vol. I (London, UK: Longman, Greens & Co., 1955), p. 751. The author adds, “It is clear that as a matter of law the Genocide Convention cannot impair the effectiveness of existing international obligations.”

110 Genocide Convention, Article V.

111 Nehemiah Robinson, *The Genocide Convention: A Commentary* (New York, NY, USA: Institute of Jewish Affairs, 1960); Leo Kuper, *International Action Against Genocide* (London, UK: Minority Rights Group, 1984); Hans Heinrich Jescheck, “Genocide,” in Bernhardt (ed.), *Encyclopaedia of Public International Law*, Vol. 4, pp. 541-544 (see Note 88); Dieter Blumenwitz, *Rechtsgutachten über die Verbrechen an den Deutschen in Jugoslawien 1944-48* (Munich, Germany: Verlag der Donaueschwäbischen Kulturstiftung, 2002), pp. 26-27, where Professor Blumenwitz affirms the retroactive application of the Genocide Convention to the killing of some 200,000 civilians, members of the ethnic German minority in Yugoslavia, by Tito partisans and militia in 1944-1945; Christian Tomuschat, “Die Vertreibung der Sudetendeutschen. Zur Frage des Bestehens von Rechtsansprüchen nach Völkerrecht und deutschem Recht,” *Zeitschrift für Ausländisches öffentliches Recht und Völkerrecht* 56:1-2 (1996): 1-69; Felix Ermacora, *Die Sudetendeutschen Fragen* (Munich Germany: Langen Muller, 1992), p. 178, where Professor Ermacora affirms the retroactive application of the Genocide Convention to the killing of some 250,000 civilians, members of the German ethnic minority of Czechoslovakia, in 1945-1946.

retrospective and future-oriented. In its 1951 Advisory Opinion, the ICJ stated that “the principles underlying the Convention are principles which are recognized by civilized nations as binding on all States, even without any conventional obligation.”¹¹² Also in this sense, the U.N. Commission on Human Rights noted in 1969 that

It is therefore taken for granted that as a codification of existing international law the Convention on the Prevention and Punishment of the Crime of Genocide did neither extend nor restrain the notion genocide, but that it only defined it more precisely.¹¹³

What the Genocide Convention added to the existing body of international law was an affirmative obligation on the States Parties to the Convention to make provision in domestic law for effective penalties for all acts punishable under the Convention (Article V) and a duty to prosecute (Article VI) by a competent national tribunal or by an international criminal court to be established. The Convention also created a preventive mechanism by urging states to call upon organs of the United Nations to take appropriate measures (Article VIII) and conferred jurisdiction on the ICJ in all matters relating to the Genocide Convention, including determination of the responsibility of a state for genocide (Article IX).

As the ICJ elaborated in the *Barcelona Traction, Light and Power Company* case (second phase), there are distinctions to be drawn between state obligations arising vis-à-vis another state and obligations *erga omnes*, or towards the international community as a whole. The Court stated:

By their very nature [obligations toward the international community as a whole] are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes* . . . Such obligations derive, for example . . . from the outlawing of acts of aggression, and of genocide¹¹⁴

It is precisely because of its *erga omnes* quality that the crime of genocide cannot be subject to prescription and that state responsibility for the crime, that is, the obligation of the genocidal state to make reparation, does not lapse with time.¹¹⁵

4.2.2 Non-Prescription of the Crime of Genocide

When the United Nations drafted the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity,¹¹⁶ it clearly and deliberately pronounced its

¹¹² *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, May 28, 1951, Advisory Opinion, International Court of Justice, ICJ Reports 1951, pp. 15-69. See Diane F. Orentlicher, “Genocide,” in Roy Gutman and David Rieff (eds.), *Crimes of War: What the Public Should Know* (New York, NY, USA: W.W. Norton & Co., 1999), pp. 153-157; Joe Verhoeven, “Le Crime de Génocide: Originalité et Ambiguïté,” in *Revue Belge de droit international*, 24:14(A/RES 3071), 1972 (A/RES/3020); criminals and of persons who have committed crimes against humanity hte (1991): 5-26 at 13.

¹¹³ U.N. Commission on Human Rights, *Report of the Ad Hoc Working Group of Experts on Southern Africa*, February 28, 1969 (E/CN.4/984/Add.18).

¹¹⁴ *Barcelona Traction, Light and Power Co., Ltd. (Belgium v. Spain)*, February 5, 1970, International Court of Justice, ICJ Reports, p. 3 (1970): p. 32.

¹¹⁵ M. Cherif Bassiouni, “International Crimes: *Jus Cogens* and *Obligatio Erga Omnes*,” *Law and Contemporary Problems* 59:4 (1996): 63-74 at 63-65.

¹¹⁶ U.N. General Assembly, *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity*, November 26, 1968, United Nations, Treaty Series, Vol. 754, p. 73 (A/RES/2391), <https://treaties.un.org/doc/Publication/UNTS/Volume%20754/volume-754-I-10823-English.pdf> (accessed September 17, 2014).

retroactive application. Article 1 stipulated that “[n]o statutory limitation shall apply to the following crimes, irrespective of the date of their commission . . . the crime of genocide as defined in the 1948 Convention . . .”

The principle of *nullum crimen sine lege, nulla poena sine lege praevia* (“no crime without law, no penalty without previous law”), laid out in Paragraph 1 of Article 15 of the International Covenant on Civil and Political Rights, is conditioned as follows in Paragraph 2:

Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.¹¹⁷

Clearly the acts of the Armenian Genocide violated international legal standards at the time, irrespective of whether legislation against “genocide” specifically existed.¹¹⁸ Similarly, Article 11, Paragraph 2, of the Universal Declaration of Human Rights of December 10, 1948, stipulates that the prohibition of *ex post facto* penal sanctions does not apply if the offense was already an offense under national or international law.¹¹⁹

Although Turkey is not a State Party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, international law is clear on the issue: there is no prescription on the prosecution of the crime of genocide, regardless of when the genocide occurred, and the obligation of the responsible state to make restitution or pay compensation for properties obtained in

¹¹⁷ U.N. General Assembly, *International Covenant on Civil and Political Rights* (see Note 103).

¹¹⁸ International law is not only “hard law” contained in treaties and conventions, but also “customary international law” and “general principles of law” as recognized in Article 38 of the Statute of the International Court of Justice (United Nations, *Statute of the International Court of Justice*, April 18, 1946, <http://www.icj-cij.org/documents/?p1=4&p2=2> [accessed September 20, 2014]). These have been interpreted by national and international tribunals, including the Nuremberg and Tokyo Tribunals. At the time of World War I, the Hague Conventions of 1907 (James Brown Scott [ed.], *The Hague Conventions and Declarations of 1899 and 1907* [New York, NY, USA: Oxford University Press, 1915], pp. 41-203, 209-224, <https://ia700404.us.archive.org/35/items/hagueconventions00inteuoft/hagueconventions00inteuoft.pdf> [accessed September 20, 2014]) were in force. Of particular relevance is the “general principle of law” enunciated in the “Martens Clause” stipulated in the preamble of Hague Convention IV: “Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience” (Brown [ed.], *The Hague Conventions*, pp. 101-102). The principles of the Martens Clause are reflected in the four 1949 Geneva Conventions for the protection of war victims (see Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Article 63; Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea of 12 August 1949, Article 62; Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949, Article 142; Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Article 158 (International Committee of the Red Cross, *The Geneva Conventions of 12 August 1949* [Geneva, Switzerland: International Committee of the Red Cross, no date], pp. 55, 79, 134, 204, <https://www.icrc.org/eng/assets/files/publications/icrc-002-0173.pdf> [accessed September 20, 2014]); and in the 1977 Additional Protocol I, Article 1(2) (Protocol additional to the Geneva Conventions of 12 August 1949, and related to the protection of victims of international armed conflicts [Protocol I], June 8, 1977, United Nations, Treaty Series 1125, p. 3, <https://treaties.un.org/doc/Publication/UNTS/Volume%201125/volume-1125-I-17512-English.pdf> [accessed September 20, 2014]); the 1977 Additional Protocol II, Preamble (Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts [Protocol II], June 8, 1977, United Nations, Treaty Series 1125, p. 609, <https://treaties.un.org/doc/Publication/UNTS/Volume%201125/volume-1125-I-17513-English.pdf> [accessed September 20, 2014]); and in the 1980 Weapons Convention, Preamble (Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminant Effects, October 10, 1980, United Nations, Treaty Series 1342, p. 137, <https://www.icrc.org/applic/ihl/ihl.nsf/INTRO/500?OpenDocument> [accessed September 20, 2014]). See also Christopher Greenwood, “Historical Development and Legal Basis,” in Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts* (New York, NY, USA: Oxford University Press, 1995), p. 28.

¹¹⁹ U.N. General Assembly, *Universal Declaration of Human Rights*, December 10, 1948 (A/RES/810), <http://www.ohchr.org/EN/UDHR/Documents/60UDHR/bookleten.pdf> (accessed September 17, 2014).

relation to a genocide does not lapse with time.¹²⁰ In its judgment of October 6, 1983, in the case concerning Klaus Barbie, the French *Cour de Cassation* (Court of Cassation) rejected the jurisdictional objections of the defense and stated that the prohibition on statutory limitations for crimes against humanity is now part of customary international law.¹²¹ France also enacted a law on December 26, 1964, dealing with crimes against humanity as “*imprescriptibles*” by nature.¹²²

The legal principle that a perpetrator of what was later recognized as “genocide” could be tried for acts committed before the term was coined or used in international law because the specific acts of genocide were already wrong under pre-existing norms of international law has been confirmed again and again. The crime of genocide was one of the charges against the accused in 3 of the 12 successor trials held at Nuremberg pursuant to Control Council Law No. 10, before U.S. military tribunals following the international military tribunal proceedings, prior to the entry into force of the Genocide Convention.¹²³ In *United States v. Alstötter*, the Court made repeated reference to General Assembly Resolution 96(I):

The General Assembly is not an international legislature, but it is the most authoritative organ in existence for the interpretation of world opinion. Its recognition of genocide as an international crime [in Resolution 96(I)] is persuasive evidence of the fact. We approve and adopt its conclusions . . . [We] find no injustice to persons tried for such crimes. They are chargeable with knowledge that such acts were wrong and were punishable when committed.¹²⁴

While it might be objected that even if this had been true for the 1940s it was not necessarily true for the 1910s, there is strong evidence to the contrary, for instance, the May 24, 1915, declaration by Britain, France, and Russia that the Ottoman Government’s acts against Armenians constituted a “crime against humanity” that was punishable under international legal norms¹²⁵ and the post-CUP Turkish government’s own prosecution of a number of perpetrators of the Armenian Genocide.¹²⁶ For Schabas’ claim—that with the distance in time from the adoption of the Convention its applicability becomes weaker, so that the Convention applies retroactively very strongly to the Holocaust but more tenuously to the Armenian Genocide¹²⁷—to be anything but an arbitrary line-drawing, it must reflect the fact that, the further

120 U.N. General Assembly, *Question of the punishment of war criminals and of persons who have committed crimes against humanity*, November 26, 1968 (A/RES/2392); December 15, 1969 (A/RES/2583); December 15, 1970 (A/RES/2712); December 18, 1971 (A/RES/2840); U.N. General Assembly, *Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity*, December 18, 1972 (A/RES/3020); December 3, 1973 (A/RES 3074); and so on.

121 *Fédération nationale des déportés et internés et patriots et al v. Barbie*, October 6, 1983, Court of Cassation (France), *International Law Reports*, Vol. 78, p. 125.

122 New Penal Code of 1994 (France), Articles 211-1 to 213-5; Jacques Francillon, “*Aspects juridiques des crimes contre l’humanité*,” in Hrayr Henry Ayvazian, Hrair Heratchian, Hélène Kosseyan, Bernard Legras, and Claire Mouradian (eds.), *L’actualité du Génocide des Arméniens: Actes du colloque organisé par le Comité de défense de la Cause Arménienne à Paris-Sorbonne les 16,17 et 18 avril 1998* (Creteil, France: Edipol, 1999), p. 398.

123 See Nuernberg Military Tribunals, *Trials of War Criminals Before the Nuernberg Military Tribunals Under Control Council Law No. 10*, 15 vols., Vol. 1, “The Medical Case” (Washington, DC, USA: Government Printing Office, 1949), pp. xvi-xix.

124 *United States of America v. Alstötter et al.*, December 4, 1947, International Military Tribunal, *Law Reports of Trials of War Criminals*, Vol. 6, p. 1 (1948), *Trials of War Criminals*, Vol. 3, p. 1 (1948): p. 983.

125 See U.S. National Archives, Record Group 59, 867.4016.67 (May 28, 1915), http://www.armenian-genocide.org/popup/affirmation_window.html?Affirmation=160 (accessed September 17, 2014).

126 Dadrian, *The History of the Armenian Genocide*, pp. 303-43 (see Note 9); Akçam, *A Shameful Act*, pp. 206-376 (see Note 9); Dadrian and Akçam, *Judgment at Istanbul* (see Note 9).

127 Schabas, “Retroactive Application of the Genocide Convention,” pp. 42-49 (see Note 83).

back in time one goes, the fewer aspects of genocide and fewer forms of mass population destruction were already prohibited by international law. But clearly there was an adequate set of provisions in international law at the time of the Armenian Genocide to have made the Genocide illegal, whatever labels were used at the time.

In the *Einsatzgruppen* trial, the defendants were charged with participation in a “systematic program of genocide, aimed at the destruction of foreign nations and ethnic groups, in part by murderous extermination, and in part by elimination and suppression of national characteristics.”¹²⁸ The first national prosecutions specifically on the crime of genocide, but without reference to the Genocide Convention, which had not yet been adopted, were carried out by Polish courts. In July 1946, Artur Greiser was charged with and convicted of genocide.¹²⁹

The leading prosecution by a national court, with reference to the Genocide Convention, was carried out by the state of Israel. In 1960, Adolf Eichmann, a Nazi official in World War II, was abducted from Argentina and taken to Israel for trial under Israeli law for his involvement in the Holocaust. Eichmann was prosecuted under the “Nazi and Nazi Collaborators (Punishment) Law of 1951,” which was modeled on the genocide provision of the 1948 Genocide Convention.¹³⁰ He was charged on four counts of genocide, corresponding to the first four subparagraphs of Article II of the Genocide Convention: killing Jews, causing serious physical and mental harm, placing Jews in living conditions calculated to bring about their physical destruction, and imposing measures intended to prevent births among Jews.¹³¹

On the issue of retroactivity, the Supreme Court of Israel endorsed the view of the District Court concerning the customary nature of the crime of genocide, and noted that “the enactment of the Law was not from the point of view of international law a legislative act which conflicted with the principle *nulla poena* (no penalty without previous law) or the operation of which was retroactive, but rather one by which the Knesset gave effect to international law and its objectives.”¹³²

A number of courts in the United States have dealt with the question of *ex post facto* legislation by relying on the judgment of the International Military Tribunal at Nuremberg to the effect that the Nuremberg Charter was declarative of international law and was not new law. In allowing the extradition to Israel of John Demjanjuk, the United States District Court for Ohio and the Circuit Court for the Sixth Circuit held:

The Nuremberg International Military Tribunal provided a new forum in which to prosecute persons accused of war crimes committed during World War II pursuant to an agreement of the wartime Allies (see The Nuremberg Tribunal, 6 F.R.D. 69). That tribunal consistently rejected defendants’ claims that they were

128 *United States of America v. Greifeldt et al.*, March 10, 1948, International Military Tribunal, *Law Reports of Trials of War Criminals*, Vol. 13, p. 1 (1949): p. 2.

129 *Poland v. Greiser*, July 7, 1946, Supreme National Tribunal of Poland, *Law Reports of Trials of War Criminals*, Vol. 13, p. 70 (1949).

130 *Attorney-General of Israel v. Eichmann*, December 11, 1961, District Court of Jerusalem (Israel), Paragraph 20-22, *International Law Reports*, Vol. 36, p. 5 (1968). See also Corey Oliver, “The Attorney General of the Government of Israel v. Eichmann,” *American Journal of International Law* 56:3 (1962): 805-845 at 814.

131 William Schabas, *Genocide in International Law* (Cambridge, UK: Cambridge University Press, 2000), p. 387.

132 *Attorney-General of Israel v. Eichmann*, May 29, 1962, Supreme Court (Israel), *International Law Reports*, Vol. 36, p. 277 (1968): Paragraph 11.

being tried under *ex post facto* laws . . . the statute is not retroactive because it is jurisdictional and does not create a new crime. Thus, Israel has not violated any prohibition against the *ex post facto* applications of criminal laws which may exist in international law.¹³³

This retroactivity has also been extended to material restitution. Although prosecution has not been based on the Genocide Convention itself but rather on German penal law, the Federal Republic of Germany has prosecuted more than 60,000 Germans and other nationals for war crimes and complicity in the crime of genocide committed during World War II, prior to the entry into force of the Genocide Convention, and many judgments make reference to the Genocide Convention. The German government has similarly recognized its international obligation to make restitution of property stolen from victims of genocide and to grant compensation to the survivors of the victims.¹³⁴ In 1952, the Federal Republic of Germany made a treaty with Israel, the preamble of which states that “unspeakable criminal acts were perpetrated against the Jewish people” and that Germany agrees “within the limits of its capacity to make good the material damage caused by these acts.” It thus agreed to pay the state of Israel the sum of 3 billion Deutsche Marks (DM).¹³⁵ Between 1959 and 1964, Germany concluded conventions with 12 member states of the Council of Europe providing for payment of a further DM 876 million for injuries to life, health, and liberty of their nationals. Another DM 101 million was provided to Austria. Further contributions of DM 122 million were agreed to with states in Eastern Europe for the victims of pseudo-medical experiments. In domestic German law, a huge reparation scheme was provided for in the Federal Law of Reparation (*Bundesentschädigungsgesetz*), pursuant to which many categories of damage are provided for.¹³⁶

It is important to note, moreover, that whether or not the Genocide Convention itself applies in a concrete situation, state practice and, in particular, the *Eichmann* case shows that the crime of genocide can be prosecuted on the basis of national law enacted following the commission of the offense. *A fortiori* civil liability for genocide can also be imposed on the basis of *ex post facto* jurisdictional legislation. In all cases before the U.N. Human Rights Committee, the European Court of Human Rights, and the Inter-American Commission and Court of Human Rights, whenever punishment of the perpetrators of gross human rights violations (murder, torture, or disappearances) is ordered, simultaneously an “effective remedy”—usually the compensation of the victims—is also indicated.¹³⁷ It can also be added that

133 *In the Matter of the Extradition of John Demjanjuk*, April 15, 1985, as amended April 30, 1985, United States District Court, Northern District Ohio, Eastern Division, *Federal Supplement*, Vol. 612, p. 544 (1985), pp. 554-558.

134 Schabas, *Genocide in International Law*, p. 443 (see Note 131).

135 Agreement between the State of Israel and the Federal Republic of Germany, September 10, 1952.

136 See Kurt Schwerin, “German Compensation for Victims of Nazi Persecution,” *Northwestern University Law Review* 67:4 (1972): 479-527 at 479, 496.

137 See Alfred de Zayas and Jakob Möller, *The United Nations Human Rights Committee Case Law 1977-2008: A Handbook* (Kehl am Rhein, Germany: N. P. Engel Publishers, 2009). See also United Nations Human Rights Committee, *General Comment No. 31*, “The Nature of the General Legal Obligation Imposed on States Parties to the Covenant,” May 34, 2004 (CCPR/C/21/Rev.1/Add.13), <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=478b26ae2> (accessed September 21, 2014) which requires both the punishment of perpetrators and reparations to victims. An important compensation judgment (in a disappearance case) was issued by the Inter-American Court of Human Rights in the *Velásquez Rodríguez* case, where the Court said, “Reparation of harm brought about by the violation of an international obligation consists in full restitution (*restitutio in integrum*), which includes the restoration of the prior situation, the reparation of the consequences of the violation, and indemnification for patrimonial and non-patrimonial damages, including emotional harm” (*Velásquez Rodríguez Case [Compensatory Damages]*, July 21, 1989, Inter-American Court of Human Rights, Series C, No. 7 [1990], Paragraphs 6, 25-26, <http://www.refworld.org/publisher/iacrt/hr,,HND,402796a64,0.html> [accessed September 21, 2014]). The Court pointed out that the applicable international law on damages does not allow modification or suspension of a judgment by the respondent state through the invocation of the provisions of its own domestic law (Paragraph 44). See in this connection the leading book in the field, Dinah Shelton, *Remedies in International Human Rights Law* (Oxford, UK: Oxford University Press, 1999). See also International Commission of Jurists, *The Right to a Remedy and to Reparation for Gross Human Rights Violations: A Practitioners’ Guide* (International Commission of Jurists: Geneva, 2006); Christian Tomuschat, “Reparation for Victims of Grave Human Rights Violations,” *Tulane Journal of International and Comparative Law* 10 (2002): 157-184.

Armenian claims derive from the doctrine of state responsibility for crimes against humanity, and that this international liability pre-dated the entry into force of the Genocide Convention. As shown above, the Turkish liability for genocide was reflected in Articles 144 and 230 of the Treaty of Sèvres of 1920. The German liability for the Holocaust was reflected in the London Agreement of 1945, which also predates the Genocide Convention.

As to the general principle of non-retroactivity of treaties such as the Genocide Convention, however, it is important to note that this principle admits of many exceptions and, in any event, is not a peremptory norm of international law.¹³⁸ Admittedly, the positivist approach to international law relies on a presumption of non-retroactivity, as noted by Professor Charles Rousseau: “International law appears to be determined by the principle of non-retroactivity. This principle is the result of treaty, diplomatic, and judicial practice.”¹³⁹ Moreover, Article 28 of the Vienna Convention on the Law of Treaties provides that “[u]nless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.”¹⁴⁰ Yet, in his commentary on the Vienna Convention on the Law of Treaties,¹⁴¹ Sir Ian Sinclair refers to the commentary of the International Law Commission on the opening phrase of Article 28, which explains that such language (instead of the more usual wording “unless the treaty otherwise provides”) was used “in order to allow for cases where the very nature of the treaty rather than its specific provisions indicates that it is intended to have certain retroactive effects.”¹⁴² Sinclair goes on to refer to the famous *Mavrommatis Palestine Concessions* case, in which the United Kingdom had contested the jurisdiction of the Permanent Court of International Justice on the ground that the acts complained of had taken place before Protocol XII of the Treaty of Lausanne¹⁴³ had come into force. In rejecting this submission, the Court stated:

Protocol XII was drawn up in order to fix the conditions governing the recognition and treatment by the contracting parties of certain concessions granted by the Ottoman authorities before the conclusion of the Protocol. An essential characteristic therefore of Protocol XII is that its effects extend to legal situations dating from a time previous to its own existence. If provision were not made in the clauses of the Protocol for the protection of the rights recognised therein as against infringements before the coming into force of that instrument, the Protocol would be ineffective as regards the very period at which the rights

138 Ian Sinclair, *The Vienna Convention on the Law of Treaties*, 2nd ed., “Melland Schill Monographs in International Law” series (Manchester, UK: Manchester University Press, 1984), p. 85; Vahakn N. Dadrian, “The Armenian Genocide and the Legal and Political Issues in the Failure to Prevent or to Punish the Crime,” *University of West Los Angeles Law Review* 29 (1998): 43-78; John Shamsey, “80 Years Too Late: The International Criminal Court and the 20th Century’s First Genocide,” *Journal of Transnational Law & Policy* 11:2 (2002): 327-383.

139 Charles Rousseau, *Principes généraux du droit international public*, Vol. I, “Introduction, sources” (Paris, France: A. Pedone, 1944), p. 486.

140 Vienna Convention on the Law of Treaties (with annex), May 23, 1969, United Nations, Treaty Series, Vol. 1155, p. 331, <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf> (accessed September 22, 2014).

141 Sinclair, *The Vienna Convention*, p. 85 (see Note 138).

142 International Law Commission, “Reports of the International Law Commission on the second part of its seventeenth and on its eighteenth session” (A/6309/Rev.1), in *Yearbook of the International Law Commission, 1966*, 2 vols., Vol. II, “Documents of the second part of the seventeenth session and of the eighteenth session including reports to the General Assembly” (New York, NY, USA: United Nations, 1967) (A/CN.4/SER.A/1966/Add.1), pp. 169-364 at 212-213.

143 Treaty of Peace with Turkey, and Other Instruments, Signed at Lausanne on July 24, 1923, United Kingdom, Treaty Series, Vol. 16 (1923), p. 1, <http://treaties.fco.gov.uk/docs/pdf/1923/TS0016-1.pdf> (accessed October 13, 2014) (hereafter, “Treaty of Lausanne”).

in question are most in need of protection. The Court therefore considers that the Protocol guarantees the rights recognised in it against any violation regardless of the date at which it may have taken place.¹⁴⁴

Sinclair also addressed the debate that accompanied the retention of the words “in relation to any . . . situation which ceased to exist before the date of entry into force of the treaty.” Whereas the United States delegation unsuccessfully argued for deletion, the majority of the delegations insisted that a treaty may well apply to “situations” that continued, even if the facts giving rise to the situation had punctually occurred prior to the entry into force of the treaty.¹⁴⁵ Given that, in particular, the expropriations of immovable and movable Armenian property have not been even partially remedied, these expropriations can be considered continuing.¹⁴⁶

Among the many exceptions known to the principle of non-retroactivity is the inclusion in the London Agreement of the new “crime against peace,” formulated *ex post facto*, and applied by the Nuremberg and Tokyo Tribunals. In this connection Professor Hans Kelsen commented:

The rule against retroactive legislation is a principle of justice. Individual criminal responsibility represents certainly a higher degree of justice than collective responsibility, the typical technique of primitive law. Since the internationally illegal acts for which the London Agreement established individual criminal responsibility were certainly also morally most objectionable, and the persons who committed these acts were certainly aware of their immoral character, the retroactivity of the law applied to them can hardly be considered as absolutely incompatible with justice . . . In case two postulates of justice are in conflict with each other, the higher one prevails; and to punish those who were morally responsible for the international crime of the Second World War may certainly be considered as more important than to comply with the rather relative rule against *ex post facto* laws, open to so many exceptions.¹⁴⁷

The applicability to other genocides, including the Armenian, as among the most morally objectionable mass crimes, is clear.

But even if this view of the conflict between principles is rejected, a strong legal argument can be made that the general rule of non-retroactivity of treaties and conventions, which was abandoned in Nuremberg in connection with the new concept of “crimes against peace,”¹⁴⁸ is not of relevance in the context of the crime of genocide, which has always been a crime under national penal laws, as a manifestation of

144 *The Mavrommatis Palestine Concessions (Greece v. United Kingdom)*, August 30, 1924, Permanent Court of International Justice, Series A, No. 2, p. 34.

145 Sinclair, *The Vienna Convention*, p. 86 (see Note 138). The U.S. proposal was defeated by a vote of 47 to 23, with 17 abstentions.

146 See Frédéric Mégret, “The Notion of ‘Continuous Violations,’ Expropriated Armenian Properties, and the European Court of Human Rights,” *International Criminal Law Review* 14:2 (2014): 317-331.

147 Hans Kelsen, “Will the Judgment in the Nuremberg Trial Constitute a Precedent in International Law?” *The International Law Quarterly* 1:2 (1947): 153-171 at 164-165. See also Hans Kelsen, “The Rule Against *Ex Post Facto* Law and the Prosecution of the Axis War Criminals,” *The Judge Advocate Journal* 2:3 (1945): 8-12.

148 Alfred de Zayas, “Aggression,” in Dinah Shelton (ed.), *Encyclopedia of Genocide and Crimes Against Humanity*, 3 vols., Vol. 1 (New York, NY, USA: Macmillan Reference USA, 2004), pp. 11-16.

multiple murder,¹⁴⁹ and which, moreover, must be seen as an international crime under “general principles of law.”¹⁵⁰

Reference to the “general principles of law” is found, for instance, in the famous “Martens Clause,” contained in the preamble of the 1899 and 1907 Hague Convention on Land Warfare:

Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them,¹⁵¹ the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.¹⁵²

There seems no clearer statement possible: the Genocide Convention of 1948 can be applied retroactively, because it is declarative of pre-existing international law. Among several precedents for the retroactive application of treaties, the London Agreement/Nuremberg Charter of 1945 and the Convention on the Non-Applicability of Statutes of Limitation to War Crimes and Crimes Against Humanity of 1968 are particularly relevant in the context of genocide. Similarly, there is precedent for the *ex post facto* drafting and adoption of international penal charters by the U.N. Security Council under its Chapter VII jurisdiction,¹⁵³ such as the Statutes of the International Criminal Tribunal for the Former Yugoslavia,¹⁵⁴ the

149 While it might be argued that laws passed in the Ottoman Empire during the genocide legalized many aspects, they did so through falsifications of Armenian violations and did not legalize mass murder of (innocent) subjects, which was what occurred (see Dadrian, *The History of the Armenian Genocide* [see Note 9], pp. 235-236, 239-242). What is more, these laws themselves—such as that covering the “abandoned property” of Armenians—were typically themselves retroactive and made legal after the property expropriations that were not legal at the time the seizures were committed (see Üngör and Mehmet Polatel, *Confiscation and Destruction*, pp. 43-47 [see Note 39]).

150 In his opening statement at the International Military Tribunal, the British Chief Prosecutor Lord Hartley Shawcross stated: There is thus no substantial retroactivity in the provisions of the Charter. It merely fixes the responsibility for a crime already clearly established as such by positive law upon its actual perpetrators. It fills a gap in international criminal procedure. There is all the difference between saying to a man, “You will now be punished for what was not a crime at all at the time you committed it,” and in saying to him, “You will now pay the penalty for conduct which was contrary to law and a crime when you executed it, although, owing to the imperfection of the international machinery, there was at that time no court competent to pronounce judgment against you.” (International Military Tribunal, *Trial of the Major War Criminals Before the International Military Tribunal*, 42 vols., Vol. 3, [Nuremberg, Germany: International Military Tribunal, 1947], p. 106)

151 This point is important in assuring the applicability of this tenet of the relevant Hague Conventions to domestic mass murder rather than the murder of enemy civilians, which is explicitly covered by the Conventions. While domestic mass murder of “internal enemies,” as Armenians were claimed to be by the Young Turk regime, might not have been directly covered by the Hague Conventions because the parties to it would not have anticipated such a case (irrational because self-weakening in the context of a war), the drafters did have the foresight to recognize that cases they did not anticipate might arise. Clearly, mass murder of a government’s own subjects violated existing “usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience” (Brown [ed.], *The Hague Conventions*, p. 102 [see Note 118]). Of course, the further point might be made that the Young Turk regime justified its genocide against Armenians by publicly asserting that they were in essence a foreign element and agents of a foreign power, Russia (see, respectively, Robert Melson, *Revolution and Genocide: On the Origins of the Armenian Genocide and the Holocaust* [Chicago, IL, USA: University of Chicago Press, 1992], p. 166; *Ambassador Morgenthau’s Story*, pp. 223-224, 229-230, 239 [see Note 62]). Thus, by its own claims, the Young Turk regime seems to have established the applicability of relevant Hague Conventions.

152 Brown (ed.), *The Hague Conventions*, pp. 101-102 (see Note 118).

153 United Nations, *Charter of the United Nations*, June 26, 1945, <https://treaties.un.org/doc/publication/ctc/uncharter.pdf> (accessed September 23, 2014).

154 William A. Schabas, “Sentencing by International Tribunals: A Human Rights Approach,” *Duke Journal of Comparative and International Law* 7:2 (1997): 461-517.

International Criminal Tribunal for Rwanda,¹⁵⁵ and the International Tribunal for Sierra Leone.¹⁵⁶

The language of the Genocide Convention neither excludes nor requires its retroactive application; in other words, there is nothing in the language of the Convention that would prohibit its retroactive application. By contrast, there are numerous international treaties that specifically state that they will not apply retroactively. For example, Article 11 of the 1998 Statute of the International Criminal Court specifies that “the Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.”¹⁵⁷ This contrast with such treaties means that the principle of non-retroactivity is not taken for granted in treaty formation and the absence of a specific provision for retroactivity does not mean that a treaty cannot be applied retroactively.

Moreover, there are treaties that purportedly do not apply retrospectively, but in practice are so applied, as is the case with the Vienna Convention on the Law of Treaties of 1969, Article 4 of which stipulates: “the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention.” Ever since the adoption of the Convention, however, international courts and tribunals have made reference to its provisions as being declarative of pre-existing law and practice, thus reflecting the customary international rules on treaties and the prevailing *opinio juris*.¹⁵⁸

It is significant that the drafters of the Genocide Convention did not stipulate that it should apply only in the future, although they could easily have done so, had they intended to limit its scope of application. Thus, the question arises as to the object and purpose of the Genocide Convention. Pursuant to Article 31 of the Vienna Convention on the Law of Treaties, the principal rule of interpretation is “the ordinary meaning given to the terms of the treaty in their context and in the light of its object and purpose.” The retroactive application of the Genocide Convention is compatible with the ordinary meaning of terms in the light of the object and purpose of the Convention. Further, such retroactive application appears necessary, in order to serve the important objective of deterring future acts of genocide (prevention) by way of establishing the precedent of punishing acts of genocide that occurred prior to its entry into force (suppression). According to Article 32 of the Vienna Convention on the Law of Treaties, the use of the *travaux préparatoires* of any treaty or convention is deemed only a supplementary means of interpretation. The *travaux préparatoires* of the Genocide Convention, however, are inconclusive with regard to the issue of retroactive application. Whereas several delegations were future-oriented, others such as the Polish representative, Professor Manfred Lachs, and the United Kingdom Representative, Sir Hartley Shawcross, saw the problem more broadly, in the light of the retroactive application of the London Charter to the Nazi crimes of genocide that had preceded it.¹⁵⁹

155 Reuel Cross, “Issue 1: The Relevance of the Eichmann, Barbie, and Finta Trials for the ICTR,” Memorandum for the Office of the Prosecutor, Case Western Reserve University School of Law, International War Crimes Project, International Criminal Tribunal for Rwanda (Spring 2003).

156 William A. Schabas, *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda, and Sierra Leone* (Cambridge, UK: Cambridge University Press, 2006), p. 83.

157 U.N. General Assembly, *Rome Statute of the International Criminal Court*, July 17, 1998, United Nations, Treaty Series, Vol. 2187, p. 3 (A/CONF.189/9): Article 11, <https://treaties.un.org/doc/Publication/UNTS/Volume%202187/v2187.pdf> (accessed September 23, 2014).

158 Rudolf Bernhardt, “Treaties,” in Bernhardt (ed.), *Encyclopaedia of Public International Law*, Vol. 4, pp. 926-932 (see Note 88).

159 U.N. General Assembly, Third Session, *Official Records*, Sixth Committee, 64th Meeting (Paris, France, October 1, 1948), pp. 17-20. See also the statements of the Czechoslovak representative, Mr. Prochazka, stressing the need to connect the Convention directly with the historical events which had proved the necessity for its existence and to stress the relationship between genocide and the doctrines of Nazism, fascism, and Japanese imperialism (U.N. General Assembly, Third Session, *Official Records*, Sixth Committee, 66th Meeting [Paris, France, October 4, 1948], pp. 29-30).

Wider legal considerations also apply here. While non-retroactivity is a principle that has pragmatic value, it is frequently abandoned in international treaties and in national legislation concerning intellectual property, copyright, and taxation. Bearing in mind that there exists a higher legal regime for human rights and a *jus cogens* obligation to refrain from genocide, retroactivity is not only appropriate but also just and necessary as a matter of international public order.

Importantly, in regard to private property confiscated in the context of the Holocaust, United States jurisdictions have not hesitated to apply laws retroactively. Thus, for instance, in affirming its jurisdiction in *Altman v. Republic of Austria*, the United States Court of Appeals for the Ninth Circuit decided on December 12, 2002, that the 1976 Foreign Sovereign Immunities Act (FSIA) applied retroactively to the events of the late 1930s and 1940s. The U.S. Court took jurisdiction and found that the property of Mrs. Altmann had been wrongfully and discriminatorily appropriated in violation of international law.¹⁶⁰

4.2.3 Universal Jurisdiction and ‘the Protective Principle’

In the *Eichmann* case, the Israeli court took the view that crimes against humanity constitute *delicta juris gentium* (crimes against the law of nations), to which the principle of universal jurisdiction has at all times been generally applicable. In rejecting Eichmann’s jurisdictional challenge, the District Court held:

The abhorrent crimes defined in this Law are not crimes under Israel law alone. These crimes, which struck at the whole of mankind and shocked the conscience of nations, are grave offences against the law of nations itself (*delicta juris gentium*). Therefore, so far from international law negating or limiting the jurisdiction of countries with respect to such crimes, international law is, in the absence of an International Court, in need of the judicial and legislative organs of every country to give effect to its criminal interdictions and to bring the criminals to trial. The jurisdiction to try crimes under international law is universal.¹⁶¹

The Court relied upon Article 6 of the Genocide Convention to explain that the purpose of the Convention could not be to limit prosecution only to the states where the offense had been perpetrated:

Moreover, even with regard to the conventional application of the Convention, it is not to be assumed that Article 6 is designed to limit the jurisdiction of countries to try crimes of genocide by the principle of territoriality . . . Had Article 6 meant to provide that those accused of genocide shall be tried only by “a competent tribunal of the State in the territory of which the act was committed” (or by an “international court” which has not been constituted), then that article would have foiled the very object of the Convention to prevent genocide and inflict punishment therefor . . .¹⁶²

Accordingly, the District Court took the view that it was entitled to exercise jurisdiction under the “protective principle,” “which gives the victim nation the right to try any who assault its existence.”¹⁶³ The Court cited Hugo Grotius and other authorities, and stated:

¹⁶⁰ *Altman v. Republic of Austria*, December 12, 2002, U.S. Court of Appeals for the Ninth Circuit, No. 01-56003. Affirmed on writ of certiorari, June 7, 2004, U.S. Supreme Court, 541 U.S. 677 (2004).

¹⁶¹ *Attorney-General of Israel v. Eichmann* (see Note 130).

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

The State of Israel, the sovereign State of the Jewish people, performs through its legislation the task of carrying into effect the right of the Jewish people to punish the criminals who killed its sons with intent to put an end to the survival of this people. We are convinced that this power conforms to the subsisting principles of nations.¹⁶⁴

The *Eichmann* precedent illustrates the possibility for a state that did not exist at the time of the crime (Israel) to try and punish a foreign citizen for genocide, when it has a legitimate and fundamental link to the victims. Similarly, a state that did not exist at the time of the Armenian Genocide (the Republic of Armenia) could represent the rights of the victims of the Armenian Genocide and their survivors. Moreover, based on the theory of legitimate and fundamental links to the victims, other states such as France, Canada, and the United States could represent the rights of the descendants of the survivors of the Armenian Genocide, who have become citizens of or currently reside in France, Canada, or the United States, respectively.

4.3 THE DOCTRINE OF STATE SUCCESSION

An important objection to the current Turkish Republic's responsibility for reparations is the argument that it represents a different state from that which perpetrated the Genocide. Even setting aside the fact that Atatürk's forces perpetrated the second phase of the Genocide, as described above, this objection still fails. The Turkish Republic established in 1923 is clearly at least the successor state, if not the continuing state, of the Ottoman Empire that ceased to exist in 1923.¹⁶⁵ The distinction between these two designations is not relevant to the issue of reparations: both entail the same rights and obligations relative to the original state. Two criteria are especially relevant: territory and international recognition. While the Turkish Republic is smaller than the Ottoman Empire at its height, it is for the most part what remained after the shrinking of the Empire and encompasses what might be considered an essential portion of the former state,¹⁶⁶ including Istanbul and Ankara. What is more, in the relevant international treaties and tribunals, such as the Lausanne Treaty and the arbitral tribunal in the *Ottoman Public Debt* case, the Turkish Republic is treated as the same state as the Ottoman Empire. In the international legal context, then, the Republic is considered the same state as the Empire.¹⁶⁷

This is consistent with the general principle that state responsibility necessarily attaches to the state itself and does not allow for *tabula rasa*. This principle has been applied to cases similar to the Turkish. Thus, it was consistent with international law for the Federal Republic of Germany to assume full responsibility for the crimes committed by the Third Reich. This has also been the situation with regard to the responsibility of France to repair the wrongs committed by the Vichy government during the German occupation and of Norway to grant restitution for confiscations and other injuries perpetrated against Jewish persons during the Quisling regime.¹⁶⁸

¹⁶⁴ *Ibid.*

¹⁶⁵ This argument for the Turkish Republic as successor or continuing state of the Ottoman Empire largely follows Patrick Dumberry, "The Consequences of Turkey Being the 'Continuing' State of the Ottoman Empire in Terms of International Responsibility for Internationally Wrongful Acts," *International Criminal Law Review* 14:2 (2014): 261-273. See also Vahagn Avedian, "State Identity, Continuity, and Responsibility: The Ottoman Empire, the Republic of Turkey, and the Armenian Genocide," *The European Journal of International Law* 23:3 (2012): 797-820.

¹⁶⁶ *Ibid.*, pp. 263-267.

¹⁶⁷ *Ibid.*, pp. 268-269.

¹⁶⁸ Björn Westlie, "Coming to Terms with the Past: the Process of Restitution of Jewish Property in Norway," Policy Forum No. 12, Institute of the World Jewish Congress, 1996.

The responsibility of a successor state for actions of the earlier state is clear. In the Report of the Independent Expert on the Right to Restitution, Compensation, and Rehabilitation for Victims of Grave Violations of Human Rights, Professor M. Cherif Bassiouni reiterated a basic principle of succession:

In international law, the doctrine of legal continuity and principles of State responsibility make a successor Government liable in respect of claims arising from a former government's violations.¹⁶⁹

This applies *a fortiori* in the case of genocide and its consequences for the survivors and their descendants.

Article 36 of the Vienna Convention on Succession of States in Respect of State Property, Archives, and Debts of April 8, 1983 provides that a succession of states does not “as such affect the rights and obligations of creditors.”¹⁷⁰ It follows from this principle that the claims of the Armenians for their wrongfully confiscated properties did not disappear with the change from the Sultanate to the regime of Mustafa Kemal.¹⁷¹

The principle of responsibility of successor states has been held to apply even when the state and government that committed the wrong were not that of the successor state. This principle was formulated, *inter alia*, by the Permanent Court of Arbitration in the *Lighthouse Arbitration* case.¹⁷² There France claimed that Greece was responsible for a breach of state concessions to its citizens by the autonomous state of Crete, committed before Greece's assumption of sovereignty over Crete. The Permanent Court of Arbitration held that Greece was obligated to compensate for Crete's breaches, because Greece was the successor state. The principle of state succession undoubtedly applies to Eastern European states and, in particular, to Serbia, for the crimes committed by the Federal Republic of Yugoslavia.¹⁷³ In addition to such examples of the decisions of international tribunals, state practice¹⁷⁴ and decisions of domestic courts support this conclusion.¹⁷⁵

4.4 THE RIGHT TO RESTITUTION HAS NOT LAPSED DUE TO THE DEATHS OF POTENTIAL CLAIMANTS OR TIME PASSAGE

Because of the continuing character of the crime of genocide in factual and legal terms, the remedy of

169 U.N. Commission on Human Rights, *Report of the Independent Expert on the Right to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms, Mr. M. Cherif Bassiouni*, February 8, 1999 (E/CN.4/1999/65).

