

Financial, Territorial, and Moral Reparations for the 1915 Armenian Massacres*

George S. Yacoubian, Jr., J.D., Ph.D.
Law Offices of George S. Yacoubian, Jr., LLC

Abstract

The Armenian massacres of 1915 are generally considered the first genocide of the 20th century.¹ More than two decades later, history repeated itself in Nazi Germany.² By 1945, the Nazis had conquered most of Europe, and the majority of European Jews had been killed as part of the Final Solution. In response to these atrocities, the Convention on the Prevention

*George S. Yacoubian, Jr., is a genocide researcher and a former prosecutor with the Philadelphia Office of the District Attorney. He is currently in private practice, specializing in criminal defense law, international criminal defense law, and family law. Address all correspondence to george@yacoubian-law.com.

¹ See e.g., Vahakn N. Dadrian, *The History of the Armenian Genocide* (Berghahn Books 1995); Richard Hovanissian, *The Armenian Genocide in Perspective* (Transaction, Inc. 1987).

² Helen Fein, *Accounting for Genocide* (U. Chi. Press 1979).

and Punishment of the Crime of Genocide³ came into effect on January 12, 1951. No state has ever asserted that genocide is not a crime, and the definition contained in Article II of the Genocide Convention is binding international law.

The term “reparation” denotes both restitution and compensation.⁴ The purpose of this manuscript is to address whether reparations are an appropriate remedy for genocidal victims after criminal responsibility has been established. Part I of this essay, first, examines victims rights in criminology and international human rights law generally, and second, examines the literature on restitution and compensation with respect to genocide specifically. Part II, first, summarizes the 1915 Armenian Genocide, and second, describes the Armenian reparations movement. Part III discusses the feasibility and practical consequences of providing restitution and/or compensation for the Armenian Genocide. Part IV concludes that, first, there is a general consensus within the international community that genocide was committed by the Turkish

³ Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1948), 78 U.N.T.S. 277 [hereinafter Genocide Convention].

⁴ Parliament of Victoria, Law Reform Committee, *Restitution for victims of crime: interim report* (PP 54, 1993) at xv and 13.

government against Armenians in 1915, and second, that because the 1915 Turkish government is guilty of genocide, acknowledgement of the massacres by the modern-day Turkish government is an appropriate resolution to an issue that will likely not be satisfactorily resolved by litigation.

Introduction

The Armenian massacres of 1915, which claimed the lives of approximately 1.5 million Armenians, are generally considered the first genocide of the 20th century.⁵ More than two decades later, history repeated itself in Nazi Germany.⁶ In 1933, the Jewish population of Europe was approximately 9.5 million.⁷ This number represented more than 60% of the world's Jewish population at that time.⁸ By 1945, the Nazis had conquered most of Europe, and the majority of European Jews – two out of every three – had been killed as part of the Final Solution. In response to both of these atrocities, the Convention on the Prevention and

⁵ See e.g., Vahakn N. Dadrian, *The History of the Armenian Genocide* (Berghahn Books 1995); Richard Hovanissian, *The Armenian Genocide in Perspective* (Transaction, Inc. 1987).

⁶ Helen Fein, *Accounting for Genocide* (U. Chi. Press 1979).

⁷ *Id.*

⁸ *Id.*

Punishment of the Crime of Genocide⁹ came into effect on January 12, 1951. No state has ever asserted that genocide is not a crime, and the definition contained in Article II of the Genocide Convention is binding international law. Today, there are 133 state parties to the Genocide Convention.¹⁰

Despite the ratification of the Genocide Convention, genocide and genocide-like crimes have been perpetrated repeatedly during the past six decades. Victimized groups have included more than one million Bengali in 1971¹¹; 150,000 Hutu in Burundi in 1972¹²; 1.5 million Cambodians between 1975 and 1979¹³; 200,000 Bosnian Muslims and Croats in the Former Yugoslavia in 1992¹⁴; 800,000 Tutsi in

⁹ Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1948), 78 U.N.T.S. 277 [hereinafter Genocide Convention].

¹⁰ United Nations, *United Nations Treaty Collection*, www.unhchr.ch/html/menu3/b/treaty1gen.htm (accessed Nov. 24, 2008).

¹¹ Frank Chalk & Kurt Jonassohn, *The History and Sociology of Genocide* (Yale U. Press 1990); Leo Kuper, *Genocide: Its Political Use in the Twentieth Century* (Yale U. Press 1981).

¹² Leo Kuper, *The Pity of It All: Polarisation of Racial and Ethnic Relations* (U. Minn. Press 1977).

¹³ Ben Kiernan, *The Cambodian Genocide: Issues and Responses*, in *Genocide: Conceptual and Historical Dimensions* (George J. Andreopoulos ed., 1994).

¹⁴ M. Cherif Bassiouni, *The Commission of Experts Established Pursuant to Security Council Resolution 780: Investigating Violations of International Humanitarian Law in the Former Yugoslavia*, in *The Prosecution of International Crimes* (Roger S. Clark & Madeleine Sann eds., 1996).

Rwanda in 1994;¹⁵ and 400,000 Sudanese civilians in Darfur in February 2003.¹⁶ Despite the existence of legislation designed to prevent genocide, and the emergence of mechanisms to prosecute individuals for genocidal behavior – the International Criminal Court – killings continue. Explaining *why* genocide occurs is not the focus of this paper. Rather, with an emphasis on the Armenian Genocide, this manuscript discusses the extent to which victimizers should be required to provide symbolic, financial, and/or territorial reparations to victimized groups once criminal culpability has been satisfied.

The term “reparation” denotes both restitution and compensation.¹⁷ Obligations to make restitution and obligations to pay compensation are legal responses to real-world events. When criminal courts order restitution, they are requiring defendants to relinquish gains to the claimant.¹⁸ In its narrowest sense, restitution means the restoration of an item of property to its lawful owner. When courts order compensation, they order defendants to compensate the claimant for a realized loss.¹⁹ Compensation thus requires the victimizer to indemnify the victim for the injury caused as a result of the offender’s criminal conduct.

¹⁵ Alain Destexhe, *Rwanda and Genocide in the Twentieth Century* (N.Y. U. Press 1995); George Prunier, *The Rwanda Crisis: History of Genocide* (Colum. U. Press 1995).

¹⁶ See e.g. www.genocideindarfur.net.

¹⁷ Parliament of Victoria, Law Reform Committee, *Restitution for victims of crime: interim report* (PP 54, 1993) at xv and 13.

