

**THE COST OF DENIAL:  
“MEDS YEGHERN” AND THE QUEST FOR RESTORATIVE JUSTICE FOR  
DESCENDANTS OF ARMENIAN GENOCIDE VICTIMS**

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**I. THE ARMENIAN GENOCIDE**

“I should like to see any power of the world destroy this race, this small tribe of unimportant people, whose history is ended, whose wars have all been fought and lost, whose structures have crumbled, whose literature is unread, whose music is unheard, whose prayers are no longer uttered. Go ahead, destroy this race. Let us say that it is again 1915 . . . Destroy Armenia. See if you can do it. Send them from their homes into the desert. Let them have neither bread nor water. Burn their houses and their churches. See if the race will not live again . . . for when two of them meet anywhere in the world, see if they will not create a new Armenia!” – William Saroyan.<sup>2</sup>

“The opposite of love is not hate, it’s indifference. The opposite of art is not ugliness, it’s indifference. The opposite of faith is not heresy, it’s indifference. And the opposite of life is not death, it’s indifference. Because of indifference, one dies before one actually dies.” – Elie Wiesel.<sup>3</sup>

**A. Background**

Proving to his generals that he would be able to destroy Europe’s Jewish population without any international intervention, Adolph Hitler asked rhetorically, “Who still talks nowadays of the extermination of the Armenians?”<sup>4</sup> Hitler was alluding to the ruthless, systematic murder of approximately 1.5 million Armenians orchestrated by the Ottoman government during World War I with the goal of establishing a unified Turkish Anatolia<sup>5</sup> rid of Christian minorities,<sup>6</sup> the

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<sup>2</sup> Armenian Genocide Museum of America Museum Brochure, available at [http://www.armeniangenocidemuseum.org/museum\\_brochure.pdf](http://www.armeniangenocidemuseum.org/museum_brochure.pdf).

<sup>3</sup> Elie Wiesel, *One Must Not Forget*, U.S. NEWS & WORLD REPORT, Oct. 27, 1986, at p. 68.

<sup>4</sup> 7 OFFICE OF THE U.S. CHIEF COUNSEL FOR PROSECUTION OF AXIS CRIMINALITY, NAZI CONSPIRACY AND AGGRESSION 753 (1946), available at [http://www.loc.gov/rr/frd/Military\\_Law/pdf/NT\\_Nazi\\_Vol-VII.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/NT_Nazi_Vol-VII.pdf).

<sup>5</sup> Anatolia refers to the peninsula known as Asia Minor, on which the Republic of Turkey now sits, that links Europe with Asia. See STEVEN RUNCIMAN, *THE FALL OF CONSTANTINOPLE* 1453-22 (14th prt. 2007). For a map of Anatolia, visit U.S. Department of State, Turkey Map and Flag, available at <http://www.state.gov/eur/ci/tu/87012.htm>.

<sup>6</sup> See Stephan H. Astourian, *Modern Turkish Identity and the Armenian Genocide: From Prejudice to Racist Nationalism*, in REMEMBRANCE AND DENIAL: THE CASE OF THE ARMENIAN GENOCIDE 23-41 (Richard G. Hovannisian ed., 1999); JACOB M. LANDEAU, *PAN-TURKISM: FROM IRREDENTISM TO COOPERATION* 29-56 (2d ed. 1995) (discussing the Pan-Turkism movement in

majority of which were the Armenians.<sup>7</sup> More importantly, Hitler was referencing the fact that there was no significant global response to the misdeeds of the Ottomans, nor was there any punishment for the perpetrators of the genocide. The Armenian Genocide was—and largely still is—practically ignored throughout the world despite significant evidence of the horrific events that transpired. “Continued Turkish denial, the impression that the world does not care, and a general sense of a lack of closure have made a significant mark on the psyche of nearly every Armenian.”<sup>8</sup> Because of the world’s appalling indifference towards the plight of Armenians, coupled with Turkey’s continuous evasion of responsibility for the genocide, Armenians have collectively sought restorative justice and recognition of the world’s first modern genocide since it began in 1915.<sup>9</sup>

The most well-documented accounts of the Armenian Genocide come from Henry Morgenthau—the United States Ambassador to the Ottoman Empire during World War I—and British historian Arnold Toynbee.<sup>10</sup> Morgenthau and Toynbee describe the Ottoman Empire’s methodical approach toward exterminating Armenians, which was initiated by the policy of the Committee of Union and Progress (“CUP”),<sup>11</sup> a political party led by the Young Turk regime that controlled the Ottoman Empire after ousting Sultan Abdul-Hamid in 1908.<sup>12</sup>