170 U.N. Conference on Succession of States in respect of State Property, Archives, and Debts, Vienna, Austria, March 1-April 8, 1983, *Official Records*, Vol. II, “Documents of the Conference” (A/Conf.117/14).

171 Baghdjian, *The Confiscation of Armenian Properties*, pp. 157-229 (see Note 38).

172 *Lighthouses Arbitration between France and Greece*, July 24, 1956, Permanent Court of Arbitration *International Law Reports*, Vol. 23, p. 659; Charles E. Rousseau, “L'affaire franco-hellénique des phares et la sentence arbitrale du 24 juillet 1956,” *Revue Générale de Droit International Public* 63 (1959): 248-292; Jen Philippe Monnier, “La succession d'États en matière de responsabilité internationale,” *Annuaire français de droit international* 8 (1962): 65-90 at 80-85.

173 For the question of the Federal Republic of Yugoslavia's status vis-à-vis the Genocide Convention, see Matthew Craven, “The Genocide Case, the Law of Treaties and State Succession,” *British Yearbook of International Law* 68:1 (1997): 127-163.

174 The Agreement between the State of Israel and the Federal Republic of Germany (see Note 135) is an example.

175 See, for instance, Lizzy Davis, “France responsible for sending Jews to concentration camps, says court,” *The Guardian*, February 16, 2009, <http://www.theguardian.com/world/2009/feb/17/france-admits-deporting-jews> (accessed September 24, 2014).

restitution is not foreclosed by the passage of time.¹⁷⁶ Therefore, the survivors of the Armenian Genocide, both individually and collectively, have standing to advance a claim for restitution. This has also been the case with Jewish survivors of the Holocaust who have successfully claimed restitution against many states where their property had been confiscated.¹⁷⁷

Restitution remains a continuing state responsibility for Turkey given its current human rights obligations under international treaty law, particularly the corpus of international human rights law. The 1997 U.N. Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and International Humanitarian Law provide in part:

Reparation may be claimed individually and where appropriate collectively, by the direct victims of violations of human rights and international humanitarian law, the immediate family, dependants or other persons or groups of persons closely connected with the direct victims.¹⁷⁸

U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities member Mr. Louis Joinet presented a report containing comparable language:

Any human rights violation gives rise to a right to reparation on the part of the victim or his beneficiaries, implying a duty on the part of the State to make reparation and the possibility of seeking redress from the perpetrator.¹⁷⁹

Principle 9 of the 1997 Basic Principles and Guidelines further states:

176 A leading international law expert in Europe, Professor Felix Ermacora, member of the U.N. Human Rights Committee, member of the European Commission on Human Rights, and Special Rapporteur for Afghanistan and Chile of the U.N. Commission on Human Rights, maintained this view. In a legal opinion on the continuing obligation to grant restitution to the Germans expelled from Czechoslovakia, some 250,000 of whom had perished in the course of their ethnic cleansing in 1945 and 1946, Ermacora wrote:

Ist die Konfiskation von Privatvermögen Teil eines Völkermordes, so ist auch ihre Rechtsnatur Teil eines Rechtsganzen. D.h. der Vermögensentzug hatte für sich selbst im vorliegenden Gesamtzusammenhang Völkermordcharakter. Er unterliegt auch der Beurteilung aufgrund der Völkeremordkonvention, deren Partner sowohl die BRD als auch die Tschechoslowakei ist. Entsprechend den Regeln internationalen Rechts sind die Akte des Völkermordes—so auch die Vernichtung von Lebensbedingungen, wie sie durch einen totalen Vermögensentzug stattgefunden haben und mit der Vertreibung kombiniert waren, zumindest nach der Konvention über die Nichtverjährbarkeit von Verbrechen gegen die Menschlichkeit nicht verjährbar. [When the confiscation of private property occurs as a component of a genocidal process, then its legal nature is inseparable from that of the whole, i.e., the deprivation of property must be seen in the context of the genocidal process and has itself a genocidal character. Accordingly, it falls under the ambit of the Convention on the Prevention and Punishment of the Crime of Genocide, to which both Czechoslovakia and Germany have adhered. In keeping with general rules of international law, acts of genocide—including the destruction of life conditions resulting from the total confiscation of private property combined with the expulsion of the population—cannot be subject to statutes of limitations and claims do not lapse, not least under the provisions of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.] (Felix Ermacora, *Die sudetendeutschen Fragen: Rechtsgutachten* [Munich, Germany: Langen Müller, 1992], p. 178)

177 Cotler, “Confiscated Jewish Property,” p. 609 (see Note 88); Irwin Cotler, “Nuremberg 50 Years Later: The Restitution of Jewish Property and Norwegian Justice,” *Nordic Journal of International Law* 67:3 (1998): 275-287; Sabine Thomsen, “Restitution,” in Bernhardt (ed.), *Encyclopaedia of Public International Law*, Vol. 4, pp. 229-32 (see Note 88).

178 U.N. Commission on Human Rights, *Basic Principles and Guidelines on the Right to Reparation for Victims of [Gross] Violations of Human Rights and International Humanitarian Law Prepared by Mr. van Boven (third revised draft)*, January 13, 1997 (E/CN.4/1997/104 Annex).

179 U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities, *The Administration of Justice and the Human Rights of Detainees: Question of the impunity of perpetrators of human rights violations (civil and political)*, Revised final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/19, October 2, 1997, Annex II, “Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity,” Principle 33 (E/CN.4/Sub.2/1997/20/Rev.1).

Statutes of limitations shall not apply in respect of periods during which no effective remedies exist for violations of human rights or international humanitarian law. Civil claims relating to reparations for gross violations of human rights and international humanitarian law shall not be subject to statutes of limitations.

Beyond confirming a clear general right for victims of human rights violations to restitution, these statements include crucial specific points for Armenian Genocide reparations. Because successive Turkish governments—through military force (the conquest of the 1918 Armenian Republic¹⁸⁰); prevention of the return or re-establishment of surviving Armenians in Turkey through mass murder of returnees as well as legal and political restrictions and other measures;¹⁸¹ repression of and discrimination against Armenians inside Turkey;¹⁸² and external political manipulation, blackmail, and force,¹⁸³ including the extensive denial campaign referenced in the Introduction and Part 2,¹⁸⁴—have prevented reparation for the Genocide, before the present there has been no avenue for reparation open to the victim group, while the claims that can be made now would be virtually all in the name of survivors who are no longer living. Of course, the expropriation of property as well as the deaths and suffering of those directly killed in the Genocide should also be included in any reparations package, if the Turkish state and society are not to benefit from the Genocide. In these cases, only others, most appropriately family members, Armenian organizations representing general Armenian interests, and the current Armenian Republic, can make reparation claims. Principle 6 of the 1997 Basic Principles and Guidelines recognizes their right to do so as representatives of the dead.

Whenever possible, *restitutio in integrum* (complete restitution, restoration to the previous condition) should be granted, so as to re-establish the situation that existed before the violation occurred. Principle 12 of the 1997 Basic Principles and Guidelines specifically asserts the *restitutio in integrum* reparation right:

Restitution shall be provided to re-establish the situation that existed prior to the violations of human rights or international humanitarian law. Restitution requires, *inter alia* . . . return to one's place of residence and restoration of . . . property.¹⁸⁵

180 Dadrian, *The Armenian Genocide*, pp. 357-361 (see Note 9); Hovannisian, "Historical Dimensions of the Armenian Question," pp. 36-37 (see Note 62); Rouben Paul Adalian, "Mustafa Kemal Atatürk," in Charny, *Encyclopedia of Genocide*, Vol. 1, pp. 110-111 (see Note 15).

181 Marashlian, "Finishing the Genocide" (see Note 67); Baghdjian, *The Confiscation of Armenian Properties*, pp. 157-229 (see Note 38); Tachjian, "An Attempt to Recover Armenian Properties" (see Note 78); Rouben Paul Adalian, "The Armenian Genocide," in Samuel Totten and William S. Parsons (eds.), *Centuries of Genocide: Critical Essays and Eyewitness Accounts*, 4th ed. (New York, NY, USA: Routledge, 2013), pp. 117-155 at 133.

182 See, for example, Çetinoğlu, "Foundations of Non-Muslim Communities" (see Note 72); "Minority Groups Face Increasing Discrimination in Turkey," *Today's Zaman*, March 20, 2014, <http://www.todayszaman.com/news-342607-minority-groups-face-increasing-discrimination-in-turkey.html> (accessed September 25, 2014).

183 See, for example, Hovannisian, "The Armenian Genocide and Patterns of Denial," pp. 120-121, 127-128 (see Note 10); Roger Smith, "Denials of the Armenian Genocide," in Charny (ed.), *Encyclopedia of Genocide*, Vol. 1, pp. 161-166 at 165 (see Note 15); "US Backs Down Over Turkey 'Genocide,'" *BBC News*, October 20, 2000, http://news.bbc.co.uk/2/hi/world/monitoring/media_reports/980914.stm (accessed September 25, 2014); Bruce Crumley, "French Draft Law on Armenian Genocide Rocks Franco-Turkish Relations," *Time*, January 24, 2012, <http://world.time.com/2012/01/24/french-draft-law-on-armenian-genocide-rocks-franco-turkish-relations/> (accessed September 25, 2014).

184 For references, see Note 10.

185 Compare with the first report by Theo van Boven, U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms: Final report submitted by Mr. Theo van Boven, Special Rapporteur*, July 2, 1993 (E/CH.4/Sub.2/1993/8), Section IX, General Principle 8, and the second report, U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities, *Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117*, May 24, 1996 (E/CN.4/Sub.2/1996/17), Annex, Principle 12.

Such fully restorative restitution might no longer be possible. In addition, the mere return of privately held Armenian land property in the Turkish Republic would not be adequate or appropriate reparation, because claiming such a form of reparation would require Armenians to live under Turkish governmental authority that has remained discriminatory toward and oppressive over Armenians to the present day.¹⁸⁶ As seen above, the Basic Principles and Guidelines clearly allow that, where *restitutio in integrum* is not possible, alternative compensation may be substituted as a remedy.

In denying the applicability of statutes of limitation to restitution claims by survivors of the Holocaust, Professor Irwin Cotler argues:

The paradigm here is not that of restitution in a domestic civil action involving principles of civil and property law, or restitution in an international context involving state responsibility in matters of appropriation of property of aliens; rather, the paradigm—if there can be such a paradigm in so abhorrent a crime—is that of restitution for Nuremberg crimes, which is something dramatically different in precedent and principles . . . Nuremberg crimes are *imprescribable* [*sic* “imprescriptible” or “indefeasible”] or Nuremberg law—or international laws anchored in Nuremberg Principles—does not recognize the applicability of statutes of limitations, as set forth in the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.¹⁸⁷

The same argument applies with respect to the survivors of the Armenian Genocide and their descendants. It is an enduring challenge to international morality that Turkey continues to benefit from Armenian lands and buildings and that it even tried to cash in on the life insurance of some of the Armenians whom the Ottoman government itself had exterminated.¹⁸⁸

In this context it is important to recall the obligations of States Parties under the International Covenant on Civil and Political Rights (ratified by Turkey on September 23, 2003; entry into force December 23, 2003),¹⁸⁹ in particular the obligations that result from Article 1, which stipulates the right of peoples to self-determination and their right to their natural wealth and resources, as well as the obligations resulting from Article 27, which provides for special treatment of ethnic and cultural minorities. It would follow that “historical inequities” should be redressed, and that the Armenian people are entitled, under Articles 1 and 27 of the Covenant, to the return of their cultural heritage. Pertinent in this context is the decision of the U.N. Human Rights Committee regarding *Lubicon Lake Band v. Canada*, where the Committee determined that there had been a violation of Article 27 and commented that “[h]istorical inequities, to which the State party refers, and certain more recent developments threaten the way of life and culture of the Lubicon Lake Band, and constitute a violation of Article 27 so long as they continue.”¹⁹⁰ In other words, where denial or destruction of the material basis of cultural heritage is at stake, a group has a right to rectification to support group identity.

186 See, for example, the sources in Note 181.

187 Cotler, “Confiscated Jewish Property,” p. 621 (see Note 88).

188 Morgenthau, *Ambassador Morgenthau’s Story*, p. 225 (see Note 62).

189 U.N. General Assembly, International Covenant on Civil and Political Rights (see Note 103).

190 U.N. Human Rights Committee, *Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (Chief Bernard Ominayak and Lubicon Lake Band v. Canada)*, May 10, 1990 (CCPR/C/38/D/167/1984).

4.5 FROM INTERNATIONAL LAW TO DOMESTIC CASES

One set of options for pursuit of a legal case for reparations includes international legal bodies, such as an ad hoc tribunal, the U.N. Compensation Commission, or the International Court of Justice. Another option—much used in the case of the Holocaust—would, as suggested above, bring cases in the courts of states, possibly including Turkey.¹⁹¹ There are domestic laws in certain contexts that might apply. For instance, it is conceivable that, in an action brought by Armenians against Turkey before a U.S. federal court, jurisdiction could be established pursuant to the Alien Tort Statute, which states that “the district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”¹⁹² In order to expand beyond the few laws addressing the Armenian Genocide comprehensively and directly by making international law directly applicable in domestic courts to this case, it will be necessary to transform international law into rules of domestic law. This is because, even where international law is clear, local courts frequently have no jurisdiction to take cognizance of cases concerning the restitution of Armenian properties and to award compensation. In order to create this jurisdiction and thus make the Armenian claims justiciable in the domestic legal order of states, local laws would have to be drafted and adopted. Such laws should be general enough to allow restitution to all victims of genocide, war crimes, crimes against humanity, racial discrimination, etc. If the pool of victims is expanded, there will be greater general support for the legislation.

At the same time, “enabling legislation” should be adopted in as many countries as possible, which would grant to decisions of international courts and tribunals status in the domestic legal order. Often enough states are not in opposition to decisions of international courts and tribunals, but simply do not have the mechanisms to execute those decisions or to translate the principles enunciated in such international decisions into domestic norms.

The next step for pursuit of reparations cases is practical: the assembly of a legal team to develop a concrete case strategy applying the legal analysis presented in this report—which courts would be best to file in, what specific claims will have the most traction, and so forth. While this step is beyond the scope of this report, the subject of which is to determine what reparations are justified on what basis and why, the analysis provided in this report is a resource for such a legal team.¹⁹³

191 See Taner Akçam, “The Spirit of the Law: Following the Traces of Genocide in the Law of Abandoned Property,” *International Criminal Law Review* 14:2 (2014): 377-395.

192 Alien Tort Statute, 28 U.S. Code §1350 (2004) (also referred to as the “Alien Tort Claims Act”). For a discussion of the statute, see Jordan J. Paust, “The History, Nature, and Reach of the Alien Tort Claims Act,” *Florida Journal of International Law* 16:2 (2004): 249-266.

193 For a discussion of possible avenues for Armenian Genocide property claim cases, see Susan Karamanian, “Economic-Legal Perspectives on the Armenian Genocide,” *International Criminal Law Review* 14:2 (2014): 242-260 at 254-259.

PART 5: HISTORICAL OBLIGATIONS AND REPARATIONS

Reparations-related law might seem to assume a model in which members of a class of victims receive reparations individually for the specific losses suffered. The distinction between individual and group reparations in such cases regarding financial compensation is not necessarily fundamental. While funding to the group's political and community institutions is more readily used for broader programs to help the group generally and subject to a group decision-making process that can ensure fairness, funds infused into the Armenian community through payments to individuals can still have the ultimate effect of supporting the rehabilitation and future viability of the Armenian identity group. The issue of territory is a different matter. There is a deep and fundamental difference between real property returned to individual owners but within the political, social, and cultural structures of the perpetrator group, and a political transfer of territory. The questions addressed in this section of the report are (1) Do Armenians collectively have a claim to a political transfer of territory? and (2) If so, what is its basis?

It should be noted that organizations can be treated as legal individuals for the purposes of return of land and other property. As explained in the previous section, for instance, the Armenian Apostolic, Protestant, and Catholic Churches might claim land and buildings expropriated through the Genocide. What is more, recent legal cases and some elements of law indicate that suits can include reparations made to community organizations and even the state representing a victim group. For instance, a substantial portion of the New York Life settlement went to Armenian organizations promoting the general well-being of Armenian communities in the Diaspora.¹⁹⁴ This might be extended to land claims.

Consideration of the political transfer of territory should include the concept of “historical justice.” Armenians inhabited for millennia land in eastern Asia Minor¹⁹⁵ that was considered “Armenia,” whether under an Armenian or a conquering government.¹⁹⁶ Further, a key motive for the Genocide was to destroy the Armenian population of this land in order to Turkify the land and break its historical Armenian presence and character.¹⁹⁷ In fact, while the facts show that there was no significant separatist movement among Armenians prior to or during the Genocide,¹⁹⁸ that CUP leaders cited rebellion or separatism as a pretext for the Genocide,¹⁹⁹ and later deniers have emphasized rebellion or separatism,²⁰⁰ confirms their and others’ perception that Armenians had a long-standing historical connection and a substantial contemporary demographic presence on the lands in question.

But, claims of historical justice need some kind of further support or rationale, particularly where territory has been inhabited for a long historical period and different groups have had access to it. At the extreme, one can argue that historical claims have no validity in themselves, because one can always

194 See Weinstein, “Insurer Settles Armenian Genocide Suit” (see Note 2).

195 The issue of the historically Armenian area of Cilicia, on the Mediterranean coast of central Asia Minor, is set aside for the general treatment of land claims in this section, and will be revisited later in the report.

196 Hovannisian, “The Historical Dimensions,” pp. 19-20 (see Note 62).

197 See, for instance, Adalian, “The Armenian Genocide,” p. 132 (see Note 180); Uğur Ümit Üngör, “Seeing Like a Nation-State: Young Turk Social Engineering in Eastern Turkey, 1913-50,” *Journal of Genocide Research* 10:1 (2008): 15-39 at 20-21, 26-27.

198 Melson, *Revolution and Genocide*, p. 157 (see Note 151); Dikran Kaligian, *Armenian Organization and Ideology under Ottoman Rule: 1908-1914* (New Brunswick, NJ, USA: Transaction Publishers, 2009); Henry C. Theriault, “Rethinking Dehumanization in Genocide,” in Richard G. Hovannisian (ed.), *The Armenian Genocide: Cultural and Ethical Legacies* (New Brunswick, NJ, USA: Transaction Publishers, 2007), pp. 27-40 at 34-35.

199 See, for example, Morgenthau, *Ambassador Morgenthau's Story*, pp. 223, 229-230 (see Note 62).

200 For analysis of this phenomenon, see, for example, Dikran Kaligian, “Anatomy of Denial: Manipulating Sources and Manufacturing a Rebellion,” *Genocide Studies International* 8:2 (2014): 208-223.

question the entitlement of the prior group on the land. This is particularly a problem where the length of history in question and the scarcity of records render the history murky. Did that group displace others in prior historical periods? Did the victim group in question benefit from assimilation of their land into a larger political entity? And so on. Historical claims to land seem to invite a regression of conflicting views about which group or groups ultimately has/have historical title to a given territory.²⁰¹

That said, the recognition of the territory described above as Armenian over the course of more than 2,000 years and many political structures appears stronger justification for historical title than is available to many other groups claiming historical lands. It is perhaps for this reason that, in the aftermath of the first phase of the Armenian Genocide (1915-1918), even the post-CUP Ottoman government was willing to recognize the borders of the new Armenian Republic as encompassing much of what is still identified as “historical Armenia.” But it is recognition through formal legal mechanisms that is the key to the legitimacy of Armenian historical land claims today.

A number of points about this award should be noted. First, the particular land determined for transfer to the Armenian Republic (known, for reasons explained below, as “Wilsonian Armenia”) was based on what appeared to be necessary to make the Republic viable as the state and society in which the Armenian people would be reconstituted after the Genocide.²⁰² Thus, the award of land was an attempt to ensure repair of damage done by the Genocide to the Armenian people as a whole. Second, after the award was made and at a point when the Armenian Republic occupied part of the land awarded, in 1920, Turkish nationalist forces, under Kemal Ataturk, on the path to establishing the Turkish Republic three years later, conquered and seized the western portion of the 1918 Armenian Republic and, with Soviet complicity, ended the independence of the Republic.²⁰³ Thus, any claim on the lands retaken by Ataturk is for land that was already granted to Armenians and taken back by the government that would establish the Turkish Republic.

While this history of conquest, the prior process of genocidal depopulation, and a long historical association and occupation support Armenian land claims, the case would seem to be immeasurably strengthened and made irrefutable if the award of lands to the Armenian Republic after the first phase of the Genocide—both the lands it actually occupied and the lands it was granted beyond what it occupied—can be confirmed as legitimate at the time and still in effect today. The remainder of this section is devoted to consideration of these issues.

5.1 BACKGROUND

The punishment of the crime of genocide—whether then called “extermination,” “evacuation,” “annihilation,” “deportations,” “atrocities,” “liquidations,” or “massacres”—as well as the obligation to make restitution to the survivors of the victims, were envisioned by the victorious Allied Powers of World War I and included in the text of the Peace Treaty of Sèvres of August 10, 1920, between the Allied Powers and the Ottoman Empire. This treaty contained a commitment to try Turkish officials not only for war crimes committed by Ottoman Turkey against Allied nationals,²⁰⁴ but also for crimes committed

201 See Janna Thompson, *Taking Responsibility for the Past: Reparation and Historical Justice* (Cambridge, UK: Polity Press, 2002), p. 57.

202 See Subsections 5.3.1, 5.3.2, and 5.3.4, below.

203 Hovannisian, “The Historical Dimensions,” p. 36 (see Note 62).

204 Particularly for violations of the 1907 Hague Convention IV on land warfare (see Note 104).

against subjects of the Ottoman Empire of a different ethnic origin, in particular the Armenians—crimes that, as demonstrated in the previous section, today would be termed “genocide” and would also fall under the more general term “crimes against humanity.”

Pursuant to Article 230 of the Treaty of Sèvres:²⁰⁵

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

The principle of just restitution for the victims also existed and was reflected in Article 144 of the Treaty of Sèvres:

The Turkish Government recognizes the injustice of the law of 1915 relating to Abandoned Properties (*Emval-I-Metroukeh*), and of the supplementary provisions thereof, and declares them to be null and void, in the past as in the future.

The Turkish Government solemnly undertakes to facilitate to the greatest possible extent the return to their homes and re-establishment in their businesses of the Turkish subjects of non-Turkish race who have been forcibly driven from their homes by fear of massacre or any other form of pressure since January 1, 1914. It recognises that any immovable or movable property of the said Turkish subjects or of the communities to which they belong, which can be recovered, must be restored to them as soon as possible, in whatever hands it may be found . . . The Turkish Government agrees that arbitral commissions shall be appointed by the Council of the League of Nations wherever found necessary . . . These arbitral commissions shall hear all claims covered by this Article and decide them by summary procedure.

Although Turkey signed the Treaty of Sèvres, formal ratification never followed, and the Allies did not apply the necessary political and economic pressure on Turkey to ensure its implementation.²⁰⁶ Such failure was attributable to the international political disarray following World War I, the rise of the Soviet Union, the withdrawal of the British military presence from Turkey,²⁰⁷ the isolationist policies of the United States,²⁰⁸ the demise of the Young Turk regime, and the rise of Kemalism in Turkey. No

205 See Note 85.

206 André N. Mandelstam, *La Société des Nations et les puissances devant le Problème Arménien*, 2nd ed. (Beirut, Lebanon: Éditions universitaires arméniens, 1970).

207 Paul Helmreich, *From Paris to Sèvres: The Partition of the Ottoman Empire at the Peace Conference of 1919-1920* (Columbus, OH, USA: Ohio State University Press, 1974), pp. 131-152.

208 “Although U.S. diplomats had condemned the Genocide as early as 1915, the U.S. government did not take any action to redress the injustices after the war. It is worth remembering that U.S. Ambassador Henry Morgenthau, Sr., had called the massacres ‘race murder’ and that on July 10, 1915, he had cabled Washington with the following description of the Ottoman policy:

Persecution of Armenians assuming unprecedented proportions. Reports from widely scattered districts indicate systematic attempt to uproot peaceful Armenian populations and through arbitrary arrests, terrible tortures, whole-sale expulsions and deportations from one end of the empire to the other accompanied by frequent instances of rape, pillage, and murder, turning into massacre, to bring destruction and destitution on them. These measures are not in response to popular or fanatical demand but are purely arbitrary and directed from Constantinople in the name of military necessity, often in districts where no military operations are likely to take place.” (Power, *‘A Problem from Hell’*, p. 6 [see Note 15])

international criminal tribunal as envisaged in Article 230 was ever established. No arbitral commissions as stipulated in Article 144 were ever set up.

A new peace treaty eventually emerged between Kemalist Turkey and the Allies (Britain, France, Italy, Japan, Greece, and Romania). The Treaty of Lausanne of July 24, 1923, did not confirm the provisions in the Sèvres Treaty for international trial and punishment of the perpetrators of the Armenian Genocide, the commitment to grant reparations to the survivors of the Genocide, and the recognition of a free Armenian state (Section VI, Articles 88-93), which had declared its independence on May 28, 1918, but in the next few years lost Western Armenia to Turkey and Eastern Armenia to a communist takeover (backed by Soviet Red Army units), which would ultimately lead to incorporation of the rump Armenian state into the Soviet Union as a Soviet Republic.

It should be noted that, prior to the drafting and negotiation of the Treaty of Sèvres, on May 24, 1915, the governments of France, Great Britain, and Russia had issued a joint declaration denouncing the Ottoman government's massacres of the Armenians as constituting "crimes . . . against humanity and civilization" for which "the Allied governments . . . will hold responsible all members of the Ottoman government and those of their agents who are implicated in such massacres."²⁰⁹

5.2 SÈVRES AND LAUSANNE

It is widely held that the 1923 Treaty of Lausanne replaced the 1920 Treaty of Sèvres. This appears in part based on the fact that the Sèvres Treaty was not implemented, while the later Lausanne Treaty established the subsequent political order in the relevant regions, especially Turkey. While the Treaty of Sèvres did not enter into force, it was signed by "High Contracting Parties," which are states that agree to be bound by the provisions of a treaty whether or not the treaty enters into force.²¹⁰ Thus, the text of the treaty was established as authentic and definitive by virtue of participation of its drawing and signatures of the plenipotentiaries of the States Parties to the treaty, and each party, including the Turkish state, consented to be bound by the treaty, whether or not it actually entered into force. That a treaty signed by the High Contracting Parties is binding on the signatory parties is made clear in Article 2, Paragraph 6, of the 1969 Vienna Convention on the Law of Treaties²¹¹ and in Article 2, Paragraph 11, of the 1978 Vienna Convention on Succession of States in Respect of Treaties.²¹² According to international law, Sèvres is an "unperfected treaty,"²¹³ but it was and is still a legally valid document, a binding contract between its parties that reflected the positions of the parties and created the stipulated obligations.

A treaty may be amended, terminated, or withdrawn from only by agreement of the parties in accordance with the procedure set out in the treaty itself or pursuant to customary international law, as codified by the Vienna Convention on the Law of Treaties.²¹⁴ As explained in the legal analysis above,

209 U.S. National Archives, Record Group 59, 867.4016.67 (see Note 125). See also Egon Schwelb, "Crimes Against Humanity," *British Yearbook of International Law* 23:1 (1946): 178-226 at 181.

210 As confirmed in the 1969 Vienna Convention on the Law of Treaties, Article 2 (1) (f) (see Note 140), a "contracting State means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force."

211 Vienna Convention on the Law of Treaties (see Note 140).

212 Vienna Convention on Succession of States in respect of Treaties, August 23, 1978, United Nations, Treaty Series, Vol. 1946, p. 3, http://legal.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf (accessed October 13, 2014).

213 This is the legal term for treaties that are not ratified by signatory states.

214 United Nations, *Final Clauses of Multilateral Treaties: Handbook* (New York, NY, USA: United Nations, 2003), p. 95.

while Article 4 stipulates that the Convention is not retroactive, the rules of the Convention that reflect customary international law do apply to treaties concluded before the entry into force of the Convention.²¹⁵ Amendment of any multilateral treaty must be by consent of *all* parties to the treaty, as stipulated in Article 40 (2) of the Vienna Convention on the Law of Treaties:

Any proposal to amend a multilateral treaty as between all the parties must be notified to all contracting States, each one of which shall have the right to take part in: (a) the decision as to the action to be taken in regard to such proposal [and] (b) the negotiation and conclusion of any agreement for the amendment of the treaty.

The Lausanne Conference cannot be considered a process of amendment or modification of the Treaty of Sèvres because no official notification for amendment was communicated to each state party of the treaty. In fact, the Treaty of Lausanne was concluded by only 7 signatories (the British Empire, France, Greece, Italy, Japan, Romania, and the Government of the Grand National Assembly of Turkey) of the 13 who signed the Treaty of Sèvres (Armenia, Belgium, the British Empire,²¹⁶ Czechoslovakia, France, Greece, Italy, Japan, Poland, Portugal, Romania, the Serb-Croat-Slovene State, and Turkey). Thus, the Treaty of Lausanne cannot legally have amended the Treaty of Sèvres because it was not a treaty of all the parties of the Sèvres Treaty. What is more, for the States Parties to the Treaty of Sèvres who were not signatories to the Lausanne Treaty, including Armenia, the Treaty of Lausanne had and has no legal effect and did not create either obligations or rights (Vienna Convention on the Law of Treaties, Article 34). Most specifically, it could not represent Armenian acquiescence to repudiation of financial reparations or new borders with Turkey. The lack of legal relevance of the Lausanne Treaty for Armenia was highlighted by Avetis Aharonian, President of the Sèvres Delegation of the Republic of Armenia on behalf of the Republic of Armenia, in an August 8, 1923 letter addressed to the Foreign Ministers of the Allied Powers:

The delegation which signed the Sèvres Treaty for Armenia reserves and insists upon all the rights which the powers, during and since the war, solemnly recognized and which were duly embodied in the Sèvres Treaty and reincorporated and reaffirmed by decisions of subsequent conferences.²¹⁷

Similarly, the termination of a treaty or the withdrawal of a party from a treaty may take place only by consent of *all* parties (Vienna Convention on the Law of Treaties, Article 54). This means that Turkey could not unilaterally free itself from the obligations imposed by the Treaty of Sèvres without consent of the other parties, including Armenia. No such consent has been given, and clearly the Lausanne Treaty did not represent it, for the reason cited above.

A further point requires emphasis. In addition to the difference in the negotiating and signatory parties to the two treaties already discussed, the scope, objectives, and context of the two treaties were quite different and further undermine any claim that the latter was meant to or could replace the earlier. First, as noted above, Sèvres was signed by “High Contracting Parties,” which are states that agree to be bound

²¹⁵ Anthony Aust, *Modern Treaty Law and Practice* (Cambridge, UK: Cambridge University Press, 2000), p. 8.

²¹⁶ For the British Empire, there were separate signatories for the United Kingdom of Great Britain and Ireland, for the Dominion of Canada, for the Commonwealth of Australia, for the Dominion of New Zealand, for the Union of South Africa, and for India.

²¹⁷ “Armenia Denounces Lausanne Treaty; Note to the Powers Formally Reserves All Grants Under the Treaty of Sèvres,” *The New York Times*, September 12, 1923, p. 30.

by the provisions of a treaty whether or not the treaty enters into force. The Lausanne Treaty was not signed by “contracting states” and thus had no status until ratified.

Second, Sèvres was concluded between the “Allied and Associated Powers” (that is, the international alliance of one side in World War I) and Turkey. And, third, it was meant to end the part of World War I that concerned Turkey and to establish peace. As stated in the Preamble,

Whereas the Allied Powers are equally desirous that the war in which certain among them were successively involved, directly or indirectly, against Turkey, and which originated in the declaration of war against Serbia on July 28, 1914, by the former Imperial and Royal Austro-Hungarian Government, and in the hostilities opened by Turkey against the Allied Powers on October 29, 1914, and conducted by Germany in alliance with Turkey, should be replaced by a firm, just and durable Peace.

The Lausanne Treaty process, on the other hand, was meant to address the Greek-Turkish conflict of 1919-1922 and was signed by individual parties with interests in the region (some directly or indirectly participating in the conflict). Regarding the signatories, furthermore, the Turkish party was referred to as “the Government of the Grand National Assembly of Turkey,” which was not the direct successor government to the Ottoman government, nor yet the government of the Turkish Republic (which was established three months after the signing of the Lausanne Treaty), but represented the belligerent group led by Kemal Atatürk.²¹⁸ Regarding the objective of the Lausanne process, its title, “The Lausanne Conference on Near East Affairs, 1922-1923,” highlighted its narrower scope, as did Robert Haab, President of the Swiss Confederation, in his official opening speech, in which he underscored the object and purpose of the conference “to put an end to the conflict in the Near East,”²¹⁹ namely the “Greco-Turkish War.”²²⁰ The Preamble of the Treaty of Lausanne highlights the object and purpose of the treaty to be “to bring to a final close the state of war which has existed in the East since 1914.” While this could be read to mean that the treaty addressed World War I and the subsequent conflict, Haab’s remarks and the wording “final close” indicate that the concern was with what was occurring in 1919-1922. Thus, the Lausanne Treaty was not meant to address World War I and the main phase of the Armenian Genocide, nor to make good on the May 24, 1915, declaration by Britain, France, and Russia that Turkey would be held accountable for its “crimes against humanity and civilization” against Armenians and other minority groups.²²¹

Although Armenia was not party to the Treaty of Lausanne, which, as pointed out above, means that it has no legal effect for Armenia, there was nevertheless a provision in the treaty, Article 16, that indirectly reconfirms the title and rights of the Republic of Armenia by virtue of the renunciation of the title and rights of Turkey over the boundaries of Armenia set up through the arbitration of U.S. President Wilson pursuant to the Sèvres Treaty, typically referred to as “Wilsonian Armenia.” Article 16 states specifically that

²¹⁸ The Treaty of Lausanne was signed on July 24, 1923, and the Republic of Turkey was proclaimed on October 29, 1923. See “Proceedings of the Opening and Public Session of the Near East Peace Conference, held at the Casino de Montbenon, Lausanne, November 20, 1922, at 3:30 p.m.,” *Lausanne Conference on Near East Affairs, 1922-1923: Records of Proceedings and Draft Terms of Peace* (London, UK: His Majesty’s Stationery Office, 1923), pp. 1-14 at 4, 8.

²¹⁹ *Ibid.*, p. 1.

²²⁰ *Ibid.*, p. 2.

²²¹ U.S. National Archives, Record Group 59, 867.4016.67 (see Note 125).

Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present Treaty and the islands other than those over which her sovereignty is recognised by the said Treaty, the future of these territories and islands being settled or to be settled by the parties concerned . . . The provisions of the present Article do not prejudice any special arrangements arising from neighbourly relations, which have been or may be concluded between Turkey and any limitrophe countries.

The Lausanne Treaty fixed the Turkish border with Bulgaria (Article 2 [1]), Greece (Article 2 [2]), Syria (Article 3 [1]), and Iraq (Article 2 [1]), but did not specify or refer to any fixing of the Turkish-Armenian border. Thus, the special arrangement through the Wilson arbitration (see below) made pursuant to the Sèvres Treaty remained in effect, as indicated in Article 16.

At the same time, the Lausanne Treaty's silence on the Turkish-Armenian border meant that there was no enforcement of the Wilsonian arbitration pursuant to the Sèvres Treaty, in effect leaving uncommented upon and thus intact the actual situation, with Turkey militarily invading and conquering that part of Wilsonian Armenia that had already been incorporated into the 1918 Armenian Republic. This point was not lost on the U.S. Senate, which refused to ratify a U.S.-Turkey Treaty of Amity and Commerce signed in Lausanne on August 6, 1923. "After several weeks of intermittent discussion," the U.S. Senate rejected the treaty on January 18, 1927.²²² A statement issued by Democrats after the defeat of the treaty indicates that the opposition was based on three major grounds, and the Armenian issue was first among them: the treaty (1) "failed to provide for the fulfillment of the Wilson award to Armenia," (2) "contained no guarantee for the protection of Christians and other non-Moslems in Turkey," and (3) did not allow "for recognition by Turks of [the] American nationality of former subjects of Turkey."²²³

This does not, however, exhaust the applicability of the Treaty of Sèvres. Even if the treaty had been amended, terminated, or otherwise invalidated, or if a party had withdrawn from it validly, according to the Vienna Convention on the Law of Treaties, Article 43, this "shall not in any way impair the duty of any State to fulfill any obligation embodied in the treaty to which it would be subject under international law independently of the treaty." The Armenian-Turkish border determination and Armenian financial restitution called for in the Sèvres Treaty, as discussed below, both had legitimacy beyond the treaty, the former because of the arbitration process legally established and the latter because of existing international law. Thus, even if legal amendment, termination, annulment, etc., of the Sèvres Treaty had occurred, which it did not, this would not have affected the obligations for any of the reparations that are the subject of this report.

5.3 WILSON'S ARBITRATION

Article 89 of the Treaty of Sèvres refers the issue of the Turkish-Armenian boundary to the arbitration of U.S. President Wilson. Thus, Article 89 is a compromis (application) for an arbitration, which needed no ratification as the treaty as a whole did. In fact, prior to the Sèvres Treaty, on April 26, 1920, another compromis was submitted by the Allied Powers to President Wilson for the same task. This gave Wilson's arbitration a broader validity than the Sèvres Treaty compromis alone.

²²² "Democrats in Senate Kill Lausanne Treaty," *Salamanca Republican Press*, January 19, 1927, p. 5.

²²³ "Lausanne Treaty Is Defeated," *The Davenport Democrat*, January 19, 1927, p. 1.

International Public Arbitration is an effective legal procedure for dispute settlement between states.²²⁴ According to the 1953 report of the International Law Commission,²²⁵ arbitration is a procedure for the settlement of disputes between states by a binding award on the basis of law and as a result of an undertaking voluntarily accepted.²²⁶ The essential elements of Arbitration consist of (1) an agreement on the part of states having a matter, or several matters, in dispute to refer the decision about them to a tribunal, believed to be impartial, and constituted in such a way as the terms of the agreement specify, and to abide by its judgment, and (2) consent on the part of the person, persons, or states nominated for the tribunal to conduct the inquiry and to deliver judgment.²²⁷ The rules of arbitration were codified by the Hague Convention for the Pacific Settlement of International Disputes, concluded on July 29, 1899, and very slightly amended in the Convention of the same name concluded on October 18, 1907 (entered into force on January 26, 1910). The Hague Convention (Article 15 of 1899 and Article 37 of 1907) defines “international arbitration” as “the settlement of disputes between States by judges of their own choice and on the basis of respect of law.”²²⁸

5.3.1 The Process and Report

On April 26, 1920, the Supreme Council of the Principal Allied and Associated Powers in Paris requested the President of the United States to make an arbitral decision to fix the boundaries of Armenia with Turkey.²²⁹ On May 17, 1920, the U.S. Secretary of State informed the American Ambassador in France that the President had agreed to act as arbitrator.²³⁰ In July, the U.S. Department of State began to assemble a team of experts for the assignment, known as the Committee upon the Arbitration of the Boundary between Turkey and Armenia. The boundary committee was headed by Professor William Westermann, and his key associates were Lawrence Martin and Harrison G. Dwight. As the Treaty of Sèvres was signed on August 10, 1920, the boundary committee began its deliberations.

The guidelines adopted by the committee were to draw the southern and western boundaries of Armenia on the basis of a combination of ethnic, religious, economic, geographic, and military factors. The committee had at its disposal all the papers of the U.S. peace delegation and the Harbord Mission; the files of the U.S. Departments of State, War, and Interior; and the cartographical services of the U.S. Geological Survey. In addition to the advice of experts in government service and direct consultations with General Harbord, the committee sought the input of missionaries and others with field experience who could give detailed information about the ethnic makeup of particular villages near where the border would likely pass; the roads and markets connecting certain villages, towns, and cities; and specific physical landmarks.

224 Louis B. Sohn, “The Role of Arbitration in Recent International Multinational Treaties,” *Virginia Journal of International Law* 23:2 (1983): 171-189 at 171-172.

225 International Law Commission, “Report of the International Law Commission covering the work of its fifth session, 1 June-14 August 1953” (A/2436), in *Yearbook of the International Law Commission, 1953*, 2 vols., Vol. II, “Documents of the fifth session including the report of the Commission to the General Assembly” (New York, NY, USA: United Nations, 1959) (A/CN.4/SER.A/1953/Add.I), pp. 200-269 at 202.

226 See Shabtai Rosenne, *The Law and Practice of the International Court, 1920-1996*, 3rd ed., 4 vols., Vol. 1, “The Court and the United Nations” (The Hague, Netherlands: Martinus Nijhoff, 1997), p. 11; Katharine Seide (ed.), *A Dictionary of Arbitration and its Terms: Labor, Commercial, International – A Concise Encyclopedia of Peaceful Dispute Settlement* (Dobbs Ferry, NY, USA: Oceana Publications, 1970), p. 126.

227 Sheldon Amos, *Political and Legal Remedies for War*, (London, UK: Cassell, Petter, Galpin & Co., 1880), pp. 164-165.

228 James Brown Scott (ed.), *The Hague Court Reports* (New York: Oxford University Press, 1916), pp. lvi-lvii.

229 Lt.-Col. Lawrence Martin, “Introduction: The Legal Basis of the New Boundaries,” in Lt.-Col. Lawrence Martin (ed.), *The Treaties of Peace, 1919-1923*, 2 vols., Vol. I (New York, NY, USA: Carnegie Endowment for International Peace, 1924), pp. v-lxxvii at xxxii.

230 Martin (ed.), *The Treaties of Peace*, Vol. I, p. 783 (see Note 229).

The “Full Report of the Committee upon the Arbitration of the Boundary between Turkey and Armenia” was submitted to the Department of State on September 28, 1920.²³¹ The report defined the area submitted for arbitration, the sources available to and used by the committee, the principles and bases on which the work had proceeded, the need for the inclusion of Trebizond to guarantee unimpeded access to the sea, the desirability of demilitarization of the frontier line, the character of the resulting Armenian state, the immediate financial outlook of Armenia, and the existing political situation in the Near East. The seven appendices of the report included the documents relevant to the arbitration, the maps used in drawing the boundaries, a discussion of the issue of Kharpert (which was not included in the Armenian territory), the question of Trebizond, the status of the boundary between Turkey and Persia, the military situation in relation to Armenia, and the financial position of those parts of the four provinces formerly within the Ottoman Empire assigned to Armenia.