¹⁸ *Id.*

¹⁹ *Id.*

Reparations are triggered by a variety of causative events. Broadly speaking, obligations to make reparations are triggered by two such events: 1) wrongs; or 2) unjust enrichment, whereby one party is unjustly enriched at the expense of another.

While there is no specific reparation (restitution or compensation) provision in the Genocide Convention, Article IV states that, “persons committing genocide or any of the other acts enumerated in Article III shall be punished. . . ,”²⁰ while Article V holds that States must, “provide effective penalties for persons guilty of genocide.”²¹ Moreover, Article VIII holds that States and the United Nations can, “take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide.”²² While reparations are not punishment *per se*, these Articles can be broadly interpreted as potentially requiring restitution and/or compensation to genocidal victims as part of any sanction imposed.

The purpose of this manuscript is to address whether reparations (restitution and/or compensation) are an appropriate remedy for genocidal victims after criminal responsibility has been established through either criminal prosecutions (e.g., Holocaust) or general consensus (e.g., Armenia). Part I of this essay, first, examines victims rights in criminology and international human rights law

²⁰ *Supra* note 6, at Art. IV.

²¹ *Id.* at Art. V.

²² *Id.* at Art. VIII.

generally, and second, examines the literature on restitution and compensation with respect to genocide specifically. Part II, first, summarizes the 1915 Armenian Genocide, and second, describes the Armenian reparations movement. Part III discusses the feasibility and practical consequences of providing restitution and/or compensation for the Armenian Genocide. Part IV concludes that, first, there is a general consensus within the international community that genocide was committed by the Turkish government against Armenians in 1915, and second, that because the 1915 Turkish government is guilty of genocide, acknowledgement of the massacres by the modern-day Turkish government is an appropriate resolution to an issue that will likely not be satisfactorily resolved by litigation.

Victimology and Victims Rights

International Human Rights Law

In the 1980s, victimology evolved as a sub-discipline within the broader discipline of criminology and fostered an ideology of anti-offender rhetoric and retribution. Several scholars established a “critical victimology.”²³ Although

²³ See e.g., R.I. Mawby & Sandra Walkate, *Critical Victimology* (Sage Publications 2004); David Kauzlarich, “Toward a Victimology of State Crime,” 10 *Critical Criminology* 173 (2002); Ezzat A. Fattah, *Towards a Critical Victimology* (Martin’s Press 1992); David Miers, “Positivist Criminology: A Critique,” 1 *International Rev. of Victimology* 3 (1989); Sandra Walkate, *Victimology: the Victim and the Criminal Justice Process*

differing in their approaches, most of these scholars sought a victimology less beholden to the promotion of punishment and a naive acceptance of state-definitions of law, crime, and victimhood. More specifically, critical victimology: 1) examines the role of power in defining victims and victimization; 2) draws attention to unrecognized victims and crimes, particularly those victimized by state or corporate actors; and 3) explores the material conditions under which some victim movements successfully gain acknowledgment of their suffering while others are ignored. In this sense, critical victimology fostered awareness of the role of power and, in particular, the power of the state, in both processes of victimization and societal responses to those persons or parties designated as “victims.” Together, these perspectives provide tools for understanding the daily operations of victim movements as they challenge state actors and strategize reparations demands.

In November 1985, the United Nations General Assembly (GA) adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.²⁴ Since then, this landmark document, which all member states are required to follow, has served as the basis for victim

(Unwin Hyman 1989); Robert Elias, *The Politics of Victimization: Victims, Victimology and Human Rights* (Oxford Univ. Press 1986).

²⁴ The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of November 29, 1985, http://www.unhchr.ch/html/menu3/b/h_comp49.htm (accessed October 2, 2008) [hereinafter the Victims of Crime Declaration].

services reform throughout the world. Article 8 of the Victims of Crime Declaration states that, “offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims, their families or dependants.”²⁵ Article 8 also states that, “such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.”²⁶ Most importantly, Article 11 also provides a provision whereby historical wrongs can be addressed by government successors. Specifically, “where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.”²⁷ This concept of “successor in title” has its roots in real property law, whereby an entity that inherits land can enjoy the benefit of it, but also must be responsible for its burdens. The doctrine that servitudes are rights that “run with the land” has been incorporated into the concept of international servitudes. For example, in the Free Zones of Upper Savoy and District of Gex case, the Permanent Court of International Justice held that France, which had acquired territory from Sardinia, was obliged to perform a

²⁵ *Id.* at Art. 8.

²⁶ *Id.*

²⁷ *Supra* note 21, at Art. 11.

duty undertaken by Sardinia to maintain a customs-free zone in the territory concerned.²⁸

Reparations for Human Rights Violations

The concept of reparations is rooted in natural law, the common law, and international law. It is an equitable principle that the beneficiary of an ill-gotten gain should make restitution, both as an act of contrition and good will, but also simply to restore the victim to some part of their previous life.²⁹ A political matter when related to the specific context of war reparations, it is generally “winners” who demand restitution from “losers.” International law of reparations is dominated by Jewish claims for reparations against Germany and other countries,³⁰ but this is not the limit of reparations claims. Even in the context of the Second World War, reparations have been paid to others, including \$1.2 billion to Americans of Japanese descent for their imprisonment and loss of their lands,³¹ a parallel settlement

²⁸ Michael Akenhurst, *A Modern Introduction to International Law* (7th ed. 1997), at 179.

²⁹ Carl Bergmann, *The History of Reparations* (Houghton Mifflin 1927).

³⁰ Christian Pross, Belinda Cooper & Erich H. Loewy, *Paying For The Past: The Struggle Over Reparations for Surviving Victims of The Nazi Terror* (Johns Hopkins Univ. Press 1998).

³¹ See e.g., Mitchell T. Maki, Harry H. Kitano & Megan S. Berthold, *Achieving The Impossible Dream: How Japanese Americans Obtained Redress* (Univ. of Illinois Press 1999); Roger Daniels, Sandra Taylor, & Harry Kitano, *Japanese Americans: From Relocation To Redress* (Univ. of Utah Press 1986).

to Japanese Canadians,³² and reparations for Korean women forced into prostitution by the Japanese army.³³ Other European claims, including those of the Romanians subjected to mass extermination in concentration camps, have failed.³⁴ While none of the aforementioned claims for reparations compare to the Jewish Holocaust, their successes and failures nevertheless represent important advances in human rights law.

The original post-Second World War German reparations law – Law Number 59 on Restitution of Property Stolen in the Course of the Aryanization of the Economy – was adopted by the U.S. military government and imposed on Germany in November 1947.³⁵ However, within the modern world, liberal democracies have used the language of reparations in making voluntary payments through various statutory regimes to their own indigenous or minority populations. American and Canadian payments to Japanese citizens as reparations for wartime injustice are the most extensive example,³⁶ although many payments to

³² Roy M. Kobayashi, *Justice In Our Time: The Japanese Canadian Redress Settlement* (Talonbooks 1994).