Insofar as the four provinces in question were concerned, the key factors were geography, economy, and ethnography. Historic and ethical considerations were passed over. The committee attempted to draw boundaries in which the Armenian element, when combined with the inhabitants of the existing state in Russian Armenia, would constitute almost half of total population and within a few years form an absolute majority in nearly all districts. Such calculations took into account the effects of the Armenian Genocide, Muslim losses during the war, and the probability that some part of the remaining Muslim population would take advantage of the provisions of the Sèvres Treaty regarding voluntary relocation to territories that were to be left to Turkey or to an autonomous Kurdistan.

The territory allocated to Armenia by the arbitration was 40,000 square miles (103,599 square kilometers), which was less than half of the area (108,000 square miles, or 279,718 square kilometers) that for centuries in Ottoman, as well as in non-Ottoman, sources and maps had typically been identified as *Ermenistan* (“Armenia”),²³² and that since 1878²³³ was the holder of the legal title “Armenia” or “the Six Armenian *Vilayets* (Provinces),” as defined in Article 24 of the Mudros Armistice.²³⁴ The committee made calculations, based on pre-war statistics, that the population of the territories to be included in the new Armenian state had been 3,570,000, of whom Muslims (Turks, Kurds, “Tartar” Azerbaijanis, and others) had formed 49 percent, Armenians 40 percent, Lazs 5 percent, Greeks 4 percent, and other groups 1 percent. It was anticipated that large numbers of Armenian refugees and exiles would return to an independent Armenia. After the first year of repatriation and readjustment, the population of the Armenian Republic would be about 3 million, of whom Armenians would make up 50 percent, Muslims 40 percent, Lazs 6 percent, Greeks 3 percent, and other groups 1 percent. The rise in the absolute number and proportion of Armenians was expected to increase steadily and rapidly in subsequent years.²³⁵ The projection was that Armenians would constitute about 75 percent of the population within 20 years after the border was fixed where the Special Committee indicated.

231 For the full report with relevant materials, see U.S. Archives, General Records of the Department of State (Decimal File, 1910-1920), RG 59, RG 59, 760J.6715/65.

232 The notion of a historic title is well known in international law. Historic title is a title that has been so long established by common repute that this common knowledge is itself a sufficient legal title.

233 See Article 16 of the Preliminary Treaty of Peace between Russia and Turkey, Signed at San Stefano, March 3, 1878, published in *The American Journal of International Law* 2:4, Supplement (1908): 387-401, <http://www.jstor.org/stable/2212669?origin=JSTOR-pdf> (accessed October 18, 2014). See also M. G. Rolin-Jaequemyns, *Armenia, the Armenians, and Treaties*, M. G. Rolin-Jaequemyns (trans.) (London, UK: John Heywood, 1891).

234 J. C. Hurewitz, *Diplomacy in the Near and Middle East*, 2 vols., Vol. 2, “A Documentary Record: 1914-1956” (Princeton, NJ, USA: D. Van Nostrand Company, 1956), p. 37.

235 Hovannisian, *The Republic of Armenia*, Vol. IV, p. 37 (see Note 67).

On November 22, 1920,²³⁶ Woodrow Wilson signed the final report, entitled, “Decision of the President of the United States of America respecting the Frontier between Turkey and Armenia, Access for Armenia to the Sea, and the Demilitarization of Turkish Territory Adjacent to the Armenian Frontier.”²³⁷ The text of the arbitration decision was cabled to Ambassador Wallace in Paris on November 24, 1920, with instructions that it should be handed to the Secretary General of the Paris Peace Conference for submission to the Allied Supreme Council.²³⁸ Wallace responded on December 7, 1920, that he had delivered the documents that morning. The boundary between Armenia and Turkey was settled conclusively, and the Turkish-Armenian international boundary was subsequently delimited,²³⁹ as clearly states the Hague Convention²⁴⁰ (Article 54 of the 1899 and Article 81 of the 1907):²⁴¹ “The award, duly pronounced and notified to the agents of the parties, settles [puts an end to] the dispute definitively and without appeal.”²⁴²

5.3.2 Validity of the Arbitral Award

For an arbitral award to be valid, it must meet certain criteria: (1) the arbitrator(s) must not have been subjected to any undue external influence such as coercion, bribery, or corruption, (2) the production of proofs must have been free from fraud and the proofs produced must not have contained any essential errors, (3) the compromis must have been valid, and (4) the arbitrators must not have exceeded their powers.²⁴³

Criterion 1: The arbitrator, as was agreed in the compromis, was U.S. President Wilson. There is no evidence or even hint of coercion, bribery, or corruption regarding his role as arbitrator.

Criterion 2: The actual determination of the boundary was carried out by the special committee introduced above. The Chair of the Committee upon the Arbitration of the Boundary between Turkey and Armenia was William Linn Westermann, then Professor at the University of Wisconsin and soon after Professor at Columbia University until 1948. He was a specialist in the history and politics of the Near and Middle East and, in 1919, had been the Chief of the Western Asia Division of the American Commission to Negotiate Peace in Paris.²⁴⁴ The principal collaborators and contributors were Major (and Professor) Lawrence Martin of the Army General Staff, who had participated as the geographer of the

236 A. O. Cukwurah, *The Settlement of Boundary Disputes in International Law* (Manchester, UK: Manchester University Press, 1967), pp. 165-166.

237 *Ibid.*, p. 31; G. H. Hackworth, *Digest of International Law*, 8 vols., Vol. I (Washington, DC, USA: Government Printing Office, 1940), p. 715.

238 *Ibid.*, pp. 789-790.

239 Cukwurah, *The Settlement of Boundary Disputes*, p. 31 (see Note 236); Hackworth, *Digest of International Law*, Vol. I, p. 715 (see Note 237).

240 The 1899 Convention was ratified by Turkey on July 12, 1907. See Scott (ed.), *The Hague Court Reports*, p. cii (see Note 228).

241 This notion was stated in Article 54 of the 1899 Convention with slightly different wording: “The award, duly pronounced and notified to the agents of the parties [at variance, puts an end to] the dispute definitively and without appeal” (*ibid.*, p. lxxxix).

242 *Ibid.*

243 Isaac Paenson, *Manual of the Terminology of Public International Law (Law of Peace) and International Organizations: English/French/Spanish/Russian* (Brussels, Belgium: Bruylant, 1983), pp. 588-590.

244 Hovannisian, *The Republic of Armenia*, Vol. IV, p. 30 (see Note 67).

Harbord Mission, and Harrison G. Dwight of the Near Eastern Division of the Department of State.²⁴⁵ Each committee member was a knowledgeable, experienced, and impartial expert. Their work, in fact, continues to stand out and be highly regarded by international lawyers as a model of such processes. For instance, Yahuda Z. Blum states that

this award must be regarded as one of the most significant analyses of the various factors that have to be taken into account in the determination of international boundaries and of the relationship among them,²⁴⁶

and A. L. W. Munkman finds

President Wilson's determination of the territorial frontiers of the newly established Armenian State particularly interesting because it includes an explanation of the reasons motivating it: the need for a "natural frontier" [and] "geographical and economic unity for the new state," [while] ethnic and religious factors of the population were taken account of so far as compatible[, and] security, and the problem of access to the sea, were other important conditions.²⁴⁷

It should be added that the report was reviewed by the U.S. Departments of State and War, so that detection of fraud or essential error, if either existed, would have been highly likely.

Criterion 3: There are several factors demonstrating the validity of the compromis:

(1) The relevant parties consented to the arbitration process. Consent can be accomplished through inclusion in any treaty of a special arbitration clause providing for arbitration of any dispute between the relevant parties that might arise in connection with the application of that treaty.²⁴⁸ The consent of Armenia and Turkey, as well as of other High Contracting Parties, was gained by the inclusion of a special arbitration clause in the Treaty of Sèvres, Article 89, which states that

Turkey and Armenia as well as the other High Contracting Parties agree to submit to the arbitration of the President of the United States of America the question of the frontier to be fixed between Turkey and Armenia in the Villayets of Erzerum, Trebizond, Van and Bitlis, and to accept his decision thereupon, as well as any stipulations he may prescribe as to access for Armenia to the sea, and as to the demilitarization of any portion of Turkish territory adjacent to the said frontier.

(2) The compromis was duly negotiated. On May 11, 1920, the Turkish delegation to the Paris Peace Conference was formally given the draft of the Sèvres Treaty.²⁴⁹ The Turkish government was accorded

²⁴⁵ *Ibid.*

²⁴⁶ Yehuda Zvi Blum, *Secure Boundaries and Middle East Peace, in Light of International Law and Practice*, "Institute for Legislative Research and Comparative Law Publications" book series, Vol. 21 (Jerusalem, Israel: Hebrew University of Jerusalem, Faculty of Law, Institute for Legislative Research and Comparative Law, 1971), p. 26.

²⁴⁷ A. L. W. Munkman, "Adjudication and Adjustment – International Judicial Decision and the Settlement of Territorial and Boundary Disputes," in Malcolm N. Shaw (ed.), *Title to Territory*, "The Library of Essays in International Law" book series, Vol. 8 (Burlington, VT, USA: Ashgate/Dartmouth, 2005), pp. 133-248 at 139.

²⁴⁸ Paenson, *Manual of the Terminology of Public International Law*, p. 586 (see Note 243).

²⁴⁹ Herbert Adams Gibbons, *An Introduction to World Politics* (New York, NY, USA: The Century Co., 1922), p. 430.

one month to submit in writing any observations or objections it might have relative to the treaty.²⁵⁰ Senator Tefvik Pasha, head of the delegation, officially acknowledged receipt of the treaty and indicated that the document would be given the earnest and immediate attention of his government.²⁵¹ At the end of May, Damad Ferid, the Grand Vizier of Turkey, applied to the Supreme Council for a one-month extension to present the Turkish observations on the settlement. The Supreme Council of the Paris Peace Conference compromised by granting a two-week extension, until June 25, 1920.²⁵² The first set of Turkish observations, bearing the signature of Damad Ferid Pasha, was submitted on June 25, 1920. On July 7, a second Turkish memorandum was received. In reply, the Supreme Council authorized the drafting committee to make minor revisions to the wording of the treaty without altering the substance.²⁵³ The Supreme Council also insisted on the arbitration of boundaries that would create “a free Armenia within boundaries which the President of the United States will determine as fair and just.”²⁵⁴ The Allied response was delivered to the Turkish delegation on July 17, 1920.

(3) The compromis was signed by authorized representatives of a lawful government. From 1918 to 1922, Sultan-Caliph Memed VI (Vahydud-Din Efendi, or Vahideddin) was the head of the Ottoman Empire, its politically recognized legitimate ruler.²⁵⁵ The Sultan represented the de jure Ottoman government.²⁵⁶ Pursuant to Article 3 of the Ottoman constitution (December 23, 1876; July, 23 1908), “Ottoman sovereignty . . . belongs to the eldest Prince of the House of Ottomans,” and the Sultan had the sole power to legislate.²⁵⁷ According to Article 7 of the Ottoman Constitution, among the sovereign rights of the Sultan is the conclusion of treaties. On July 22, 1920, Sultan Mehmed VI, the constitutional head of the state, convened a *Suray-i Saltanat* (Crown Council) of 50 prominent Turkish political and military figures, including former ministers, senators, and generals, as well as Prime Minister Damad Ferid Pasha. The Council recommended in favor of signing the Sèvres Treaty. The treaty was accepted.²⁵⁸ The final treaty, including the arbitral clause (Article 89), was signed by Turkish plenipotentiaries (General Haadi Pasha, Senator; Riza Tefvik Bey, Senator; and Rechad Haliss Bey, Envoy Extraordinary and Minister Plenipotentiary of Turkey at Berne) and sent by the Sultan’s government under the leadership of Damad Ferid Pasha.²⁵⁹

Criterion 4: The compromis asked the arbitrator (1) to fix the frontier between Turkey and Armenia in the *vilayets* of Erzerum, Trebizond, Van, and Bitlis, (2) to provide access for Armenia to the sea,

250 Helmreich, *From Paris to Sèvres*, p. 309 (see Note 207).

251 The Earl of Derby (Paris) to Earl Curzon, received May 12, 1920, FO E 4614/56/44/Tel.568, Document No. 61 in Rohan Butler and J. P. T. Bury (eds.), *Documents on British Foreign Policy 1919-1939*, First Series, Vol. 13 (London, UK: Her Majesty’s Stationary Office, 1963), p. 70.

252 Earl Curzon to Sir Buchanan (Rome), June 26, 1920, FO E 5506/3/44/Tel.236, Document No. 72, Note 2, in Rohan Butler and J. P. T. Bury (eds.), *Documents on British Foreign Policy 1919-1939*, First Series, Vol. 13 (London, UK: Her Majesty’s Stationary Office, 1963), p. 79.

253 British Secretary’s Notes of an Inter-Allied Conference held at the Villa Fraineuse, Spa, on Sunday, July 11, 1920, at 11:30 a.m., Appendix I, Draft Reply to Turkey, ICP 131, in Document No. 62, Appendix I, in Rohan Butler and J. P. T. Bury (eds.), *Documents on British Foreign Policy 1919-1939*, First Series, Vol. 8 (London, UK: Her Majesty’s Stationary Office, 1958), pp. 553-556.

254 *Ibid.*, p. 554.

255 Arnold J. Toynbee and Kenneth P. Kirkwood, *Turkey* (New York, NY, USA: Charles Scribner’s Sons, 1927), p. 151.

256 Harold Armstrong, *Turkey in Travail: The Birth of a New Nation* (London, UK: John Lane, 1925), p. 113.

257 Lord G. Shaw-Lefevre Eversley, *The Turkish Empire From 1288 to 1914 and From 1914 to 1924*, Abridged ed., Sir Valentine Chirol (ed.), (Lahore, Pakistan: Sheikh Abdur Rashid, 1958), p. 295.

258 Salahi Ramsdan Sonyel, *Turkish Diplomacy 1918-1923: Mustafa Kemal and the Turkish National Movement*, “Sage Studies in 20th Century Security” book series, Vol. 3 (London, UK: Sage Publications, 1975), p. 82.

259 Toynbee and Kirkwood, *Turkey*, p. 76 (see Note 255); Elaine Diana Smith, “Origins of the Kemalist Movement and the Government of the Grand National Assembly (1919-1923),” doctoral dissertation, American University, Washington, DC, USA, 1959, p. 133.

and (3) to prescribe stipulations for the demilitarization of Turkish territory adjacent to the Turkish-Armenian frontier. As is clear from the resulting territorial assignment to Armenia, President Wilson strictly remained within this assignment, despite strong pressure by missionary groups to include the town of Kharpert and the surrounding area in the Republic of Armenia.

5.3.3 Further Considerations Regarding the Validity of the Arbitral Award

The Treaty of Sèvres called for the boundary arbitration by President Wilson just described. Once it was agreed to and completed, that is, properly executed, regardless of the fate of the treaty, the arbitration became irrevocable. The legal doctrine of *res judicata* (“finality of judgments”) holds that once a legal claim has come to final conclusion it can never again be litigated.²⁶⁰ The doctrine of *res judicata* is considered applicable to all arbitral awards, whether the special agreement or general treaty of arbitration contains such a provision or not. In addition, arbitral awards and court judgments are similar in their nature, as both are based on law.²⁶¹ They both are legal decisions. Therefore, the doctrine of *collateral estoppel*, which affirms that an issue that has already been legally duly determined cannot be reopened or litigated again in a subsequent proceeding, applies in arbitration cases as well as court proceedings.²⁶²

If a party to an arbitration, by lack of any action in a reasonable period, does not challenge the award, this is taken to be tacit agreement and the award is considered valid and binding. It is thereafter precluded from going back on that recognition and challenging the validity of the award.²⁶³ At the time, Turkey did not legally challenge the validity of President Wilson’s Arbitral Award, never started any action for cancellation of the award, and by lack of any action gave its “tacit agreement.” Later military invasion and subjugation of some of the areas covered in the Arbitral Award cannot be taken as a legal challenge to the award, but are rather a violation of the arbitration decision. Indeed, arbitration decisions engage the parties for an unlimited period.²⁶⁴ The validity of the arbitration is not dependent upon its subsequent implementation.

The President is the representative authority in the United States.²⁶⁵ This representative character implies that all official utterances of the President are of international cognizance and are presumed to be authoritative.²⁶⁶ Foreign nations must accept a decision within his or her authority as President as the final position of the United States government.²⁶⁷ By virtue of the arbitrator’s position as U.S. President, the award was and is binding for the United States.

Finally, annulment (nullification of the legality) of an arbitral award can occur only when there is some authoritative public or judicial confirmation of the ground for such an annulment. This confirmation might come from an international agency such as the International Court of Justice. Confirmation of the

260 *Ibid.*, p. 198.

261 Max Sørensen (ed.), *Manual of Public International Law* (New York, NY, USA: St. Martin’s Press, 1968), p. 584.

262 Seide (ed.), *A Dictionary of Arbitration and Its Terms*, p. 49 (see Note 226).

263 Sørensen (ed.), *Manual of Public International Law*, p. 694 (see Note 261).

264 Luzius Wildhaber, *Treaty-Making Power and Constitution: An International and Comparative Study*, “Schriftenreihe des Instituts für Internationales Recht und Internationale Beziehungen” book series, Vol. 16 (Basel, Switzerland: Helbing and Lichtenhahn, 1971), p. 98.

265 Quincy Wright, *The Control of American Foreign Relations* (New York, NY, USA: MacMillan, 1922), p. 36.

266 *Ibid.*, p. 37.

267 *Ibid.*, p. 38.

ground of an annulment might also be based on international public opinion deriving from the general principles of law common to all nations.²⁶⁸ Simple refusal by a party to comply with an arbitral award is not a lawful annulment. Based on Article 81 of the Hague Convention I of 1907 and the absence of any international machinery to declare an arbitral award null and void, a party cannot make a legal plea for annulment of a valid arbitration decision.²⁶⁹

5.3.4 Implications for Land Status Today

From the validity of President Wilson's Arbitral Award it follows that Turkey's current occupation of "Wilsonian Armenia" constitutes a breach of an international obligation and is legally actionable, for instance, by referral to the ICJ, under Article 36 (2) of the ICJ Statute, which allows it to decide "the nature and claim of the reparation to be made for a breach of an international obligation." Consequently, in spite of long-standing occupation of the land in the Arbitral Award, Turkey does not possess legal title to that territory and its de facto sovereignty is merely administrative control by force of arms. Belligerent occupation does not yield lawful rule over a territory. Continuous occupation since 1920, demographic changes (forced or otherwise) in the territory in question, and elimination of the outward cultural signs and designations of the territory have no effect on the legality of Turkish control of the territory. In order to reaffirm the validity of international law and the credibility of the international prohibition against the use of force, the consequences of the failure to comply with the Arbitral Award and military conquest of the land not previously under Turkish control must be reversed. As stated already, the principle of general law *ex injuria non oritur jus* means that the state that has committed an illegal act may not continue to enjoy the fruits of its own illegality, and that out of this illegality, no new rights can emerge for the Turkish state or its subjects.

The second question posed at the beginning of this part of the report has thus been answered: whether viewed as compliance with the Arbitral Award itself or as repair for the damage of the failure to comply since 1920, turning over the "Wilsonian Armenian" lands to the Republic Armenia is legally required and an important element of fulfillment of the overarching reparative process for the Armenian Genocide envisioned in the aftermath of its main phase. This is clear in the July 17, 1920, reply by the Supreme Council of the Paris Peace Conference to the Turkish government, emphasizing the need for the arbitral process:

During the [previous] twenty years Armenians have been massacred under conditions of unexampled barbarity, and during the war the record of the Turkish Government in massacre, in deportation, and in maltreatment of prisoners of war immeasurably exceeded even its own previous record . . . Not only has the Turkish government failed to protect its subjects of other races from pillage, outrage, and murder, but there is abundant evidence that it has been responsible for directing and organizing savagery against people to whom it owed protection.²⁷⁰

It was thus presumed that continued rule by Turkey would compromise the safety and prevent the fair treatment of Armenians. Armenian sovereignty over the "Wilsonian Armenian" lands was understood

268 Seide (ed.), *A Dictionary of Arbitration and Its Terms*, p. 15 (see Note 226).

269 Sørensen (ed.), *Manual of Public International Law*, pp. 693-694 (see Note 261).

270 Draft Reply to Turkey (see Note 253).

as necessary for the rehabilitation of the Armenian people and its viability into the future. As will be discussed in more detail later in this report, given the enduring effects of the Genocide, due in part to Turkish prevention of the original reparations scheme, the material need is possibly even greater today and so the lands in question remain a crucial component of any effective and meaningful scheme of repair.

In concluding this part of the report, it should be emphasized that a response posing an alternative interpretation of the Sèvres/Lausanne Treaty history is not adequate to preserve the status quo of inaction on the Armenian Genocide. The uncertainty resulting from conflicting views of the treaty history does not merely mean that, if there were a political process including state-level land reparations to resolve the Armenian Genocide issue, the treaty history can be interpreted to be consistent with border changes. Any contentions against the case made in this part of the report would demonstrate the unresolved nature of the situation produced by the divergent interpretations of the treaty history. This, in turn, would appear not just to allow but to necessitate a legal decision on or political solution to the issue of land reparations.²⁷¹

It should also be pointed out that the existence of a legally binding international instrument, President Wilson's Arbitral Award, confers on Armenian reparations claims a special validity that is not usual in contemporary cases of genocide and other mass violence, and can be understood in either of two ways. First, the award can be seen as the central component of a reparations scheme worked out by relevant representatives of the international community in the aftermath of the first phase of the Armenian Genocide. If reparations for the Armenian Genocide are justified, then it is reasonable to see the previously determined reparations scheme that includes the Arbitral Award as still valid. Second, the present enforcement of the Arbitral Award can be viewed as repair for the damage done by Turkish nationalist forces that blocked its full implementation and violently seized that part of the awarded territory already under Armenian political sovereignty. In this sense, enforcement of the award is reparation for Turkey's violation of a binding obligation, a violation that was part of the second phase of the Armenian Genocide pursued by nationalist forces through 1923.²⁷²

271 This appears to be corroborated by the presence of a stipulation confirming the existing border between Armenia and Turkey, in the diplomatic protocols between the two states signed in Zurich on October 10, 2009 (see Note 17 for citation information). That Turkey would require this element of the protocols betrays recognition that, in fact, the treaty history and international law have *not* conclusively resolved the question of Armenian land claims in Turkey's favor and, indeed, that Armenia has a legitimate case for the lands in question. Neither state has ratified the protocols.

272 This second understanding is consistent with Janna Thompson's focus on the breach of a formal obligation as the key basis of a "transgenerational responsibility" for reparations (Thompson, *Taking Responsibility for the Past*, pp. 27-30, 36, 71-77 [see Note 201]).

PART 6: ETHICAL DIMENSIONS OF THE REPARATIONS QUESTION

At first glance, ethical issues do not appear to have a role in their own right in consideration of reparations. They are relevant only to the extent that they are reflected in formal law and political agreements. Laws can be the expression of ethical principles and commitments, but until those principles and commitments are codified in law, they have no relevance to legal processes and political deliberations. The actual situation, however, is more complex. It is an important insight of this report that the realities of the modern political order require that the legitimacy of a reparations claim be compelling on two levels at once. In an ideal world, the fact that universal law and a particular treaty history both establish the validity of a reparations claim and impose an obligation on the perpetrator group to honor it should be sufficient to effect the repair. Yet, in the actual political world, implementation of a reparations scheme must be supported by the political will of those with power in the situation, whether leaders of a society with the legitimate right to make such decisions or a critical mass of its population. Reparations must be not only legally right, but also consistent with the political context in which claims are made.

This second requirement is usually sufficient to block even insubstantial reparations, as any objective examination of indigenous histories in the Americas and Australia indicates clearly. Given perpetrator groups' power to inflict significant harms on victim populations, coupled with the increase in relative power that results from the infliction of those injuries and benefits accrued to those who inflict them, where the damage of genocide must be repaired there is always a stark power asymmetry between the perpetrator and victim groups. What is more, except in rare circumstances, such as the shifting power balances at the end of World War II, prominent third-party players either do not have any interests that would cause them to support reparations claims, or see such claims as a danger to the hierarchical global system that benefits them by marginalizing weaker groups, especially victim groups. These dynamics mean that victimization becomes part of a negative cycle, in which groups that start out as weak enough to be victimized become, through their victimization, yet weaker and less and less able to defend their rights, which ultimately become reparations claims.

It is tempting to view this situation as inevitable “reality” and to dismiss those who seek reparations without possessing the force to compel them or having supporters with that force—that is, virtually all victim groups—as hopelessly unrealistic and naïve. But if the current global order seems to confirm the Thrasymachean²⁷³ position that ultimately what is right is what is imposed by those groups who have power over other groups, modern history contains enough exceptions to call this apparent inevitability into question. One can cite the independence movement of India, the U.S. civil rights movement, and the South African anti-Apartheid movement as three cases in which moral commitments drove dramatic political change. While the main force for change was certainly the push for justice by victim groups, ethical challenges *within* perpetrator groups were crucial elements that altered the dynamics of power. The importance of such challenges is evident in the efforts of those in the victim community to trigger them.²⁷⁴ Although the interests and power of governments and dominant components of perpetrator groups remained strong factors and had effects on these processes, ultimately ethical considerations drove a significant enough shift in the perpetrator group and in powerful bystander groups that change became possible against the self-interest, narrowly conceived, of members of both types of group.

273 Thrasymachus is the character in Plato's *Republic* who, in Book I, asserts that “the just . . . is the advantage of the stronger” (Plato, *The Republic*, G. M. A. Grube [trans.] [Indianapolis, IN, USA: Hackett Publishing Company, 1974], p. 12).

274 As, for instance, in the struggle for Black civil rights, Martin Luther King, Jr., appealed to U.S. Whites on ethical grounds.

It is true that, in the many cases in which reparations advocacy has so far failed, ethical considerations have not been sufficient to overcome the forces against reparations. It is just as true that in the relatively fewer cases of success,²⁷⁵ ethical commitments have been essential and even decisive. Ethical principles are a major political force, but depend on subjective commitment in a way that raw military, economic, and political power do not. Mobilization of “ethical power” depends on recognition that it is a power, while it is in the interest of military, economic, and political powers to discount it in order to prevent that recognition. Despite the human capacity for denial in the face of compelling rational argumentation and fact, there are many people in the world, including in perpetrator societies, for whom ethical consistency and adherence to general principles, despite the particular costs this might entail, are fundamental to personal and group identity. This is not to say that even the most well-intentioned Turkish person would not feel internal conflict, discomfort, and even fear at the prospect of a full engagement of the Armenian Genocide, but that some will see that the way to resolve this challenge is through open ethical reflection at the individual and community levels. The law might tell a person and a community that something should be done, but ethical analysis shows them *why*, and can reinforce and energize their commitment to what might otherwise be abstract and external, and thus perpetually avoided.

In this way, ethical analysis plays an important role. The law is always, to some extent, the result of various power dynamics, some of which can be motivated by ethical reasoning. Law, in this sense, is always only a partially completed framework for addressing genocide. If the limits of the law are taken as the limits of discourse on a reparations claim or the issue in general, then it becomes impossible to move a reparations process as well as the law itself forward toward a better formulation. Ethical analysis provides models for reworking law as well as applications of existing law. It also provides a deeper, stronger framework that can serve as a continuing corrective for legal processes and help keep the focus on the real issues of harm to victims and of perpetrator responsibilities.

In this sense, ethical analysis completes the legal picture. It is not just that ethical principles (should) underlie laws, but that law is incomplete without ethical reasoning. There are inevitable gaps and ambiguities in law, particularly regarding complex issues such as reparations and genocide. While the U.N. Genocide Convention defines the crime and stipulates the different ways an individual can have a role in perpetrating it, it does not directly address perpetrator groups as groups.²⁷⁶ Thus, the most important law on genocide is incomplete, and must be supplemented by ethical reasoning, as is provided below on the issue of groups. What is more, law relevant to reparations does not adequately consider group land claims²⁷⁷ and political transfer of lands;²⁷⁸ specific international agreements, therefore, such as President Wilson’s Arbitral Award, are required. To confirm this award as necessary to reparations for the Armenian Genocide, ethical analysis, as presented below, is necessary.

In recognition of the capacity of ethical commitment to motivate profound change within perpetrator groups and among third parties in positions of influence, this part of the report provides an ethical

²⁷⁵ Such as reparations for the Japanese Americans forced into internment camps during World War II (see, for example, Leslie T. Hatamiya, “Institutions and Interest Groups: Understanding the Passage of the Japanese American Redress Bill,” in Roy L. Brooks [ed.], *When Sorry Isn’t Enough: The Controversy over Apologies and Reparations for Human Injustice*, “Critical America” book series [New York, NY, USA: New York University Press, 1999], pp. 190-200 at 196; 199-200, Note 34), and reparations for the Holocaust (see, for instance, Michael J. Bazzyler, *Holocaust Justice: The Battle for Restitution in America’s Courts* [New York, NY, USA: New York University Press, 2003], especially pp. 17-19).

²⁷⁶ Henry C. Theriault, “Reparations for Genocide: Group Harm and the Limits of Liberal Individualism,” *International Criminal Law Review* 14:2 (2014): 441-469 at 448-449.

²⁷⁷ *Ibid.*, pp. 452-465.

²⁷⁸ *Ibid.*, pp. 465-466.

analysis of the issue of reparations, combining both universal elements and components specific to the Armenian case. Part 7 presents a mechanism by which members of the perpetrator group can be brought into a process in which ethical concerns can have their proper role and through which a safe space is opened for acting on the moral commitments so many carry.

The basis of the international state system and relations within it, as well as of international law, is Western political theory and ethics. Discourse on the Armenian Genocide, including Turkish denial, is based on Western legal, political, ethical, and scientific principles. The analysis here therefore focuses on Western ethical theory, though it does so in a manner consistent with universal or cross-cultural human rights principles. The Western tradition is valuable, if some elements can be problematic. As an example, a double-edged feature of Western ethical theory is its privileging of universalism. This has often been the function of a Eurocentric attitude that has discounted other viewpoints, particularly of the host of societies and civilizations subjugated or destroyed by Euro-American/Australian powers. Holders of such a worldview misrepresent as universal a limited Euro-American/Australian perspective and impose it on societies across the globe. At the same time, this universalism also functions in a positive way: it emphasizes that regardless of the weakness or marginality of a group, its members deserve to have their individual and collective rights respected just as much as those who have the power to enforce their rights and security without appeal to justice mechanisms. This consistency is crucial for reparations, as most claims of victim groups are set aside *despite* their legal and ethical legitimacy, while perpetrators of mass violence are ensured full justice under international law. A telling example is the fact that, after freeing itself in 1804 from oppressive French rule and thus emancipating those who became its individual citizens from the degradation, exploitation, and brutality of slavery, Haiti was required to pay France reparations of 100 million francs—an astronomical sum in its day. The victims, not the perpetrators who did damage, were victimized again by enforcement of “reparations” for the perpetrators’ loss of the ability to further enslave and brutalize a national population.²⁷⁹

A challenge for mainstream Western ethics—and philosophy, more generally—is its nearly exclusive focus on the individual. In a Western ethical framework, it is difficult if not impossible to treat group harms and repairs.²⁸⁰ But a proper engagement of genocide and reparative justice for it require just that. They depend on a richer concept of the group than is available in mainstream Western ethical theories and philosophy more generally. Without an enhanced presence for the group, Western ethics is not able to distinguish adequately between individual reparations claims and group processes aimed at the viability and well-being of the group as a whole.

Within the Western tradition, groups are generally conceived of as aggregates of individuals without any meaning beyond their benefits for individuals. This is taken to imply that group harm is impossible, except as understood through harms to the individuals in the group. Genocide can then only be understood as the mass killing of individuals who share an identity attribute, such as being Armenian. But, as made clear by Lemkin, from the point of its coining and as enshrined in the U.N. definition, “genocide” has meant the destruction of groups as groups. Genocide targets intragroup bonds, structures, and relations.

279 Dionne Jackson Miller, “Haiti: Aristide’s Call for Reparations From France Unlikely to Die,” *Inter Press Service News Agency*, March 12, 2004, <http://ipsnews.net/interna.asp?idnews=22828> (accessed September 30, 2010).

280 For an example of this limitation specifically regarding genocide, see Stephen Winter, “On the Possibilities of Group Injury,” in Claudia Card and Armen T. Marsoobian (eds.), *Genocide’s Aftermath: Responsibility and Repair* (Malden, MA, USA: Blackwell Publishing, 2007), pp. 111–131. For an analysis of this limitation, see Theriault, “Reparations for Genocide”: 453–467 (see Note 276).

Genocides destroy families²⁸¹ and other group structures. The effects are experienced by individuals, leading some theorists to claim that all harms comprising a genocide are ultimately individual.²⁸² But such an inference conflates the objective features of the harm done with the consciousness that registers that it has been done. Consciousness is individual, so suffering as a subjective mental process occurs within individuals. But that does not mean that the actual, objectively measured harms are individual. One would hardly claim that, when a finger is burned, the fact that pain is experienced essentially only by the nerve ending means that only the nerve ending is harmed; on the contrary, the entire finger is harmed, but that harm is registered just at the point of the nerve ending. What is more, group harms are often more devastating than individual harms, because they combine the suffering of the self with a broader context of suffering and destruction. In genocide, it is not just that an individual is harmed, but that the world in which he/she exists is destroyed.

If the material, social, political, identity, and other impacts of the Armenian Genocide today are registered by individuals, what makes them significant is that they continue to undermine the viability of Armenian group existence both in very practical ways—such as a small, weak, poor Armenian Republic facing a large, powerful, hostile Turkey with pronounced anti-Armenian attitudes—and social ways—such as the weakened cohesion of Armenian identity because of global dispersion. It is this group existence, especially for Armenians in Turkey and in the Armenian Republic, on which individual well-being—security of life and liberty, vibrancy of culture and identity, avoidance of poverty and exploitation, etc.—depends. It is the group that requires repairs, not individuals simply as individuals. For instance, for the Armenian Republic to be economically, geopolitically, and demographically viable, it needs increased land, in particular for agriculture, economic development, and military security. Addressing the devastating economic and political effects of the Genocide requires group reparations.

The solution to the limits of mainstream Western ethical theory is not a simplistic assertion of the group as primary over the individual, but recognition of the reality of groups and the intertwining of groups and individuals. Individual harms have implications for the group, just as group harms impact the individuals within the group. For instance, if a number of group members are killed, then the group overall is smaller, less of a presence in the world, less viable long-term, and so forth.²⁸³ Obviously, the reverse is also true. Indeed, a strict separation between individual and group harms appears impossible, as each implies the other.

Regarding individual and group reparations, the situation is more complex. As long as group reparations are fairly applied to the beneficiary group, then improvements in the situation of the group benefit at least some and possibly all individual members. Reparations to individuals can also benefit the group; for instance, if a number of individual members are lifted out of poverty, then the group overall is better off and has more resources available for positive development. There is, however, an asymmetry in the relationship between individual and group reparations. While whatever benefits a group inevitably benefits at least some individuals within the group, individual reparations do not directly affect the group, unless the recipient allows them to. To ensure benefits to the group, some group component of reparations is necessary.

281 Elisa von Joeden Forgy, “The Devil in the Details: ‘Life Force Atrocities’ and the Assault on the Family in Times of Conflict,” *Genocide Studies and Prevention* 5:1 (2010): 1-19.

282 See, for example, Winter, “On the Possibility of Group Injury” (see Note 280).

283 Even individual crimes are typically recognized to harm a society, as the concept of a criminal “paying his/her debt to society” indicates.

Most of the recent discourse on Armenian Genocide reparations has focused on insurance and bank account lawsuits.²⁸⁴ These are individual claims, with payments primarily going to individuals.²⁸⁵ These are labeled Armenian Genocide reparations, but are not structured around group identity, historical wrongs, or future viability of the group. There is a risk that, when such suits are presented as Armenian Genocide reparations, they have a tendency to displace the broader group reparations process. In addition, they are against third-party corporations that were not main perpetrators—not the Turkish Republic as successor to the Ottoman Empire and responsible party for the conduct of post-war nationalist forces. In this way, they are especially limited as reparations.

This is not to suggest, however, that such suits have no positive role to play. So long as they are not taken as the culminating reparations process, they can be steps toward a broader group reparative process. They can set legal precedents that support cases in an expanded group approach. This could include establishing a right to reparations and obligations of Turkey for reparations. In addition, these kinds of cases can establish a legally accepted historical record. They can create momentum that can grow into a broader reparations movement and encourage both the victim and perpetrator groups to address outstanding issues regarding a genocide. Lawsuits in Turkish domestic courts²⁸⁶ could occasion widespread national and international attention and push the Turkish state into engaging at least some of the Armenian losses from the Genocide. They could also raise questions about the role of Turkish legal structures in the Genocide,²⁸⁷ as well as later expropriations of property.²⁸⁸

For individual reparations initiatives to qualify as genuine genocide group reparations, three criteria must be satisfied:

- (1) The reparations must address a harm that has implications for the group. For instance, theft of property must be understood to weaken the Armenian community, not just harm an individual or family.
- (2) The reparations claims must be identified as part of a broader group reparations process.
- (3) There must be a broader group reparations process actually occurring or that will occur, which addresses general harms and into which the individual reparations pursued can fit.

For a group approach to properly respect individual rights, there is just one requirement: the group must have a fair scheme in place to ensure that reparations benefit the group generally and not just a small group within it.

The legal and treaty analysis of reparations so far has focused primarily on material reparations, particularly rectification or compensation for the expropriation or destruction of movable and immovable property, with some discussion as well of compensation for death and suffering. These are core elements

284 See, for example, Karagueuzian and Auron, *A Perfect Injustice* (see Note 37).

285 It should be noted that a portion of the negotiated compensation for the *New York Life* case was given to community institutions and organizations (Weinstein, “Insurer Settles Armenian Genocide Suit” [see Note 2]).

286 Taner Akçam, “Axis Rule of Turkey: The Genocidal Intent Behind Legalized Seizure of Armenian Property,” paper, “The Armenian Genocide: From Recognition to Reparation” international conference, Armenian Catholicosate of Cilicia, Antelias, Lebanon, February 25, 2012.

287 Akçam, “The Spirit of the Law” (see Note 191).

288 As detailed in Sait Çetinoğlu, “Foundations of Non-Muslim Communities: The Last Object of Confiscation,” *International Criminal Law Review* 14:2 (2014): 396-406.

of any reparations package for the Armenian or a similar case, but as explained in Part 3 of this report, a comprehensive reparations package includes numerous other elements as well. The first step in providing a full ethical analysis of comprehensive reparations is to explain the various ways in which the five-component package laid out in Part 3 addresses the legacy of the Armenian Genocide. These components included punitive, material, and symbolic functions. As noted in Part 3, the first component—punishment of direct perpetrators—is no longer possible in regard to the Armenian Genocide.

There are two main damages that can be addressed by material repair. First are the expropriated property, including land, of Armenians and the subsequent benefits to the perpetrators and their progeny of that property. The land should be understood not just as individual entitlements, but the foundation of Armenian identity as recognized by the Wilsonian Arbitral Award. These damages can be directly rectified through, for instance, return of land and cash payment for expropriated moveable wealth, including accrued interest or lost revenue. Second are the deaths and suffering of Armenians in the Genocide. While these are permanent damages and cannot be fully rectified, they can be addressed in some way that provides *something* to the victim community, as is common in wrongful death and suffering lawsuits. Again, this type of repair should be understood as group, not individual, and as support for reconstitution of the group against the impact of the colossal demographic destruction.

The land and other property expropriated were taken illegitimately through one of the most extreme forms of violent destruction, genocide.²⁸⁹ In addition to massive theft and the forced abandonment of all types of property, even ostensibly consensual sales of property were, in fact, forced or coerced in the context of genocide: victims being deported in short order and facing horrific violence had no choice but to sell land or other possessions at a fraction of their value to gain any compensation they could as a means toward survival. Armenians were also routinely extorted during the deportations and had to pay unfair, even absurd sums in attempts to survive, none of which would have been paid outside of the context of genocide.²⁹⁰ What is more, the Turkish government passed laws on “abandoned property” to formalize and provide legal camouflage for the expropriation of Armenian movable and immovable property.²⁹¹ Any basic concept of fairness strongly supports the view that all such property should have

289 See, for instance, Jesse B. Jackson to Henry Morgenthau (Constantinople), August 19, 1915, in Sarafian, *United States Official Records* (see Note 62), pp. 207-208 (source: U.S. National Archives/Record Group 59/867.4016/148).

290 See, for example, J. E. Merrill, “A Statement by J. E. Merrill on the Zeitoun-Marash Situation,” *ibid.*, pp. 67-69 at 68-69 (source: U.S. National Archives/Record Group 59/867.4016/80); E. Briquet, “E. Briquet’s report from Tarsus: Enclosure No. 5 with despatch [sic.], No. 370,” *ibid.*, pp. 110-112 at 110-111 (source: U.S. National Archives/Record Group 59/867.4016/95); “Conditions in Marsovan,” *ibid.*, pp. 140-143 at 141 (source: U.S. National Archives/Record Group 59/867.4016/106); Edward I. Nathan to Henry Morgenthau (Constantinople), August 7, 1915, *ibid.*, pp. 165-166 at 165 (source: U.S. National Archives/Record Group 59/867.4016/124); William S. Dodd to Henry Morgenthau (Constantinople), *ibid.*, pp. 192-195 at 192 (source: U.S. National Archives/Record Group 59/867.4016/137); Mary L. Graffam to Mr. Peet, August 7, 2015, *ibid.*, pp. 240-244 at 241-242 (source: U.S. National Archives/Record Group 59/867.4016/187); William S. Dodd to Henry Morgenthau (Constantinople), September 8, 1915, *ibid.*, pp. 252-256 at 253-255 (source: U.S. National Archives/Record Group 59/867.4016/189); Edward I. Nathan to Henry Morgenthau (Constantinople), September 27, 1915, *ibid.*, pp. 275-276 at 275 (source: U.S. National Archives/Record Group 59/867.4016/200); Mary Riggs, “The Armenian Exodus from Harpoot,” *ibid.*, pp. 330-332 (source: U.S. National Archives/Record Group 59/867.4016/225); Walter M. Geddes, memorandum, *ibid.*, pp. 380-383 at 380-381 (source: U.S. National Archives/Record Group 59/867.4016/243); Frances C. Gage, “Report of Difficulties in Armenia,” *ibid.*, pp. 400-407 at 403, 406; (source: U.S. National Archives/Record Group 59/867.4016/252); Leslie A. Davis to Henry Morgenthau (Constantinople), June 30, 1915, *ibid.*, pp. 455-460 at 458 (source: U.S. National Archives/Record Group 59/867.4016/269); J. K. Marden, statement, *ibid.*, pp. 524-527 at 526 (source: U.S. National Archives/Record Group 59/867.4016/291); American Consul to Henry Morgenthau (Constantinople), “Expulsions of Christians and Jews from Bagdad,” November 10, 1915, *ibid.*, pp. 581-582 at 582 (source: U.S. National Archives/Record Group 59/867.4016/350); Leslie A. Davis, “Report of Leslie A. Davis, American Consul, Formerly at Harput, Turkey, on the Work of the American Consulate at Harput Since the Beginning of the Present War,” *ibid.*, pp. 611-686 at 625-626, 672 (source: U.S. National Archives/Record Group 59/867.4016/392). See also Üngör and Polatel, *Confiscation and Destruction*, pp. 90-92 (see Note 39).

291 Baghdjian, *The Confiscation of Armenian Properties*, pp. 83-101, 166-174 (see Note 38); Akçam, “The Spirit of the Law” (see Note 191).

been returned or compensated for after the Genocide, and all extorted funds returned or compensated for. Far from the passage of time rendering Armenian claims to such property weaker, it has compounded the impact of the original thefts and made recompense all the more imperative. The passage of time has increased the value of the property taken and allowed the perpetrators and their progeny to build further wealth on what was originally taken. Indeed, the aggressiveness of the denial campaign suggests an attempt to obscure the illegitimate origin of possession of much land and wealth in post-Genocide Turkish society.

Because the issue of land is not simply an individual one, but a group issue—Which state will have sovereignty over the land in question?—the arguments in this section should not be seen as concerning individual land restitution cases; rather, they build an overarching case for the giving of land to an Armenian political entity. This is especially true to the extent that it is no longer possible to determine what property was which family's, due to lost records and memories. Individual land claims are certainly legitimate as part of a group reparation scheme that includes the political transfer of land as well as the restoration of property to individual owners. The treatment of Native Americans makes clear the importance of a community component to land title. One of the key mechanisms used by the U.S. government to break up residual Native American peoples was forcing communal land into individual ownership. The result was a complex process through which individual owners became prey to unfair business practices and through which community relations were fractured.²⁹² On the contrary, only through group possession and control can the land returned support the overall rehabilitation of Armenians as a people, both by increasing the force of cohesion among Armenians through shared ownership and by allowing practical deliberations about how to best use the land so that it can support Armenians as a whole.

As discussed above, it is clear that human life is incommensurate with money: there is no amount of money that can rectify a death. Similarly, for serious suffering, including sexual assault and other forms of torture, deprivation, imposed disease, etc., as well as the temporary and permanent consequences, including psychological trauma and physical disability, monetary compensation cannot erase the actual victimization by violence and resultant suffering. At the same time, even long after the violence in question, financial reparation has important functions. First, it is a humane alternative to retribution. Even regarding direct perpetrators, retribution is a debatable justification for punishment, and certainly cannot be applied to a society even immediately after it has committed atrocities, because it is inevitable that any corporate punishment will affect those who were either not involved or in fact resisted the wrong-doing of others in their society. Assuming the legitimacy of retributive punishment, which is subject to a philosophical debate much broader than that about punishment for genocide, only individual perpetrators should be punished retributively.²⁹³ Financial reparation does affect the perpetrator group, as would corporate retributive punishment, but in a manner that allows a taking of responsibility by members of the group in place of a balancing of suffering by members of that group. Unlike retributive punishment, the goal of financial reparations is not to make the perpetrator group suffer as the victim group did, or to suffer the losses that the victim group did, but to mitigate as much as possible the losses sustained by the victim group through action by the perpetrator group. It is not a punishment of the perpetrator group, but a taking of responsibility that spreads the impact of the damage of genocide so that a portion is shared by the perpetrator group alongside the victims. Financial repair also does not target individuals; instead, it allows the society to work as a whole to make compensation in a way that supports the basic needs and rights of individual members of the perpetrator group.

292 See Steve Russell, "The Jurisprudence of Colonialism," in Anne Waters (ed.), *American Indian Thought* (Malden, MA: Blackwell Publishing, 2004), pp. 217-228.

293 Which the U.N. Genocide Convention assumes, as discussed earlier in this part of the report.

Second, monetary compensation provides funding to victims, victims' families, and the victims' community more broadly to address the various impacts of a genocide in a way that supports the rebuilding of the victim group's population and the viability of its cultural and political identities. Depending on how it is used, this money can increase individual well-being in a number of ways, including the development of essential social structures and supports, such as educational and medical facilities. In the shadow of genocide, financial reparations can increase the security and comfort of the victim group against the insecurity, instability, and deprivation otherwise prevailing as persistent, intergenerational harms of a genocide.

Third, as discussed above, compensation for deaths and suffering is not just a material remedy, but also a symbolic act by perpetrators marking the wrongness of what was done to victims who were devalued by destruction and torture. This function depends, of course, on the identification of compensation for death and suffering as precisely this kind of reparative act. The necessary symbolic aspect of this element of a reparations package extends further, to the requirement (see Part 3) that there be other symbolic elements in the overarching reparations package, including broad education about the case, recognition of the full extent and intent of the genocide, and an apology for the full genocide by the perpetrator group.

Rather than justifying symbolic repair directly, this point shows that symbolic reparations are a necessary correlate of material reparations that render material repair truly reparative, rather than a simple material payoff. This reverses the usual approach to symbolic reparation, particularly in the form of apology and education. These are quite often presented as the key forms of redress for the Armenian Genocide and other cases of past mass violence. The AGRSG rejects the notion that these alone are adequate reparations; on the contrary, the AGRSG sees them as supports for material reparations and meaningful only in that role, even as the reparative function of material acts similarly depends on symbolic elements. This shows how intertwined different components of an overall reparations package, as laid out in Part 3, are: reparations cannot be reduced to one of the elements alone, such as recognition and apology, and still be effective as a resolution.

A comprehensive reparations package, as presented in a preliminary manner in Part 3, requires—in addition to (1) punishment if possible, (2) rectification or compensation for material losses, (3) compensation for death and suffering, and (4) symbolic acts as discussed here—the assumption of responsibility by the perpetrator group for the recovery of the victim group to the maximum reasonable extent, but certainly at least to the point of the long-term viability and security of the victim group's community structures and identity. This would include perpetrator group efforts to support demographic recovery as well as redevelopment of the victim community. It would also include responsibility for protection of the victim group during this process, against external powers that might be emboldened by the weakened state of the victims and the past normalization of violence against the victim group. This long-term responsibility element would not only provide crucial material support and protection, but would send an essential message to victims that the perpetrator group no longer maintains a destructive attitude against them, and is now committed to the victim group's well-being and survival. This is a profound confirmation of the worth of the victims and their group identity, against the devaluation and degradation of the genocidal process.

This confirmation is reinforced through symbolic methods. Admission of the harm done and education within and beyond the perpetrator society are based on recognition of the humanity of the direct victims and their progeny and the moral wrongness of harming them materially and in terms of their dignity.

Finally, rehabilitation of the perpetrator state and society marks the foregoing recognition as well as a strong commitment to change those features of the government and culture that contributed to or resulted from genocide. It commits the perpetrator state and society to an enduring recognition of and support for the full human dignity of members of the victim group in perpetuity. While initially symbolic in focusing on changing attitudes in the perpetrator group and validating non-denialist historical narratives as part of the reworked collective identity of the perpetrator group, it also has significant material effects in reworking economic, political, social, and military structures and institutions.

Indeed, as is the case for compensation for death and suffering, symbolic elements are essential to giving meaning to the reparations process. With the guarantee of an accurate portrayal of the history of genocide, an apology, and other symbolic methods, material acts such as financial payments and land transfers are confirmed and recognized to be reparative. Financial payments to be made are not just money that is easily dissolved into the global economy, without specific meaning; on the contrary, the payments have reparative effects. What is more, the emphasis on the meaning of payments restricts the possibility of misuse by elites who might otherwise control the fiscal affairs of the victim society.

This symbolic impact is also important beyond the victim and perpetrator groups. Each genocide whose perpetrators enjoy impunity—virtually all so far in world history²⁹⁴—and whose society continues to enjoy its fruits without paying even a symbolic or ethical cost for doing so reinforces, for would-be perpetrators, the low risk of genocide and the great profits possible through it. A substantial reparations package that includes both material compensation and symbolic elements emphasizing the ethical wrongness of genocide can go far toward changing the lessons that contemporary figures such as Slobodan Milosevic and Omar al-Bashir have taken from history. This means that reparations can have a deterrent effect. This is one justification for them.

Reparations also reduce or eliminate the military, political, and material domination of the perpetrator society over the victims as they rehabilitate the perpetrator society away from the attitudes and practices that produce genocide. They consequently reduce the potential of the perpetrator group to commit mass violence in the future, against the same targets as in the past or new targets. In the Armenian case, reparations could make it more difficult for Turkey to fund as well as to justify—in the international political community and domestically—future attacks against Armenians or human rights violations against other groups. Reparations thus at least partially incapacitate the perpetrator group regarding its ability to commit mass violence.

Deterrence and incapacitation, often cited as justifications for punishment, are broader benefits that weigh in favor of any approach to a crime that produces them as outcomes. Thus, to the extent that Armenian Genocide reparations have these effects, reparations are supported.

6.1 APPLICATION OF MAJOR ETHICAL THEORIES TO REPARATIONS

The next step in ethical analysis is to consider how the range of Western ethical theories applies to the question of reparations. This has two important functions. First, it will help determine to what extent, if

294 It should be noted that even in the case of the Holocaust, many participants escaped responsibility, including many important figures in Nazi Germany's business sector, which had a significant role in "large-scale theft" through "Aryanization" of businesses, the Holocaust more broadly, and extraction of wealth from occupied countries (see Christopher Simpson, *The Splendid Blond Beast: Money, Law, and Genocide in the Twentieth Century* [New York, NY, USA: Grove Press, 1993], pp. 59-74, 80-91, 96-97, 149-150, 153-157, 186-188, 189-197, 217-231, 251-253, 266-267).

any, reparations for the Armenian Genocide are ethically right. Second, by bringing into play the complex features and reasoning of different ethical theories, important nuances and subtleties regarding, as well as broad new angles on, the issue of reparations will emerge. These will be very helpful to a full analysis of the question of whether Armenian Genocide reparations are justified, to what extent, and of what kind.

There are four major mainstream ethical theories: Aristotelian, Kantian, Utilitarian, and Rights-based. While, of course, discussion of each ethical theory's relation only to reparations would not be exhausted even by many philosophical volumes, the intent of the treatments here is not to provide a detailed scholarly treatise on the ethical theories themselves, but to determine how each theory in general applies to reparations for genocide, and in particular the Armenian case. There is also an important critical strain in Western ethical theory that focuses on situations of oppression, domination, and power differentials among groups. It is thus particularly relevant to reparations for the Armenian Genocide and will be considered in addition to the mainstream Western ethical theories.

The Aristotelian approach to a destructive event such as genocide is best termed “corrective,”²⁹⁵ as defined in the “Terminology” section above. The world exists in a temporal sequence of states, with each new state determined by the actions taken in the previous state. When an act changes a state in an unjust manner, then the morally required response is a reversal to the previous state of affairs or, more precisely, changing the present state of affairs such that it most closely represents the state that would have come to exist had no destructive event occurred.

The Corrective Justice case regarding material damage through the Armenian Genocide is straightforward. Through the Genocide, the state of the world changed from one in which Armenians held certain property to one in which the Turkish state and individual Turks (and some others) held that property. What is more, each subsequent state of affairs has been one in which Armenians have lost the benefits they would have derived from that property, and the current holders have gained those benefits. Corrective Justice calls for a return of all expropriated wealth, as well as payment of all benefits derived from them since expropriation, to those who should have had rightful title to them. In cases in which moveable wealth was destroyed or otherwise cannot be returned, a fair-value monetary equivalent should be paid. Similarly, the amount that would have been derived by Armenians from ownership of their property should also be paid.

Clearly a strict Corrective Justice approach to the deaths and suffering of Armenians is not possible: there is no way to restore the dead to life and erase the experiences of rape, torture, and loss. At the same time, Corrective Justice calls for as much of a correction as is possible; the fact that perfect restoration is rarely if ever possible does not count against it. Even the full return of stolen property will not produce the exact state of affairs that would have existed had no theft occurred at all. If the types of monetary payments for death and suffering, as discussed above, can have a positive effect against the demographic destruction and traumatization of Armenians as a group, then Corrective Justice principles would support it.

Restoration of the human dignity of members of the victim group is clearly also justified on this model. Genocide has the effect of lowering the status of the victims, even stripping them of their human status altogether, both symbolically and practically—as when Armenian deportees were reduced to starving

295 See Book V of Aristotle, *Nicomachean Ethics*, David Ross (trans.), J. L. Ackrill and J. O. Urmson (rev.), *The Nicomachean Ethics* (Oxford, UK: Oxford University Press, 1998), pp. 106-136.

beings incapable of providing care to their children, continually humiliated and denied the most basic human agency, subjected to a range of bodily violations, and so forth. Restoration of dignity through recognition, apology, and other means are consistent with Corrective Justice.

Kantian Ethics²⁹⁶ appear less suited to a discussion of reparations. Kant focused the majority of his attention on a method for determining whether a contemplated act is morally right or not, and beyond that on criminal punishment, not repair. Kantian Ethics are the main form of “Deontological Ethics,” which calls for ethical judgments based on intentions behind actions, not their consequences. At the same time, the particular way that Kant conceived of victimization by another is relevant to addressing a case of genocide. A central tenet of Kantian Ethics is that all persons’ autonomy and dignity must be respected fully. It is wrong to lie to another person, because this means preventing the person from having accurate information with which to exercise his/her judgment; it is treating another as inferior or denying him/her personhood. And, it is wrong to kill another person, because that is denying that person every aspect of his/her personhood, and transforming him/her into a mere instrument for the ends of the murderer.²⁹⁷ What is more, when the liar or the murderer acts, he/she also denies his/her own personhood, by failing to act in accord with a “good will,” which he/she is fully capable of doing as a rational agent. This can be extended to repair: when a person or set of persons is wronged in this kind of manner, it compromises the humanity of the victim(s). The perpetrator(s) then bear(s) responsibility for restoration of the humanity of the victim(s). The restoration of or compensation for expropriated or destroyed property, apologies, and other material and symbolic reparative measures restore the personhood of the victims by negating (at least partially) their instrumentalization or denigration.

There is an interesting implication of Kant’s concept of moral agency for consideration of genocide. Far from demonizing or degrading members of the perpetrator group, they are viewed as culpable for wrong acts precisely because they are full moral agents capable of determining what is right and wrong. In this sense, by making perpetrators responsible for their actions and addressing the denial of others’ humanity, punishment and reparations to the extent possible restore the personhood of direct perpetrators as well as the perpetrator society, including later generations: precisely by being punished and compelled to repair, perpetrators are held to the standards of fully autonomous ethical agents, which confirms their personhood. In the Armenian case, to the extent that the perpetrators’ personal and national identities depend on the Genocide and that they maintain a dominance relation over Armenians, they are required to take steps to change these identities and this relation in a way that restores the personhood of victims, as well as the personhood of the perpetrators in so far as they share in that group identity. Group reparation restores the general ethical agency of the group and legitimacy of its identity, which were sacrificed by the direct perpetrators.

Other elements of Kantian Ethics are also relevant to reparations. As a deontological theory, Kantian Ethics specifically excludes consideration of consequences from ethical decision-making. Actions are deemed right or wrong based on whether or not they are in accord with universal ethical principles. While the particular set of ethical principles developed by Kant might be debatable, the relevant point here is that once these have been determined and reparations are shown to be in accord with them, reparations are considered just, even if they represent discomfort and sacrifice for members of the perpetrator society.

296 See Immanuel Kant, *Groundwork of the Metaphysics of Morals*, H. J. Patton (trans.) (New York, NY, USA: Harper and Row, 1964).

297 This is true regardless of whether the murder is instrumental, such as a means of gaining wealth. Even murders resulting from emotional extremes instrumentalize the victim by making him/her a means to the end of psychological discharge by the murderer.

Though the impact of ethical decision-making should not be discounted generally, contra Kant, Kantian Ethics provides an important balance against ahistorical approaches that privilege the contemporary situation without regard to the legacy of past harm.

Utilitarianism calls for a harm-benefit analysis of the consequences of proposed social decisions.²⁹⁸ There are many specific forms of Utilitarianism that measure harms and benefits on different kinds of scales and that call for different methods of determining harms and benefits (subjective preferences, pleasure and pain, etc.). They hold in common a commitment to measure harm and benefit for all affected individuals, with each individual counting equally in the overall calculation. Application to reparations for a genocide is not, however, straightforward. Utilitarianism is used to determine which of at least two alternative actions or general rules for reparations in the present world will lead to the most net benefit or the least net harm.

On initial consideration, Utilitarianism would seem to oppose reparations. First, Utilitarianism cannot directly address past harms, because once these are done, they are part of the status quo to which Utilitarian analysis is applied. The concern of this ethical theory is not what can be done about past Armenian losses and injuries, but whether there is a state of affairs possible better than the present regarding the distribution of property among Armenians and Turks. Thus, Armenians would seem to have no special claim on lands or property lost through genocide.²⁹⁹ If legal and treaty considerations justify the transfer of a large territory to Armenia and Armenians, Utilitarian theory would weigh the benefits to Armenians against the harms to those present inhabitants who might be disadvantaged by the transfer, and by the Turkish state, if it absorbs the costs of the transfer and passes these on to its people through taxes, reduced services, reduced geopolitical power, etc. This suggests a second problem: genocide at its core is about a dramatic demographic reduction of the victim population relative to the perpetrators. In the Armenian case, direct killings were supplemented by forced identity changes of a significant percentage of children and women. Utility calculations count each individual person equally. But, when a Utility calculation regarding the benefits and harms of reparations is done, that is, after a genocide, the genocide itself will have produced a substantial shift in the Utility calculation to the great benefit of the perpetrators, because there will now be significantly fewer victim group members alive to figure in the calculation.

Yet, Utilitarianism calls for careful consideration of a range of factors, not merely immediate benefit and harm. For instance, any calculation of benefits and harms regarding reparations for a specific genocide would have to take into account the implications for other groups as well. If would-be perpetrators knew that Utilitarianism would guarantee them impunity after completion of a genocide—and, indeed, the more fully they killed off the victim group—then genocide would likely *increase* in frequency. This increase would be a major harm of such an approach to reparations, and would figure in favor of making reparations, for their deterrent effects. This supports compensation for death and suffering, in addition

298 The classic formulations of Utilitarianism are Jeremy Bentham, *The Principles of Morals and Legislation*, “Great Books in Philosophy” book series (Amherst, NY, USA: Prometheus Books, 1988), and John Stuart Mill, *Utilitarianism*, George Sher (ed.), 2nd ed. (Indianapolis, IN, USA: Hackett Publishing, 2001).

299 It might even seem that Utilitarian theory justifies genocide, but this is likely an unfair appraisal. Utilitarianism requires taking account of the benefits and harms to *all* people affected by a given action or rule, which means the suffering of victims must be part of any utility calculation. Depending on the relative weighting of different benefits and harms, if loss of life and other consequences of genocidal destruction far outweigh material as well as other genocidal gains (as they should on any reasonable analysis), then a utility calculation is likely to come out against genocide, even of a small victim group relative to the perpetrator group. Of course, that does not mean that Utilitarian theory cannot be used to justify genocide, by using a weighting that results in that outcome.

to return of or compensation for property, as well as symbolic repairs that cost little yet yield important benefits for deterrence. In addition, even where there is a small number of victims relative to the size of a perpetrator group, for all credible versions of Utilitarianism, the long-term effects of genocide—which can include debilitating poverty, loss of identity, etc.—significantly outweigh benefits such as increased wealth. What is more, Utilitarian systems tend to add a supplemental limit to prevent the sacrifice of some for the benefit of others. This limit is often given a Utilitarian justification: if there is a rule that allows the sacrifice of some for many, then in the long run tremendous harm will be done and the very possibility of individual security will become impossible.

Similarly, many Utilitarians hold that individual rights, such as the rights to life and property, should be protected generally, because the failure to protect them even in limited circumstances opens the door to a more general erosion of protections that can lead to widespread murder and property theft and destruction. Required return of or compensation for expropriated property, for instance, prevents the enjoyment of the benefits of genocide.

What appears to be a detrimental feature can also be seen as a positive one. So long as there is an emphasis on the more serious suffering of victims, the inclusion of members of the perpetrator group in ethical calculations is important because of the internal complexity of perpetrator groups. Even in the period of a genocide, not all members of a group are actual perpetrators, and when considering a case nearly a century after the genocide, no direct perpetrators remain part of the perpetrator group. In such circumstances, it is important that members of that group be taken into account in ethical calculations.

Another apparently detrimental feature can actually strongly support reparations. Because Utilitarianism focuses on the present, it takes account of the long-term impact of a genocide. Rather than appealing to what might be called “historical justice,” that is, claims and rights based on historical titles and rights, or even abstract ethical principles, Utilitarianism gives full weight to the present needs of members of the victim group. While possession of expropriated property benefits perpetrators and their progeny, the harm to victims and their progeny of continued deprivation is typically greater. After all, in the aftermath of genocide—even decades and centuries later—victim groups inevitably struggle for material survival and social viability, and the lack of a land base and/or other economic resources is a significant detriment to continued survival and recovery. And, while payment of a death and suffering benefit to the surviving victim community is a burden to the perpetrators and/or their progeny, the need for such resources by victims even long after a genocide (the case of Native Americans today is a good example) can be existential. In the Armenian case, the rampant poverty of the Armenian Republic, due in part to the long-term effects of mass property expropriation and in part to the small size of the country, its small population, its relative marginality due to these factors, and the relative size and strength of a Turkish state that is often antagonistic to Armenian well-being, means that reparations for the Genocide are warranted to address its effects.

Still, a Utilitarian case for genocide reparations requires addressing certain further complexities. For instance, does it matter who pays the reparations—is not the money the same for the victims no matter its source? Reparations have a symbolic healing value for victims, helping to restore their sense of “fairness” in the world and legitimacy as human beings (rather than as fit targets for destruction), and so the source does matter in a Utility calculation. In addition, holding perpetrators and/or their progeny responsible for reparations increases their deterrent effect, as discussed above.

The system of ethics that is most central to Western political structures and law is the “Rights-based” ethics of the liberal-individualist tradition. Simply put, all persons³⁰⁰ have a set of basic rights, including the rights to life, to freedom from bodily injury, to property, and to freedom from denigration based on ethnic, national, racial, etc., identity. When such a right is violated, the violation requires a remedy. First, a violated right should be restored as much as possible. Second, because rights are fundamental to human existence, violations of rights should be deterred, and penalizing violators is the most direct way to do so. Third, because rights-violators are volitional human beings, they are responsible for their actions and thus should be punished when their actions harm others by violating their rights. In this way, a Rights-based approach combines central elements of Utilitarian and Kantian Ethics.³⁰¹

An important element of some Rights-based approaches is that once a right is violated, the violation is recognized as standing until some positive step is taken to reverse the violation. Thus, as Nozick following Locke argues, once property is expropriated unjustly, and thus a property right is violated, that violation is attached to that property until reversed, no matter how many subsequent just transfers of that property are made and no matter how innocent later holders of that property are of the original property right violation.³⁰² Similarly, once a person’s right to life has been violated, that violation is outstanding until some step is taken to address it. Likewise for bodily and psychological harm. This obviates any question of later rights being violated through an act rectifying a previous right violation: the perceived “rights” held subsequent to the initial violation are in fact not rights at all.

Given this account of Rights-based Ethics, it strongly supports the comprehensive reparations package detailed in Part 3 of this report. The Armenian Genocide violated each of the four rights listed above. In terms of expropriated property and the lost benefits that would have accrued to Armenians had the property remained in their possession, the Rights-based approach seems obvious: the rights violations should be reversed and the property restored to its rightful owners or their progeny, and the benefits that would have accrued based on ownership of the property should also be given over. Where return is no longer possible because of destruction of property, the usual Rights-based approach is to determine a monetary equivalent. Regarding the killings and inflicted bodily and psychological injury, a Rights-based approach again allows the substitution of monetary payments. Education, apology, and similar measures can restore the rights of dignity and worth to Armenians.

At the same time, it should be noted that some Rights-based theorists hold that such a right as that to property recovery fades with time. With regard to land, Waldron argues that it is impossible to know long after a dispossession of a group what would have happened in the meantime. Would those holding the land still hold it? Would they have made bad decisions about managing the land? Indeed, what causal forces would have operated with possibly dramatic effects? The implication for Waldron is that any attempt to address the dispossession after a long period of time is hopelessly speculative and arbitrary. What is more,

300 For the purposes of this report and consistent with the United Nations Declaration of Universal Human Rights, “person” is equivalent to “human being.”

301 This point follows the approach of Thomas Hurka in “Rights and Capital Punishment,” in David Theo Goldberg (ed.), *Ethical Theory and Social Issues: Historical Texts and Contemporary Readings*, 2nd ed. (Orlando, FL, USA: Harcourt Brace, 1995), pp. 496-504. One of the crucial advances of Rights-based Ethics over Kantian is that the latter is not able to deal with conflicts between ethical imperatives. For Kant, conflicts between duties were not possible if truly rational analyses were applied, while Rights-based theory recognizes the prevalence of such conflicts and provides a mechanism for adjudicating them. For instance, in the conflict between perpetrators’ right to free speech and the right of victims not to be subject to genocide, if that free speech is used to publicly order acts of genocide, then the latter right will trump the former, because it concerns the more fundamental concern of life and death.

302 Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 150-153.

he argues that present occupants eventually gain as much right to the land as former occupants had. To make this case, Waldron emphasizes a different aspect of Locke's theory of property rights, that people gain title to land by applying labor to it. When a person toils for a long period to make land productive or lives for a long time in a way that invests himself/herself in the land, then he/she gains an increasing right to it, relative to previous occupants. The notion is that, as a person uses land, it becomes more and more central to his/her existence and thus he/she acquires a right to it.³⁰³ Similarly, Sher focuses on the causal connection between long-past harms and present conditions or rights. He starts by claiming that all people in essence have been harmed by and benefitted from some historical events that have benefitted and harmed others, respectively. Why should only some individuals have priority? It would appear that there are specific, substantial, historically identifiable harms in the past that stand out. But he argues that even reparations claims based on this type of harm lose legitimacy over time, because victims might have other opportunities in their new situation to make gains they otherwise would not have had. The direct link between past harm and present condition is broken by the intermediate opportunities. Only where a present situation is clearly "the automatic effect of the initial wrong act" are direct reparations justified.³⁰⁴

While Nozick's claim of an undiminished right no matter the passage of time could be seen as extreme in one direction, the opposing view can be seen as extreme in the other. By Waldron's logic, the way in which an individual comes to occupy land is eventually irrelevant. This means that, while genocide is initially a rights violation and gains through it illegitimate, it becomes less and less of a rights violation over time, until it is no longer a rights violation. Waldron might argue that genocide is still a rights violation long after it is committed, but that its relevance diminishes until it is completely irrelevant to any present concerns about justice. But this, in effect, means that the violation fades. There are a number of problems with this approach. First, it undercuts deterrence and even encourages genocide. Second, it means that power, not respect for rights, makes justice. If the state of affairs produced by a violation of rights could be made acceptable and just simply by the passage of time, then for those powerful enough to prevent the restoration of rights or redress for a violation long enough—and in the case of the Armenian Genocide, successive Turkish governments have done so for nearly a century, through political and economic pressure, denial, etc.—the result of the violation of rights will eventually be just. Far from ensuring an objective, disinterested form of justice, this approach brings "justice" into accord with the subjective psychology typical of members of perpetrator groups. Such members of perpetrator groups view their possession of victims' property as an entitlement: the possession is normalized through an ideology of genocide that lowers the status of victims and legitimizes perpetrators' injuries to them, including rationalizing mass killing.³⁰⁵ Third, this approach undercuts the very nature of "rights" by rendering them temporary, variable, and situational. If this is the case, then rights do not seem to be able

303 Jeremy Waldron, "Superseding Historic Injustice," *Ethics* 103:1 (1992): 4-28. For perceptive accounts and critical appraisals of Waldron's view, see Thompson, *Taking Responsibility for the Past*, pp. 89-97 (see Note 201), and McCalpin, "Reparations and the Politics of Avoidance," pp. 21-22, 26-27 (see Note 13).

304 George Sher, "Ancient Wrongs and Modern Rights," *Philosophy & Public Affairs* 10:1 (1981): 3-17 (quotation at 13). For insightful accounts and critiques of Sher's approach, see Thompson, *Taking Responsibility for the Past*, pp. 77-86 (see Note 201), and McCalpin, "Reparations and the Politics of Avoidance," pp. 21-22, 26-27 (see Note 13).

305 This is readily apparent across the breadth of genocide cases. For example, how very few are the North or South Americans today inhabiting lands the indigenous inhabitants of which were destroyed or dispossessed through a broad process of genocidal colonialism who even entertain the barest possibility that the victims might have legitimate claims to even some of the lands—or even compensation for the lost lands, which of course is not true reparations in such a case (see Matthew Fletcher, "American Indians Seek Control, Not Just Reparations," *The New York Times*, <http://www.nytimes.com/roomfordebate/2014/06/08/are-reparations-due-to-african-americans/american-indians-see-control-not-just-reparations> [accessed December 28, 2014])? Examples are often extreme to the point of absurdity. For instance, Morgenthau discusses Talaat Pasha's request for New York Life's list of Armenian policyholders; they and all of their family members were dead, and Talaat held that the Turkish government was now the beneficiary (Morgenthau, *Ambassador Morgenthau's Story*, pp. 225 [see Note 62]).

to do the ethical work they are expected to: if even the most serious rights violations—those accomplished through genocide—are subject to this kind of nullification, then it would seem that a Rights-based case can always be made to set aside any right, rendering rights virtually arbitrary. Or, more accurately, rights become a function of power, as just discussed.

An additional criticism can be made. Waldron claims that those who originally occupied land and were dispossessed might have, without the dispossession, made bad decisions and lost the land or not benefited from it in any event. Thus, returning land now is not justified, because we do not know that the victim group would still have the land had no dispossession occurred. The problem here is two-fold. First, it is not a question of what would have happened to the land in question long after the dispossession point, had the dispossession not occurred. Perhaps the victim group would have squandered their resources. The point is that the dispossession denied them control of the land and thus prevented them from exercising any choice over it in the first place. In other words, they were denied even the chance to make bad decisions regarding the land—an opportunity taken by those who dispossessed them. Second, Waldron uses the Maori people in New Zealand as an example in making his case.³⁰⁶ In doing so, he ignores that they had stewarded land in New Zealand for many centuries³⁰⁷ before being dispossessed of it. The situation appears to have been stable and there is no substantive reason to claim that the Maori would suddenly have engaged in disastrously bad decision-making regarding the land. Indeed, in making his argument, Waldron assumes a Western liberal individualist concept of land ownership with a particular sphere and type of decision-making that does not even seem to apply.

Sher's approach does emphasize an important point: the present situation of a victim group is a crucial factor in determining their right to reparations. If time, for instance, has erased all the effects of a past harm, then reparations are no longer justified. Though taking account of the present situation of victims is important, there are two problems with the way this appears to apply to reparations. First, the approach conflates individual and group recovery. Victim groups never recover from genocide. It might be that individual members of a victim group do go on to have decent lives and that, over generations, many come to live better lives than would have been possible had no genocide occurred, but the group overall will always be in a diminished state demographically and thus geopolitically, economically, etc. And, in fact, this does affect individuals in profound ways.³⁰⁸ Many individual Armenians might be economically successful now, but that does not mean that Armenians as a group have similarly exceeded or even come close to the status, power, vibrancy, security, etc., that they would have, had no genocide occurred. The reparations that are the focus of this report—group reparations—concern precisely these harms to Armenians as a group. Only through repair of the actual damage done can these effects be mitigated. Yet, because they can never be remedied completely, the need for reparations *remains* over the passage of any interval of time. Second, while Sher would seem to hold that any improvement in the situation of victims would count toward the required overall repair, as discussed above, the repair of the dignity and worth of victims requires that reparations come from the perpetrator group and are identified as reparations. This is especially true when victim groups are the main causal factor in their own (partial) recovery from genocide. On Sher's approach, the work that victims do to recover from the injuries done them is actually

306 Waldron, "Superseding Historic Injustice," p. 9 (see Note 303).

307 See Government of New Zealand, "Story: When Was New Zealand First Settled?," <http://www.teara.govt.nz/en/when-was-new-zealand-first-settled> (accessed December 28, 2014).

308 Though not unproblematic (see Theriault, "Reparations for Genocide," pp. 454-465 [see Note 276]), the work of Claudia Card on social death makes the case for the importance of group structures to individuals (see Claudia Card, "Genocide and Social Death," in Claudia Card and Armen T. Marsoobian [eds.], *Genocide's Aftermath: Responsibility and Repair* [Malden, MA, USA: Blackwell Publishing, 2007], pp. 10-26).

credited to the perpetrator group and reduces their responsibility for repair. Clearly, a fair approach would require compensation for the victims' post-genocide efforts as much as repair of original harms, when those efforts address the effects of genocide; to the extent victims repair the injuries, they should be compensated for the resource and labor drains necessary to do so.

Given the foregoing analysis, a general Rights-based approach to reparations would seem to result from a compromise between the two extremes. The *prima facie* right to full repair of a past injury is qualified by consideration of intervening circumstances, including the needs of those in the present who would be affected by the making of reparations. While the present circumstances do not trump the historical right, they should have some weight. Rights-based Ethics appears to justify reparations most clearly and fully when the present impacts of past harms are significant and readily apparent.

The common thread through each of the ethical theories discussed so far is that, when harm is inflicted, there is a requirement that the harm be repaired. Each ethical system in its way (sometimes overlapping) justifies material and other reparations for the Armenian Genocide. Indeed, as has been shown, to argue against reparations from one of these viewpoints requires in essence justifying mass murder and theft through it, and no major ethical theory properly elaborated and applied would allow this. What is striking is that each of the theories supports reparations, while different pairs are often in opposition on many other major ethical issues, such as abortion, capital punishment, euthanasia, and freedom of speech limitations.

It is also important to note that none of the mainstream ethical theories, each of which generally justifies reparations for genocide, developed out of consideration of reparations. On the contrary, reparations are justified by what are clearly four independent moral measures not organized around the issue of reparations and not specifically focused on it or on oppression and human rights more generally. The analyses are strong argumentation because they show that reparations accord with general ethical commitments shared by most people.

There is a fifth set of approaches to ethics that is particularly relevant to reparations for mass human rights violations. These approaches have, in fact, emerged in response to the kinds of problems discussed above for Rights-based Ethics and other mainstream theories in regard to issues of oppression and mass human rights abuses. The set includes important feminist, critical race, anti- and post-colonial and similar approaches to ethical and political issues.³⁰⁹ The central contention of this set of theories is that power differentials are relevant to ethics, both in how ethical principles are applied and in what should count as injustices. These theories bring to the center of ethical concern power asymmetries corresponding to oppression, domination, and violence. For instance, a prevalent Rights-based response to conditions of injustice is to end the injustice and establish a just political order. U.S. slavery and the Jim Crow system that followed it imposed an unjust order on U.S. society. Once the system of formal discrimination was ended, from some Rights-based perspectives, the problem had been addressed. That is not to say that reparations for direct damages would not have been appropriate, but as far as the effects of the 350 years of oppression experienced by enslaved and free people of African descent in the United States, the problem was solved: with granted equal rights, with equal access to education, employment, and personal security, the harm had been ended.

309 For an excellent example as well as general account of this approach to ethics, see Hilde Lindemann, *An Invitation to Feminist Ethics* (New York, NY, USA: McGraw-Hill, 2006), especially pp. 11-12, 15-17, 20-38.

But an ethics focused on oppression recognizes that the harm done was not just ongoing denial of rights, but the cumulative effects of that denial. For instance, economic discrimination is not adequately addressed solely through the creation of a political and legal order that ensures equal financial and employment opportunities. People of African descent were denied those equal opportunities for centuries, with the effect of impoverishing the group overall, despite some individual exceptions. Simply ending the inequality in the present would mean that African Americans enter into a seemingly egalitarian system with significantly lower financial resources and less education than those of European descent possess, so they are at a distinct disadvantage in the system, without taking into account the additional obstacles caused by the significant multi-generational effects of manipulated and destroyed intragroup social and familial relations, cultural destruction, and trauma. Formal equality of opportunity must be coupled with a range of reparative measures that transform it into concrete and meaningful equality.

An ethics focused on oppression would seem to justify reparations tautologically, but in fact such ethical theories have been developed precisely to address situations of mass human rights violations. Unlike the four mainstream ethical theories, there is no claim that an ethical theory focused on oppression is prior to the oppression it takes account of; on the contrary, such theories are responses to oppression.

6.2 REFINING THE MORAL ARGUMENTS: RESPONDING TO CHALLENGES, OBJECTIONS, AND ALTERNATIVES

The previous section examined how various ethical theories apply to reparations. The main conclusion of the analyses is that each ethical theory generally justifies reparations for genocide. That each of these ethical theories can be used to develop a case for reparations in support of reparations does not, however, mean that complexities, uncertainties, and objections to reparations are not possible or that arguments against reparations are automatically illegitimate. There are complexities and tensions inherent in the concept of reparations irrespective of the ethical theory applied. These often come to light when the general concept of reparations is transformed into a concrete, detailed proposal regarding a particular set of injuries. Just as importantly, that a comprehensive set of material and symbolic reparations for genocide is justified does not mean that reparations are the best way to address a past genocide. Alternatives, such as recognition of the genocide and dialogue toward reconciliation between the victim and perpetrator groups, are frequently proposed as optimal methods of addressing recent or long-past mass human rights violations. Finally, there are substantive objections that have been raised against reparations generally or specifically for the Armenian Genocide that must be addressed in any analysis of reparations for this case.

This section of the report examines various complexities that arise when reparations for the Armenian Genocide are considered, alternatives to reparations, and objections to reparations. The complexities, alternatives, and objections are presented in general terms. In this way, the analyses of and responses to the issues raised will apply to the entire range of positions captured by the general account, rather than being focused only on specific versions, and will be flexible enough to apply even to similar positions proposed in the future.

6.2.1 Challenge: The Passage of Time

As discussed above, theorists such as Waldron and Sher claim that as more time passes from the point at which a mass human rights violation occurs, the weaker the claim to reparations becomes. Regarding

the Armenian Genocide, many involved parties hold that nearly a century after the Armenian Genocide, so much time has passed that reparations claims, particularly regarding territory, are meaningless. There are different arguments for this position, but as described above the key element is the notion that, as time passes, other factors intervene to such an extent that the effects of a mass human rights violation are erased or made unimportant relative to those factors. Thus, some argue that U.S. slavery was so long ago that its vestiges have been erased, and any issues contemporary African Americans face are not the result of a system that ended one and a half centuries ago.

Regarding land reparations in particular, another concern is that awarding territory to the immediately previous possessors is arbitrary. Why should that group, as opposed to those who possessed the land prior to them, have title? What if the victim group to receive reparations dispossessed another group before it? What if this goes back multiple groups? Because there is no way in these circumstances to determine whose claim is the most legitimate, this view privileges present possession.

These concerns are certainly legitimate in some cases. For instance, one would hardly hold contemporary Athenians, or Greeks generally, responsible for the Melos Genocide in the 5th century BCE. First, this happened so long ago and so much has changed politically, culturally, economically, socially, etc., that (1) it would be impossible to identify clear victim and perpetrator groups, (2) it would be impossible to disentangle more than 2,000 years of causes and effects, with so many players involved, to identify specific injuries that still affect or the benefits still existing for anyone in the contemporary world, and (3) even if this were possible, it is virtually certain that the negative effects on the contemporary world would be quite small. Point 1 here is evidenced by the fact that no group is actually claiming such reparations. Second, given the limited and unclear impact on the contemporary world, redress of the historical wrong would not seem to be necessary to a just state of affairs today; there would seem to be many ways to ensure a more just order for Greeks today than reparations for the Melos Genocide. Even if one were to allow that some small negative effects do impact the contemporary world, since they are very small relative to other forces impacting that world, any requirement for reparations would be adequately met by a proper historical accounting and memorialization of that genocide.

Consideration of the Melos case suggests three criteria for determining whether the passage of time has substantially reduced the validity of a mass human rights violation reparations claim or decreased the magnitude and extent of justified reparations:

(1) Identifiable groups directly linked to the direct perpetrator and victim groups must exist today.³¹⁰

(2) The harms done by the original mass human rights violation must substantively impact members of the victim group or the victim group as a whole at the present time. The contemporary impacts of the mass human rights violation must be objectively significant, affecting important aspects of individual well-being and group identity and viability. The benefits for the perpetrator group can also be a factor in applying this criterion, but if the perpetrator group squandered the benefits of its violations, this cannot be held against the victim group.

310 Though not relevant to the Armenian case, this criterion might be modified in cases in which the victim group no longer exists but the perpetrator group does, thereby requiring reparations from the perpetrator group that address contemporary harms related to what was done to the direct victims. For an analysis of this challenge and methods for dealing with such cases, see Henry C. Theriault, "Repairing the Irreparable: 'Impossible' Harms and the Complexities of 'Justice,'" in José Luis Lanata (ed.), *Prácticas Genocidas y Violencia Estatal: en Perspectiva Transdisciplinar* (San Carlos de Bariloche, Argentina: IIDyPCa-CONICET-UNRN, 2014), pp. 182-215 at 190-194, 202-204. Where both groups no longer exist, then reparations would seem impossible, but that does not mean that the broader human community has no obligation regarding the case of past harm; on the contrary, there would seem to be a responsibility to memorialize and educate about the harm.

(3) The contemporary impacts of the original mass human rights violation must either be traceable through historical records (such as confirmation that a particular area was an Armenian village prior to the Genocide) or be readily apparent from identifiable indirect indicators, for instance, the conquest by Turkish nationalist forces of a major part of the 1918 Armenian Republic during the second phase of the Armenian Genocide. This analysis of identifiable harm must exclude the increases in well-being accomplished through the efforts of victims themselves because of later circumstances, in order to avoid making victims responsible for their own reparations.

The Armenian case clearly satisfies each of these criteria.

(1) Both Armenians and Turks are identifiable contemporary groups directly descended from the Genocide period. The vast majority of Armenians in the Diaspora not only can trace their families back to genocide survivors, but many can name the particular villages, towns, or cities from which the survivors came. Many Armenians in the contemporary Republic also trace their lineage back to Genocide refugees. What is more, most contemporary Armenians with self-awareness share in the identity that was targeted in the Genocide.

While it is presumably not the case that every contemporary Turk traces his/her lineage back to a direct perpetrator, the identity that contemporary Turks share is the product of the Turkish nationalism that was a key cause of the Armenian Genocide, with its roots in the theories of Ziya Gökalp, who is still celebrated as a major national figure.³¹¹ As discussed in Part 4 of this report, the contemporary Republic of Turkey is also the successor state of the Ottoman Empire, the perpetrator of the first phase of the Armenian Genocide, and was formed by the nationalist movement that perpetrated the second phase of the Genocide.