³³ Tong Yu, "Reparations for Former Comfort Women of World War II," 36 *Harv. Intl. L.J.* 528 (1995).

³⁴ Barry A. Fisher, "No Roads Lead to Rom: The Fate of the Romani People Under the Nazis and in Post-War Restitution," 20 *Whittier L. Rev.* 513 (1999).

³⁵ *Supra* note 27.

³⁶ *Id.*

indigenous peoples are broadly of this type.³⁷ While these Japanese reparation claims included complex litigation strategies, the final reparations settlements were voted by the U.S. Congress and the Canadian Parliament.³⁸

Even before the defeat of the Nazis, plans were in motion to claim reparations and restitution on behalf of Jewish victims. These plans were evident in several publications, including Robinson's (1944) *Indemnification and Reparations*,³⁹ Moses's (1944) *Jewish Post-War Claims*,⁴⁰ and Goldschmidt's (1945) *Legal Claims against Germany*.⁴¹ However, Jewish reparations and restitution claims were not universally embraced by all of the Allied nations. The US, which found itself in a stronger economic position than its European allies after the war ended and which held an

³⁷ See e.g., Carter D. Frantz, "Getting Back What Was Theirs? The Reparation Mechanisms for the Land Rights Claims of the Maori and the Navajo," 16 Dickinson J. Intl. L. 489 (1998); Jennifer M.L. Chock, "One Hundred Years of Illegitimacy: International Legal Analysis of the Illegal Overthrow of the Hawaiian Monarchy, Hawaii's Annexation, and Possible Reparations," 17 U. of Haw. L.R. 463 (1995).

³⁸ Maki, Kitano & Berthold, *supra* note 28, at 121-36 (1999); Barbara L. Tang, "The Japanese Internment and Reparations: Creating a Judicial or Statutory Cause of Action Against the Federal Government for Constitutional Violations," 21 Loyola L.A. L. Rev. 979 (1988); Mari J. Matsuda, "Looking to the Bottom: Critical Legal Studies and Reparations," 22 Harvard Comparative Law Rev 323 (1987).

³⁹ Robinson, Nehemiah, *Indemnification and Reparations-Jewish Aspects* (Institute of Jewish Affairs: 1944).

⁴⁰ Moses Siegfried, *Jewish Post-War Claims* (Irgun Olej Merkaz Europa 1944).

⁴¹ Siegfried Goldschmidt, *Legal Claims Against Germany* (The Dryden Press 1945).

ideological commitment to the sanctity of private property, proved early on to be the nation most supportive of reparations and restitution.⁴² This is reflected in the development of American Military Law No. 59 in 1947,⁴³ which responded to Jewish demands by setting up a process for the restitution of Jewish property and was adapted to the French and British military zones in subsequent years before it was developed into a common law for all of West Germany in 1949 (Military Government of Germany 1948).⁴⁴ Military Law No. 59 and its later incarnations were, however, imperfect since they were unevenly applied across the American zone and often relied on arbitrary local interpretations of the law's requirements.⁴⁵ They also provided only a partial response to the harms of Nazism because they failed to take into account the broader costs of the Holocaust, aside from those resulting from the theft of Jewish property.⁴⁶

⁴² Goschler, Constantin (1991) "The United States and Wiedergutmachung for Victims of Nazi Persecution: From Leadership to Disengagement," in A. Frohn, éd. *Holocaust and Shilumim: The Policy of Wiedergutmachung in the Early 1950s*. Washington, DC: German Historical Institute.

⁴³ Jay H. Geller, *Jews in Post-Holocaust Germany, 1945-1953* (Cambridge Univ. Press 1995).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

Genocide in Armenia

For three thousand years, a thriving Armenian community had existed inside the vast region of the Middle East, bordered by the Black, Mediterranean and Caspian Seas. The area, known as Asia Minor, stands at the crossroads of Europe, Asia, and Africa. Despite repeated occupations, Armenian pride and cultural identity never wavered. The snow-capped peak of Mount Ararat became its focal point and by 600 B.C. Armenia sprang into being. By the 10th century, Armenians had established a new capital at Ani. In the 11th century, the first Turkish invasion of the Armenian homeland occurred, beginning several hundred years of rule by Muslim Turks.⁴⁷ By the 16th century, Armenia had been absorbed into the Ottoman Empire. At its climax, this Turkish Empire included much of Southeast Europe, North Africa, and almost all of the Middle East.⁴⁸

By the 1800s, the once powerful Ottoman Empire began to decline. For centuries, it had spurned technological and economic progress while the nations of Europe had embraced innovation and become industrial giants.⁴⁹ As the empire gradually disintegrated, formerly subject peoples, including the Greeks, Serbs and Romanians, achieved their long-awaited independence. Only the Armenians and the

⁴⁷ See e.g., Vahan M. Kurkjian, *A History of Armenia* (Indo European Publishing 2008); Simon Payaslian, *The History of Armenia* (St. Martin's Press 2007); I. M. Diakonoff, *The Pre-History of the Armenian People* (Caravan Books 1984).

⁴⁸ *Id.*

⁴⁹ *Id.*

Arabs of the Middle East remained stuck in the backward and nearly bankrupt empire, now under the autocratic rule of Sultan Abdul Hamid.⁵⁰

During the second half of the 19th century, Armenia fell under the rule of the Ottoman Turks.⁵¹ By the 1890s, young Armenians began to press for political reforms, calling for a constitutional government, the right to vote, and an end to discriminatory practices, such as special taxes levied solely against them because they were Christians.⁵² The despotic Sultan responded to their pleas with brutal persecutions. Between 1894 and 1896, more than 100,000 inhabitants of Armenian villages were massacred by the Sultan's special regiments.⁵³ The end of the century, however, brought significant deterioration to the Ottoman Empire, and, in 1908, the Young Turkish revolution overthrew the old regime.⁵⁴ In July 1908, the Young Turks forced the Sultan to allow a constitutional government and guarantee basic rights.