(2) The Genocide continues to have a substantial impact on Armenians today. The biggest factor in its poverty is the two phases of the Genocide, which destroyed the majority of the Armenian population and expropriated its land, money, and movable property in the Ottoman Empire, leaving the smaller Armenian territory in the Russian Empire to absorb impoverished refugees and later to be forced into subjugation in the Soviet Union. Today's Armenian state is the small, landlocked rump Armenia remaining after the 1920 Turkish conquest of the majority of the independent Armenia. It is poor, politically marginal, and militarily insecure, under threat from larger neighbors, including the mammoth Turkish Republic. It is dependent on foreign aid as well as the Russian military, and subject to Russian economic and political neo-colonialism and the policies and actions of powerful states in Europe, Asia, the Middle East, and beyond. After 70 years of Sovietization, the current Armenian Republic struggles to maintain its identity, while the majority of Armenians live in a fragmented, globally dispersed Diaspora that struggles to retain an Armenian identity in the face of assimilative forces. Sizeable Armenian populations remain vulnerable to oppression and violence in Syria, Iraq, and other Middle Eastern countries. A small residual Armenian population in Turkey continues to face serious discrimination, including property expropriations³¹² and violence.³¹³ The long-term viability of the Armenian Republic and of the global Diaspora remains an open question, as the intergenerational legacy of the Genocide plays out.

311 See Stephan H. Astourian, "Modern Turkish Identity and the Armenian Genocide: From Prejudice to Racist Nationalism," in Richard G. Hovannissian (ed.), *Remembrance and Denial: The Case of the Armenian Genocide* (Detroit, MI, USA: Wayne State University Press, 1999), pp. 23-49 at 31-40.

312 Çetinoğlu, "Foundations of Non-Muslim Communities" (see Note 288).

313 The most obvious example of contemporary violence against Armenians in Turkey is the assassination of Turkish-Armenian journalist Hrant Dink in 2007. See "Turkish-Armenian Writer Shot Dead," *BBC News*, January 19, 2007, <http://news.bbc.co.uk/2/hi/europe/6279241.stm> (accessed December 29, 2014).

The losses by Armenians are mirrored in many Turkish gains, as sketched in Part 2 of this report. The wealth expropriated in the first phase of the Genocide has figured prominently in many family fortunes³¹⁴ and provided the basis of the Turkish Republic's new economy.³¹⁵ The lands depopulated of Armenians and Turkified in the first phase of the Genocide, and the territories reappropriated as well as newly acquired³¹⁶ through conquest of the 1918 Armenian Republic, have become core parts of the Turkish Republic, which is significantly larger than it would have been otherwise. These expropriations and Turkifications have provided bases for strong and increasing geopolitical, economic, and demographic power and stability since the Genocide. The genocidal process produced a much more cohesive state and popular conformity to its ideology and the notion of Turkish identity associated with it, which have also contributed greatly to Turkish power and stability.

It might be objected that many Armenians, particularly in the Diaspora, are relatively well off financially and have developed cohesive community, educational, and religious institutions that support the continuation of Armenian identity. While this is true, it should be recognized that this is so *despite* the impacts of the Genocide. In fact, any recovery has happened in the face of continued Turkish efforts to undermine recovery, for instance, with the blockade of the Armenian Republic, which has had devastating economic effects, the Turkish government's refusal to normalize relations, and its aggressive interdiction against Armenian political development and influence in places such as the United States. Efforts at recovery have meant a tremendous material and psychological drain on Armenians, with long hours committed by refugees and their progeny. To balance the strides some Armenians have been able to make since the Genocide against the damage done by the Genocide would be to make Armenians responsible for repair of that damage. What is more, while some Armenians have prospered since the Genocide, others have not, and continue to live in difficult conditions. Even where they have achieved relative economic comfort, Armenians across the world are subject to a frail identity that continues to be subject to strong external forces and political challenges that prevent commemorations of their history of suffering and loss and its inclusion in school textbooks, legitimize demonization and anti-democratic political dismissals of their concerns, etc. Importantly, the continued, substantial Turkish benefits from the Genocide detailed above confirm that Armenian gains cited cannot be considered reparations for the Genocide. It should also be noted that only that portion of the original Armenian population that survived the Genocide has been able to make positive gains. There remains a permanent majority of Armenians prevented from any kind of recovery because they were killed in the Genocide or would have been descendants of those killed.

(3) Armenian deaths and suffering in the Genocide are well documented and researched, and corroborate estimates made after the first phase of the Genocide (see Subsection 8.5.3).³¹⁷ Recent scholarship has begun to trace expropriations of Armenian property,³¹⁸ and there are generally accepted methods for calculating

314 Uğur Ümit Üngör, "The Economic Aspect of the Armenian Genocide in the Diyarbakir Region," paper, "The Armenian Genocide and International Law" conference, Haigazian University, Lebanon, September 3, 2009.

315 Demirer, "The 'Armenian Issue'" (see Note 51). See also Üngör, "Seeing Like a Nation-State," p. 34 (see Note 197).

316 Kars being one of the areas conquered by Turkish nationalist forces that was not previously Ottoman territory.

317 For details on the nature and extent of the violence and suffering, see Sarafian, *United States Official Records*, (see Note 62); Gust, *The Armenian Genocide*, pp. 185-755 (see Note 62); Kévorkian, *The Armenian Genocide*, pp. 265-696 (see Note 62); Miller and Miller, *Survivors*, pp. 78-117 (see Note 62). For a comprehensive and detailed analysis of the numbers of those killed and targeted overall, see Travis, *Genocide in the Middle East*, pp. 222-223 (see Note 52).

318 Üngör and Polatel, *Confiscation and Destruction* (see Note 39); Baghdjian, *The Confiscation of Armenian Properties*, pp. 497-505 (see Note 38).

compensation of losses that could be applied to this case.³¹⁹ There are also clear general descriptions of the mass expropriation of Armenian property in the historical record, and many documents such as title deeds held by heirs. Recent works and historical sources also provide significant documentation of the benefits to the state and to Turkish individual and family holdings today,³²⁰ as well as the negative long-term economic impacts on specific Armenian victims of expropriations.³²¹

Other points are also relevant to the passage of time issue. As pointed out above, if the passage of time automatically weakens reparations claims, this will encourage perpetrator groups to forestall reparations processes in the hope of ultimately preventing them. If reparations claims remain legitimate over time, then perpetrator groups have more reason to negotiate a timely settlement. Indeed, as the legal concept of usufructus suggests, the passage of time often makes the effects of a genocide worse, as injuries compound and negative cycles emerge. For instance, a demographic collapse results in reduced group economic means, which in turn negatively affects population growth. Every year that an expropriated business is held by the perpetrator group, more profits are lost to the victims. Against the old adage, time does not heal all wounds, but rather makes some worse.

In addition, the assertion of a time limit on reparations also violates international law, which rejects any statute of limitations on redress for major mass human rights violations, as discussed in Part 4 of this report.

6.2.2 Challenge: Restoration of the Pre-Genocide State of Affairs Is Impossible and Undesirable, and Creation of the State of Affairs Had the Genocide Not Occurred Is Impossible

As this report has already touched on, it is impossible to return to the pre-Genocide state of affairs. The most obvious reason is that, once a substantial number of Armenians were killed (ultimately 60 percent of the pre-Genocide 2.5 million in the Ottoman Empire), the population of the Armenian people was permanently reduced. Similarly, there is no way to change the suffering that many survivors and later generations endured from the post-Genocide impacts of trauma, poverty, dispersion, familial dissolution, etc.

It is also clear that most, if not all, Armenians would reject a return to the Ottoman state of affairs. While the Genocide maximized the domination of and violence against Armenians, the situation of Armenians in the Ottoman Empire before the Genocide, going back many decades, was marked by political, legal, and economic discrimination, abuse, sexualized and other violence, kidnapping, and degradation. The situation was desperate enough to draw international attention and efforts to ameliorate the conditions of Armenians. What is more, given that nearly a century has passed since the Genocide, the population of Armenians has already increased to exceed the pre-Genocide total global population of fewer than 4 million, to perhaps 8 million.³²² Moreover, given the average standard of living a century ago, particularly

319 Irmgard Marboe, “Compensation and Damages in International Law and Their Relevance for the Valuation of Expropriated Armenian Property,” *International Criminal Law Review* 14:2 (2014): 407-426.

320 See, for example, Üngör and Polatel, *Confiscation and Destruction*, pp. 78-84, 129-132, 162-164 (see Note 39).

321 *Ibid.*, p. 164. This kind of evidence presents a significant problem for Sher’s approach to the passage of time and reparations.

322 These are very rough estimates, the former based on various sources already cited in this report and the latter the most frequently cited figure in recent years in Armenian circles. Just give the complexities of counting a globally dispersed population, and setting aside questions about how “Armenian” should be defined—by subjective identification, percentage of heritage, cultural attributes, etc.—the latter could be far off the mark in either direction. Any inaccuracy, however, is not material to the point being made here.

in the Ottoman Empire, many Armenians have already achieved a higher standard of living than their ancestors had then.

Projection to the state of affairs that would have existed had the Genocide not occurred is more complex. Some reasonable projections are possible, particularly regarding the value of expropriated property. But there is no way to effect such a restoration of the projected state of affairs regarding key aspects of the destruction done by the Genocide. No matter what rate of increase the Armenian population has achieved or will achieve in the future, the population will always be substantially lower than it would have been. The problem is compounded by (1) the perhaps hundreds of thousands of forced assimilations to Turkish or Kurdish identity of Armenian children and women, and (2) the post-Genocide impacts of trauma, poverty, dispersion, familial dissolution, etc., on the birthrate of Armenians. Historian Richard G. Hovannisian has projected that, even had the Genocide occurred but the 1918 Armenian Republic been allowed to exist independently as envisioned at the time, rather than conquered during the second phase of the Armenian Genocide, the population today of the Armenian Republic would be on the order of 20 million, making Armenia a regional power with significantly increased geopolitical relevance and political, military, and identity security. No repair in the present will result in this population.

It is true that some views of reparations, including Nozick's, see them as corrective, in the sense of advocating for a "turning back of the clock" or the establishment of a present based on projections about what the situation of the victim group would have been.³²³ But, for the most part, as Robinson points out, this "counterfactual conception of compensation" is "merely a popular assumption" that interferes with more precise and tenable accounts of repair.³²⁴ Indeed, the view of reparations as a simplistic return to a previous state or the establishment of a projected state of affairs seems sometimes to be used in popular discourse as an easily refuted "straw man" to strengthen counter-arguments against reparations. Such counter-arguments play up the apparent absurdity of reparations conceived this way and the fallacious reasoning that, because this type of full restoration is not possible, repair is not possible at all. This report, however, does not call for a return to the pre-Genocide state of affairs or a creation of a counterfactual state of affairs as if the Genocide had never occurred. Based on the reasoning above regarding the nature of political and economic conditions in the Ottoman Empire, it recognizes that a return to the pre-Genocide state of affairs—including the degradation, violence, and insecurity of the precarious pre-Genocide position of Armenians in the Ottoman Empire—is not proper repair for the Genocide. Regarding any projection, it takes full account of the permanence of some harms of the Genocide, as considered in Part 2. The view of reparations as return to the pre-Genocide state of affairs or establishment of a projected state of affairs might appear based on the notion of *restitutio in integrum*, discussed in Part 4 of this report. As suggested in that discussion, however, the legal principle is more complex. The purpose of reparations as presented in the foregoing arguments is not a simple return to the past but a balancing of past harms with present actions, that is, actions that tend to reverse the effects of genocide at least partially. This is the approach the report takes: it develops a concept of reparations that is meant to address—to the extent possible at the present time—the continuing impacts of the Genocide on contemporary Armenians as a group. It does not look to the past for the goal of reparations, but instead to the present and future. It does not call for an impossible demographic increase of Armenians, but rather for measures to be taken to support the well-being and security of Armenians today in a way that will promote the future viability and vibrancy of the group. Such measures will certainly

323 For a discussion and critique of such views, see Rodney C. Roberts, "The Counterfactual Conception of Compensation," in Claudia Card and Armen T. Marsoobian (eds.), *Genocide's Aftermath: Responsibility and Repair* (Malden, MA, USA: Blackwell Publishing, 2007), pp. 132-146.

324 *Ibid.*, p. 133.

positively affect the Armenian population figure, by preventing emigration out of the Republic and assimilation to other identities due to identity, economic, political, etc., weakness. Population growth and group viability will also benefit from addressing that portion of the economic difficulties of the present Armenian Republic and the Armenian Diaspora traceable to the property expropriations and destruction of economic, familial, and community structures and institutions in the Genocide and the further impacts of subjugation by Turkey and the Soviet Union of the 1918 Republic. The return of available property and calculation of compensation of destroyed or unavailable property is clearly possible. As pointed out in the previous section, recent scholarship provides ample evidence of at least a significant portion of Armenian property and financial losses. There was also a credible accounting of Armenian property losses made after the first phase of the Genocide (see Subsection 8.5.3). By correcting for inflation, this could be the basis of a compensation figure.

However impossible the full realization of a projection may be—about what might have been had no Genocide occurred—it is clear that the kind of reparative approach sketched here, which will be elaborated through the full set of recommendations in Part 8 of this report, will mitigate the outstanding harms of the Genocide and bring the situation of Armenians today much closer to what reparative justice indicates it should be. Calls for compensation for deaths and suffering are not intended to erase that death and suffering, but rather to mark it clearly as wrong and to balance the harms in a meaningful manner that can help mitigate the long-term effects of the destruction of Armenian life, community, political viability, and identity as they still impact Armenians today. If return of or compensation for expropriated property and payment for losses accrued since expropriation will not create the same economic situation as would have existed in the absence of genocide, clearly it—rather than the retention of expropriated property and its benefits by the perpetrator progeny—will bring the future state of the world much closer to what it would have been for Armenians and Turks. The impossibility of full and perfect restoration does not entail that no effort and no partial reparation should be made. Quite the contrary, the overwhelming destructiveness and losses of the Armenian Genocide make it morally imperative that the perpetrator progeny do at least something substantial to balance them. By analogy, just because it is not yet possible to cure all cases of cancer does not mean that medical professionals should stop trying to cure cancer at all.

6.2.3 Challenge: A Full and Accurate Accounting of What Is Due to Armenians and to Whom Specifically It Is Due Is Impossible

Even if a comprehensive reparations package is justified abstractly, actually making these reparations depends on knowing specifically what is to be given. While symbolic elements such as apology and education respond to the general features of the case, determining material reparations covering expropriated property as well as compensation for deaths and suffering, slave labor, etc., requires knowing precisely what was expropriated, how many people and who were killed and suffered, who was enslaved and for how long, etc. Given the imperfect records of the Genocide, these facts are impossible to determine. Only some claims can be substantiated through documentation, historical records, or memory; the overall losses can only be estimated by extrapolations from available records. What is more, heirs to those identified as killed are often impossible to determine because of incomplete knowledge or because no family members survived the Genocide. Finally, some Armenians who are not related to direct victims will likely benefit from group reparations.

These concerns can be summarized as demonstrating the impossibility of determining accurately the precise individual and group reparations that should be made. There are two consequences of concern.

First, if Armenians without legitimate claims to reparations benefit from reparations, this is unfair to those providing reparations. Second, it is possible that material reparations will be overestimated, which is again unfair to the perpetrator group.

While these concerns are understandable, further analysis shows them to be manageable challenges. First, while a perfectly accurate accounting of the damage done to Armenians is not possible, a reasonable estimation is possible based on (1) existing Ottoman records of expropriations, (2) existing population records from Ottoman and Armenian sources, and (3) eyewitness accounts of expropriations, massacres, etc., during the first phase of the Genocide, and other such sources. Many Armenians today retain title deeds or other information showing their ownership of land and other property that is now in the hands of the Turkish government or individuals in Turkey. These deeds are supplemented by other evidence confirming ownership of land and other property without explicit, direct documentation. These include religious, cultural, and historical monuments that originally belonged to Armenian national institutions, including the Armenian Apostolic, Catholic, and Protestant Churches. Further, historical accounts, archival records, testimony, and other sources make it possible to identify at least partially land stolen from Armenians during the Genocide as well as various possessions (jewelry, farm products, money, etc.). While it is not possible to reconstruct a perfect record of what Armenians owned and what was taken through the Genocide, for much that was taken this is possible, and obvious and reasonable extrapolations based on historical documents allow estimation of the overall losses.³²⁵ For instance, where the specific details of which people were killed and the identities of their heirs are not available, general group reparations can reflect good estimates of the numbers of people killed and property expropriated, based on such sources. Ottoman-era and Turkish Republican-era archives in Turkey might contain detailed lists of expropriated property and other important documentation of expropriations.³²⁶

Still, these estimates will not be certain, and the process inherently imperfect. But this is likely true of many cases in which damages are awarded. For instance, when a person is killed in a commercial air crash, his/her family might be paid compensation based on the expected salary the deceased might have earned through the remainder of his/her working life, the amount and intensity of suffering he/she experienced before dying, and other such factors. It is clearly impossible to know how long a crash victim would have lived, what his/her salary would have been, or how long he/she was in pain before dying in the crash. Yet, reasonable estimates are routinely made. That beneficiaries are paid based on an estimate that the deceased would have worked 25 more years with steady salary increases is not unjust, even though it is quite possible the person might have lost his/her job the following year, never earned as high a salary again, and so forth. It is just as likely that he/she would have worked longer and at a higher salary than expected. These uncertainties are inevitable in any minimally complex case involving damages. If over estimation is a major concern, then conservative estimates can be used.

What is more, neither the expropriations and violence nor the poor record keeping and chaotic process were the fault of Armenians. The perpetrators chose to do the damage, and Armenians should not be denied repair because of the manner in which the perpetrators harmed them. According to laws used to legitimize the deportations of Armenians, all Armenian property, moveable and immovable, held by the

325 Using Üngör and Polatel, *Confiscation and Destruction* (see Note 39), and Baghdjian, *The Confiscation of Armenian Properties* (see Note 38), as well as contemporaneous on-the-ground accounts such as those contained in Sarafian, *United States Official Records* (see Note 62), and Gust, *The Armenian Genocide*, pp. 185-755 (see Note 62), as a basis for extrapolation, credible overall estimates are possible.

326 See Uğur Ümit Üngör, "The Armenian Genocide: New Sources and Research Directions," <http://www.haigazian.edu.lb/Publications/Documents/HARVol31fullcontent/9-32.pdf> (accessed January 6, 2015).

Ottoman government because of deportation was supposed to be recorded in detail. While this does not account for money and possessions taken by those preying on the deportation caravans, it would account for a significant amount of what was expropriated. That the Ottoman government did not keep accurate records or destroyed those records, or that subsequent Turkish governments have not allowed access to or have destroyed those records, is not a valid defense. The burden is on the Turkish government today to produce those records or to accept a reasonable estimate based on available documentation, even at the risk that this estimate is inaccurate (which it is just as likely to be to the detriment of Armenians as of Turkey). A similar argument holds for the number of Armenians killed and who survived.

Finally, even if the estimates inaccurately favor the victims to a significant extent, that does not mean that the victim group gains unfairly through reparations. No matter how sizable a reparations package is, it will always address only a small part of the overall damage done by a genocide, if the permanent harms done are taken into account.

6.2.4 Objection: Material Reparations Will Be Unacceptably Disruptive, Harm the Innocent, and Benefit the Undeserving

This issue concerns the return of expropriated property and compensation for property and the death and suffering of victims. It is possible that rectification of the harms inflicted through the Armenian Genocide will be economically and politically disruptive and will unfairly inflict new damages against innocent targets. One group of special concern are those who are the progeny of or politically identify with members of the perpetrator group who resisted the Genocide, including those in positions of religious and governmental leadership who were removed because of their unwillingness to participate in the Genocide. In this sense, their relationship to the Genocide is one of refusal, which might have produced long-term harms for their families. Is this unfair?

This concern legitimately takes into account all those in the present who will be affected by rectification of a past injury, including present-day residents of Turkey who, of course, are not Genocide perpetrators. There are two specific considerations here. First, is it morally acceptable that a resolution for a past injustice would entail contemporary unfairness against those not directly involved in or connected by resistance to the past injustice?³²⁷ Second, what if any is the responsibility for a past harm of those members of a group in later generations?

While any material repair will require resources drawn from contemporary Turks, the biggest challenge is return of land. If it is justified, then the same arguments will certainly justify other material reparations. Return of land to Armenians would concern territory occupied by Turks and members of other groups, such as Kurds. Would it be fair to displace these people?

That return of land would affect such individuals should not be taken lightly. This harm, however, would be the result of the process of Genocide, not Armenian reparations claims. The fault would lie with the perpetrators of the Genocide, and the responsibility to ameliorate the difficulties resulting for present occupants with the Turkish state. This problem does not expose a faulty ethical base for material reparations, but rather shows that genocide itself creates a status quo that is so compromised that

³²⁷ For a treatment of this concern, see for instance William C. Bradford, "The Genocide of American Indians," in Claudia Card and Armen T. Marsoobian (eds.) *Genocide's Aftermath: Responsibility and Repair* (Malden, MA, USA: Blackwell Publishing, 2007), pp. 232-259 at 247.

addressing it is not possible without some kind of disruption. If the arguments for reparations are right, they are right regardless of whether they are difficult to implement. Part of the reparative process is to figure out ways to implement what is right in a workable manner.

In addition, if the rights of contemporary inhabitants trump Armenian claims to territory, does this not lead to a de facto acceptance of genocidal Turkification of that land, that is, a condoning of genocide?

Large-scale reparation through land return and substantial monetary payments will impact the Turkish state's borders, land use, political structuring, and fiscal condition. However, this impact will be mitigated in various ways. First, Turkey's international political stature will dramatically increase, moving it from a country often viewed as an unrepentant abuser of human rights to one of the very few states to engage honestly a major human rights violation in its past. Second, terminating its denial campaign will allow it to use political, diplomatic, economic, and academic resources for productive purposes and allow it to stop trading various concessions to other countries in exchange for support for denial. Third, there is the possibility of a political alliance and economic cooperation with Armenia and improved relations with the United States, France, and other powers, as well as entrance into the European Union. And, Turkey will remain a territorially extensive country with a large population and globally significant economy.

Even if these practical points were not true, moral requirements still favor reparations. Regarding the second concern above, contemporary Turks do have a moral responsibility to address the Armenian Genocide. To understand this, it is important to differentiate causal from moral responsibility.³²⁸ One can be morally responsible for addressing a problem one did not cause. While no living Turk is a direct perpetrator of the Armenian Genocide, most if not all Turks today politically, economically, and in terms of identity enjoy—and many willingly retain possession of—the benefits gained by the Turkish state and society through the Armenian Genocide, even where class and other factors work in opposing directions.³²⁹ Moreover, many Turks actively identify with the nationalism or elements of the mainstream Turkish national identity that drove the Genocide.³³⁰ The extent to which reparations will impose losses on contemporary Turks marks how much they continue to benefit unjustly from the Genocide, that is, how justified reparations are.

Even though the making of reparations will be difficult, this is to be expected, as some level of sacrifice by the perpetrator group is an inevitable component of redress for a genocide. While reparations will be economically and politically disruptive for some Turks, it will be beneficial to Armenians. This is not unfair damage to Turks to benefit undeserving or deserving Armenians. On the contrary, it is a fairer distribution of the long-term harms of the Armenian Genocide across both the victim and perpetrator progenies. Indeed, the very view that reparations will harm Turkish people is a flawed perception based on the assumption that the current situation is a fair norm and that Turks deserve the extensive benefits of the Genocide they still enjoy. Once the Genocide is recognized as a persisting injustice, this assumption is falsified: that portion of contemporary Turkish wealth and power that derives from the Genocide does not legitimately belong to the Turkish state, society, or individuals, and so loss of it is not a moral harm.

328 This distinction is informed by George Sher's treatment of the difference between "blame" and "responsibility" in "Blame for Traits," plenary address, 28th Conference on Value Inquiry, Lamar University, Beaumont, TX, USA, April 14, 2000.

329 It is possible that some Turkish people who might historically have received benefits from the Genocide have lost those through exploitation within the Turkish economic and political system.

330 See Theriault, "From Unfair to Shared Burden," pp. 156-157 (see Note 16). See also Karen Kovach, "Genocide and the Moral Agency of Ethnic Groups," in Claudia Card and Armen T. Marsoobian (eds.), *Genocide's Aftermath: Responsibility and Repair* (Malden, MA, USA: Blackwell Publishing, 2007), pp. 50-70 at 55-61.

Furthermore, though it is true that today's Turkish people did not commit the Genocide (setting aside that some are complicit with the actual perpetrators through the denial that prevents mitigation of the outstanding damages), this is true of contemporary Armenians as well. But, the reality of history has forced contemporary Armenians to bear a tremendous burden in terms of economic health, identity, and political security, etc. Reparations will not inflict new damages on Turks, but rather require the progeny of the perpetrators to share the burden of the past with Armenians, many of whom face all sorts of difficulties today, from rampant poverty and political and military weakness to client-state status vis-à-vis Russia and dependence on other powers. A history of genocide is unfair for all concerned, but to date that unfairness and harm has been entirely the burden of Armenians.

It is not Armenians making a case for reparations who are imposing that unfair burden on Turks, but rather the past perpetrators of the Armenian Genocide who condemned their progeny to face the consequences of the perpetrators' genocidal actions. If reparations will require today's Turks to bear some of the burden that is unfair for all, it is still the case that no matter how much contemporary Turks give in reparation, they will never bear a burden that is equal to that of Armenians, for their population has grown steadily for a century, their identity is intact, their political structures secure, and their legitimacy and long-range relevance in the world guaranteed.

The distinction between guilt for the Genocide and responsibility for redress can now be further clarified. The argument here does not blame contemporary Turks for the Genocide, nor does it hold them retroactively responsible for it based on a shared nationality with the perpetrators. While such things as active denial of the Armenian Genocide and espousing of Turkish ultranationalism would identify some contemporary Turks with the perpetrators, this is not universal. The argument instead holds Turks responsible for dealing with the present impact of the Genocide in the proportion to which they benefit from it and as a way of sharing with Armenians some part of the unfair burden imposed by it.

This fairer distribution of the impact of the Genocide also helps address the issue of Turkish resisters. It should be stressed that this classification does not include those Turks and others who "took in" Armenian "orphans" out of their own self-interest (or who even through kidnapping saved them from death) or who exploited the context of the Genocide to coerce women and girls into marriage or concubinage (or through kidnapping saved them from death, if not from sexual and other abuse).³³¹ All parties acting in such ways were active perpetrators of the Genocide. The category of resisters is limited to those who, out of a clear sense that what was happening to Armenians generally or on an individual level was wrong, did something to protect one or more Armenians from it. Is it fair that their progeny or those who identify with them are just as subject to the burden of reparations as ultranationalist Turks, in so far as their taxes will support payments and they could be affected by land return? Do not their predecessors' morally good actions exempt them from reparations today? Indeed, does not this past resistance by governmental and religious leaders³³² relate to all Turks today just as much as the perpetrators' actions do? This is an important issue, and certainly the reparations process should acknowledge these people and their laudable acts, but at the same time, it is not unfair that their progeny and other Turks share in the burden of the legacy of the Armenian Genocide as Armenians do today. They are no less innocent than typical Armenians. And, in so far as they are participants in the Turkish state and society, it can be argued that they still benefit in the same manner as other Turks.

331 See Derderian, "Common Fate, Different Experience," pp. 6-7, 9-11 (see Note 62).

332 See, for instance, Donef, "Righteous Muslims" (see Note 53); Bedrosyan, "The Real Turkish Heroes" (see Note 53).

What is more, because the Genocide perpetrators dominated society, it is misleading to identify with resisters as the sole representatives of Turkish society in the Genocide period. While resistance at the time of the Genocide and today is relevant to appraisal of Turkish identity and society, so are the perpetrators and those who today refuse to acknowledge or address the Genocide. And, the perpetrators and those who refuse dominated and dominate the Turkish state and society; any contemporary Turk must come to terms with this. Rather than past resistance by public figures and others bestowing on contemporary Turks (including those directly descended from resisters) an immunity from responsibility for addressing the legacy of the Genocide, it should serve as a model for contemporary action. For that past resistance to be meaningful today, it must be reflected in just and moral actions regarding the Genocide. In this way, contemporary Turks connect themselves to the legacy of ethical resistance rather than perpetration. Avoidance of reparations and thus responsibility devalues and undermines the original resistance. By choosing actions—support for reparations—today that accord with the spirit of resistance in the past, contemporary Turks can rightly choose to identify with a different strain of their national history and free themselves from the “moral taint” of association with the perpetrators though a shared national ideology.³³³

The impact of material reparations on Turkish individuals should also not be overstated, and will or can be mitigated. First, even though reparations will require, for instance, that individual Turks who acquired land fairly and legally (for instance, a Turkish individual paid fair market value for land to another Turk who had—or whose forebears had—acquired that land through theft or coerced unfair sale terms from an Armenian during the Genocide) lose the land that is transferred to Armenian possession, it is not incumbent upon Armenians to forego land transfer to prevent this loss to Turks; on the contrary, it is the responsibility of the Turkish government and society as substantial beneficiaries of the Young Turk-run Ottoman Empire and nationalist forces of the post-war period to compensate such Turks. The Turkish government and society should use their resources to make the process fair to individual Turks.

What of the benefits to Armenians of material reparations? So long as the facts of the Genocide, including the harms it inflicted and their devastating legacy for Armenians, remain denied and avoided by the Turkish state and society, reparations claims for land and other property return, as well as compensation for other expropriated property, death, and suffering, are bound to be seen as unfair attempts to exploit Turkey for material gain. Without an in-depth, objective understanding of the injuries, there is no context for understanding why material wealth should be transferred. Even with an understanding of the legal and ethical requirements related to property rights and torts, many members of the perpetrator group are likely to continue to see return and compensation as unjustified. Property return and financial compensation are core elements of reparations for a genocide, however, not only because of legal and ethical notions of fairness in relation to property rights or torts, but because of the central roles in many genocides, including the Armenian, of the (1) expropriation of land and other material possessions and (2) murder and imposed suffering to be compensated for. Movable wealth, including the basic items necessary for daily life and the land and buildings that provide people basic shelter, food, and other necessities, through farming or business, are not proven superfluous by the fact that those who survive their expropriation do in fact survive. These expropriations are not just schemes for enrichment and enticements for participation in genocide, which would be enough to justify return and compensation;

333 On the notion of “moral taint,” see Marina A. L. Oshana, “Moral Taint,” in Claudia Card and Armen T. Marsoobian (eds.), *Genocide’s Aftermath: Responsibility and Repair* (Malden, MA, USA: Blackwell Publishing, 2007), pp. 71-93. On the question of inter-generational association with past mass human rights violations, see Kovach, “Genocide and the Moral Agency of Ethnic Groups” (see Note 330); Armen T. Marsoobian, “Acknowledging Intergenerational Moral Responsibility in the Aftermath of Genocide,” *Genocide Studies and Prevention* 4:2 (2009): 211-220; Theriault, “Repairing the Irreparable,” pp. 188-189, 202-204 (see Note 310).

the expropriations create conditions in which members of the victim group do not have the basic material necessary to live, that is, they are actions that bring about the deaths of victim group members. That many people die of deprivation in genocide is confirmation. Return of or compensation for those properties is not the provision of luxury for victim group members, but rather addresses the needs caused by the genocide. Similarly, compensation for death and suffering is not a windfall for survivors or the heirs of those killed; rather, it is provision of resources necessary to, but not sufficient for, the partial rebuilding of fractured, devastated families and communities. Addressing these harms responds directly to the core of genocidal destruction—core elements that continue to have major impacts on Armenian individuals, group identity, and political and economic viability today, as explained in Part 2 of this report.

The emphasis of this report on group rather than individual reparations provides further clarification. Territorial and financial reparations should be made to Armenians as a group, not as individuals. The distribution of that portion appropriate for individual use should be determined by need and other fair criteria, as discussed in Part 8 of this report.

6.2.5 Objection: The Notion of Pre-Genocide ‘Armenian Territory’ Is Untenable

Land in the Ottoman Empire, at least for a long period before the Genocide, was not occupied solely by Armenians, and so cannot be considered “Armenian land” for the purposes of reparations. This suggests that, while it might be acceptable to compensate individual Armenian families for land that was taken from them or to compensate Armenians as a group for these individual property losses, a political land transfer is not legitimate.

Reparation land claims typically focus on a portion of the six traditionally Armenian provinces that are today in eastern Turkey. It is true that prior to the Genocide, these lands had mixed occupancy. However, (1) the Armenian population was spread across Asia Minor on territory not being claimed, balancing the intermixture in the traditionally Armenian provinces, and (2) repression of and violence against Armenians in the pre-Genocide era had lowered the population figures.³³⁴ Indeed, the reduction of the Armenian percentage of the population of those lands was the result of deliberate social engineering³³⁵ and other manipulations intended to reduce the Armenian population in the various administrative units of the six traditionally Armenian provinces to minority status.³³⁶

There is a deeper issue here. If the fact that not only Armenians lived on this land can be used to reject Armenian claims on the land, then how can the contemporary Turkish state have any more justified a claim on the land? As the successor state to the Ottoman Empire, it has some claim. Merely because it is based on contemporary occupation, this claim might appear stronger than a prior Armenian control of the land before conquest many hundreds of years ago. At the same time, while long-past history itself should not have a bearing on contemporary political arrangements, this “state of conquest” was preserved right up to 1908, in the *millet* system. Armenians remained a subjugated population on an imperial model. As an analogy, just because many French had long before moved into conquered Algeria did not mean that Algerians did not have a right to independence. At the very least, the indigenous Armenian presence on the land complicates any easy Turkish claims to the land. Second, from the Young Turk perspective,

334 Uğur Ümit Üngör, *The Making of Modern Turkey: Nation and State in Eastern Anatolia, 1913-1950* (Oxford UK: Oxford University Press, 2011), pp. 25-54.

335 *Ibid.*

336 Dadrian, *The Armenian Genocide*, pp. 175-176 (see Note 9).

this land was explicitly depopulated of Armenians through extreme policies culminating in genocide in order to prevent Armenian assertions of territorial sovereignty. If the ideology of Turkish right to this land as “Turkish land” is rejected, then this Turkish right to the land must be reconsidered to the extent that it depends on Turkification of the land through genocide.

Recognizing that (1) Armenians and others cohabitated this land, (2) Armenians had just as much political right to the land as any other group, (3) Armenians were expelled from or exterminated on the land to render it “non-Armenian,” and (4) the current state of affairs almost entirely excludes Armenians from access to this land and includes a campaign to de-Armenianize the land through destruction of churches and other artifacts of the past Armenian presence, then at the very least, Armenians today have some claim against Turkish control of the territory they used to inhabit. What is more, because each successor government in Turkey from the Genocide on has continued the oppressive and even violent treatment of Armenians that cannot be separated from the legacy of the Genocide,³³⁷ the security and dignity of Armenians who would access this land cannot coexist with Turkish political and military control of it. Given the ethical right to the land and this practical concern, but balanced against the passage of time and cohabitation with other groups, one compromise option would be the return of some land within the traditional Armenian areas based on some formula sensitive to all of these factors. This should not discount the extensive individual land holdings of Armenians in other areas of Asia Minor. Armenians were not the exclusive inhabitants of this land, but they also inhabited areas all around the territory of today’s Turkey prior to the Genocide. For instance, in the south, there was a large population of Armenians on the traditional territory of the Armenian Cilician Kingdom. Armenians also formed local majorities in urban “Armenian quarters” and in villages outside the eastern provinces. These losses to Armenians could be balanced by an increase in the size of the land award within the traditional Armenian areas or the basis of individual reparations.

6.2.6 Alternative: Recognition and/or Apology Adequately Address the Legacy of the Armenian Genocide

While the Turkish government, Turkish organizations in the United States and other countries, and many Turkish individuals at each level of Turkish society deny that the Armenian Genocide occurred, among Turkish progressives the prevalent view is that recognition of this fact, perhaps with memorialization and an apology, will address the outstanding issue. Recognition has long been the worthy goal of many genocide studies and other scholars, especially those working against the active Turkish denial campaign. Until very recently, recognition was also the dominant concern among Armenians in the Republic and Diaspora, and remains the primary goal of many organizations, leaders, and community members.

The value of recognition and of apology should not be understated. Recognition works on both a practical and a metaphysical level. Practically, it marks an acknowledgment of the past injustice and its wrongness, and can evidence a positive shift in attitudes in the perpetrator group toward the victim group. Perhaps more importantly, the function of recognition for victims’ sense of community identity and self-worth can be very valuable. Following Hegel and de Beauvoir, recognition of our humanity by others is essential to that humanity.³³⁸ Acknowledgment of the wrongness of victimizing Armenians,

337 See, for example, Çetinoğlu, “Foundations of Non-Muslim Communities” (see Note 288); *BBC News*, “Turkish-Armenian Writer Shot Dead” (see Note 313).

338 G. W. F. Hegel, *Phenomenology of Spirit*, A. V. Miller (trans.) (Oxford, UK: Oxford University Press, 1976); Simone de Beauvoir, *The Second Sex*, H. M. Parshley (trans.) (New York, NY, USA: Vintage Books, 1989).

of treating them as legitimate targets of violence and less worthy of human rights than other people, implies recognition of Armenians' humanity and can have a positive effect for Armenians as well as Turks. Apology, when sincere and well formulated,³³⁹ goes a step beyond recognition, to express regret about the past violation and a wish that things could have been otherwise. A well-formulated apology clearly identifies (1) the entity or individuals apologizing (Turkish state, collection of citizens, etc.), (2) to whom the apology is being made, (3) the specific harms, in detail, the apology is for, and (4) the responsibility being taken by the entity or individuals making the apology. Clearly, the recent "apology campaign" by some progressive Turks fails on each of these points. A genuine apology would be an active taking of moral responsibility for the psychological well-being of Armenians, at least symbolically, beyond a mere condemnation of past acts by others. Given the passage of time since the Genocide, an apology might be seen as having a more meaningful positive impact for Armenians than an abstract process of anonymous reparations.

Recognition of the Armenian Genocide might have an added favorable consequence. It could change Turkish society by helping to highlight elements of the dominant nationalist ideology/ies that have their origins in the process leading to and were important factors in the Armenian Genocide and, through the feeling of shame at the implications of those elements, promote change. It can also help expose the pluralist nature of contemporary Turkey and promote a different approach from nationalist exclusivism.

Given these potential benefits, is recognition, perhaps with apology,³⁴⁰ adequate contemporary repair for the Armenian Genocide?

The answer to this question turns, in part, on the actual likelihood of these potential benefits being fully realized without concurrent material reparations. In this regard, it is not clear how recognition and apology alone will effect true change in Turkish society. Even full recognition and apology will, as the exclusive repair, prevent a material process as discussed in Part 3 of this report. In this way, the economic, political, and other benefits of recognition and apology for the Turkish state and society will far outweigh (1) any negative effects of recognition, such as diminished national self-image, and (2) any positive reparative effects for Armenians. In addition, the material impacts of the Genocide on contemporary Armenians, as detailed in Part 3, Subsection 6.2.1, and elsewhere in this report, will largely remain intact. And, far from hurting the national image of Turkey and Turks, recognition and apology are likely to increase their stature, in addition to opening the door to the European Union and other benefits. Recognition and apology will also allow the issue to fade from being central to Turkish identity and eliminate the political price Turkey pays for denial as well as the need to expend so many resources and so much effort on the denial campaign. Most importantly, if recognition and apology are considered as full repair of the Armenian Genocide, it will allow Turkey to consolidate the immense material gains made through the Genocide without further concern.

Given the advantages for the Turkish state and society, it will be impossible to determine the sincerity of a recognition statement and/or an apology. If material reparations are permanently off the table, then there is really no downside to recognition and apology. They might well be merely rhetorical devices meant to ensure the material gains of the Genocide and to decrease international pressure on Turkey as well as internal pressure from progressives. They might even be made in a duplicitous manner, in

339 Erbal, "From Democracy to Justice" (see Note 48); Mouradian, "Violence, Peace, and Conflict Resolution" (see Note 48).

340 In what follows, apology will be included with recognition, as the strongest form of this reparative approach.

that hardline Turks could admit to the Genocide while still maintaining privately that it was necessary and—from a Turkish point of view, especially given the prevention of material reparations—ultimately productive for Turkey.

There are three implications. First, recognition and apology alone cannot deal with the material harms of the Armenian Genocide, and so cannot be a full resolution of the issue. Second, if recognition and apology are considered a full resolution, then this will render the Armenian Genocide an act without consequences for the killings, inflicted suffering, and expropriated property. With the issue “resolved” by recognition and apology, the Armenian Genocide will have become a highly successful genocide. Third, this will signal to potential genocide-perpetrating societies that it is possible to commit genocide, deny it, wait for a period, and then end denial, and keep all practical benefits of the genocide (and avoid punishment). Partial repair of this form might undermine deterrence even more than the failure to make any repair at all, because in the latter situation material reparations remain a possibility.

There are two additional issues raised by the recognition and apology approach. First, those promoting it often argue that it will allow healing for Armenians as well as Turks; in other words, that recognition by Turkey, especially if accompanied by an apology, will help Armenians feel that the issue has been properly and justly resolved and so all parties win—except Armenian “nationalists” who maintain material claims and Turkish ultranationalists who refuse to admit any significant flaws in Turkish society, culture, and history. But, even if many Armenians experience recognition and apology as “healing,” this kind of subjective psychological experience might be seen as manipulated. The process of genocide establishes a norm of intense suffering. During a genocide, the ending of the genocide becomes the primary objective. The end of a genocide, however, does nothing to address the harms already done by the genocide; it merely prevents further direct harm from being inflicted. Similarly, while a past genocide is being denied, stopping denial takes on primary significance. After all, as Israel Charny writes, genocide denial is a continued assault on the victims, “mocking their sensibilities” and celebrating their destruction.³⁴¹ If denial is maintained long enough, as in the Armenian case, then the pain inflicted by denial becomes conflated with the harms done by the genocide itself, and stopping the denial becomes conflated with addressing those harms. This constant pressure of denial affects the victims and their progeny. Against the force of the perpetrators and that of their progeny who support denial and in the face of the renewed sense of threat that denial imposes, comfort can become very important. As a result, recognition as an end to discussion of justice for the genocide can come to represent, for at least some victims, a healing resolution of the issue. While it might be true that subjectively, recognition satisfies their need for resolution, the reason it does is because these people have been subjected to a sustained attack of genocide denial on top of the long-term effects of the genocide itself. Their very sensibilities have been warped by genocide and denial. Here, decreased psychological pain would not be equivalent to a genuinely reparative outcome, but would instead correspond to negative effects on Armenians.³⁴²

Second, unless anchored by honored material commitments to repair, recognition and apology are inherently unstable. The lessons of Australia and Japan are clear in this regard. Australia, whose government issued a report in 1997 showing that it had committed genocide against its aboriginal population, has seen years of backlash against this admission, while Japan has oscillated for decades between recognition and denial of the Nanjing Massacre of 1937-1938. Although the Turkish government

341 Charny, “A Contribution to the Psychology of Denial of Genocide,” p. 300 (see Note 80).

342 This shows a limitation of Utilitarianism, as opposed to the other theories discussed above. Utilitarian justice can be produced by the psychological manipulation of concerned parties.

might, even sincerely, fully recognize and apologize for the Armenian Genocide next month, there is nothing to stop subsequent governments or leaders from disavowing and even recanting the recognition and apology. Without material redress that will make the recognition, the expression of regret, and the taking of responsibility a permanent and concrete reality in the world, recognition and apology alone are merely linguistic events that can be altered by subsequent speech acts without any material force applied or the material state of affairs belying the change.

6.2.7 Alternative: Governmental or Civil Society Dialogue with Turkish People toward Reconciliation Is a Better Path to Armenian Well-being than Reparations

Positive intergroup relations that reduce tensions and aim ultimately at good, stable, and secure interconnections between Armenians and Turks are indubitably a worthwhile goal. Certainly improved group relations would be of great benefit for Armenians, by eliminating actual practices by Turkey and some Turks that harm Armenians, such as various forms of discrimination against Armenians in Turkey, the blockade of the Republic of Armenia, and so forth. What is more, this approach is generally informed by a conflict resolution or peace studies perspective that, in abstract terms, has admirable aspirations. Conflict resolution directed toward reconciliation can be very productive in some cases of intergroup tension, for instance after a military conflict of enemies of roughly equivalent strength.

Determining whether the dialogue approach, rather than reparations, is the appropriate model for resolution of the Armenian Genocide requires consideration not just of the model in the abstract but of the particular features of this case relative to the nuances of the model. The model prioritizes a specific notion of success: the reduction or elimination of tensions. As it is generally applied to the Armenian Genocide, however, it does not consider the various states of Armenian-Turkish relations that can be considered less tense than the present. Behind application of this approach to the Armenian-Turkish case is, typically, the view that any reduction in tensions is a positive step and that full elimination will resolve the legacy of the Armenian Genocide: Armenian well-being depends on an end—any end—to tensions with Turks. The model does not consider whether Armenian well-being is dependent on reduced tension with Turks without regard to the tradeoffs that would be made on the dialogue-reconciliation model, nor does it consider changes in relations based on other approaches, such as a reparative process. Certainly, better relations with Turkey and Turks alone without tradeoffs would promote Armenian well-being, but considering the dialogue option as an alternative to reparations, most notably a legal and political reparations process, requires further analysis.

It is not clear that Armenian well-being will be served by a dialogue process alone, even one that results in Turkish recognition of and apology for the Genocide, as discussed in the previous section. The dialogue model in its usual form when applied to perpetrator-victim relations is based on a misunderstanding of the nature of those relations. In its application to the Armenian-Turkish case,³⁴³ it misconstrues the present Armenian-Turkish relationship as a tension resulting from a conflict over history overlying or produced by various prejudices on both sides. Echoing the prominent denial claim that the events of 1915 were actually a mutual ethnic conflict, not a one-sided destruction, the current tension is treated as a mutual conflict

343 For examples of this approach, see David L. Phillips, *Unsilencing the Past: Track Two Diplomacy and Turkish-Armenian Reconciliation* (New York, NY, USA: Berghahn Books, 2005); Elazar Barkan, "Can Memory of Genocide Lead to Reconciliation?", in Richard G. Hovannisian (ed.), *The Armenian Genocide: Cultural and Ethical Legacies* (New Brunswick, NJ, USA: Transaction Publishers, 2007), pp. 389-408; Taner Akçam, *Dialogue Across an International Divide: Essays Toward a Turkish-Armenian Dialogue* (Toronto, Ontario, Canada: Zoryan Institute, 2001). For a critical analysis of this approach, see Theriault, "From Unfair to Shared Burden," pp. 127-147 (see Note 16).

between equal parties, even if Armenian suffering in the past is acknowledged. Proponents go out of their way to present criticisms of Armenian “nationalism,” political intransigence, hostility, and prejudice that balance criticisms of contemporary Turks, even where the proponent recognizes the Armenian Genocide as a historical injustice and willingly condemns the direct perpetrators. This view assumes that the deep power asymmetry, which was marked by more and more intense oppression of Armenians prior to the Genocide and which reached a total extreme through the Genocide,³⁴⁴ ended when the killing stopped. It misses the fact that genocide, when it stops, produces an outcome of domination by the perpetrator group over the survivors. Beyond the impact of the power of the perpetrator group to impose its attitudes of prejudice and hierarchy on the survivors, the victim group has been reduced to bare existence. Much of Armenian society, culture, institutions, family structures, etc., has been destroyed, and its economic resources and population reduced in the ways described in Part 3 of this report. The survivors are thus forced into an objective position far below members of the perpetrator group, and far below their pre-Genocide position. Genocide lowers the power and identity of the victims almost completely, while it raises the relative power and identity of the perpetrators greatly.

If Armenians and Turks enter a dialogue process as if they are equal parties, then the asymmetric domination will not be addressed. The very structure of dialogue makes it impossible to change that relationship, because it operates through the equal treatment of both parties. It aims at changing the attitudes of Armenians and Turks toward one another, not at producing concrete changes in the material and political statuses of each group and the power dynamic between them. Some versions can even be seen as a therapeutic process whose goal is not to change the status quo domination relation and the wealth and power imbalance imposed by the Genocide and left unaddressed since 1923, but to help Armenians feel good about that status quo and therefore to accept it without resentment, hostility, or indignation. This kind of reconciliation or peace is easy to obtain, so long as the weaker party is willing to give in to the demands of the stronger. But such an outcome requires the sacrifice of justice.

Reparations as conceived in this report, on the other hand, would address the imbalance and oppression directly, by changing the economic distribution and political-territorial order produced by the Genocide and employing symbolic and educational efforts that will revalue Armenians and ensure that Turkish power is used to support Armenians. It will reduce the material and political as well as ideological bases of Turkish domination of Armenians. Without reparations, the material form of the power imbalance will be frozen and will continually re-impose the domination relation despite any reduction in tensions or changes in attitudes made through dialogue. But, no formulation or characterization of a dialogue process proposed for the Armenian-Turkish case promotes or even accepts reparation as a worthy goal of dialogue. On the contrary, almost all formulations fall into one of two types (or a hybrid), the first even hesitating to include Genocide recognition as a necessary or proper outcome of dialogue, and the second very explicitly seeing recognition alone as its ultimate goal.³⁴⁵

The dialogue approach sometimes depends on the view that “what is done is done” and the well-being of Armenians is best served by focusing on the future rather than the past. That is, the bad relations with Turks in the past cannot be changed, but better relations for the future can be developed. Again, this assumes a discontinuity with the past—that the past does not materially impact the present, but impacts

344 Theriault, “Rethinking Dehumanization in Genocide,” pp. 31-32 (see Note 198).

345 If a dialogue process did result in an embrace of reparations by a critical mass of Turkish participants, this would likely be due to the impact of the kinds of legal, political, and ethical arguments made in this report independently of the dialogue process, or some other factor external to dialogue.

it only in the form of psychological attitudes. If the psychological attitudes are altered to eliminate the elements that create present-day tensions between Armenians and Turks, then the problem is solved. This approach ignores the permanent and material impacts of the Genocide detailed above.

A final point: the term “reconciliation” is often used as the goal of dialogue. This assumes that at some point in the past, Armenians and Turks enjoyed good relations. But the Turkish-Armenian relationship began with conquest and subjugation, continued as a dominance hierarchy, reached its apex in the Genocide, and has continued forward as an acrimonious dominance relation of Turks over Armenians. With the possible exception of the period between 1908 and 1914, when Armenians worked with the Young Turks and had Ottoman citizenship rights, there was never a period of good, mutual relations. Even in this period there was strong discrimination against Armenians and even a major massacre,³⁴⁶ and, given the outcome of the Armenian-Turkish engagement that started in 1908, it is misleading to call this a period of good relations. Therefore, it is not possible for Armenians and Turks to be reconciled, as there is no previous state of good relations to return to. The goal can only be “conciliation” as a first period of good relations.³⁴⁷

6.2.8 Alternative: Democratization of Turkey, not Reparations, Will Lead to the Optimal Resolution of the Legacy of the Armenian Genocide

Recognition and/or other changes, such as acceptance of Turkey into the European Union, will encourage the democratization of Turkey. A democratic Turkey will be pluralistic, meaning that Armenians within Turkey will gain full civil rights. This will change attitudes in Turkey toward Armenians in Turkey and outside. This will support Armenian well-being, making reparations unnecessary. A push for reparations, on the other hand, will undermine this process by putting too much pressure on Turks, emphasizing ethnic difference, and imposing a significant burden on today’s Turkish state and society.

Democratization of Turkey is clearly a worthwhile goal. Current Turkish progressive discourse emphasizes increased protection of individual rights, such as the rights of freedom of speech and freedom of religion. These protections could increase the security of minority groups within Turkey and their ability to live without downplaying, hiding, or in fear because of their ethnic and religious identities, as has been the case in post-Genocide Turkey for Armenians and other minority groups, including Kurds. Recognition of the Armenian Genocide could have broader effects in Turkey, if it were to break the hold of Turkish nationalism on the state, exposing it as a force of falsified history and the heir of a genocidal nationalism. Political pluralism and other progressive approaches could be seen as viable alternatives not subject to these problems.

The assumption here is that increased democratization will entail improvements in the security of and respect for Armenians vis-à-vis the Turkish state, in the first instance within Turkey but also in Republic of Turkey-Republic of Armenia relations and in the treatment of the Armenian Diaspora. While it is true that democratization could result in these improvements, without a specific commitment to change in the treatment of and attitudes toward Armenians, the democratization of Turkey proper is consistent with the status quo treatment of Armenians. Although some of the formal legal mechanisms applied against Armenians in Turkey might be eliminated, democratization does not entail that the grounding dominance

³⁴⁶ The Adana Massacre of 1909 (see, for instance, Christopher J. Walker, *Armenia: The Survival of a Nation* [New York, NY, USA: St. Martin’s Press, 1980], pp. 182-188).

³⁴⁷ This point follows Raymond A. Winbush’s point about White-Black relations in the United States, with no point of prior good relations, in “The Legacy of Slavery and Jim Crow,” lecture, Worcester State University, USA, March 29, 2007.

relation between Turks and Armenians inside and outside Turkey will change. As the histories of many great democracies show, democracy for the majority in a society does not entail full inclusion of all members of that society, such as minority groups, and can coexist with violent imperialism and aggression abroad. Democracy is not inconsistent with deep oppression of and violence against members of the democratic society or others. Despite two centuries of expanding and in many ways laudable democracy in the United States, for instance, African Americans were subjected to slavery, Jim Crow segregation, and then other forms of discrimination, while Native Americans were subjected to genocide and reservation internment. Indeed, these policies were the products of democratic decision-making. If the core material forces of domination and inequality, including demographic, territorial, and economic elements, are not directly addressed, that domination and inequality will be preserved in future democratic political structures. They will not simply disappear as other elements of the society change, even with the rhetoric of democratic inclusion. This is clear from the Armenian Genocide itself, which occurred in a state that had recently adopted a liberal pluralistic constitution and proclaimed the full rights and participation of minority groups, including Armenians. This political transformation did not affect the underlying domination relations of Turks over Armenians and, to the extent that the domination relation was directly challenged through promotion of Armenian civil rights, the result was a genocidal backlash to preserve the domination relation and, in fact, maximize it through the near destruction of Turkish Armenians.³⁴⁸

Even assuming that (1) recognition and/or other developments would result in a pluralistic democratization of Turkey and (2) a push for reparations will undermine the process by putting too much pressure on Turks—undermining mainstream Turkish national identity, for example—by (a) emphasizing ethnic difference as Armenians assert their rights against the state and society they are supposed to be a part of or have good relations with and (b) imposing a significant economic burden on today’s Turkish state and society, this does not mean that reparation itself is the problem. If the pluralistic democracy that emerges will dissolve in the face of legitimate demands of justice for the Armenian Genocide in the form of reparations, then the democratic pluralism in question will not be genuine. It will, in fact, turn on the internal contradiction that a democratic system ostensibly guaranteeing full rights, equality, and fairness for all members regardless of identity characteristics can function or exist only so long as (1) a segment of its population demarcated by ethno-religious criteria are denied their legal rights to redress for a past injury and (2) Armenians outside the borders are denied their rights vis-à-vis the Turkish state, that is, denied redress for a past violation of the principle of ethno-religious equality, the effects of which continue and compound. In other words, the democratic pluralism will function only so long as it does not take seriously a commitment to universal respect for the rights of all people.

Ultimately, if reparations are considered part of a just resolution of the Armenian Genocide, then the democratization of Turkey is simply a different issue that addresses different problems. While there can be overlap, it would require decisions within a democratic system to directly address the legacy of the Armenian Genocide through reparations, rather than to see democratization as a substitute for repair.

6.2.9 Objection: Granting or Even Calling for Reparations Will Produce a Counterproductive Backlash

This objection to Armenian Genocide reparations holds that, if Armenians receive—or even call for—reparations, Turkish resentment will build because Turks today will be held responsible for acts they did not commit. A reparations process will alienate Turks and produce not a resolution of the issue but the

348 Theriault, “Rethinking Dehumanization in Genocide,” pp. 31-32 (see Note 198).

opposite, in the form of an anti-Armenian backlash that will negatively impact Armenians within Turkey, support continuation and expansion of a bellicose attitude toward the Armenian Republic and actions meant to undermine it, such as the present blockade by Turkey, and raise tensions with the Armenian Diaspora, all to the detriment of Armenians. The deep and lasting opposition and possible direct violence will outweigh any symbolic and material benefits of reparations.

The logic of this objection is similar to the claim that Armenians should not push use of the term “genocide” in reference to the events starting in 1915, because the term will alienate Turks. There are two elements in the objection. The first is the unfairness of present-day Turkey and Turkish individuals having to bear the responsibility of addressing a past injury they did not inflict. This element has already been addressed, in Subsection 6.2.4. The second is the potential for a backlash by Turks that could include violence against Armenians in Turkey, increased animosity toward and active opposition to Armenians in the Diaspora, and an increased threat to the Armenian Republic. This is a legitimate concern that should not be dismissed, especially by authors of a report who do not live in Turkey as Armenians and for whom the reach of the Turkish government and society are limited. The assassination of Hrant Dink for public discussion of the Genocide confirms the potential for violence against Armenians in response to reparations claims.

Yet, not insisting on the justness of a resolution of the Armenian Genocide is not necessarily the best way to deal with this potential backlash, even if it could be triggered by pursuit of a just resolution. In fact, it can be argued that the best way to achieve stable security for Armenians in Turkey and elsewhere lies precisely in pursuing a comprehensive resolution of the Genocide that emphasizes justice. Otherwise, Armenians might be accepting one kind of injustice in order to avoid another, with no improvement in the level of respect accorded their human rights.

To understand the potential backlash, it is crucial to contextualize it. In Turkish politics, society, and culture, demonization of Armenians is not uncommon, and being called Armenian can be considered an insult.³⁴⁹ The post-Genocide status quo has been subjectively normalized, and many Turks might well perceive any change made through reparations as a violation or attack. Because the changes will negatively affect Turkey as a society economically, at least in the short term, and impact Turkish individuals’ relations to Turkish national identity and the stature of that identity itself (at least on the view of those wedded to a chauvinistic or exclusivist Turkish nationalism), this will likely foster resentment.

If resentment is provoked, that is not necessarily a problem with reparations as resolution of the Genocide. The question is, Why would such resentment occur? This resentment at the establishment, for the first time, of a just post-Genocide order and relationship between Armenians and Turks would betray not an Armenian attempt to undermine relations with Turks, but rather a Turkish commitment to a post-Genocidal relationship of domination based on attitudes of superiority developed through the imperial conquests of the ascendant Ottoman Empire, and maximized through the assertion of Turkish domination in the Genocide. In simple terms, resentment will show that the attitudes toward Armenians of a critical mass of Turks will not have changed since the time of the Genocide. That in the post-Genocide era, Turks have generally not had to express those attitudes explicitly to maintain the dominance relation over Armenians, including possession of expropriated Armenian land and economic resources, is a

349 See, for example, Adam Taylor, “Is ‘Armenian’ an Insult? Turkey’s Prime Minister Seems to Think So,” *The Washington Post*, August 6, 2014, <http://www.washingtonpost.com/blogs/worldviews/wp/2014/08/06/is-armenian-an-insult-turkeys-prime-minister-seems-to-think-so/> (accessed January 12, 2015).

testament not to the erosion of that attitude but of the stability and normalization of Turkish domination over Armenians. Reparations, by threatening that order, might well provoke a resentful reassertion of Turkish imperial and genocidal power over Armenians. In this sense, attention to this potential backlash functions as a threat against Armenians if they choose to pursue justice, similar to the pre-Genocidal reprisals by the Ottoman government against Armenians when some Armenians agitated for basic human rights protections.³⁵⁰ If calls for or making reparation are avoided because of fear of this backlash, then the threat will have succeeded. Veiled Turkish power will thwart basic justice, leading not to a post-Genocide conciliation, but the opposite: it will solidify and consolidate the power hierarchy and material expropriation accomplished through genocide. The harmony preserved will mask continued oppression and injustice for Armenians.

What is more, any way of addressing the Genocide under threat of a backlash will be inherently unjust, because it will be the product of a coercive threat that prevents free choice for the parties involved: Armenians will have been forced into the double-bind of asserting claims for justice but having to accept a racist backlash, or avoiding the backlash by giving up the claim to justice.

It is true that, in such a circumstance, recognition or a “forgive and forget” approach focusing on the future of Turkish-Armenian relations without regard to the ways in which the past impacts the present and future will likely produce a more comfortable and pleasant relationship between Armenians and Turks. But this rapport will depend on the self-abnegation of Armenians, a decision not to assert their basic rights, and acceptance of the Genocide as an accomplished fact that should not be addressed today. It will depend on Armenian acquiescence to Turkish power, to the extent that Armenians have a choice in the matter. And, it will leave intact the underlying Turkish imperial and genocidal attitude toward Armenians and the political and economic order. Thus, there will be no actual resolution: the domination will remain, kept under the surface only as long as Armenians continue to accept the unfair status quo. Indeed, the backlash threat implies and trades on a present in which Armenians still live subject to the threat of renewed oppression and violence by some Turks. As in the era of the Genocide, the threat of violence is still the last word on Armenian quests for justice.

The backlash is not a problem to be avoided; rather, it is a problem to be actively solved, and a reparations process offers the only obvious path for the Turkish state and society to overcome this domination relation and the attitude of an assumed right to expropriation and power. A reparations process can support this in two ways. First, the rejection of the material and other benefits of the Genocide by contemporary Turkish society will result in a substantive, concrete change in the relations between Armenians and Turks, opening the possibility of a more equal, mutual relationship. Second, to the extent that reparations are willingly embraced by Turkish society, Turks will be choosing to take on a share of the burden of the impact of the Genocide with Armenians, demonstrating a sincere understanding of the impact of the Genocide as well as fostering a more equal, mutual relationship. To the extent that reparations would negatively impact Turkey economically and territorially, Turks will be making a voluntary material sacrifice that will confirm their good intentions and their willingness to offer a permanent resolution of the issue—in other words, reparations will offer material proof of real change.³⁵¹ Land and/or monetary

350 See, for example, Peter Balakian, *The Burning Tigris: The Armenian Genocide and America's Response* (New York, NY, USA: HarperCollins, 2003), pp. 35-62.

351 This point extends the analysis in Henry C. Theriault, “Shared Burdens and Perpetrator-Victim Group Conciliation,” in Bert Ingelaere, Stephen Parmentier, Jacques Haere, and Barbara Segaert (eds.), *Genocide, Risk and Resilience: An Interdisciplinary Approach*, “Rethinking Political Violence” book series (Basingstoke, Hampshire, UK: Palgrave Macmillan, 2013), pp. 98-107 at 104-105.

reparations, once given, cannot be recanted and cannot be reversed except by force or coercion. The willing giving of land reparations especially would foster trust, because it would represent a permanent, categorical rejection of “Turkification” of those lands and thus a repudiation of the ideology behind the Genocide. It would end ambitions against Armenian statehood, while demonstrating a commitment to Armenian well-being and political and military security. And, if reparations are not capable of driving this transformation, their willing embrace will mark unambiguously that such a shift has occurred.

This objection and elements of the response so far assume that the backlash threat is real, and this possibility should be taken seriously. At the same time, it might be the case that the objection overstates the threat, falling prey to a problematic assumption about contemporary Turks that many are incapable of dealing responsibly and fairly with the Genocide issue. While the broad support of denial in Turkish society, widespread demonstration of attitudes of prejudice against Armenians, and the discriminatory treatment of Armenians in Turkey support the negative view, there are other indications in contemporary Turkey that many individuals want to deal with this issue in a direct and responsible way. To fail to recognize this possibility is to succumb to an unfair negative assumption about Turks that has its lineage in the “terrible Turks” stereotype of the past. Contemporary Turks deserve to be given the opportunity to deal fairly with the Genocide issue, through reparations, which their government’s own denial has prevented for so long.

6.2.10 Objection: Land Reparations Are an Unacceptable Existential Assault on Turkish Statehood and Identity

This view maintains that any lands in today’s eastern Turkey that a reparative process would award to an Armenian political entity (for instance, the Wilsonian lands) are part of the essential territory of Turkey, and the loss of those lands would be an attack on the Turkish state and identity, would undermine the viability of that statehood and identity, or would warp beyond recognition or destroy that state and identity. This makes land reparations inconceivable for many contemporary Turks.

This kind of reaction to the possibility of land reparations is understandable and is shared by people in the United States and many other countries facing similar land claims for past mass violations of human rights. Similar to these other societies, the call for land reparations in Turkey would challenge many individuals’ sense of not just Turkish national identity but the personal identity that years of Kemalism, as well as the general nationalist turn typical of modern societies, have embedded in individuals in Turkish society. From the perspective of those with this type of identity, even just the claim of genocide is an unwarranted attack that must be defended against.

This reaction has its foundation in the assumption that the status quo today, which resulted from Atatürk’s aggressive military conquest of much of the territory of the Armenian state established in 1918, is morally correct and that any change to it would be an ethical violation. Is the assumption objectively defensible? The assumption reflects and depends on the principle of “territorial integrity.” Territory gained through genocidal conquest or consolidated through elimination of an internal minority is, in global politics, soon considered permanently integrated into the perpetrator state without reference to the claims of former inhabitants. While there are a handful of exceptions, East Timor being the most obvious,³⁵² if one considers, for instance, the formerly indigenous lands in North and South America

352 While East Timor was subjected to genocide starting in 1975, its right to self-determination was ultimately recognized and supported (see James Dunn, “Genocide in East Timor,” in Samuel Totten and William S. Parsons [eds.], *Centuries of Genocide: Critical Essays and Eyewitness Accounts*, 4th ed. [New York, NY, USA: Routledge, 2013], pp. 279-315 at 292-294, 301).

and Australia, the general tendency is clear. The normalized integration of territory into perpetrator states is in large part the function of the principle of territorial integrity. Through various international principles and agreements, the interstate borders between countries are considered sacrosanct. The emergence of this principle was not, of course, a negative development: the notion of territorial integrity is an important one for preventing interstate invasions and conquests, particularly in the post-colonial era. There is, however, a problem that comes with the general privileging of territorial integrity over all, or at least the vast majority of, other political and ethical concerns. The principle confers an automatic legitimacy on current national borders almost always without regard to the often-violent ways in which those borders have been made or preserved. Once the occupation of land persists for a period of time sufficient to allow measures of practical integration, such as resettlement by perpetrator group members, it is typically accepted by the world community and protected by the principle of territorial integrity, while the success of genocide within a state's borders in eliminating minorities and ensuring cohesion of the territory under exclusive control and occupation by members of the perpetrator group similarly exploits this principle. Clearly, in the aftermath of genocide involving expropriation of land and where political transfer of territory is an appropriate repair, the territorial integrity principle functions to support, confirm, and consolidate the effects of the violence of genocide. The principle represents a deep injustice against victims. Objective consideration of the legacy of a genocide and what should be done to address it requires treating territorial integrity as one principle in play among others—a principle whose legitimacy in that context is inversely proportional to the legal and ethical rightness of the methods used to establish the borders, not an inviolable limit on reparations that automatically discounts any territorial transfer. Even the new international legal principle of the “Responsibility to Protect” (R2P) justifies violations of state sovereignty only as temporary interventions to stop mass atrocities within state borders; it clearly does not include alteration of borders as an outcome of intervention or as a solution to the problem of mass violence.³⁵³ What is more, just its advocacy for very limited suspension of territorial integrity has led to many condemnations of R2P.³⁵⁴

The assumption of territorial integrity ignores the conditions under which lands that might be awarded came to be tied to the Turkish state and identity, and what specific concept of the Turkish state and identity is at stake in this objection. First, any land that would be awarded to Armenians is land that was depopulated of Armenians through the Armenian Genocide. While Turks and Kurds also lived on some of the land given to Armenians by the Treaty of Sèvres, for instance, these were traditionally Armenian lands that typically, despite demographic manipulations and falsifications by the Ottoman government, retained substantial Armenian populations up to the Genocide.³⁵⁵ What is more, large Armenian populations with long histories inhabited many other areas of the Ottoman Empire, which were not included in the territory given to Armenia through the Treaty of Sèvres. Through this approach, then, Armenians would receive only a portion of the land with substantial Armenian populations, so that this partial amount of land would offset the fact that not only Armenians lived on this land.

The elimination of the Armenian population on these lands was a core goal of the Armenian Genocide.³⁵⁶ The lands are identified as “Turkish” when viewed through the Turkification ideology that drove the

353 International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: The Report of the International Commission on Intervention and State Sovereignty* (Ottawa, Ontario, Canada: International Development Research Centre, 2001), p. 35.

354 Hugh Breakey, “The Responsibility to Protect and the Protection of Civilians in Armed Conflicts: Review and Analysis,” 2011, pp. 51-55, http://www.griffith.edu.au/_data/assets/pdf_file/0007/333844/Responsibility-to-Protect-and-the-Protection-of-Civilians-in-Armed-Conflict-Review-and-Analysis.pdf (accessed January 13, 2015).

355 Dadrian, *The Armenian Genocide*, pp. 175-176 (see Note 9); Travis, *Genocide in the Middle East*, pp. 181-184 (see Note 52).

356 Hovannisian, “The Historical Dimensions of the Armenian Question,” p. 19 (see Note 62).

Armenian Genocide.³⁵⁷ It follows that contemporary resistance to the restoration of Armenian lands is, in fact, a function of the maintenance of vestiges of the earlier genocidal ideology against Armenians, even if those resisting do not recognize this. So long as such lands are considered “Turkish” and held by the Turkish state, the ideology of Turkification and the resulting Armenian Genocide are maintained as material facts in the world. Only by relinquishing these lands can contemporary Turks break with the ideology and actions that gave them those lands.

If the Turkish state and identity will be altered by land restoration to Armenians, then these changes will be positive moves away from the construction of the Turkish state and Turkish national identity (including many progressive concepts of it) through genocide and the ideology driving it. Land restoration is an essential element of a meaningful rehabilitation of Turkey and extirpation of the genocidal ideology, structures, and benefits that were frozen into Turkish territory and political, military, cultural, and social institutions through the Armenian Genocide. This was true in the practical sense, as those institutions were developed in part by Genocide perpetrators and built on the results and ideology of the Genocide.³⁵⁸ And it is true conceptually, as the notions of Turkish identity and statehood were developed out of the Genocide and in line with the perpetrators’ genocidal mentality. Only by letting go of the land and the ideology of its essential “Turkishness” will it be possible to forge a new identity without a genocidal history and component. To recognize that the most important thing for Turkey is not its territorial integrity is to take a crucial step against exclusivist nationalism. To allow Armenians back onto “Turkish” lands and to give up nationalist control of those lands would mean finally giving up the nationalism that drove the Genocide.

357 Theriault, “From Unfair to Shared Burden,” p. 157 (see Note 16).

358 See, for example, Baghdjian, *The Confiscation of Armenian Properties*, pp. 157-160 (see Note 38); Taner Akçam, *From Empire to Republic: Turkish Nationalism & the Armenian Genocide* (London, UK: Zed Books, 2004), p. 23; Akçam, *A Shameful Act*, pp. 306-312, 340-344, 362-364 (see Note 9); Üngör, “Seeing Like a Nation-State,” pp. 28-30, 33-34 (see Note 197); Kaligian, “Anatomy of Denial,” p. 210 (see Note 200). For an incisive account of this continuity drawing these and other analyses, see Avedian, “State Identity, Continuity, and Responsibility,” pp. 806-809, 813-814, 817, 819 (see Note 165).

PART 7: THE REPARATION PROCESS AND THE PROCESS AS REPARATION

7.1 LEGAL CASES AND POLITICAL NEGOTIATION AS PATHS TO REPAIR

Parts 4, 5, and 6 have presented cases supporting the view that comprehensive reparations should be made for the Armenian Genocide. Parts 4 and 5 include discussion of avenues for pursuit of legal cases, for instance, through the International Court of Justice. In addition, promotion of ethical considerations treated in Part 6 could foster social and political movements in Turkey and elsewhere that would support reparations, including the symbolic elements of a comprehensive package and support for the long-term viability of the Armenian identity and state.

Political negotiation might also be a useful mechanism. The Republic of Armenia might be the most appropriate party to lead such a process, but it would be crucial to have an Armenian team that combines representatives from various components of the global Armenian community, including the Armenian Republic, Armenians in Turkey, and the Armenian Diaspora in its various geographical segments. Participants should include Armenian political parties inside and outside the Republic, the Armenian Apostolic, Protestant, and Catholic Churches, Armenian organizations and institutions, and the Armenian Republic's government, in consultation with academic, diplomatic, and other experts. International legal requirements for reparation would be the framework of the negotiations but would not determine the final settlement. Advantages of this approach include (1) the involvement of Turkish representatives in the settlement, (2) flexibility to include reparative measures, such as an apology, beyond the material damages that are the focus of strictly legal approaches, and (3) less stringent evidentiary requirements that accommodate the difficulty of providing documentary evidence for some of the known losses of the Genocide with the level of specificity and detail that is required in a typical tort case. Third-party support for this political process is also a possibility, and the process itself might at least initially be driven by third-party intervention, particularly if powerful states take an active interest in reparations for the Armenian Genocide.

7.2 THE TRUTH COMMISSION APPROACH

The three approaches discussed so far are all legitimate paths toward reparation and should be pursued. But the AGRSG has identified another method for pursuit of reparative justice that could advance each of these other three initiatives while offering features that none of them do. This is a “truth and rectification commission” process.

A truth commission would increase the likelihood of reparations being made, make more likely that the reparations were genuine and sincere, encourage the rehabilitation of the Turkish state and society, which is not a concern in the legal or treaty analyses and just touched on in the discussion of ethical issues, and offer a pathway to improved Armenian-Turkish relations with a possible culmination in full conciliation. It would do this by engaging Turkish individuals and institutions as active participants in the reparative process. The Armenian Genocide Truth and Rectification Commission (AGTRC) allows the freedom of ethical decision-making to come into relation with the requirement for repair. Through a truth commission,

members of the perpetrator group could be brought into a process in which ethical commitments can have their proper role and in which a safe space is opened for acting on the moral commitments to human rights that many Turks wish to act on. Instead of reparative measures being imposed on the Turkish population from outside, reparations would flow out of the truth commission experience. And, as will be elaborated below, the truth commission process would offer a unique opportunity to invest material reparations with the meaning they should have but which is often excluded from legal and political activities, even when they succeed in attaining reparations. Next, not only will the truth commission process foster the awareness and reflection necessary for the rehabilitative transformation of the Turkish state and society away from the legacy of genocide, but the process itself would be rehabilitative. A truth commission is the best mechanism for bringing about the rehabilitation of the Turkish state and society into a direct relationship with the other reparations components discussed in this report. Through the truth commission model, the process of repair would be part of the repair, rather than merely a means toward the end of reparation, as legal cases and political negotiation would, in isolation, be. Finally, a truth commission process, with its opportunities for cooperation and relationship-building, could foster increased Armenian trust of Turkish institutions and society, which in turn would support the validating effects of an apology for the Genocide and an improved sense of security vis-à-vis Turkey and its society. How reparations are given affects their meaning and greatly affects their reparative impact. The truth commission approach can help invest reparative measures with their full meaning.

7.3 THE TURKISH TRANSITION

Turkey might be considered a “transitional society,” a society that is hampered by the impact of historical wrongs committed in its name and within its borders—wrongs that, however tentatively, some members of that society are seeking to address in order to rework the society away from this history. The question of how to deal with these historical wrongs is then a question of “transitional justice.” As legal theorist Ruti Teitel describes it, transitional justice focuses on “how societies should deal with their evil pasts” and “what, if any, is the relation between a state’s response to its repressive past and its prospects for creating a liberal order.”³⁵⁹ Transitional justice can be categorized as “extraordinary justice,” primarily to indicate that any transitional phase often requires special considerations that would otherwise not fall under the rubric of conventional justice mechanisms. Transitional justice can be seen as

the process of situational justice that mediates between adequately dealing with perpetrators and mass violence and their legacies while building a common future by addressing the present circumstances of injustice as direct consequences of the past.³⁶⁰

The Armenian Genocide is the central Turkish historical wrong and requires special assessment and engagement as the key to Turkish transition. As already discussed, the Genocide’s benefits for contemporary Turkey are significant, and the mentality and institutional structures behind it have been to a large extent folded into Turkish political and military culture and institutions as they have been subsequently developed. It can thus be said that engagement of the Armenian Genocide is a prerequisite to transition: only through an honest and comprehensive addressing of the Genocide can the Turkish

359 Ruti G. Teitel, *Transitional Justice* (Oxford, UK: Oxford University Press, 2000), p. 3.

360 Jermaine McCalpin, *Justice Under Constraints: Transitional Justice in Deeply Divided Societies*, unpublished doctoral dissertation, Brown University, Providence, RI, USA, 2006, p. 8.

state and society move forward to build on an alternative foundation. As noted above, a democratic transformation of Turkey that does not deal with this past and its impact on the future will not be genuine and will be limited. Such things as acceptance into the European Union, while outwardly signs of progress, will, absent direct rectification of the Armenian Genocide, simply mask the deeper problems in the Turkish state and culture. What is more, if taken as a resolution of the Genocide issue, that resolution will be unjust and compound, rather than mitigate, the outstanding challenge of the Genocide.

Turkey can also be understood as a “deeply divided society.” A significant part of this society languishes under the enslavement of denial, historic injustice, and deep division. While this term is typically applied to societies in which conflict or one-sided domination between groups still largely present has become nearly intractable, it can also be applied to Turkey regarding the relationship of ethnically identified Turks and the state government representing them to Armenians, who are now largely external to Turkish state and society. The situation is quite complicated, as there is a residual and oppressed Armenian-identified population within Turkey today; a larger population of Muslim- and generally Turkish-identified people of Armenian descent resulting from forced or contextually coerced individual and group assimilations during or before the Genocide, who might be called “latent” Armenians³⁶¹ (estimates place this category at as many as 4 to 6 million³⁶²), some of whom desire connection to this aspect of their objective history and identity;³⁶³ and perhaps 8 million Armenians around the world, including about 3 million in the Armenian Republic, the majority of whom have historical connections to the Genocide³⁶⁴ (the exception is traditionally Russian Armenians, a minority of the overall global total), and a worldwide Armenian Diaspora formed in large part through the genocidal expulsion of Armenians from Turkey.

A “deeply divided society” is a society marked by a sense of profound and historic injustice, in which one or more groups have a longstanding grievance about a lack of justice for their group. The Armenian Genocide continues to leave a fundamental breach in the justice equation for the Turkish-Armenian relationship within and outside of Turkey. A historical assessment of the contestation surrounding its treatment of non-Turkish ethnic groups reveals that history has not resolved some critical problems. Turkey is a deeply divided society not only because there are extreme divisions centering on the mass atrocities and dealings with several minorities within Turkish borders, but also because the measures and grounds on which these historic injustices are to be resolved are also highly contested. While the Genocide and related acts were meant to break the Turkish connection to the large Armenian population once integrated into, if considerably oppressed within, Ottoman-Turkish society, the result has been a continuing domination through denial and assertion of Turkish power. Addressing this fracture will overcome the historically imposed division, regardless of whether Armenians return *en masse* to Turkey, which is highly unlikely.

361 See, for instance, Fethiye Çetin, *My Grandmother: An Armenian-Turkish Memoir*, Maureen Freely (trans.) (London, UK: Verso, 2012); Chris Bohjalian, “In a Turkish Town that Had 10,000 Armenians, Now There Is Only One,” *The Washington Post*, June 6, 2013, http://www.washingtonpost.com/opinions/in-a-turkish-town-that-had-10000-armenians-now-there-is-only-one/2013/06/06/d893197a-c93e-11e2-9f1a-1a7cdee20287_story.html (accessed January 15, 2015); Raffi Bedrosyan, “What’s Next for the ‘Hidden Armenians’ of Diyarbakir/Dikranagerd?”, *The Armenian Weekly*, January 14, 2014, <http://armenianweekly.com/2014/08/28/whats-next-hidden-armenians-diyarbakirdikranagerd/> (accessed January 15, 2015).

362 Aida Avetisyan, “Growing Number of ‘Hidden Armenians’ Reveal Their Identities in Turkey,” *Asbarez*, November 5, 2014, <http://asbarez.com/128569/growing-number-of-%E2%80%98hidden-armenians%E2%80%99-reveal-their-identities-in-turkey/> (accessed January 15, 2015).

363 “Turkey’s Muslim Armenians Come Out of Hiding,” *The Japan Times*, April 26, 2013, <http://www.japantimes.co.jp/news/2013/04/26/world/turkeys-muslim-armenians-come-out-of-hiding/#.VLdyJHvqU80> (accessed January 15, 2015); “Thousands of Turkified Armenians Revert to Their Roots,” *PanARMENIAN.Net*, January 18, 2005, <http://www.panarmenian.net/eng/news/11925/> (accessed January 15, 2015).

364 As explained in Note 322, such population figures for Armenians today are rough estimates.

The AGTRC offers an opportunity for the transition and healing of Turkey *and* justice for Armenians. Looking at approaches to dealing with historic injustices such as genocide, one realizes that the way to conciliation and peace always has to go through truth and justice.

7.4 THE TRUTH COMPONENT

Memory is important in assessing genocides. When a society has not adequately confronted a historical injustice such as the Armenian Genocide, it is primarily because memory has been suppressed, unwritten, or rewritten. Remembering is not just individual, it is collective. But, if the collective memory's creation is the purview of only the power-holders, then it results in an "organization [of] oblivion,"³⁶⁵ especially because the memory of the Genocide is suppressed until it is quarantined to oblivion. The role of silencing and suppression are therefore obstacles to proper historical rectification of mass violence. As with the South African Truth and Reconciliation Commission, one cannot expect that because perpetrators choose to forget or conceal their crime, the victims and their progeny are able to conceal or forget their losses. The inherited memory of the atrocities and violations of human rights will always challenge the orthodoxy of amnesia-induced injustice.

Amnesia is not just forgetfulness—it is injustice when it prevents purposive resolution to historic injustice. In the case of the Armenian Genocide, this forgetfulness might be termed "amnesia-induced injustice." Turkish society is constructed on collective amnesia: no genocide happened and we have never had any problems with Armenians being Turkish (if it is on our terms). The Armenian Genocide in the minds of many Turks and others echoes the Pauline injunction of "forgetting the things which are behind and pressing towards those that are ahead."³⁶⁶ In daily existence, some measure of forgetting can be a positive step toward moving forward, but this is not true of a case of genocide, where true progress can only come with proper and responsible remembrance that leads to an undoing of damages and efforts to make peace with the past in its full reality. What the Armenian Genocide requires is not an invitation to support the unknowing of the Genocide, or the forgetting of the need for resolution; it requires working through the "messiness of history," untangling the plethora of events, memories, and actors. The resolve to move forward can only happen after (not before) the remembering of the past. The Akan ethos of *sankofa*³⁶⁷ reminds us that it is "never a taboo to return and fetch it" (the thing we left in the past). The Genocide has passed, but we have to return to rescue it from forgetfulness and injustice. "Forgetting," that is, being able to move forward to new issues, can really only take place after, not before, meaningful remembrance. And "remembering" here means engaging the past to bring closure and resolution.

The urge to purge both what was done (in terms of genocide) to the Armenians as well as what the Armenians did (their contributions to the Ottoman Empire) has not been accidental or incidental, but deliberate and methodical. This often has required that the system of education and learning in Turkey "remove the Armenians" literally and figuratively. According to Ayse Hur,

365 Uğur Ümit Üngör, "Organizing Oblivion in the Aftermath of Mass Violence," in *Commemorating Genocide: Images, Perspectives, Research*, special issue of *The Armenian Weekly*, April 26, 2008, pp. 23-27 at 23.

366 Philippians 3:13b-14, *The Christian Bible*, Authorized Version.

367 The idea is that the past is critically important to how we not only understand but live in the present. The Armenian Genocide, until it is "fetched" from the past, will mean that Armenians, like Blacks in the Americas, carry the scars of injustice because of unresolved injustices.

policies were implemented to erase what was done to the Armenians from the collective memory. At first, this act of “forgetting” was a precondition for Turkish identity . . . [I]n time it became an element of continuation.³⁶⁸

Hur’s argument suggests that amnesia is not merely injustice but power-related—amnesia is an outgrowth of power. The Turkish state and its supporters can afford to forget because they have the power to do so.

These efforts include two particularly significant elements. First, in a policy continuing into the 1950s, references to “Armenia” were eliminated from official maps, and the names of Armenian villages and towns in Asia Minor changed. As Dickran Kouymjian elaborated to the Permanent People’s Tribunal in Paris in 1984, 90 percent of the historical Armenian place names in Turkey have been modified.³⁶⁹ Inscriptions in the Armenian language continue to be removed from buildings and monuments.³⁷⁰ This has happened in contravention of Articles 38 to 44 of the Treaty of Lausanne, which were intended to protect the rights of minorities, including the cultural rights of the small surviving Armenian minority.

Second, legal repression of the memory of the Genocide is encoded in Turkish law, which has been applied repeatedly in the past decade. Particularly noteworthy is Article 301 of the Turkish Penal Code, which is being frequently used to prosecute human rights defenders, journalists, and other members of civil society who peacefully express their dissenting opinions on historical or other issues.³⁷¹ “Article 301, on the denigration of Turkishness, the Republic, and the foundation and institutions of the state, was introduced with the legislative reforms of June 1, 2005, and replaced Article 159” of the old penal code.³⁷² “Amnesty International [has] repeatedly opposed the use of Article 159 to prosecute non-violent critical opinion and called on the Turkish authorities to abolish the article.”³⁷³ Similarly, Article 305 criminalizes acts “against fundamental national interests.”³⁷⁴ Such acts are intended to include

making propaganda for the withdrawal of Turkish soldiers from Cyprus or for the acceptance of a settlement in this issue detrimental to Turkey . . . or, contrary to historical truths, that the Armenians suffered a genocide after the First World War.³⁷⁵

368 Ayse Hur, “A Society Crippled by Forgetfulness,” in *Commemorating Genocide: Images, Perspectives, Research*, special issue of *The Armenian Weekly*, April 26, 2008, pp. 11-13 at 11.