Armenians in Turkey were delighted with this sudden turn of events and its prospects for a brighter future. Both Turks and Armenians held jubilant public rallies. However, their hopes were dashed when three of the Young Turks seized full control of the government in 1913. This

⁵⁰ Dadrian, *supra* note 2.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Josef Guttman, *The Beginnings of Genocide* (Armenian Historical Research Association: 1965).

triumvirate – Mehmed Talaat, Ismail Enver and Ahmed Djemal – came to wield dictatorial powers and concocted their own ambitious plans for the future of Turkey. The Young Turks adopted “a credo based on pan-Turanism, which alleged a prehistoric mythic unity among Turanian peoples based on racial origin to be implemented by ‘Turkification’”⁵⁵ Motivated by a feverish sense of jingoism, the Young Turk regime sought an empire that stretched from central Asia all the way to China.⁵⁶ The problem with the Young Turk plan to unite all of the Turkic peoples was that the traditional historic homeland of Armenia lay right in the path of their plans to expand eastward. They regarded the Armenians as alien and a major obstruction to the fulfillment of their political, ideological, and social goals.⁵⁷

Along with the Young Turk’s newfound “Turanism” was a dramatic rise in Islamic fundamentalist agitation throughout Turkey. Christian Armenians were once again branded as infidels.⁵⁸ Young Islamic extremists, sometimes leading to violence, staged anti-Armenian demonstrations. Throughout Turkey, sporadic local attacks against Armenians continued unchecked over the next several years. There were also significant cultural differences between Armenians and Turks. The Armenians had always been one of the best-educated communities within the old Turkish

⁵⁵ *Id.* at p. 5.

⁵⁶ Dadrian, *supra* note 2; Hovanissian, *supra* note 2.

⁵⁷ *Id.*

⁵⁸ *Id.*

Empire.⁵⁹ By contrast, the majority of Turks were illiterate peasant farmers and small shopkeepers.⁶⁰ The various autocratic and despotic rulers throughout the empire's history had valued loyalty and blind obedience above all. Their uneducated subjects had never heard of democracy or liberalism and thus had no inclination toward political reform.

The Young Turks decided to glorify the virtues of simple Turkish peasantry at the expense of the Armenians in order to capture peasant loyalty. They exploited the religious, cultural, economic and political differences between Turks and Armenians so that the average Turk came to regard Armenians as strangers among them. When the First World War broke out in 1914, leaders of the Young Turk regime sided with Germany and Austria-Hungary. The outbreak of war would provide the perfect opportunity to solve the "Armenian question" once and for all. As a prelude to the coming action, Turks disarmed the entire Armenian population under the pretext that the people were naturally sympathetic toward Christian Russia. Every last rifle and pistol was forcibly seized, with severe penalties for anyone who failed to turn in a weapon. At this time, approximately 40,000 Armenian men were serving in the Turkish Army. In the fall and winter of 1914, their weapons were confiscated, and they were put into slave labor

⁵⁹ Dadrian, *supra* note 2.

⁶⁰ *Id.*

battalions building roads or were used as human pack animals.⁶¹

By the end of April 1915, the stage had been set for the final solution to the Armenian Question. The decision to annihilate the entire population came directly from the ruling triumvirate of ultra-nationalist Young Turks.⁶² Men, women, and children were walked to secluded areas and murdered outright.⁶³ Those that were not killed immediately found death by deportation.⁶⁴ Alleging acts of treason, "the Ottoman authorities ordered . . . the wholesale deportation of the Armenian population of the empire's eastern and southeastern provinces."⁶⁵ By the time the killings had been completed, more than 1.5 million Armenians had been slaughtered, and the Armenian Question in Eastern Anatolia had been resolved.⁶⁶

While temporary relief for some Armenians came as Russian troops attacked along the Eastern Front and made their way into central Turkey, the troops withdrew in 1917 at the start of the Russian Revolution.⁶⁷ Armenian survivors withdrew along with them and settled in among fellow Armenians already living in provinces of the former Russian Empire. There were in total about 500,000 Armenians gathered in this region. In May 1918, Turkish armies

⁶¹ Hovanissian, *supra* note 2.

⁶² Dadrian, *supra* note 2; Kurkjian, *supra* note 44.

⁶³ *Id.*

⁶⁴ Dadrian, *supra* note 2.

⁶⁵ *Id.* at 15.

⁶⁶ Dadrian, *supra* note 2.

⁶⁷ Kurkjian, *supra* note 44.

attacked the area to achieve the goal of expanding Turkey eastward into the Caucasus and also to resume the annihilation of the Armenians,⁶⁸ additional evidence of genocidal intent. As many as 100,000 Armenians fell victim to the advancing Turkish troops. The First World War ended in November 1918. Shortly before the war ended, the Young Turk triumvirate abruptly resigned their government posts and fled to Germany where they had been offered asylum. In the months that followed, repeated requests by Turkey's new moderate government and the Allies were made asking Germany to send the Young Turks back home to stand trial on violating the laws of war.⁶⁹ All such requests were declined.⁷⁰ To this day, Turkish government officials still disavow the attempts at racial extermination that have haunted Armenian survivors for more than nine decades.

Armenian Genocide Reparations Movement

The Armenian Genocide reparations movement contains three claims: 1) compensations for unpaid insurance policies; 2) formal recognition of the 1915 Armenian Massacres by the modern Turkish government and the global community; and 3) territorial reparations. As with the Holocaust, the first claim involved the pursuit of reparations for insurance policies sold to Armenians immediately preceding the wholesale massacres and deportations. In the Ottoman

⁶⁸ Dadrian, *supra* note 2.

⁶⁹ *Id.*

⁷⁰ *Id.*

Empire, Armenians and other minorities purchased insurance policies from European and American insurance companies, which marketed those policies in the region. Many of the Armenian purchasers perished in the Armenian genocide during and after the First World War. Their relatives sought payment from the insurers, claiming that payments were never made on the policies.

In 2000, 12 elderly Armenians brought the first lawsuit filed with regard to these insurance claims against New York Life Insurance Company. All but one of the claimants resided in the United States (US). In *Marootian v. New York Life Insurance Company*,⁷¹ the claimants filed a class action suit seeking payment from New York Life on the policies. In response, New York Life filed motions to dismiss. The insurance company did not dispute that it sold such policies to the Armenian population in Ottoman Turkey. In fact, it combed its archives and located records, including aged insurance cards, for 2,300 Armenian policy holders from that time period. It argued, however, that the suit should be dismissed because all of the policies contained forum selection clauses mandating that if a dispute ever arose about the policies, the parties would resolve such a dispute either before French or English courts.⁷² In addition,

⁷¹ No. 99-12073 (C.D. Cal. filed Jan. 17, 2000).

⁷² Mem. of Points of Authorities in Support of Defendant's Motion to Dismiss Due to Improper Venue at 2-3, *Marootian* (No. 99-12073). The policies purportedly contained one of the following two forum selection clauses: 1) "For the enforcement of this document, the civil Courts of France will be the only competent courts"; or 2) "Any action or

New York Life argued that, because the policies were written and unpaid almost a century ago, the lawsuits were time-barred.

In 2001, the California legislature enacted a statute similar to the one it had passed in response to the Second World War-era insurance and slave labor litigation, using the previous actions in the Holocaust restitution movement as a model for the present actions against the Armenian insurance companies. Like the Second World War-related statute, this statute: 1) allowed suits on Armenian genocide-era policies to be heard in California courts, despite the forum-selection clauses; and 2) extended the limitations period of such suits to 2010.⁷³ New York Life challenged the constitutionality of Cal. Civ. Proc. Code 354.4 on the same

proceeding under this Policy shall be brought in the London Courts." *Id.* at 2.

⁷³ The applicable provisions of the new statute, Cal. Civ. Proc. Code, 354.4, read: (b) Notwithstanding any other provision of law, any Armenian genocide victim, or heir or beneficiary of an Armenian Genocide victim, who resides in this state and has a claim arising out of an insurance policy or policies purchased or in effect in Europe or Asia between 1875 and 1923 from an insurer... may bring a legal action or may continue a pending legal action to recover on that claim in any court of competent jurisdiction in this state, which shall be deemed to be the proper forum for that action until its completion or resolution; (c) Any action, including any pending action brought by an Armenian genocide victim, whether a resident or nonresident of this state, seeking benefits under the insurance policies issued or in effect between 1875 and 1923 shall not be dismissed for failure to comply with the applicable statute of limitations, provided the action is filed on or before December 31, 2010. *Id.* at 354(b) and (c).

grounds that the Japanese companies challenged the constitutionality of Cal. Civ. Proc. Code, 354.6, California's slave labor litigation statute. On November 30, 2001, Federal judge Christina Snyder rejected New York Life's arguments, finding, in a lengthy opinion, that Cal. Civ. Proc. Code, 354.4 was constitutional.⁷⁴ Judge Snyder also held that California courts possessed jurisdiction over claims against insurance carriers arising out of the Armenian genocide.⁷⁵ In May 2002, New York Life settled the case for \$20 million, while AXA Corporation, in a separate but similar lawsuit, agreed to settle its matter for \$17 million.⁷⁶

The second claim of the Armenian reparations movement has been the widespread symbolic recognition of the Armenian Massacres, officially commemorated on April 24 each year. While many governments, international organizations, and historians recognize the Armenian Massacres as "genocide," its official recognition by Turkey and the US remains unaccomplished. In 2007, the Elie Wiesel Foundation for Humanity produced a letter signed by 53 Nobel Laureates re-affirming the Genocide Scholars' conclusion that the 1915 killings of Armenians constituted genocide.⁷⁷ Wiesel's organization also asserted that Turkish acknowledgement of the Armenian Genocide would create

⁷⁴ See order denying defendant's motion to dismiss due to improper venue under Fed. R. Civ. P. 12(B)(3), *Marootian v. New York Life Insurance Co.*, No. CV-99-12073, 2001 U.S. Dist. LEXIS 22274 (C.D. Cal. Dec. 3, 2001).

⁷⁵ *Id.*

⁷⁶ See www.armeniadiaspora.com/ADC/news.asp?id=297.

⁷⁷ See www.rferl.org/content/article/1075779.html.

no legal “basis for reparations or territorial claims,” anticipating Turkish anxieties that it could prompt financial or territorial claims.⁷⁸

Although there has been much academic recognition of the Armenian Genocide, this has not always been followed by governmental and media recognition. Many governments, including the governments of Israel, the United Kingdom, Ukraine, and Georgia, do not officially use the word “genocide” to describe these events. However, 42 of the 50 US states have made individual proclamations recognizing the events of 1915 as genocide.⁷⁹

International support, however, is increasing. The Parliament of the State of New South Wales, Australia, passed a resolution acknowledging and condemning the Armenian Genocide in 1997.⁸⁰ In 2001, the Canadian provinces of Ontario and Quebec, and then, in 2004, the government of Canada itself, recognized the Armenian Genocide.⁸¹ In recent years, parliaments of several countries, including France and Switzerland, have formally recognized the event as genocide. Countries officially recognizing the Armenian Genocide include Argentina, Armenia, Austria, Belgium, Canada, Chile, Cyprus, Greece, Italy, Lebanon,

⁷⁸ *Id.*

⁷⁹ See www.armenian-genocide.org/current_category.11/affirmation_list.html.

⁸⁰ See www.turkishweekly.net/articles.php?id=11.

⁸¹ See www.sen.parl.gc.ca/sjoyal/e/debates/un_declaration_of_human_rights.html.

Lithuania, Netherlands, Poland, Russia, Slovakia, Switzerland, Uruguay, and Venezuela.

A major obstacle for wider recognition of the genocide is Turkey, which denies that genocide or even massacres ever took place and insists any deaths were a side-effect of the casualties during the First World War. Azerbaijan, an ally of Turkey and in a state of war against Armenia, shares the position of Turkey. On June 15, 2005, the German Bundestag passed a resolution that "honors and commemorates the victims of violence, murder and expulsion among the Armenian people before and during the First World War." The German resolution also states: "The German parliament deplors the acts of the Government of the Ottoman Empire regarding the almost complete destruction of Armenians in Anatolia and also the inglorious role of the German Reich in the face of the organized expulsion and extermination of Armenians which it did not try to stop."⁸² The Resolution also contains an apology for German responsibility.⁸³ In 2006, the French parliament submitted a bill to create a law that would punish any person denying the Armenian genocide with up to five years imprisonment and a fine of 45,000 Euros.⁸⁴ Despite Turkish protests, the French National Assembly adopted a bill making it a crime to deny that Armenians

⁸² See www.armenian-genocide.org/Affirmation.339/current_category.7/affirmation_detail.html

⁸³ *Id.*

⁸⁴ See www.assembleenationale.fr/12/propositions/pion3030.asp.

suffered genocide in 1915 at the hands of the Ottoman Turks.⁸⁵

On September 4, 2006, Members of the European Parliament (EP) voted for the inclusion of a clause prompting Turkey “to recognize the Armenian genocide as a condition for its EU accession” in a highly critical report, which was adopted by a broad majority in the foreign relations committee of the European Parliament.⁸⁶ This requirement was later dropped on September 27, 2006, by the GA of the European Parliament.⁸⁷ In dropping the precondition of acceptance of the Armenian genocide, the European Parliament said, “MEPs nevertheless stress that, although the recognition of the Armenian genocide as such is formally not one of the Copenhagen criteria, it is indispensable for a country on the road to membership to come to terms with and recognize its past.”