369 Kouymjian, “The Destruction of Armenian Historical Monuments,” p. 173 (see Note 71); see also Kouymjian, “Confiscation of Armenian Property and the Destruction of Armenian Historical Monuments,” p. 8 (see Note 4).

370 Kouymjian, “The Destruction of Armenian Historical Monuments,” p. 175 (see Note 71).

371 See Amnesty International, “Turkey: Article 301: How the Law on ‘Denigrating Turkishness’ Is an Insult to Free Expression,” public document, EUR 44/003/2006, March 2006, <http://www.amnesty.org/en/library/asset/EUR44/003/2006/en/1a24fcc9-d44b-11dd-8743-d305bea2b2c7/eur440032006en.pdf> (accessed January 15, 2015); Human Rights Watch, “Turkey: Government Amendments Will Not Protect Free Speech – Article 301 Should Be Abolished,” April 17, 2008, <http://www.hrw.org/news/2008/04/16/turkey-government-amendments-will-not-protect-free-speech> (accessed January 15, 2015). See also, for example, “Popular Turkish Novelist on Trial for Speaking of Armenian Genocide,” *The New York Times*, December 16, 2005, http://www.nytimes.com/2005/12/16/international/europe/16turkey.html?_r=0 (accessed January 15, 2015); “Writer Appeals to Court to Acquit Zarakolu in 301 Case,” *Today’s Zaman*, December 8, 2007, http://www.todayszaman.com/national_writer-appeals-to-court-to-acquit-zarakolu-in-301-case_128947.html (accessed January 15, 2015).

372 Amnesty International, “Turkey: Article 301,” p. 1 (see Note 371).

373 Amnesty International, “Document – Turkey: Article 301 Is a Threat to Freedom of Expression and Must Be Repealed Now!”, public statement, EUR 44/035/2005, <http://www.amnesty.org/en/library/asset/EUR44/035/2005/en/7af4ffcc-d47d-11dd-8743-d305bea2b2c7/eur440352005en.html> (accessed January 15, 2015).

374 Organization for Security and Co-operation in Europe, “Review of the Draft Turkish Penal Code: Freedom of Media Concerns,” by the Representative on Freedom of the Media, Miklos Haraszti, May 2005, <http://www.osce.org/fom/14672?download=true> (accessed January 15, 2015), p 5.

375 *Ibid.*

A truth commission is an official body that is temporarily constituted to investigate past atrocities that took place within a country over a specific period of time, with an end to suggesting measures of dealing with the violations and atrocities that are discovered or confirmed. The Armenian Genocide case is a special situation and presents a unique challenge for the truth commission model, because it is not a question of historical proof that the Genocide occurred (the historical data are clear), but active denial on the part of the perpetrator group. What is more, the general perpetrator group (even if the actual perpetrators are dead) still has power, and the Turkish state is still defined in their interest. This is in stark contrast to the typical cases through which the truth commission process is usually understood, such as South Africa: South Africa's Truth and Reconciliation Commission operated only after the Apartheid regime had left power. Even given these challenges, this report advocates a truth commission as a bona fide mechanism of dealing with the Armenian Genocide, while recognizing that a truth commission can only work if it is given support and recognition by both the perpetrator and the victim group. Truth commissions where they have been used successfully (there have been more than 40 such commissions since 1974) have often initiated or accompanied a democratic opening or transition.³⁷⁶ In the Turkish case, the correlation between democratization and resolution of the Armenian Genocide's impacts runs both ways: while Turkish democratization—particularly free speech protections and a more open political process not vetted and ultimately controlled by political and military elites and institutions—will certainly support a more productive engagement with the Armenian Genocide, at the same time, Turkey's true democratization requires addressing the Armenian Genocide as a foundational factor for the Turkish Republic and an event with continuing impact. Furthermore, if Turkey is to demonstrate that it is democratizing or even transitioning to a more open society, a truth commission has to be prepared to deal with the deep divisions of the past that continue to impact the present and will impact the future if not engaged.

In many cases, truth commissions function to engage perpetrators and victims in a process of determining the truth of past violence and oppression, so that both groups have a clear understanding that can serve as the basis for improved relations and, possibly, rectification. In the Armenian-Turkish case, however, two factors suggest a different meaning for the truth component of the AGTRC. First, the historical truth of the Genocide is well established, through decades of comprehensive archival research and scholarship (including Ottoman records and scholarship), and no credible scholar on the issue now doubts that the data point to a clear case of genocide under the United Nations definition. Second, successive Turkish governments, with active academic and other civil society support inside and outside Turkey, have denied the basic, well-established facts of the Armenian Genocide, through an aggressive, broad, well-funded, state-sponsored campaign. If the AGTRC were to begin with a process of negotiation or deliberation about what the truth of the history of 1915 and after actually was, it would at once negate and erode what has already been achieved in this regard and also give new purchase for denial. It would, in essence, extend denial into the future through a negotiative process between Armenians and Turks that would not be guaranteed to lead anywhere. It would, indeed, grant new credibility to denialist viewpoints by making the questioning about whether the Genocide occurred a legitimate and central part of an Armenian-Turkish dialogue process. This is not meant to imply that knowledge of the Genocide will not be extended through the truth function of the AGTRC, for instance as Ottoman Archival documents that have been difficult or impossible for scholars to examine become freely available and information on the internal workings of the denial campaign becomes public. This new information will be quite valuable, but will not change understanding of the basic contours of the Genocide, which ample evidence

376 Priscilla Hayner has been the leading authority on truth commissions. See Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd ed. (New York, NY, USA: Routledge, 2010).

has long established. Moreover, the AGTRC will give Turkish society a chance to confront and reflect on the impact of the Genocide on Armenians and on itself, including how the Turkish state and culture have been impacted by genocidal acts and the ideology behind the Genocide, the role of perpetrators in building modern Turkey, and so forth.

It is highly relevant to the AGTRC that Turks in general have been prevented from accessing the factual record and scholarship on this issue, as successive Turkish governments have interfered with and prevented their broad dissemination. In light of this, the truth function of the AGTRC will provide a process through which the full range of the facts, including the long-term impact of the Genocide on Armenians and Turkey, can be presented to Turkish society in a forthright manner. Expert testimony; survivor testimony through video, audio recording, and writings; eyewitness accounts through these media and photographs; and other such information will support a deep and meaningful engagement of the facts of the Armenian Genocide by Turkish individuals. As the name implies, the commission begins with recognition of the Armenian Genocide, and the Turkish state and society must do so as well. The AGTRC can only succeed if it is recognized as a process through which engaging and addressing the truth of the Armenian Genocide is possible, not as a means of debating whether it occurred and coming to some kind of compromise as to what will be asserted as “historical truth.” As a broad-based, public process, the AGTRC offers Turkish society its first opportunity to engage the history of the Genocide—and thus its own history—in an open, forthright, and comprehensive manner freed from the pressure of denial and legally enforced adherence to an inaccurate and damaging state narrative of the past.

Relative to this analysis, the reasons for the failure of the “Turkish-Armenian Reconciliation Commission” (TARC), which operated from 2001-2004, come into relief. TARC aimed to serve as a means of promoting Armenian-Turkish rapprochement through avoidance of the Armenian Genocide.³⁷⁷ As such, TARC did not represent a new approach to dealing with the contestation and rectification of the Armenian Genocide. Reconciliation has to have more justification than “let’s move on from the past.” It has to deal with the uncomfortable reality of Reparation may be claimed individually and where appropriate collectively, by the direct victims of violations of human rights and international humanitarian law, the immediate family on whose terms do we move on from the past, what does it mean in this case to move on from the past, and most importantly, what measures will help us to move on from the past. The Armenian Genocide cannot be peripheral to a truth commission; it has to be its *raison d’être*. TARC failed because not only was the truth of the Armenian Genocide not taken as a starting point for a deliberation on how to improve Armenian-Turkish relations, but the Armenian Genocide was partially set aside as an issue in those relations, especially early on. At a certain point, it was recognized that this issue had to be confronted, and an independent report was commissioned that determined that what occurred was genocide. Precisely with this, however, TARC fell apart, because the obvious truth and centrality of the Armenian Genocide came into direct conflict with the structuring fiction of TARC—that relations could be improved by avoiding this issue—and the tension became too great. What is more, even if somehow the TARC process had been held together despite this, the 2003 International Center for Transitional Justice report stating that genocide had occurred went to great lengths to historicize the Armenian Genocide so that its contemporary impact would be completely set aside and erased.³⁷⁸ Thus, even if the truth

377 For a useful if laudatory account of TARC that does not include the criticisms made here, see Phillips, *Unsilencing the Past* (see Note 343).

378 “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: Legal Analysis Prepared for the International Center for Transitional Justice,” briefing paper, January 1, 2002, especially pp. 7-9, <http://www.ictj.org/publication/applicability-un-convention-prevention-and-punishment-crime-genocide-events-which> (accessed January 15, 2015).

of the historical facts of the Genocide had been recognized, those facts would have been disconnected from the relevant contemporary facts, and thus would not have led to a process of justice that addresses the outstanding Genocide issues. TARC was aimed neither at resolving the “truth deficit” in Turkey—willful amnesia perpetuated in the population through self-imposed denial—nor in working toward a just solution regarding the Armenian Genocide that could serve as the basis of improved relations. It is quite possible that the real issue with TARC was the link between justice and full disclosure of the truth, such that the latter was resisted and inadequately made in order to prevent the former from becoming the central issue, which it would have been, as the logical next step in a productive process.

It should also be stressed that the AGTRC bears no relationship to the historical sub-commission proposed in the Armenia-Turkey protocols,³⁷⁹ as discussed in the Introduction. The historical sub-commission would be part of the “intergovernmental bilateral commission” to be established through the protocols, while the AGTRC would specifically *not* be a governmental body tasked with negotiation over historical matters. What is more, if, as many fear, the historical sub-commission becomes a mechanism for debating the history of the 1915-1923 period, it would actually work in the reverse direction from the starting point of the AGTRC: starting from ample evidence of the Armenian Genocide, it would work backwards to open the issue up for muddying debate, which would erode the achieved knowledge of the Armenian Genocide and re-legitimize denial as an apparently valid historical viewpoint. The AGTRC would begin with the established consensus on the facts of the Armenian Genocide and work toward a resolution of the legacy produced by those facts.

A truth commission is not a panacea for denialism. The AGTRC will be a quasi-judicial, transitory body. As such, it will not bear witness to all truth fully or extirpate all denialism, but it will significantly increase the truth presented in, and significantly decrease the lies in circulation in, Turkish society.

7.5 THE REPARATIVE COMPONENT

As already argued for above, resolution of the Armenian Genocide requires more than acknowledging that it happened—it requires acts meant to mitigate the damage done as it now impacts the present and will impact the future if unaddressed. Truth is part of a process of resolution, not the end point of the process. Ultimately a truth commission is not an end in itself. The premium placed on truth is primarily that it will lead somewhere. Some hope for justice, others closure, and still others, conciliation. If a truth commission does not lead to any of these, it means that the truth would have been exhumed only to be reinterred. While dialogue is very important and is a first step to resolution, “Can we talk (on my terms)?” is not the same as “We acknowledge and recognize that our forebears gravely wronged your ancestors by committing genocide against them.” The basis for a truth commission or any similarly constituted mechanism is resolution based on truth and acknowledgement with reparatory measures, not on token conciliation that humanizes the perpetrator group while hindering meaningful reparation efforts. The development of the AGTRC concept here has taken account of the fact that truth commissions have sometimes been criticized for inadequate attention to the material and psychological needs and rights of victims.³⁸⁰

379 “Protocol on Development of Relations Between the Republic of Turkey and the Republic of Armenia” (see Note 17).

380 See, for instance, Giyose, “The Debt to the Indebted,” p. 171 (see Note 13); McCarthy, “Will the Amnesty Process Foster Reconciliation” (see Note 55); Teitel, *Transitional Justice*, p. 88 (see Note 359). As an example of a criticism, while the South African Truth and Reconciliation Commission had a Reparation and Rehabilitation Committee, reparations (defined even in monetary terms) were not extensively addressed. Only 19,000 people were considered victims for the purposes of granting reparations. A pecuniary equivalent of US\$3,000 was awarded to each person defined as a victim, while other elements of repair were not provided directly. But, reparation has to be understood as more comprehensive than money to address a diversity of harms that victims and societies undergo; it has to be material, psychological, symbolic, etc.

The corrective impulse of long-term solutions is necessary but often misguided in connection to truth commissions. Resolution of the Armenian Genocide, as with many other mass killings and atrocities, must focus primarily on justice based on truth, and not simple conciliation. The goal of resolution efforts must place energy in revelation and reparation. This is not to say that conciliation is unimportant, but to recognize that meaningful conciliation cannot be achieved until the parties have moved beyond the contestation of the Genocide toward justice for it. Conciliation by acceptance of an unjust status quo is not a productive resolution of the Genocide, but instead consolidates its harms and further weakens and marginalizes the victims. Proper conciliation is a by-product, not a focus or ultimate goal, and not a necessary outcome of the AGTRC. If the AGTRC achieves justice for the Armenian Genocide but does not result in Armenian-Turkish conciliation, it will have been successful, and at the very least will have opened up the possibility of a future conciliation. A process through which the Turkish state and society become reconciled to the reality of the past, the responsibilities of the present, and the possibilities of the future should not be confused with conciliation with Armenians. At the same time, the truth commission process will support Turkish institutions and individuals in the former—to do the hard, disquieting, even painful work of taking steps to recognize and resolve the outstanding issues of the Armenian Genocide. In this sense, it will offer an ethically and emotionally positive support to balance the difficulty of fully engaging the Armenian Genocide.

One strength of the proposed AGTRC process is that it can contextualize financial and territorial reparations in two ways. First, it makes them part of a process that can be profoundly positive for Turkish state, society, and individuals, as has been explained. Second, it does not assume that their necessity is sufficiency; while they are a central and necessary component of any just resolution scheme, other components are also essential.

The broad goals of the AGTRC process as a mechanism of transitional justice are three-fold. First, it will help secure against continued oppression of Armenians (especially but not only Armenians living under a Turkish government) and repetition of elements of genocidal violence, that is, violence against Armenians as Armenians, as was seen for instance in the 2007 assassination of Hrant Dink.³⁸¹ The only way Turkey can secure against further deep division and repetition of mass murder is to exorcise from state institutions and society the conditions and policies that have made such violations of human rights possible up to the present time.

Second, it must attain perpetrator group accountability. As noted in Subsection 6.2.4, while the actual perpetrators of the Genocide are long dead, given the intergenerational transfer of wealth and power accruing from the Armenian Genocide, there must also be in today's Turkish state and society recognition of the intergenerational transfer of responsibilities and obligations. The original perpetrators do not need to be alive or present for accountability to be ascribed to their actions. In other words, the onus falls on the descendants of the original perpetrator group to stand accountable for the policies and consequences of their forebears. This is the moral and political crossroads at which Turkish society finds itself. The perpetrators, instigators, and beneficiaries of the Armenian Genocide end up being the entire Turkish state and society, which now have a primary obligation to rectify the Genocide's consequences.

The third goal is justice for the victim group. A truth commission provides a good context for a program of reparations primarily because it is concerned not just with granting reparations as an act of historical rectification but also with ensuring that reparations is an integral part of justice and transformation. While

381 *BBC News*, "Turkish-Armenian Writer Shot Dead" (see Note 313).

various sections of this report have argued that justice includes monetary and territorial reparations, the concept used in the report is far broader and more complex than these two elements alone (see Part 3). What is more, justice in this sense is context-specific. What is justice for Armenians and other ethnic minorities in Turkey might not be the same for Native and African Americans in the United States. Yet, it is clear that justice in such situations demands that victims and their progeny be properly recognized for their suffering through return/compensation, acknowledgement, and inclusion—and not on the terms of the perpetrator group.

As discussed in Part 3 of this report and elsewhere, in addition to monetary compensation and territorial return, there are other elements crucial to a contemporary comprehensive reparations package for the Armenian Genocide. While material forms of compensation directly address some aspects, the harms inflicted through the Genocide are not only material or addressable through material mechanisms; for instance, as funding for Armenian institutions might help rebuild the social fabric of Armenian culture, financial reparation can have important emotional and cultural impacts that cannot be reduced to money.

While it might appear that material reparations, particularly political transfer of land, are the greatest challenge, and that symbolic and mixed measures will be easier for Turkey and Turks to undertake, the latter require a different kind of commitment by the Turkish state and society. The AGTRC offers the best available path toward their realization.

The first additional component is acknowledgment and apology. Being sorry or remorseful by itself cannot stand as reparations and therefore justice. Nonetheless, that does not mean that apology has no value in a reparative process. The road to the future, including improved Turkish-Armenian relations, has to start with an admission and acknowledgement that a wrong was done. To apologize for historical wrongs almost always carries the Sisyphean burden to the “apologizer” of being expected to tangibly atone for the wrong being confessed or acknowledged. This is why no U.S. President has apologized for the atrocities and injustices of slavery or genocides of Native American peoples. To apologize means to recognize not just the wrongness of the act but, importantly, the humanity of the victims and their descendants as well as the need to rectify the past. No Turkish regime has apologized for the Genocide that many deny happened in the first place. To do so would require commensurate provisions for justice from a historical perspective.

An apology is symbolic in two ways: it is a means of opening the past to historical scrutiny and therefore the potential for rectification; and it suggests that it is not only the original perpetrators and beneficiaries that are culpable, but that there exists a collective culpability that is less concerned with whether Turkish individuals today directly harmed Armenians and more with the fact that Armenians are still greatly impacted by the earlier violence against them, and contemporary Turks share a social continuity with those who perpetrated that violence.

The AGTRC offers an opportunity for Turkish individuals and institutions to understand and reflect on the historical harms done and the need for present engagement. In place of an abstract imperative for apology, the AGTRC provides a safe space for personal and institutional transformation that can lead to a sincere will to offer a genuine apology with the features described in Subsection 6.2.6. While instituting the AGTRC does not guarantee this attitude transformation, it does create a context that fosters it and makes it much more likely than otherwise.

Acknowledgment is made not only through apology, but as ongoing support for memorialization, commemoration, and education. Days of remembrance, restoration of Armenian place names, museums devoted to the Genocide, and inclusion in Turkish textbooks all remove the Genocide from imposed oblivion and give the sense that its victims' deaths were not in vain. Some progressive Armenian and Turkish scholars emphasize the importance of restoring Armenian churches and other artifacts and publicly recognizing Armenian contributions to Turkish history, in a way similar to the growing recognition in the United States of the tremendous contributions of people of African descent and other oppressed groups to U.S. history, politics, and culture.³⁸² While not in itself rectification of the destruction of Armenians in the Ottoman Empire, it can, at least partially, symbolically reverse the physical and conceptual removal of Armenians from Turkey accomplished through the Genocide and its denial, including the near century of destruction of the physical evidence of Armenian habitation in Turkey. These reparative measures require going far beyond the activities of the AGTRC, but it is through that process that Turkish institutions and individuals can become aware of the facts and their implications, and committed to bearing witness publicly to those facts and their general dissemination.

As pointed out above, the AGTRC is most crucial for the rehabilitation of Turkish society and its state. As previously explained, the economy, public institutions, and identity of contemporary Turkey were forged in the crucible of genocide. Within them the attitudes, practices, and results of genocide remain embedded, shaping the framework through which Turkey evolves. These deep features are manifested in the continuing ill-treatment of minorities and dissident Turks as well. The rehabilitation of Turkey requires more than democratization: if Turkey is going to be transformed away from these genocidal shadows and its deep division, it must expose and extirpate these elements, and reorganize itself around positive values that include recognition and responsibility for its past. Ending denial can be a step in that direction, but the giving of material reparations and apology/acknowledgment as genuine reparations is as much the result of a rehabilitative process as its engine. The strengths of the truth commission model make the AGTRC the optimal mechanism for a voluntary, self-driven re-examination of Turkish institutions and attitudes, and their transformation. Rather than such insights being imposed externally on Turkish society, that society would be part of the process that would bring them to light. The active nature of Turkish participation in the AGRSG can extend into the long process of active transformation of the entire society. While rehabilitation is important for the security of the victim group as well as other potential subsequent targets, it is necessary (1) for the well-being of members of the perpetrator group (that their state, society, and identity not have genocidal elements or residual features), and (2) for humanity (that through this transformation a less genocidal global order be established).

The value of an AGTRC process for active change by Turkey cannot be overstated. Unlike even voluntary political negotiations by governments, the AGTRC draws in people in all capacities and from all parts of society, as direct participants and affected observers. It is the best way to try to ensure that reparations are the reflection of a changed Turkey, rather than the cause of resentment on the part of a recalcitrant state and society. And, in addition to helping Turks become aware of their true history and come to terms with the responsibility they now have for addressing it, the AGTRC offers a unique opportunity for Turks to reconnect with the forebears who resisted genocide, and even the earlier strains of progressive Turkish political thought and action that had once aspired for a very different future from

382 For instance, educational institutions typically feature a range of programs on such topics during the months dedicated to particular minority groups, principally the nationally designated "African American History Month" (<http://www.africanamericanhistorymonth.gov/> [accessed January 15, 2015]) and "National Hispanic Heritage Month" (<http://hispanicheritagemonth.gov/> [accessed January 15, 2015]).

the path of genocide and what has followed it. Only in the context of a full engagement with the true nature of the Armenian Genocide, including the extensive organizational structures that executed it and the odious ideology that drove it, can Turks appreciate those political leaders who resisted the Genocide and those who sought, through the 1908 revolution and other efforts, to open a different, politically progressive, civil rights-respecting path for Turkey.³⁸³ These positive political trajectories, generated from a unique post-colonial perspective, can provide Turks today with genuinely Turkish alternative political models and principles as the basis for a rediscovery of long-repressed elements of Turkish national and individual identity.

The AGTRC is similarly the best path toward realization of the final reparation component: the active support by Turkey of the future viability of Armenian identity and political statehood. The Armenian Republic today is small and vulnerable to neighbors and great powers alike. The forces applied on it require deft handling just to ensure preservation. Were Turkey to go from one of the main negative forces acting on Armenia to providing positive assistance, the beneficial impact would be dramatic. But for Turkish people and institutions to accept this level of responsibility, which goes beyond even the level of responsibility characterizing a one-time return of territory, requires the kind of rehabilitative process just described, as well as a clear understanding of and appreciation for what Armenians and their state face today as a legacy of the Genocide. It is only through the sort of deeply transformative process possible through the AGTRC that the attitudes necessary to this kind of support for Armenians is achievable. Moreover, the kind of relationship necessary for such support requires the development of trust on the Armenian side, which in turn depends on Armenians having good reasons to trust despite the history of Genocide and denial. If the AGTRC cannot guarantee such trust, of available options, it offers the best mechanism for achieving it.

It should be stressed that no process can satisfy all Turks and Armenians. Not only is each group internally diverse, with individuals motivated by a wide range of attitudes toward the past and present, ethical commitments, senses of identity, and needs and desires, but a practical process requires a general resolution that can never address fully every particular, personal issue raised by a genocide. Rather, as with previous truth commissions the world over, the AGTRC should aim to achieve full disclosure of the most contested and divided details of Turkey's past, and to offer a means of moving forward and beyond the divisive past through a general justice that is not an automatic result of disclosure but is accomplished through an ethical commitment to the resolution process despite its imperfection.

7.6 AGTRC STRUCTURE AND PROCESS

7.6.1 Composition

As the failure of TARC demonstrates, who will serve as members of a truth commission, as well as who will testify before it, are crucial questions. TARC's membership was constituted by a very particular set of people with a pre-determined notion of the function of TARC. Its membership was a political product rather than representative of the communities involved. For instance, notably absent were progressive Turks who were committed to a just resolution of the Armenian Genocide issue, as well as progressive Armenians who represented a genuine challenge to Turkish domination and denial.

³⁸³ See, for example, Bedrosyan, "The Real Turkish Heroes of 1915" (see Note 53); Dadrian, *The Armenian Genocide*, pp. 222-224, 231, 237 (see Note 9).

At the same time, if such a commission is to have any likelihood of success it has to be comprised of people who are seen as non-divisive and who are willing to work together for the common cause of just historical resolution. The logistics of how members are selected will always be controversial. Armenians, Turks, and persons not directly connected to either group ought to serve on the commission. Just as importantly, its members should represent a wide cross-section of interests and not be dominated by political brokers on either side.

Given the origination point of the AGTRC—recognition of the fact of the Armenian Genocide and the need to engage its legacy—deniers have no role on the AGTRC. By this point in history, no denier can be considered to be acting in “good faith,” that is, to be sincerely committed to the truth and simply ignorant of historical facts or lacking the appropriate perspective for making rational sense of those facts. A denier at this point must either be committed to refusing the truth actively through self-delusion or be a person who does realize the truth but refuses to acknowledge it publicly because of a political agenda, personal motivations, or ideological commitments; in other words, contemporary deniers are incorrigible. Deniers testifying simply to present denialist arguments would thus serve as obstacles in the process with no prospect of positive development themselves or a positive role on the commission. Denial has no role in the AGTRC process, except possibly to serve as an illustration of the challenges to full disclosure in Turkish society, the virulence and aggressiveness of denial, and the harms it continues to do. Denialist writings would likely be sufficient, though a case can be made for real-time, interactive engagement of a denier.

Careful consideration should be made of the qualifications of those who will testify before the commission or otherwise present evidence before it, as well as regarding the documentation and scholarly and other works used as evidence. Beyond that, under the assumption that the commission members are ethically committed to just resolution and have sufficient skill relative to and insight into the complexities of achieving it that they can guide the testimony process in an appropriate way, there can be somewhat more latitude in terms of who testifies in front of the commission. Different perspectives should be present, for instance, Armenians of various ethical and political beliefs regarding what will constitute justice for the Armenian Genocide. It is crucial in this process to recognize that even among “progressive Turks” who have recognized the Genocide, there is a wide range of viewpoints and commitments that should all be represented, especially because relative to Turkish state-sponsored denial and oppression of Armenians, such individuals tend to be grouped together reductively.

7.6.2 Origin of the Commission

Related to the above is the origin of the actual commission itself. Most truth commissions that have failed have primarily been victims of over-politicization or domination by one set of interests that aim to suppress or reinvent the truth of the occurrences in question. Non-governmental groups under the rubric of civil society have to be leaders in the drive for establishing a truth commission. If only politicians are interested in and push the process forward, it will send the distinct message that “political expediency” and not societal concerns are paramount. In essence, a truth commission has to be a public, publicized mechanism. While it can be elite-generated in some sense, it must garner mass support in both victim and perpetrator communities in order to be successful. It must be recognized that nothing can force the Turkish population to choose to address the Armenian Genocide in a responsible, just way, but that refusal to engage it in this way will mark the continuing injustice against and oppression of Armenians that cannot be changed in any other manner. Signs of changes among

both progressive elites and the general Turkish population in recent years are encouraging that, free from political manipulation, a critical mass of the population will be supportive.

It should also be noted that, if the AGTRC process either is prevented by a critical mass of Turks or is derailed or watered down, Armenians and the world community have the right, given the foregoing ethical, legal, and historical justifications for reparations, to pursue other avenues for gaining reparations, even if these will be less likely to produce positive changes in the Turkish state and society. A good faith offer will have been made and rejected by Turkey.

7.6.3 Frame of Reference

A third consideration is the scope of a truth commission to examine the Armenian Genocide. There are several events that could be the subject of the AGTRC, including preceding mass violence against Armenians under Sultan Abdul Hamid II. A careful delineation of what will fall under the scope of the truth commission should be made up front. What will be the chronological frame: Would consideration start with the 1915 Genocide? At what historical point would it end? This report recognizes 1923 as the end of the Armenian Genocide, but arguments for earlier and later dates have been made in the scholarly literature. Previous truth commissions have limited consideration to events within specific time periods, and this would present a particularly critical challenge for the AGTRC primarily because the genocide in question occurred almost a century ago. Nonetheless, it is not the vintage or contemporariness of the crime that justifies resolution; rather, the fact that it was committed and that the victim group to this point has had no recourse to justice is the determining justification for taking up the issue today.

7.6.4 Powers and Limitations

This is a crucial aspect of a truth commission process. The AGTRC's powers and limitations must be decided on, clearly stated, and fully supported by Turks and Armenians. In general, truth commissions are not judicial bodies and therefore do not have the powers of subpoena or prosecution. They often make recommendations based on their findings but are normally limited in their ability beyond that. Additionally, all truth commissions must answer the question as to who will be held liable by its findings and who will be charged to implement its recommendations.³⁸⁴ At the same time, it must be recognized that the powers and limitations of a truth commission body often correlate to its origins and independence from political and other influences—in some sense, the lack of formal political power corresponds to independence from limiting political forces.

Beyond this, the AGTRC should freely report its conclusions regarding what reparations should be made and related issues. It will provide an important mechanism for making very precise analyses of reparations, given that it will presumably have access to Ottoman Archival and other records that will offer significant details regarding property expropriations, Armenian casualties in the Genocide, responsibility by perpetrators, and other aspects of the Genocide and its impact. The AGTRC will provide a unique opportunity for a comprehensive, detailed, and precise analysis of the harms of the Genocide and appropriate reparations within the context of a commitment to justice.

384 Jermaine O. McCalpin, "Prospects for a Truth Commission," *Sunday Gleaner*, July 20, 2008, <http://jamaica-gleaner.com/gleaner/20080720/focus/focus5.html> (accessed January 15, 2015).

7.6.5 Source of Resources for Reparations

A crucial consideration of the AGTRC will be who will provide resources for reparation. This issue is likely to be controversial within the Turkish state and society, and will require deliberations among Turks in the context of the overall AGTRC process to determine the proper share. Presumably, the Turkish state will provide the relevant lands in its possession as well as compensate Turks for returned lands in private possession that have been legitimately obtained through purchase. Lands that can be established to have come into a family's possession directly through expropriation from Armenians would not be compensated for, as the family's possession and profit would have always been unjust. In addition, monetary payments should be made by the government and funded through mechanisms determined by the Turkish society through political deliberation, to ensure a fair distribution of the burden of reparations that reflects as much as possible contemporary benefits from the Armenian Genocide. While the AGTRC should be sensitive to the complexities of these issues and work to ensure the best process possible, as argued above, the negative impact of reparations on the Turkish state and society do not have moral weight against making reparation. After all, the whole point of repair is that the perpetrator group offers something meaningful to the victim group: if what is given is not a loss for the perpetrator group, then it has no value. If it has no value, then how can it be meaningful for the victim group?

PART 8: RECOMMENDATIONS FOR A COMPREHENSIVE REPARATIONS PACKAGE

Part 3 of this report laid out a general five-element schematic for reparations covering the harms of a typical case of genocide. Subsequent sections of the report have applied that schematic to different aspects of the Armenian Genocide. This part of the report will consolidate and elaborate on the components as applied to the Armenian case. Because of the complexity of and potential for conflicting approaches to territorial return and financial compensation for property loss, deaths, and suffering, these aspects of the reparations package will receive in-depth attention. Treatment of them will be last in this part, requiring a sequence of reparations elements different from that used in Part 3.

8.1 PUNISHMENT

In the case of the Armenian Genocide, the first reparative measure (a criminal judicial process applied to perpetrators) can no longer be acted on,³⁸⁵ as any responsible adult perpetrator at the time of the Genocide is presumably deceased by the present time. This process was not completed in the aftermath of either phase of the Genocide, so it cannot be considered accomplished. Although it did result in some convictions and produced much documentation of the Genocide, the judicial process begun in the aftermath of World War I was not successful, as some processes were aborted before many perpetrators were put on trial, many perpetrators were tried *in absentia* or allowed to escape without being tried, many of those convicted received light sentences or had their sentences later reduced, and so on.³⁸⁶ What is more, as discussed, many of those with roles in the Genocide later became important members of the Turkish Republic's governmental sector and influenced the institutions and ideology of post-Genocide Turkey.³⁸⁷

The impossibility of applying the first reparative measure to the Armenian Genocide imparts to the other aspects that much more importance.

385 There is one sense in which prosecutions are still possible today. Denial of genocide can be seen to do objectively demonstrable, material injury to victims in a way that continues or extends the impact of the original acts of violence of the genocide, by consolidating material gains and investing the original violence with a longer period of impact that can even cross generations (Theriault, "Denial and Free Speech," pp. 242-246 [see Note 81]). As such, deniers today can be viewed as complicit in the impact of genocide. With this in mind, denial of genocide could be considered a further injury, reparations for which could be included in a general reparations package. However, legislation criminalizing denial has generally done so by considering denial as a form of hate speech and focusing on its contemporary effects (see, for example, "French Senate Passes Bill Criminalizing Armenian Genocide Denial," *The Armenian Weekly*, January 23, 2012, <http://armenianweekly.com/2012/01/23/breaking-news-french-senate-passes-bill-criminalizing-armenian-genocide-denial/> [accessed January 15, 2015]; Theriault, "Denial and Free Speech," pp. 239-242 [see Note 81]), as distinct from its relationship to the direct harms of genocide itself. Given this, prosecutions for genocide denial, especially of a long-past genocide where deniers are clearly not direct perpetrators, does not appear to repair the direct harms of genocide and should be considered separately. To the extent that denial is part of the genocidal process, the appropriate repair (after ending denial, to prevent further harm) is to promote education within the perpetrator community and globally, as called for in Section 8.2. Denial clearly has material effects: as denial forestalls a reparative process, some repairs in fact become impossible while the harms done continue to compound over time. The reparative package proposed here, particularly financial compensation and support for the security of Armenia and Armenians, includes reparations for these compounding damages, through usufructus and other types of compensation for increased losses due to the failure to make reparation in a timely manner.

386 Dadrian, *The History of the Armenian Genocide*, pp. 310-313, 319, 334 (see Note 9); Akçam, *A Shameful Act*, p. 363 (see Note 9); Dadrian and Akçam, *Judgment at Istanbul*, pp. 113, 114, 122 (see Note 9); Vahakn N. Dadrian, "A Textual Analysis of the Key Indictment of the Turkish Military Tribunal Investigating the Armenian Genocide," *Journal of Military and Political Sociology* 22:1 (1994): 125-162 at 126-127.

387 See, for example, Baghdjian, *The Confiscation of Armenian Properties*, pp. 157-160 (see Note 38); Akçam, *A Shameful Act*, pp. 306-312, 340-344, 362-364 (see Note 9); Üngör, "Seeing Like a Nation-State," pp. 28, 30, 33-34 (see Note 197); Kaligian, "Anatomy of Denial," p. 210 (see Note 200). For an incisive account of this continuity drawing these and other analyses, see Avedian, "State Identity, Continuity, and Responsibility," pp. 807-809 (see Note 165).

8.2 RECOGNITION, APOLOGY, EDUCATION, AND COMMEMORATION

The third reparative measure requires the perpetrator group to admit fully to all aspects of the Genocide and its ethical wrongness, ensure meaningful knowledge and engagement with the history among its population, and promote substantial awareness of it globally. Based on the discussion of the role of truth in repair (Part 7), especially of the benefit for rehabilitation of perpetrators being confronted by the entire truth of the Genocide, recognition should comprise acknowledgment of the full details of what occurred as well as the roles of different named perpetrators and perpetrator classes, consisting of ideologues and planners; mid-level leaders; governmental, non-governmental, and quasi-governmental killers, rapists, and so on; and opportunistic participants who engaged in violence, looting, expropriation of property, kidnapping, etc. To help Turkish people understand the specific reparations to be made and the importance of making them, acknowledgment should also specify complete details of the injuries inflicted and the short- and long-term impacts of the Genocide on Armenians as individuals and a group, including delineation of current needs that can be traced to the injuries inflicted by the Genocide. To the extent possible, perpetrators down to the local level and victims should be named. The Turkish government and major non-governmental institutions with complicity in the Genocide should publicly and explicitly recognize the Genocide in its fullness, both to make the recognition explicit and to provide moral leadership to Turkish society.

Acknowledgment should also include extensive education initiatives to train Turkish citizens in the facts of the Genocide, to sensitize them to the responsibility of their society for addressing the case in the present and future, and to support better relations with Armenians. Global education should also be a priority. Counteracting the effects of denial in both contexts should be the initial focus of education efforts. All initiatives should be funded by Turkey, except in so far as they are part of school curricula in other countries.

The characteristics of a valid apology are laid out in Subsection 6.2.6. The Turkish government, on behalf of the Turkish people, and complicit non-governmental entities should make an official, valid apology to Armenians for the Genocide and its subsequent denial. The apology should be explicitly linked to other components of the reparations package, to help give them their full meaning as reparations and to confirm the sincerity of the apology.

Memorialization of the Genocide through measures such as days of remembrance, restoration of Armenian place names, museums devoted to the Genocide, and inclusion in Turkish textbooks, will help keep the Genocide present to Turkish individuals and institutions in a way that supports a continuing commitment against its legacy and provides them with regular opportunities to confirm the recognition and apology, as well as to extend education on the issue within Turkey and beyond.

Each of these measures is fully within the power of Turkey to implement. Recognition requires only an end to denial and positive official statements confirming the facts of the Genocide. Apology is likewise accomplished through a speech act that does not have a material cost, though, as discussed earlier in this report, confirmation of its genuineness depends on parallel material reparations. Commemorative events, museums, and educational initiatives do require financial resources and work, but presumably the funds and the academic and community labor currently devoted to denial, if reallocated to these positive initiatives, would more than suffice. There would therefore be no net cost to Turkey to implement these activities on a continuing basis.

8.3 SUPPORT FOR ARMENIANS AND ARMENIA

As explained in Part 2, the Genocide dramatically reduced the Armenian population and dispersed it globally. In addition, the physical and psychological effects of violence, dislocation, loss, community and family destruction, and intentional torment have permanently reduced the size, viability, and vibrancy of the general Armenian community. The conquest of the bulk of the 1918 Armenian Republic and forcing of the remainder into the Soviet Union further undercut the well-being of Armenians and their future viability as a group. While territorial and financial reparations will have a positive effect on the present challenges, it is both morally right and necessary that Turkey take further steps to ensure the basic well-being and survival of the Armenian people as an identity group and its political state, the present-day Armenian Republic. Measures of support for the Republic of Armenia should go far beyond cessation of harmful actions, such as the blockade of Armenia's border, to encompass military protection, infrastructural and financial investment, favorable trade relations, educational exchange, foreign policy advocacy, and political and economic protection from external political and economic exploitation, domination, and intimidation.

This support should continue until Armenian statehood and identity are no longer in question, and the state and people have the relative strength to ensure reasonable economic, political, and military security and independence. As such, it would require commitment of Turkish governmental resources. But, the Turkish government currently expends a great deal of domestic governmental and diplomatic resources on denial and other measures harmful to Armenia, such as the blockade of Armenia's borders and military and diplomatic support for Azerbaijan in its activities against Armenia. The militarization of the Turkish-Armenian border also requires funding and personnel. Reallocation of financial, institutional, and labor resources to support Armenia would likely require no net increase in overall Turkish expenditures or labor. For instance, current military resources deployed against Armenia could be withdrawn and held in reserve in the event of a risk to Armenia's security.³⁸⁸

8.4 REHABILITATION OF TURKEY

Turkey's governmental institutions and legal system continue to include elements deriving from the genocidal process, such as Article 301 of the Turkish Penal Code (see Section 7.2). Indeed, as indicated in Section 8.1, numerous genocide perpetrators were active participants in the formation of the Turkish Republic and its institutions. The government's extensive denial campaign within and outside Turkey both (1) expands the embedded presence of attitudes, practices, and structures reflecting the ideology driving the Armenian Genocide and advancing its goals and (2) confirms the presence of these elements. What is more, anti-Armenian prejudice is rampant in the Turkish population, and has resulted in public denigration of Armenians and discrimination against them, as well as violence.³⁸⁹ Full repair of the Armenian Genocide requires rehabilitation of Turkey so that attitudes, practices, laws, and institutional features, frameworks, and structures deriving from the Genocide or extending its impact are no longer embedded in Turkish culture and political institutions and practices. Rehabilitation is necessary so that Armenians are no longer denigrated and under threat, the Genocide can be fully ended as its vestiges are extirpated from Turkish institutions and culture, and the world can move toward a less genocidal form.

³⁸⁸ Of course, this would require complex arrangements and a long period of trust-building between Armenia and Turkey.

³⁸⁹ See, for example, Çetinoğlu, "Foundations of Non-Muslim Communities" (see Note 72); Taylor, "Is 'Armenian' an Insult?" (see Note 349); *BBC News*, "Turkish-Armenian Writer Shot Dead" (see Note 313).

Rehabilitation can be achieved through a combination of measures, including symbolic acts such as recognition and apology and the process of making material reparations when their meanings are understood. The key mechanism is the type of truth commission developed in Part 7 of this report. The rehabilitative effect of the AGTRC process has already been discussed at length in Section 7.5.

8.5 RETURN OF PROPERTY AND COMPENSATION FOR PROPERTY, DEATH, AND SUFFERING

As treated in Parts 4, 5, and 6, land, buildings, and other immovable and movable property expropriated in either phase of the Genocide must be returned if not destroyed, and must be compensated for if unavailable. That portion of businesses and other such entities that derive from Genocide expropriations must also be returned if still in existence or compensated for if not. For all possessions for which reparations are indicated, usufructus compensation for lost use of a possession from its expropriation to the present is also required. This would consist of the amount of an increase in value from appreciation, inflation, comparable interest, and so on, as well as financial and other benefits, such as business growth, that possession would have likely entailed. Forced labor and material expropriations that cannot be directly rectified, including destroyed economic structures and networks, must also be compensated in amounts adjusted for the passage of time to the present day. As discussed below, individual and group land reparations should be adjusted to allow political transfer of contiguous lands to Armenians, though particular properties outside of the reparation zone should be returned to heirs of the owners where full records are available.

In addition, compensation must be made for all Genocide-inflicted deaths; physical and psychological suffering, including through sexualized violence, forced labor, loss of family members through death or kidnapping, witnessing of violence against family and community members as well as strangers, etc.; and losses of social stability and well-being through family destruction and fragmentation, community destruction, and the destruction of spiritual, cultural, educational, and other institutions central to the lives of Armenians. Lost educational and other opportunities should also be compensated for.