On November 29, 2006, the lower house of Argentina’s parliament adopted a resolution recognizing the Armenian Genocide. The bill was overwhelmingly adopted by the assembly and declared April 24 the international day of remembrance for the Armenian genocide as an official “day of mutual tolerance and respect” among peoples around the world. On March 8, 2007, Turkish nationalist

⁸⁵ See www.assemblee-nationale.fr/12/dossiers/reconnaissance_genocide_armenien_1915_loi_2001.asp

⁸⁶ See <http://www.euractiv.com/en/enlargement/parliament-faces-crucial-enlargement-decisions/article-158105>.

⁸⁷ *Id.*

Doğu Perinçek became the first person convicted by a court of law for denying the Armenian Genocide, found guilty by a Swiss district court. Perinçek appealed the verdict, but the conviction was upheld by the Swiss Federal Supreme Court on December 12, 2007.⁸⁸

The United States House Committee on Foreign Affairs approved HR 106, a bill that categorized and condemned the Ottoman Empire for the Genocide, on October 10, 2007, by a 27-21 vote. However, some of the support for the bill from both Democrats and Republicans eroded after the White House warned against the possibility of Turkey restricting airspace and ground-route access for US military and humanitarian efforts in Iraq.⁸⁹ The bill never passed.

The third claim of the reparations movement involves territorial reparations. Some Armenians believe they are entitled to the return of lands that were depopulated through genocide. Specifically, Armenians want restoration of the 1920 borders of the Treaty of Sevres and/or the return of Mount Ararat, long a symbol of Armenian heritage, located on the Eastern border of Turkey. This territorial reparation seems unreasonable, and it is this fear of territorial loss that likely fosters modern-day Turkish denials.

⁸⁸ See http://jumpcgi.bger.ch/cgi-bin/JumpCGI?id=12.12.2007_6B_398/2007.

⁸⁹ See <http://hr106.com/>.

Discussion

The gradual recognition of human rights that emerged during the 18th century Enlightenment could have led to greater tolerance for other human beings whose culture, language, ethnicity or religion may be different. The 19th century saw mass extermination of indigenous peoples, notably the displacement, spoliation and annihilation of hundreds of thousands, if not millions, of the native population of the North American continent. The 20th century has seen many more genocides. The first was perpetrated against the Armenians, a people who have inhabited the Caucasus and the Anatolian peninsula for thousands of years. As an ethnically and religiously different community in a frequently hostile environment, it has suffered various and repeated forms of persecution over the ages.

The First World War provided the opportunity for a deliberate attempt by the Ottoman authorities to eliminate the Armenian minority. Decades of persecution and smaller massacres of Christian Armenians in the Ottoman Empire culminated in the systematic deportation and extermination campaign conducted by the Young Turk *Ittihad* Government in 1915-16.⁹⁰ There are various estimates of the number of persons who directly or indirectly lost their lives in the wake of the genocidal campaign.⁹¹ The exact quantity, however, is ultimately irrelevant. The Genocide Convention does not

⁹⁰ Dadrian, *supra* note 2.

⁹¹ *Id.*

require that a certain quantity of people perish before a genocide label can be applied. The issue is whether the Turkish Government manifested the intent, through word or action, to commit atrocities against its Armenian population that today would be considered genocide. The general consensus across and within the international community is yes.

According to the Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group; and,
- e) Forcibly transferring children of the group to another group.⁹²

⁹² *Supra* note 6, at Art. II.

This definition, and much of the subsequent debate that surrounds it, is tied to the historical understanding of the Holocaust. Raphael Lemkin, who coined the term genocide,⁹³ actively pressed for international recognition of this crime because he foresaw the German plans for the Jews. ⁹⁴For this reason, it has been noted that the Holocaust is often viewed as the “prototypical” genocide,⁹⁵ serving as the model or gold standard against which all other genocides are assessed.

The modern-day Turkish government denies that there was an Armenian genocide, claiming that Armenians were only removed from the eastern “war zone.” The Armenian Genocide, however, occurred all over Anatolia (present-day Turkey) and not just in the “war zone.”⁹⁶ Deportations and killings occurred in the West, in and around Ismid and Broussa; in Central Turkey, in Ankara; in the Southwest, in and around Konia and Adana; in Central Anatolia, near Diyarbekir, Harpout, Marash, Sepastia, Shabin Kara-Hissar, and Ourfa; and on the Black Sea coast, in and around Trebizond, all of which were not part of a “war zone.”⁹⁷ Only Erzeroum, Bitlis, and Van, in the East, were in the “war zone.”

⁹³ Raphael Lemkin, *Axis Rule in Occupied Europe* (Carnegie Endowment for International Peace: 1944).

⁹⁴ *Id.*

⁹⁵ David Moshman, “Conceptual constraints on thinking about genocide,” 3 *J. of Genocide Research* 431 (2001).

⁹⁶ Dadrian, *supra* note 2.

⁹⁷ *Id.*

The Armenian Genocide is a historical fact, acknowledged at the time of its occurrence and recognized today by the international community.⁹⁸ The massacres were condemned at the time by representatives of the British, French, Russian, German, and Austrian governments – all of the major powers. The first three were foes of the Ottoman Empire; the latter two, its allies. The US, neutral towards the Ottoman Empire, also condemned the Armenian Genocide and was the chief spokesman in behalf of the Armenians.⁹⁹ That modern-day Turkey refuses to acknowledge the 1915 genocide is hardly persuasive as to its non-existence. The *only* outstanding issue that surrounds the Armenian Question today is reparations.

An issue for consideration is whether the breadth of the crimes committed has any bearing on the likelihood of reparations. That is, does the scale of a genocidal event translate into a broader and more aggressive acceptance of the need for reparations? This raises the question as to whether or not the Armenian genocide has received less

⁹⁸ Dadrian, *supra* note 2; Hovhanissian, *supra* note 2; Taner Akcam, *A Shameful Act: The Armenian Genocide and the Question of Turkish Responsibility* (Macmillan 2006); H. Morgenthau, P. Balakian, R.J. Lifton, and R. Smith, *Ambassador Morgenthau's Story* (Wayne State University Press 2003); S. Power, *A Problem from Hell: America and the Age of Genocide* (Basic Books 2002); Y. Auran, *The Banality of Indifference: Zionism and the Armenian Genocide* (Transaction Publishers 2001); W.A. Schabas, *Genocide in International Law: The Crimes of Crimes* (Cambridge University Press 2000); G.S. Graber, *Caravans to Oblivion: The Armenian Genocide, 1915* (J. Wiley 1996); E. Staub, *The Roots of Evil: The Origins of Genocide and Other Group Violence* (Cambridge University Press 1992).

⁹⁹ Dadrian, *supra* note 2; Morgenthau et al., *supra* note 95.

attention in the way of reparations because it is somehow a “lesser” genocide. While it seems curiously morbid to count death tolls and percentages of population killed, it is certainly possible that the wider resonance of the Holocaust in the public imagination is the result of the much higher death toll experienced by Jews at the hands of the Nazis. While these quantitative and qualitative arguments may be important issues for victim groups to negotiate in the development of their trauma narratives, in and of themselves they do not allow us to explain the success or failure of reparations claims.

The question of whether or not the severity of the genocide has an impact on the reparative response is also problematic because the notion of “genocide” has only recently become prominent in reparations debates. In the years immediately following the Second World War, genocide was largely absent from discussion. Indeed, those seeking reparations were often careful to state that compensatory payments were sought for specific harms – personal injury, unpaid labor, lost laboring capacity, and lost property – and not for the irreparable harm of the killings. Indeed, as knowledge of the crimes of the Holocaust became more widespread, the moral dimensions of reparations became more complicated, because some viewed accepting reparations from the Germans as equivalent to a normalization of relations with West Germany. To counter this view, and to avoid the charge of accepting “blood money,” advocates of reparations made a distinction between these moral questions and the legal and material

rights possessed by Jews and the state of Israel for the loss of property and wealth that accompanied the Holocaust. In this sense, the moral element of the reparations demand was replaced with a practical element intended to staunch these complex moral issues.

The eventual success of Jewish reparations claims did, however, eventually help to give the term genocide greater political currency, transforming it into a powerful framing device for groups claiming redress. But this framing device was not without its attendant costs, as the scale and severity of the Holocaust and the emotional power of its trauma narratives became the measure for other collective tragedies, making it more difficult for other victims of genocide and mass violence to achieve the same level of enshrined victimhood. To a great extent, therefore, the ability of a group to mobilize its collective advocacy would seem integral to the success of its cause. Because the Holocaust was so quantitatively immense and because the atrocities post-dated the Armenian genocide, the international community may be more willing to accept its occurrence. Ultimately, however, the determination of whether certain acts can be accurately labeled as “genocide” should depend on an objective application of the facts to the international Genocide Convention standard. Neither the extent of the suffering experienced by a group, nor the moral force of the application of the term genocide to its hardship, should provide an adequate explanation of a group’s success or lack of success in making reparations claims.

Punishing crimes against humanity and genocide were concerns of the international community at least since

the Paris Peace Conference of 1919. In the case of the Treaty of Sèvres between the victorious Allies and Turkey, the Allies announced in Article 230 their intention to punish those responsible for the genocide against the Armenians,¹⁰⁰ an affirmation that provides strong and persuasive support for the mere existence of the genocide. However, the emergence of the Soviet Union, the geopolitical development after the war, coupled with the rise of the Turkish Nationalists under General Mustafa Kemal, and the abolition of the Sultanate in November 1922, eventually led to the abandonment of the Treaty of Sèvres (though not the obligations contained therein) and renegotiation between the Allies and the new Turkish Government at the Conference of Lausanne.¹⁰¹ The resulting Treaty of Lausanne,¹⁰² however, abandoned the idea of ensuring punishment for the crimes committed against the Armenians. Some war crimes trials against Turkish Unionists and top leaders of the Young Turk Party responsible for the genocide against the Armenians did, however, take place before Turkish courts martial in Istanbul.¹⁰³ Meanwhile, Great Britain proposed the establishment of an International War Crimes Tribunal and proceeded to collect evidence for the trials, but the political

¹⁰⁰ See wwi.lib.byu.edu/index.php/Section_I%2C_Articles_1_-_260.

¹⁰¹ Dadrian, *supra* note 2.

¹⁰² See wwi.lib.byu.edu/index.php/Treaty_of_Lausanne.

¹⁰³ Vahakn Dadrian, "Genocide as a Problem of National and International Law: the World War I Armenian Case and its Contemporary Legal Ramifications," 14 *Yale J. of Intl. L.* 221 (1989).

developments after the First World War did not allow its establishment.¹⁰⁴

The Nazi extermination of millions of Jews became the first genocide that was subject to international judicial scrutiny, and many of those who perpetrated it or were involved in aspects of its execution were held personally liable, tried and punished as common criminals. They were brought not only before international courts like the International Military Tribunal at Nuremberg, but also before countless tribunals of the victorious Allies such as France and England.

The Victims of Crime Declaration allows human rights victims to receive reparations and imposes an obligation on UN member States to punish perpetrators of human rights violations. For the surviving victims of genocide, the foremost right is the right to truth, which entails recognition of their suffering, of their status as victims, and of the right to their history. This type of symbolic reparation is not trivial. They may appear immaterial, but they are indispensable to one's identity and to the will to survive. Other, more concrete remedies are the right to return to one's homeland and the right to restitution of or compensation for wrongfully confiscated property.

¹⁰⁴ The war crimes committed by the German armed forces during the First World War should also have been tried by international criminal tribunals, and the Allies demanded the handing over of nearly one thousand persons pursuant to articles 227 to 230 of the Treaty of Versailles with Germany. No international trials, however, were ever held.

In addition to individual criminal responsibility for genocide, the 1948 Convention also establishes State responsibility. Parties to the Convention can bring a case before the International Court of Justice for the Court to make a determination of a State's responsibility for acts of genocide. On the basis of such a finding and relying on general principles of international law, a State can demand reparations from another State, and, for instance, mixed compensation commissions could be established to determine the appropriate level of compensation. There is precedent for providing reparations, in the form of land, to victimized groups. In the context of the Turkish invasion of Northern Cyprus in July 1974 and the expulsion of over 175,000 Cypriots to the south of the island, the Government of Cyprus filed several claims with the European Commission on Human Rights. In its first decision, the Commission found that "the transportation of Greek Cypriots to other places, in particular the excursions within the territory controlled by the Turkish army, and the deportation of Greek Cypriots to the demarcation line . . . constitute an interference with their private life, guaranteed in article 8(1) which cannot be justified on any ground under paragraph 8(2)."¹⁰⁵ The Commission furthermore considered that the prevention of the physical return of Greek Cypriots who had been driven out from their homes in the north of Cyprus amounted to an infringement of their right to respect

¹⁰⁵ "Cyprus v. Turkey," Application Nos. 6780/74 and 6950/75, Report of 10 July 1976, application No. 8007/77, Report of 4 October 1983.