From a practical standpoint, return and compensation are the most complex and challenging aspects of Armenian Genocide reparations. First, it is necessary to determine which Turkish entity and/or individuals will be responsible for providing them. It is also necessary to decide precisely which Armenian individuals and institutions will receive what part of the material reparations made. Finally, if territory can be delineated in a single process, even the estimation of only movable property, businesses, and other possessions requires detailed analysis of available evidence regarding a multitude of specific pieces of property the expropriation of which was recorded in some way. What is more, for many of the compensation pieces detailed here, a method for appropriate present-day valuation of the property in question must be developed and applied.³⁹⁰

8.5.1 Who Should Bear the Costs of Material Repair?

As demonstrated in Part 4 of the report, the government of the present Republic of Turkey is primarily responsible for repair, including all group reparations. The only additional parties are individuals who are in possession of property expropriated in the Genocide by their direct ancestors. Their direct and continued benefit from the Genocide makes them liable for return or compensation.

³⁹⁰ Marboe, “Compensation and Damages in International Law” (see Note 319).

As discussed in Subsection 6.2.4, it is the responsibility of the Turkish government and its citizenry to ensure that responsibility for funding is distributed fairly across Turkish society. This would include compensation to those private citizens as well as entities (such as businesses) that would be required to give up land, buildings, and/or other property, but who are not directly descended from or which are not the continuing or successor entities of, respectively, the individuals or entities that expropriated the property in the Genocide. For instance, a business that had purchased another business that directly expropriated property in the Genocide would be responsible for absorbing the loss from return or compensation. The government could use the well-established principle of “*eminent domain*” to take possession of land, buildings, and businesses marked for return, when compensation would be due to present owners. The approach of the government might also include a mechanism for the preservation of communities in the relocation process.

Developing a specific plan for funding would be the purview of the Turkish government, with appropriate input from its citizenry. The AGTRC could be the appropriate avenue for developing such a plan, though other processes—as long as fair—would also be legitimate.

8.5.2 How Should Material Reparations Be Distributed?

As discussed in Part 6, there is a complex relationship between individual and group harm, with group harm and repair being central not only to Armenian identity and political survival, but also to the wide-spread well-being of individuals within the group. Group reparations are therefore the focus of this report. Where records exist of specific possessions and heirs are identifiable, then return or compensation should be made to the individuals, within the general group reparations process. Compensation for death, suffering, and related impacts should be paid, however, to the group as a whole, as the justification for such compensation is the reconstitution of Armenians as a group, with long-term identity and political viability. Similarly, where property losses in a given area (village, regions, etc.) are clear from the historical record but not subject to specific individual claims, the compensation should be made to the group as a whole. Land return works on both levels, with a political transfer of territory to Armenian political sovereignty functioning as group repair, and the return of land for which past Armenian owners and their living heirs are identifiable, and their claims demonstrable, functioning as individual reparations.

Through this formulation, most material reparations made will be to the group alone. It then will fall to Armenians as a group to determine how these material resources—land, money, and businesses—will be used to promote group survival and reconstitution. Just as Turkish citizens and their institutions will have to decide who will bear the responsibility for each part of the material reparations package, Armenians will have to decide how group material reparations resources will be invested into, as well as distributed to, the range of possible beneficiaries—from the Armenian Republic and major Armenian institutions such as the Armenian Apostolic, Catholic, and Protestant Churches to the multitude of Armenian organizations and individual Armenians worldwide—in order to best promote the survival and reconstitution of the group and the well-being of the individuals within it, with regard to their short- and long-term needs. Because the goal of this report is not simply that reparations be made, but that they support the survival and reconstitution of Armenians as an identity group, at least a preliminary discussion of what constitutes a fair process is necessary here. The actual model, however, will have to be worked out through a global participatory process involving the Armenian state, Armenian people within and outside its borders, and Armenian institutions, organizations, and other entities within and outside the state borders.

A fair distribution process will have the following features:

(1) The process for participation by citizens of the Armenian Republic should be fully democratic. New mechanisms for this participation within the Republic should be developed that are independent of existing governmental structures, and these mechanisms should be overseen or run by an outside body. These mechanisms should include (a) independent outside monitoring of participation and decision-making and (b) avenues for participation of any Armenian through Diasporan mechanisms if internal participation is blocked or impeded for any reason. No governmental official should oversee or have authority over the participation of Armenian citizens in the deliberative process. Formal restrictions on the influence of wealth and of wealthy Armenian citizens on the process should be put in place.

(2) Given that the global Armenian Diaspora is largely the product of the Genocide and those in it remain deeply impacted by the Genocide, they should have a role in deliberations equal to that of the Armenian Republic and its citizens. Diasporan Armenians should be able to participate in the process through organizations representing specific constituencies, but also through mechanisms specifically for individual Armenians to participate directly. Restrictions on the influence of wealth and of wealthy Armenian Diasporan individuals and organizations on the process should be put in place.

(3) The body overseeing and monitoring resource distribution should be a disinterested external committee. This body might be formed through the United Nations in ways similar to international tribunals, or through some other appropriate mechanism. While through the participation mechanisms described in features 1 and 2 Armenians would make the distribution decisions, in case of irresolvable conflicts or power imbalances, the external body would have authority.

(4) Each distribution decision should be tested against the basic goals of the reparative process: the promotion of Armenian group survival/reconstitution and individual Armenian well-being. Because of the great disparity in the physical and identity security of Armenian communities worldwide, as well as significant variances in economic situations, relative level of need should be the key consideration. Needs will have to be ranked by determining, for instance, how the preservation of Armenian institutions supporting retention of identity among members of Diasporan communities that are heavily assimilated already compare to the basic economic needs of rural Armenians in the Republic. This ranking will have to take into account decisions about the relative weight of individual needs and group needs. What is more, the overall distribution should optimize the overall benefits to Armenians as a group and as individuals. There are further considerations specific to territorial reparations that will be addressed in the next section.

8.5.3 Determining the Territory to Be Returned and Its Post-Reparations Status

As previously discussed, there are three primary factors in determining specifically which land should be transferred to Armenians as restitution for land lost through the Armenian Genocide, including its second phase. First, large amounts of land privately held by Armenians in a lawful manner in the Ottoman Empire were expropriated through the Armenian Genocide. Second, the traditional Armenian homeland, referred to as the “Six Armenian *Vilayets* (Provinces)” (Erzerum, Van, Bitlis, Diyarbekir, Mamuret-ul-Aziz, and Kharpert/Harput³⁹¹) or “Western Armenia,” in addition to the region of Cilicia in the center of southern Asia Minor, were emptied of Armenians by deliberate government policies including the

391 See Rouben Paul Adalian, *Historical Dictionary of Armenia*, 2nd ed., “Historical Dictionaries” book series (Lanham, MD, USA: Scarecrow Press, 2010), p. 337.

Genocide. While these lands were under Ottoman governance (having been conquered centuries before the Genocide), the clear attempt to “de-Armenianize” them is grounds for an Armenian right to this land as compensation. Third, a portion of these lands was given to the 1918 Armenian Republic through a legally binding arbitration process, in recognition of the Armenian historic right to the lands, Armenian habitation of the lands, and the need for Armenians to have independence from Turkish rule that had just subjected them to genocide and clearly could never be a legitimate authority over Armenians again. The Armenian Republic was prevented from actual possession of some of this land, and lost the remainder through direct military invasion and conquest by Turkish nationalist forces.

These three points correspond to three possible ways of determining the land that should be returned to Armenians: (1) land could be returned to the heirs of individual owners of property, (2) specific areas of pre-Genocide Armenian population concentrations could be determined and returned, or (3) the lands determined by the Wilsonian Arbitration Award process could be given.

There are three problems with the first approach. (a) It would require detailed documentation or historical accounts fixing the specific lands held by hundreds of thousands of Armenian families. (b) It would not provide a basis for group reparations, as the lands in question were typically interspersed with land occupied by other groups. While Armenians might have been a majority, the emphasis on individual title as the basis of entitlement to reparations would prevent any group reparative process involving territory, and thus limit greatly the reparative effects of land return. (c) This approach would ignore the Wilsonian Arbitral Award as well as the actual possession of territory by the 1918 Armenian Republic and the violent seizure of much of this land by Turkish forces. For this approach to be properly reparative and not subject to these objections would require a way of consolidating territory into one unit. This could be accomplished by determining by actual documentation and by extrapolation the approximate amount of territory held privately by Armenians before the Genocide and designating a territory of the same size contiguous to the present Armenian Republic as the land to be given as compensation for the land expropriated through the Genocide. In this way, land return would not be direct repair, but compensation. Determination of the specific lands to be given would have to take account of historical issues—the cultural importance of certain areas to Armenians—as well as present-day needs, such as the need for access to the sea.

The second approach would not be subject to the above concerns, but the problem of pre-Genocide population interspersion would still need to be taken into account. The most appropriate way to do this would be to use pre-Genocide population figures to determine what portion of historically Armenian lands were Armenian-occupied at the time of the Genocide, and based on this to determine what portion of the six Armenian provinces and Cilicia should be returned to Armenians. Depending on the actual pre-Genocide demographics determined by careful study, the implementation of this approach might depend on offsetting pre-Genocide Armenian population centers further from the present-day Republic with non-Armenian-majority areas closer.

The third approach would simply apply the Wilsonian Arbitral Award after a nine-decade suspension. This approach has a distinct advantage over the other two approaches: the lands to be given to Armenians were determined through a painstaking process (see Subsection 5.3.1) that took into account a range of factors related to the need for an appropriate territory to ensure the future viability of the Armenian people. The territory designated for Armenians, in fact, was intentionally designed to support the goals of repair. Further, this approach is based on a post-Genocide analysis of what land should be given to

Armenians, rather than relying on pre-Genocide or historical habitation. Because the land calculation done for the Wilsonian Arbitral Award concerned what was needed for the viability of an Armenian state and the reconstitution of Armenian identity, it can be argued that it remains valid on these grounds today. It should also be noted that the awarded territory is significantly smaller than the six provinces and Cilicia, and so represents a compromise claim.

While the Wilsonian Arbitral Award is a very good solution to the problem of determining lands to be given in reparation, one objection that use of it—or either of the other two possibilities just presented—might face is that reliance on a long-past determination of territory to be returned does not take account of the current demographic realities of Armenians. If Armenians are granted extensive land reparations, will they be able to inhabit the lands at anywhere near the population density of the present-day population? The population of Turkey relative to the global number of Armenians is so disparate, with Turks greatly outnumbering Armenians much more than prior to the Genocide, that large-scale land reparations will possibly displace a substantial number of Turkish citizens and leave the lands to be inhabited by a smaller number of Armenians. This objection can be addressed in a way that follows the Subsection 6.2.4 requirement that consideration of present residents does not in itself negate reparations claims.³⁹²

In deciding (1) which of these approaches best serves reparative justice by taking account of past harms and present realities in a properly balanced way and (2) the actual territory to be returned, one issue that needs to be considered in a more complex manner than typical in the general and Armenian-specific literature on reparations is how post-genocide population densities should be taken into account in determining the size of the territory to be returned. The temptation when considering present population figures is to use a straight proportion of the populations to determine the correct proportion of claimed territory to be given to Armenians, compared to that retained by Turkey. If the present population of Turkish citizens on the land in question is, for instance, four times the number of Armenians who would occupy the land if it were given to the Armenian Republic, then proportional fairness would dictate that only one-fifth of the land in question should be returned to Armenians, to achieve a balanced population density. It would be possible to vary this approach by using the population of the Turkish Republic, approximately 70 million, and the worldwide population of Armenians, an estimated 8 million, for a similar calculation, though this would include many people on both sides who would not inhabit the land.

The problem with this kind of proportional approach is that the population figures in question are the result of (1) the demographic destruction of Armenians through the Genocide, (2) the assimilation of many Armenians to Turkish identity through the Genocide, and (3) nearly a century of Turkish population growth within secure borders, as opposed to a difficult post-Genocide situation for many Armenians that affected population growth. Thus, what appears to be a fair use of proportions today in fact rewards the perpetrator group for genocide. The demographic effect of genocide on land reparations must be balanced for—that is, the proportion used to determine how much territory contemporary Armenians are to receive as reparations should not be based on simple population figures, but must be adjusted for the effects of the Genocide. One way to do this would be to use demographic projections, such as the 20 million figure for the present-day Armenian population cited in Subsection 6.2.2 (though even this did not adjust for population losses in the first phase of the Genocide), with an adjustment of the Turkish population regarding Armenians forcibly assimilated and their progeny and other appropriate factors.

³⁹² For an elaboration of the approach presented here, see Theriault, “Repairing the Irreparable,” pp. 208-211 (see Note 310).

Another way to take account of and not reward genocidal demographic destruction, while ensuring adequate land to support long-term Armenian physical, economic, and political viability and identity survival, would be to fix an appropriately reparative ratio for adjustment, such as 1:10, so that the amount of land returned to Armenians is that on which the population is at approximately 1/10th of its current density, or of what would result on the land retained by Turkey if the population leaving returned territory were evenly distributed across Turkey. There are many variations on this basic principle; the ethically and practically optimal proportion would be determined through a deliberative process such as that provided by the AGTRC.

While the “fair disproportion” approach just discussed can solve the problem of current demography without rewarding past genocide, the actual proportion selected and the specific territories to be identified for reparation are uncertain, and cases can presumably be made for different positions on both. The optimal way to avoid this uncertainty would be to consider the Wilsonian Arbitral Award territory—or one of the other two approaches discussed above—as the appropriate balance between present-day populations and the ethical imperative not to reward genocide.

One category of territory should be exempted from any shifting of historically Armenian land in and out of a reparations package. Armenian Apostolic, Catholic, and Protestant Church lands and buildings, regardless of their location in present-day Turkey, should be returned to the respective Churches. Those on lands given to Armenians could then be governed in the manner currently used for other Church lands in Armenia. For those remaining in Turkey, either (1) the Turkish government should guarantee appropriate state protections, fund restoration of lands and buildings, respect the use of these for religious purposes as determined by the Armenian Apostolic, Catholic, and Protestant Churches, or (2) the lands should be administered by an appropriate international institution, such as the United Nations. If the first case, then Turkish governance should be overseen by an appropriate international monitor.

There is also the question of present-day inhabitants who wish to remain on their land, even if its political designation changes. Especially if worked out through the AGTRC process, some number of inhabitants could be allowed to stay on land given as reparation at the political level. There are two limitations on this, however. First, sufficient land would have to be available for Armenian returnees. Second, overall demographics resulting from the transfer of territory with allowance for current inhabitants would still have to support the function of the land as a resource for and basis of the reconstitution and future viability of Armenian political and cultural existence and identity. If the demographics were too heavily non-Armenian, then this could actually undercut preservation of Armenian identity from within the resulting state or produce internal tensions that result in a political fracturing of the state and the reduction of Armenian territory to its present level or even less. An appropriate balance would have to be struck. Suppression of the political rights of those who remain is not an option. Returned territory must be governed democratically for the outcome of return to be reparative; a repressive government would not support the well-being of Armenians individually or as a group. The last issue to be considered regarding land is its political status. There are four options presented in this report. (1) The most obvious is outright political transfer of territory to the Republic of Armenia. This is particularly appropriate if the territory to be transferred is that specified by the Wilsonian Arbitral Award, because this is precisely the land that was taken from the 1918 Armenian Republic by Turkey, and the present Republic is the continuing state of what remained of the 1918 Republic. The ceding of Wilsonian Armenia to the present Armenian state will simply complete the process that was stopped and reversed in 1920. In this way, the present Republic would simply absorb the new territory.

There are two potential objections to this approach, however. First, the majority of Armenians globally are not represented by the current Armenian Republic, nor do they have any role in its policies or decisions. Second, the significant corruption reported in the Armenian Republic³⁹³ raises strong concerns about any state process of reparations distribution. Achieving the goals of reparations—viability and reconstitution—might not be possible with a simple transfer of land to the present Republic. (2) Another option is the creation of a second independent Armenian state comprising the territory given in reparations. This leads to obvious problems, however. A political split does not support viability and reconstitution as well as a single state. Many Armenians in the Republic trace their heritages to the Genocide, but will be excluded from the returned territory unless they choose to leave the Republic. The political split will artificially divide Armenians in a manner inconsistent with prevailing sentiments, while inclusion in a single state would provide returning Armenians formal representation within the existing Republic's governmental structures. Finally, a law can be passed forbidding the Armenian government from explicitly or surreptitiously selling or ceding away land to individuals or entities within or outside its borders.

(3) Another alternative is to develop a new governmental structure for the combined territory of the Armenian Republic and reparation lands. A federated structure could preserve a measure of local independence while also guaranteeing a proportional or half share of power to Armenians taking up residence on the returned land.

The second and third way of determining land to be given as reparations (above: return of lands that had high Armenian population figures prior to the Genocide and restoration of the Wilsonian Arbitral Award territory) also require decisions about land distribution to individuals once a political transfer takes place. In some cases, land will be returned to the heirs of those who lost it in the Genocide but who retained documentation or other evidence establishing prior ownership without a reasonable doubt, such that these options subsume the first approach of exclusively individual land return, except that land given to individuals will be part of the Armenian state rather than the Turkish. As for land that is not claimed by individuals, a significant portion should be retained for national use for the benefit of the Armenian people generally, and the remaining land should be distributed among Armenians tracing their lineage through the Genocide (or, for simplicity sake, all Armenians globally), in an equitable manner. In general, though adjusted for the complexities of family size today relative to prior to the Genocide, Armenians who can document or otherwise corroborate title to specific property in areas of Turkey outside the transferred land should be awarded comparable property within the transferred territory, and others will receive an equitable share of unclaimed property. If this results in too great a disparity in land amounts awarded in favor of those with specific claims or those with unspecific claims, then the claim awards should be adjusted to make them more equitable or fully equitable. The family size adjustment will take account of how many family members there were prior to the Genocide as well as how many there are today, to balance the competing principles that the size of reparation awards should depend on the number of family members alive prior to the Genocide (with the award to be divided among living family members today) and the principle that reparations for the Genocide are due equally to all Armenians (excepting survivors, who should have special status in the process) as they were equally impacted by the Genocide. All these considerations would be adjusted based on need.

In each of these approaches, a means of providing an avenue of representation for Armenians with property in the reparations zone but who reside outside of Armenia and Turkey is crucial. Not every

393 See, for instance, Policy Forum Armenia, *State of the Nation: Corruption in Armenia*, 2013, http://georgien.ahk.de/fileadmin/ahk_georgien/Armenien/PFA_Corruption_Report_1_Armenia.pdf (accessed January 15, 2015).

Armenian would be able or willing to return, but this mere fact should not automatically disqualify an Armenian from participation in the reparations territory. Some set of criteria for allowing outside Armenians to participate and hold repaired land would have to be worked out.

There is a fourth alternative for territorial reparations, which has been put forward by Ara Papian in other contexts. This innovative approach reduces the potential backlash against reparations by Turks and provides an avenue for Armenian economic viability and regrowth.

This approach calls for an arrangement by which Turkey retains political title over the lands in question but grants to Armenians full and inalienable rights to free passage, residency (on land provided by the government), and economic activity in the lands without being subject to Turkish political authority except as reasonable (police, etc.). This might be accomplished by an international territorial lease based on a bilateral treaty under international guarantee and control. Turkey would retain sovereignty over the territory in question, but through a treaty with Armenia arranging a lease, Armenia would have full access to and use of the territory as if it had sovereignty. This arrangement would give the right to Turkish citizens to keep their citizenship and remain on the land, while Armenians would gain the right of free transit, the right to pursue economic activities, and so on. With sufficient guarantees by the international community to protect the zone from outside aggression and retention of the Turkish right to defend its borders, the whole territory could be demilitarized and put under international control. Taxation would have to be worked out. One option would be to allow revenues to go to the Armenian Republic as a form of repair, with the proviso that it would be responsible for the infrastructure and publish services in the area, while a second would be to ensure that all taxes were directly applied to services and infrastructure of the territory.

Objections to this approach include the impermanence of this resolution, the lack of Armenian political control over the land as both a practical limitation and inadequate repair at the symbolic level, and the constraints that retention of individually and corporately held land by current inhabitants would put on the availability of land for Armenians.

Given the strengths and weaknesses of the four approaches presented here, the ultimate decision of which approach to take would depend on the emphasis placed on the various consequences of each approach. For instance, if individual property rights are considered more important than political considerations, then the first approach might be appropriate. If symbolic repair and concrete political security and control are determined to be the paramount considerations, then the second or third approach might be chosen. If economic development for Armenians with minimal disruption to Turks is prioritized, then the fourth approach might be chosen.

8.5.4 Calculation of Compensation for Unavailable Movable Property and for Death and Suffering

As discussed in Part 3 of this report, these are two distinct types of harm. They are treated together here because (1) they both are addressed through financial payments and (2) at the Paris Peace Conference they were treated together in a manner that does not allow easy differentiation.

As discussed in Parts 3 and 6, compensation for death and suffering is not meant as a means to balance past harms in a complete way, but to provide some measure of offsetting the past harm with a

present penalty that can support the continued reconstitution of Armenian identity, institutions, and society. Compensation for suffering alone refers to the physical and psychological experiences of those who survived. For the purposes of this report, slavery is one form of suffering. While in other cases compensation has been based on calculations of how much labor was performed and related issues, in the Armenian case, reliable records do not exist of traditional forms of slave labor, and other forms that are difficult to quantify, such as domestic servitude and sexual slavery, were perhaps the bulk of the slavery.

There is some debate about the Ottoman-Armenian population prior to the Genocide and how many people were killed during the Genocide. Standard estimates are that about 2.5 million Armenians lived in the Ottoman Empire prior to the Genocide, with approximately 1 million in Russian Armenia and perhaps 500,000 elsewhere.³⁹⁴ The usual number given for the number killed through 1923 is 1.5 million.³⁹⁵ However, legitimate calculations range from about 1 million to more than 1.5 million.³⁹⁶ Because exact figures are not possible given the (1) limitations of pre-Genocide population counts and (2) the manner of and great extent of the killing across a large territory over a significant period of time, which as for most genocides makes getting direct individual by individual evidence of all deaths impossible, , for the purposes of the report, the AGRSG will use 1.25 million as the total number killed in the Genocide, though members believe 1.5 million is most likely the accurate figure. This figure does not include those killed in the 1894-1896 Massacres or the 1909 Adana Massacre, which are beyond the scope of this report.

While virtually all Ottoman Armenians who were not killed in the Genocide suffered in some way through it—the majority through the deportations—and many Russian Armenians suffered as well—especially with Atatürk’s invasion of the 1918 Armenian Republic—for the purposes of this report, the AGRSG will use the number 1 million as the total number of those who survived but suffered in varying degrees. Again, it is impossible to fix the suffering of each individual precisely, but from eyewitness reports such as those in the U.S. Archives,³⁹⁷ it is clear that the average level of suffering was extreme. It very often, if not virtually always, included frequent rape for women and girls.

One approach to fix the death and suffering compensation would be to use the *Marootian et al. v. New York Life Insurance Company* case³⁹⁸ calculations as a basis. New York Life has revealed that it wrote about 8,000 policies in the Ottoman Empire (many to Armenians) at a total value of about US\$10,000,000.³⁹⁹ Based on this, one could see the value placed on a human life at that time in that place as approximately US\$1,250. Even given that no cash equivalent for a human life is possible, this might appear to be a strikingly low figure. But it must be kept in mind that compensation for death is not meant to provide some equivalent to what was lost, but to provide the victim group the resources needed to mitigate at least to some extent the impact of demographic reduction. One might consider the suffering value as half the death value, that is, US\$625. If it is assumed, reasonably, that all who died suffered, then each death in the Genocide should be compensated by US\$1,875, and each survivor who suffered US\$625. This would make the total death and suffering compensation figure in 1915 dollars (1.25 million x US\$1,875) + (1 million x US\$625) = US\$2,343,750,000 + US\$625,000,000 = US\$2,968,750,000. Adjusting this

394 As explained in Subsection 6.2.2, the population must be estimated because of the nature of pre-Genocide censuses.

395 Adalian, “The Armenian Genocide,” p. 132 (see Note 180).

396 As consideration of the various accounts of the Armenian Genocide referenced in this report would show.

397 Sarafian, *United States Official Records* (see Note 62).

398 *Marootian et al. v. New York Life Insurance Company*, December 3, 2001, U.S. District Court, Central District of Los Angeles, CV-99-12073.

399 Use of the U.S. dollar rather than Turkish lira is preferable because the U.S. currency has been stable since prior to 1915.

forward using the New York Life calculation method, this would mean approximately US\$33,358,953,125; adjusting forward using the U.S. Bureau of Labor Statistics U.S. Dollar Inflation Calculator from 1915 to 2014 (a factor of approximately 23.59)⁴⁰⁰ would yield US\$70,030,167,080.

An alternative would be to use the final calculations of payments for the *Marootian et al. v. New York Life* case, which included approximately US\$8,000,000 to approximately 2,500 policy holders or their beneficiaries (on average US\$3,200 per policy holder in contemporary U.S. dollars) and US\$3,000,000 divided among Armenian organizations (on average US\$1,200 per policy holder). The total payment was thus approximately US\$4,400 per policy holder. To pay this per death plus half for suffering and then half per survivor for suffering would mean (US\$4,400 x 1.25 million) + (US\$2,200 x 1.25 million) + (US\$2,200 x 1 million) = US\$5,500,000,000 + US\$2,750,000,000 + US\$2,200,000,000 = US\$10,450,000,000.

The property loss calculation is more complicated because sufficient records are not available. Recent scholarship offers hope that more and more property expropriations can be traced, for instance by using Turkish source records.⁴⁰¹ But even without direct records, there is a good deal of indirect evidence from which it is possible to estimate, if conservatively, the scale of the overall property expropriation. For instance, through careful study of average possessions of Armenians, including buildings, in the Ottoman Empire based on contemporaneous documentation, it might be possible to provide a reasonable estimate of property losses.

In addition, individuals sometimes have evidence of individual property losses. Those who can prove property loss through documentation or corroborating testimony should receive restitution for this property. Such individual amounts could be used to extrapolate to the total group compensation amount.

Property loss calculations would also include usufructus (for lost business income and rent for land and buildings taken), though the amount would likely have to be a general estimate.

A crucial additional damage that should be addressed is the destruction of the Armenian social, economic, political, educational, and cultural infrastructure, which includes but goes beyond material property destroyed, to encompass the organization of social relations, practices, etc. Calculation of the restitution due for these losses should be made by assessments of what is needed now to build up these aspects of Armenian existence.

Without a full process dealing with claims and evidence as it exists, it is not possible to give an estimate of the property loss and other damages. However, a previous calculation based on data gathered after the Genocide was made, by the Special Committee of the First Sub-Committee of the Paris Peace Conference's Commission on Reparations of Damage (Valuation of Damage),⁴⁰² using data submitted by the Armenian delegation. It should be noted that this process included a death benefit (as indicated in the note below), which could be subtracted from it and addressed by one of the calculations above. It also included funding to help re-establish family structures and reconstruction of losses, which in part could address the social infrastructure damage discussed in the previous paragraph.

400 Available at U.S. Department of Labor, Bureau of Labor Statistics, CPI Inflation Calculator, http://www.bls.gov/data/inflation_calculator.htm (accessed September 1, 2014).

401 See Üngör and Polatel, *Confiscation and Destruction* (see Note 39).

402 See Burnett, *Reparation at the Paris Peace Conference*, pp. 583-590 (see Note 69).

The members of the Special Committee were General McKinstry (United States), Colonel Peel (British Empire), and M. Jouasset (France), with H. James (United States) and M. P. Laure (France) serving as its secretaries.⁴⁰³ The Special Committee's April 14, 1919, report included the following proposal for Armenian reparations:⁴⁰⁴

I. Turkish Armenia	
a) Losses suffered by the [rural] population	4,601,600,000 francs
b) Damage suffered by urban population and their needs for reconstruction (merchants, manufacturers and artisans)	3,235,550,000 francs
c) General damage	325,000,000 francs
	840,000,000 francs
	5,596,350,000 francs
II. Republic of Armenia and the provinces of the Caucasus inhabited by Armenians	
a) Localities absolutely devastated and destroyed, whose population has been driven out	1,831,872,000 francs
b) Localities not abandoned by the population	1,293,600,000 francs
c) General losses	30,000,000 francs
	240,000,000 francs
	512,000,000 francs
	625,000,000 francs
TOTAL	19,130,972,000 francs

NOTES

The claim includes reparation, at 5,000 francs each, for 1,100,000 civilians massacred and 35,000 soldiers killed, in addition to claims for injuries, deportations, etc., regardless of whether there are heirs or dependents alive.

The claim also provides for re-establishing, with all their property, as many families as were comprised by the original people.

The exchange rate on April 14, 1919, was 1 U.S. dollar = 5.18 francs, so this total in U.S. dollars was US\$3,693,239,768.34. Adjusting this forward through the rate worked out in *Marootian et al. v. New York Life Insurance Company*, the sum would be approximately US\$41,500,000,000. Adjusting forward with the U.S. Bureau of Labor Statistics U.S. Dollar Inflation Calculator yields approximately US\$87,120,217,000. These amounts do not cover damages for 1919-1923, so further calculations would have to be made. To cover death/suffering and property damage/loss in the Kars region, Cilicia, and Smyrna during this

403 *Ibid.*

404 *Ibid.*

period, an additional 20 percent could be added, bringing the figure to either US\$49,800,000,000 or US\$104,544,260,400, respectively.

In addition to the New York Life and U.S. Bureau of Labor Statistics methods, other methods for calculation of losses and death and suffering compensation at the time of the Genocide as well as forward valuation are possible. The actual reparations figure would have to be selected from what is given in this report or through another method, as decided in the legal decision, political agreement, or AGTRC recommendation used to determine the final reparations package.

For death and suffering payments, a number of options exist. The total reparation payment can be divided among the Armenian Republic and various non-governmental religious, educational, cultural, and political organizations in the Republic and Diaspora (as crucial to community cohesion and infrastructure, but also as avenues for funding to positively affect Armenians' well-being), as well as possibly being used for economic investment in the Armenian economy (for instance, as capital for small business grants or loans, etc.). It could be divided among all living Armenians today as individual or family payments, or could be paid to descendants of Genocide victims based on claims of how many family members were lost or suffered through the Genocide, as corroborated by documentation and testimony, including for instance immigration documentation. Or, it could be distributed through a combination, with a percentage of the total payment going to the Armenian government and non-governmental entities, and the remainder divided among Armenians equally or on the basis of lost family members in the Genocide. Payments could also be based on financial need, such that an equal total would be available to all Armenians, and those in need would receive all or part of that total, with the balance plus the allocations to those who are not in need going to Armenian governmental and non-governmental organization recipients. Need-based distributions should be a priority for those Armenians in the Republic whose economic situation, whether directly traceable to the Genocide or to contemporary Turkish oppression, as through the economic blockade of Armenia, is difficult or dire. A glaring challenge today is to provide funding for basic needs as well as economic development to support the economic independence of women and girls in Armenia, with the current national domestic violence problem and risk of being trafficked into sexual and other servitude. Given the resonances with the victimization of women and girls in the Genocide, it would be appropriate to target some part of reparations funds to supporting women facing abuse and to improving the general standard of living, especially that of the poorest segments of society, so that women and girls are less vulnerable to trafficking recruitment or coercion.

The same concerns regarding Armenian Republic governmental control of the distribution process of land reparation apply to financial compensation. One of the same mechanisms—an external oversight board, a federated system such that the portion of compensation due those outside the Republic would be administered by those outside the Republic, etc.—could be used.

CLOSING REMARK

Through this report's findings that the Turkish state and society should make a comprehensive set of reparations to Armenians, its treatment of how the reparative process could work, and its detailing of specific reparations that should be made, the AGRSG has shown that the universal commitment to human dignity and to human rights requires the recognition of both Armenians' suffering and their right to equality of treatment when it comes to restitution and compensation. Given the justness of reparations and their importance, the AGRSG would like to give life to the philosophy of human rights by ensuring not only that the norms are invoked and proclamations remembered, but also that concrete steps are taken to rehabilitate the victims and to make appropriate reparations to them. The general principles of law *ex injuria non oritur jus* and the prohibition of unjust enrichment must be vindicated. The cultural heritage of the Armenians must return to the Armenians. And generations of victims who have suffered the traumata of genocide and exile must have the consequences of these crimes addressed.

ABOUT THE ARMENIAN GENOCIDE REPARATIONS STUDY GROUP

Funded initially by a grant from the Armenian Revolutionary Federation-Dashnaksutyun to do an independent study of the issue of reparations for the Armenian Genocide, the Armenian Genocide Reparations Study Group was first convened in 2007. Its members are Alfred de Zayas, Jermaine O. McCalpin, Ara Papian, and Henry C. Theriault (Chair). George Aghjayan has served as a special consultant. The AGRSG released a preliminary draft report in 2009, which was followed by three 2010 programs on the report, featuring members of the AGRSG, at George Mason University in the United States (May 15), at the University of California Los Angeles School of Law (October 23), and in Yerevan, Armenia (December 11).

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Alfred de Zayas received his J.D. from Harvard University and his D.Phil. in History from Göttingen. He is a member of the New York and Florida Bars. He is a retired senior lawyer with the United Nations High Commissioner for Human Rights, Geneva; former Secretary of the U.N. Human Rights Committee; and former Chief of the Human Rights Petitions Department. The sections of this study written by Dr. de Zayas were drafted between 2009 and 2012, before his appointment in May 2012 as the first Independent Expert on the Promotion of a Democratic and Equitable International Order by the Human Rights Council. In this position, Dr. de Zayas has authored multiple reports, testified numerous times, and made frequent public recommendations toward democracy and equity. From 2006 to 2010 and 2013 to the present, he has been President of

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Dr. de Zayas was lead author of the “Terminology” section, Part 4, and the “Closing Remark.”

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Jermaine McCalpin is currently Associate Director of the Center for Caribbean Thought and Lecturer of Transitional Justice in the Department of Government, University of the West Indies, Mona. He received his B.Sc. in Political Science and International Relations and M.Sc. from the University of the West Indies, Mona. He earned his M.A. and Ph.D. in Political Science from Brown University. Dr. McCalpin specializes in Africana political philosophy, Caribbean political thought, and transitional justice. His research interests include truth commissions and political accountability, as well as reparations for slavery, Native American extermination, and the Armenian Genocide. McCalpin has written on the South African Truth and Reconciliation Commission and its development of a restorative justice approach to South Africa's transitional justice issues as well as

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Dr. McCalpin was lead author of Part 7.

ARA PAPIAN



Ara Papian is President of the Modus Vivendi Research Center, which focuses on Armenian political issues. From 2000 to 2006, Papian served as Ambassador Extraordinary and Plenipotentiary of the Republic of Armenia to Canada. Prior to this appointment, he was the Spokesman and Head of the Public Affairs Department of the Ministry of Foreign Affairs of the Republic of Armenia. From 1989 to 1991, Papian was Professor of Armenian Language and Literature at the Melkonian Educational Institute in Nicosia, Cyprus, and taught Armenian history and the history of Iran at Yerevan State University from 1987 to 1989 and from 1998 to 2000, respectively. Papian graduated from the Department of Oriental Studies of Yerevan State University (1984) and completed a postgraduate degree course of studies in Armenian History at Yerevan State University (1989).

He graduated from the Diplomatic Academy of the Russian Federation (1994, Moscow) and from the NATO Defense College (1998, Rome). He also completed a course of study in Public Diplomacy (1999, Oxford). From 1981 to 1982 and then from 1984 to 1986, Papian served as a military interpreter/translator in Afghanistan. He was decorated seven times with military awards.

Ambassador Papian was lead author of Part 5 and co-author of Part 8.

HENRY C. THERIAULT

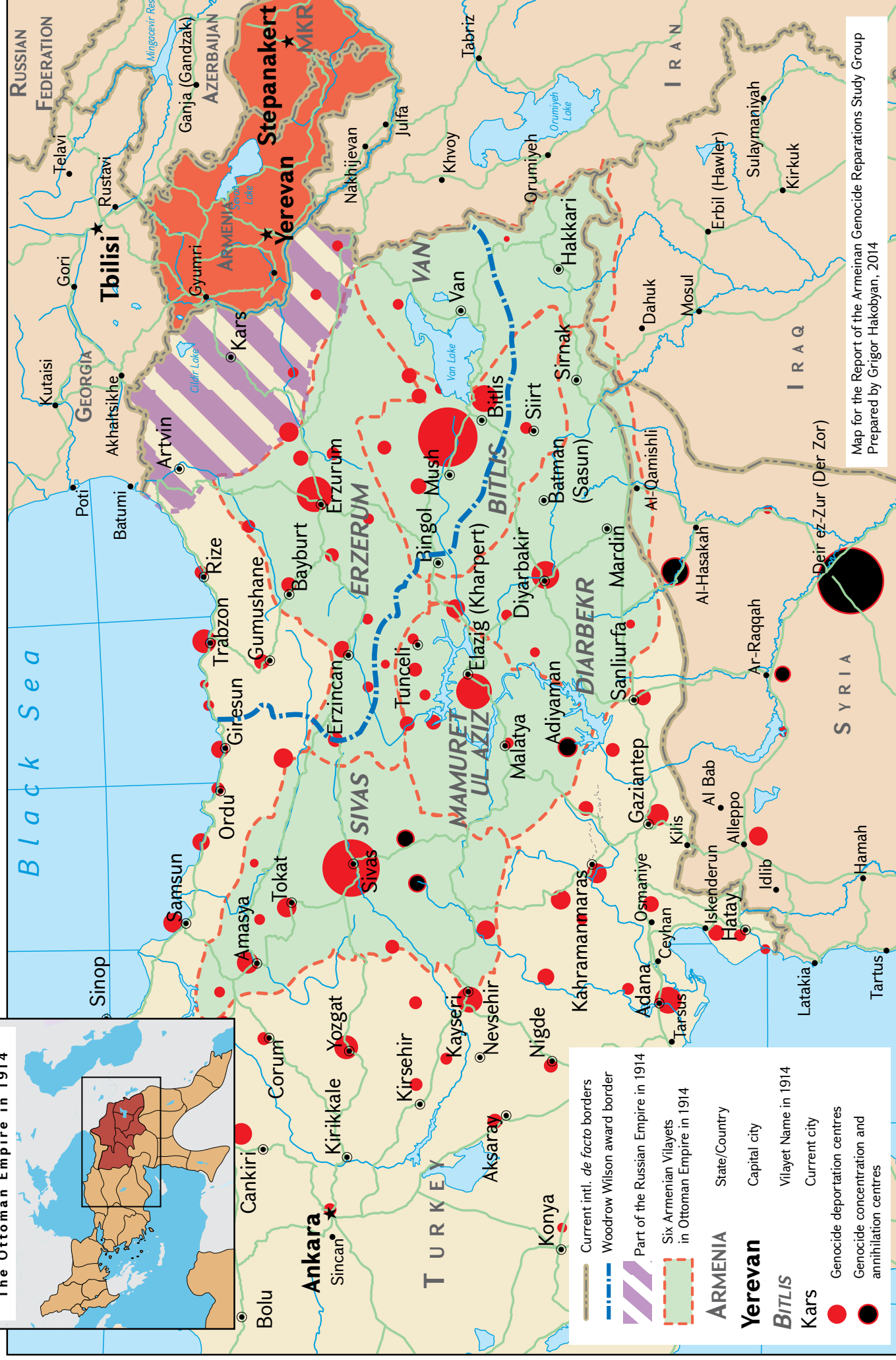
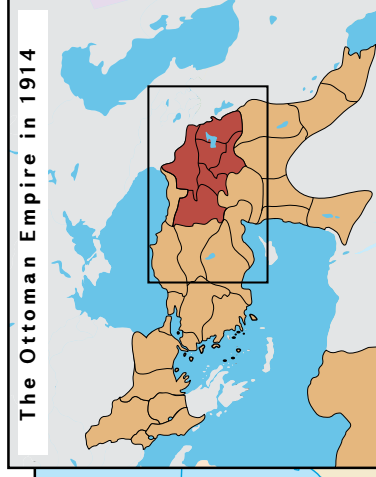


Henry Theriault is currently Professor in and Chair of the Philosophy Department at Worcester State University in the United States, where he has taught since 1998. From 1999 to 2007, he coordinated the University's Center for the Study of Human Rights. He earned his B.A. in English from Princeton University and his Ph.D. in Philosophy from the University of Massachusetts, with a specialization in social and political philosophy. His research focuses on reparations, victim-perpetrator relations, genocide denial, genocide prevention, and mass violence against women and girls. He has published numerous journal articles and chapters in the area of genocide studies, including "Difficult Dialogues: Perpetrators, Victims, Power, and the Legacies of Mass Violence," in *The Humanities and Healing* (2014); "Repairing the Irreparable: 'Impossible' Harms

and the Complexities of Justice," in *Prácticas Genocidas y Violencia Estatal: en Perspectiva Transdisciplinar* (2014); "Hell Is for Children: The Impact of Genocide on Young Armenians," in *Genocide: A Critical Bibliographic Review*, Vol. 10 (2014); "Reparations for Genocide: Group Harm and the Limits of Liberal Individualism," *International Criminal Law Review* 14:2 (2014); "Yüzyıl Türkiye'si İçin Ermeni Soykırımı Sorunu: Sorumluluk ve Çözüme Yönelik Tazmin" ("The Challenge of the Armenian Genocide for 21st Century Turkey: Responsibility and Reparation Toward Resolution"), *Öncesi ve Sonrası ile 1915: Inkâr ve Yüzleşme: Inkâr ve Yüzleşme Sempozyumu 24-25 Nisan 2010* (2013); "Shared Burdens and Perpetrator-Victim Group Conciliation," in *Genocide, Risk and Resilience: An Interdisciplinary Approach* (2013); and "Denial of Ongoing Atrocities as a Rationale for Not Attempting to Prevent or Intervene," in *Genocide: A Critical Bibliographic Review*, Vol. 9 (2013). He has lectured and given panel papers around the world, including in Armenia, Turkey, the Mountainous Karabakh Republic, Lebanon, Australia, Japan, South Korea, Rwanda, Britain, France, Belgium, Italy, Argentina, and across the United States. He is founding co-editor of the peer-reviewed *Genocide Studies International* and was recently named co-editor of Transaction Publishers' *Genocide: A Critical Bibliographic Review*. From 2007-2012 he served as co-editor of *Genocide Studies and Prevention*, and was guest editor of the *International Criminal Law Review* special issue on "Armenian Genocide Reparations" (14:2, 2014), and the *Armenian Review* special issue on the "New Global Reparations Movement" (53:1-4, 2012).

Dr. Theriault served as Chair of the AGRSG and was lead author of the Introduction and Parts 1-3 and 6, and co-author of Part 8.

Map for the Report of the Armeinan Genocide Reparations Study Group



Map for the Report of the Armenian Genocide Reparations Study Group
Prepared by Grigor Hakobyan, 2014



- Turkish-Armenian boundary
- Other international boundaries
- Unmarked international boundaries
- Old Turkish-Russian boundary
- Village boundaries
- Sandjak boundaries
- Kaza boundaries
- Railways, broad gauges
- Railways, narrow gauge
- Important highways
- Trails
- Important cities
- Other cities and villages
- Peaks and passes on Armenian boundary
- Other peaks
- (All elevations approximate, in meters)