of their homes as guaranteed in article 8(1). The Commission further noted that the acts violating the Convention were directed exclusively against members of the Greek Cypriot community and concluded that Turkey had failed to secure the rights and freedoms set forth in the Convention without discrimination on the grounds of ethnic origin, race, and religion as required by article 14 of the Convention.¹⁰⁶

Individuals can also demand remedies, and over the past 30 years Human Rights Treaties such as the European Convention on Human Rights and the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol have created important jurisprudence granting remedies to victims of human rights violations. For instance, based on Protocol I to the European Convention on Human Rights, Titina Loizidou obtained a judgment in Strasbourg entitling her to compensation from Turkey for illegally confiscating her property during the invasion and expulsions of 1974. The Court held by eleven votes to six that the denial of access to the applicant's property and consequent loss of control thereof is imputable to Turkey.¹⁰⁷ In a further judgment of July 28, 1998, the Court ordered restitution. By fifteen votes to two, the Court rejected

¹⁰⁶ In 1983 the European Commission again dealt with the issue and found that the displacement of persons, separation of families and discrimination violated the European Convention. See Christa Meindersma, "Population Transfers in Conflict Situations," *Netherlands International Law Review* 41 (1994): 31-83 at 71-72.

¹⁰⁷ *Case of Loizidou v. Turkey*, 40/1993/435/514, Judgment of 18 December 1996.

Turkey's claim that Loizidou had no entitlement to an award under Article 50 of the Convention. By fourteen votes to three it decided that Turkey was obliged to pay to Loizidou 300,000 Cypriot pounds for pecuniary damage and 137,084 pounds for costs and expenses.

In matters of restitution and/or compensation for property confiscated arbitrarily and in violation of the principle of equality and non-discrimination, the UN Human Rights Committee has held in seven "Views" concerning many more applicants that the Czech Republic had violated the applicants' rights under Article 26 of the ICCPR and that they were entitled to restitution and/or compensation.¹⁰⁸ It should be noted that while the ICCPR entered into force on March 23, 1976, most confiscations took place between 1945 and 1950. Nevertheless, it was the arbitrariness of the restitution legislation itself and its discriminatory application that led the Committee to make a finding that the overarching principle of equality enshrined in Article 26 of the Covenant had been violated. The Human Rights Committee, however, would not be able to entertain a claim against Turkey because Turkey has not yet become a party to the ICCPR or to the Optional Protocol thereto. Armenia is a party to both instruments.

In recent years, there has been much discussion of relations between Armenians and Turks. A "reconciliation" movement has emerged, on both sides. A key fracture

¹⁰⁸ Case No. 516/1992 *Simunek v. Czech Republic*, Case No. 586/1994, *Adam v. Czech Republic*, 857/1996 *Des Fours Walderode v. Czech Republic*.

between different participants has turned on the role, if any, that the Genocide should play in contemporary relations. Some Turks with a denialist agenda have argued that “claims” about Turkish violence against Armenians in the past should be set aside so as not to keep driving tensions between the two groups. Some progressive Turks who might accept that the Armenian Genocide is a historical fact as well as some Armenians have joined in this approach. Their utilitarian calculation is clear – the past cannot be changed, but if by putting aside the past we can effect a more positive present and future, then it is right to do so, even for Armenians who will benefit in various ways.

Broad state and societal acknowledgment of the Armenian Genocide is the key to improved relations. In the case where there is no acknowledgment of the Armenian Genocide, it should be trivially obvious that no resolution can occur. If the Armenian Genocide issue is set aside in order not to antagonize Turks, so that they willingly engage in a relationship with Armenians, the apparently smooth result will not be a resolution. The genocide issue cannot be resolved if it is not even engaged. The “conciliation” will be an illusion, because it will depend on a denial of reality and will hold only so long as Armenians themselves accept the success of the genocide and, in a sense, the right of Turks to have committed it. Turks who are not willing to engage the genocide issue are refusing to give up the anti-Armenian attitude behind the genocide itself. Even if that attitude is not displayed explicitly because of Armenian deference does not mean it is not there, but rather that its target is not presenting itself.

How should the issue be resolved? By financial compensation? Territorial reparations? Symbolic admission alone? There are three (3) plausible reasons for why the modern day Turkish government refuses to acknowledge the existence of the massacres. First, government officials may truly believe that genocide never occurred. While any objective examination of early 20th century history and the literature that evolved from that era clearly demonstrate that genocide did occur, it may be asking too much for modern-day government officials to admit to something, that in their minds, is a non-event. If, for example, students in the US were never taught about 19th century slavery, and slavery as a concept disappeared from history textbooks, would future generations of white-Americans be offended with the suggestion that their ancestors could have committed such acts of enslavement? It may be offensive to Armenians that modern Turks refuse to accept the obvious, but their unawareness may be more a product of their education rather than intentioned ignorance.

Second, Turkish government officials may deny the genocide because, while they internally acknowledge its occurrence, they feel shame with admitting that something of that nature could have occurred at their own hands less than 100 years ago. It is human nature to retaliate when criticized, and downplaying or denying the genocide may be a byproduct of that basic instinct.

Third, it is possible that Turkey knows that a genocide occurred, but denies its existence because they believe that admission may lead to reparations.

Compensation may be required in the form of financial or territorial demands from Armenians or may come from international political concessions in other arenas (e.g., European Union). It is certainly less expensive, in the short and long run, to deny the genocide than acknowledge that one occurred, even if it occurred several generations earlier.

Elie Wiesel's Foundation for Humanity suggested that mere acknowledgment of the Armenian Genocide by the modern-day Turkish government would not create a basis for territorial and/or financial reparations.¹⁰⁹ Certainly, an agreement whereby acknowledgment of the genocide would be exchanged for a promise *not* to seek financial and/or territorial reparations could be binding. Would the Armenian and global community be satisfied if the Turkish government acknowledged the genocide, with the promise that no reparations – financial or territorial – would be required with that admission? If the words have meaning, and April 24, 1915, is given its rightful place in history, such “moral reparation”¹¹⁰ would be a reasonable compromise to all involved. Armenians would be satisfied that the perpetrators themselves acknowledged the genocide, which would likely spur acknowledgements by other states, and the Turkish government would be content that the matter was effectively resolved without having to relinquish financial and/or territorial compensation.

¹⁰⁹ *Supra* note 74.

¹¹⁰ N. Roht-Ariraza, “Reparations Decisions and Dilemmas,” 27 *Hastings Int'l & Comp. L. Rev.* 157 (2004).