The first step toward genocide was to disarm the Armenian population.<sup>13</sup> Early in 1915, the CUP reduced the status of Armenian soldiers serving in the Turkish army from cavalry artillerymen to menial road laborers, confiscating their weapons so that they would not be able to effectively resist the impending onslaught by Turkish soldiers.<sup>14</sup> The Turkish army loaded war supplies onto the backs of Armenian soldiers, who dragged these supplies through the mountains of the Caucasus,<sup>15</sup> sometimes waist-high in snow, enforced by the whips and bayonets of the Turks.<sup>16</sup> Not long after demoting the status of Armenian soldiers, it became routine protocol for Turkish soldiers to murder them in cold blood. Similar to a practice adopted by the Nazis in concentration camps during World War II, the Armenians were often ordered by their Turkish commanders to dig ditches before being shot in groups of fifty to 100 and buried in the graves that they had just dug for themselves.<sup>17</sup>

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the Ottoman Empire); Arnold J. Toynbee, *A Summary of Armenian History up to and Including 1915*, in *THE TREATMENT OF ARMENIANS IN THE OTTOMAN EMPIRE* 634 (Arnold J. Toynbee ed., 1916) (“The Turkish leaven was to permeate the non-Turkish lump, until it had all become one uniform Turkish substance.”).

<sup>7</sup> See LANDEAU, *supra* note 5, at 32.

<sup>8</sup> John Shamsy, *80 Years Too Late: The International Criminal Court and the 20th Century’s First Genocide*, 11 J. TRANSNAT’L L. & POL’Y 327, 328 (2002).

<sup>9</sup> See *id.*; Vahakn N. Dadrian, *The Armenian Genocide as a Dual Problem of National and International Law*, 4 U. ST. THOMAS J. L. & PUB. POL’Y 60, 60 (2010); Harut Sassounian, *Genocide Recognition and a Quest for Justice*, 32 LOY. L.A. INT’L & COMP. L. REV. 115, 118 (2010); Richard G. Hovannisian, *The Historical Dimensions of the Armenian Question, 1878-1923*, in *THE ARMENIAN GENOCIDE IN PERSPECTIVE* 35-38 (Richard G. Hovannisian ed., 9th prtg. 2004); Robert Melson, *Provocation or Nationalism: A Critical Inquiry into the Armenian Genocide of 1915*, in *THE ARMENIAN GENOCIDE IN PERSPECTIVE* 61 (Richard G. Hovannisian ed., 9th prtg. 2004).

<sup>10</sup> See Leo Kuper, *The Turkish Genocide of the Armenians*, in *THE ARMENIAN GENOCIDE IN PERSPECTIVE* 45 (Richard G. Hovannisian ed., 9th prtg. 2004).

<sup>11</sup> See *id.* at 56-57.

<sup>12</sup> See Hovannisian, *supra* note 9, at 27.

<sup>13</sup> See Toynbee, *supra* note 5, at 638; Kuper, *supra* note 10, at 46.

<sup>14</sup> See HENRY MORGENTHAU, *AMBASSADOR MORGENTHAU’S STORY* 302 (1918); Toynbee, *supra* note 5, at 638; Kuper, *supra* note 10, at 46.

<sup>15</sup> For a U.S. Department of State map of the Caucasus region, visit University of Texas, Perry-Castañeda Library Map Collection, available at [http://www.lib.utexas.edu/maps/commonwealth/caucasus\\_region\\_1994.jpg](http://www.lib.utexas.edu/maps/commonwealth/caucasus_region_1994.jpg).

<sup>16</sup> See MORGENTHAU, *supra* note 14; Kuper, *supra* note 10, at 46.

<sup>17</sup> See MORGENTHAU, *supra* note 14; Kuper, *supra* note 10, at 46-47.

In the next phase of the genocide, the Ottoman government arrested and deported the Armenian elite: the civilian leaders of the Armenian villages and communities within each province of the Ottoman Empire.<sup>18</sup> After removing the Armenian leadership, the Young Turks initiated their carnage of the Armenians by “deporting” the remaining citizenry.<sup>19</sup> Armenian males were ordered by a call from the public crier to present themselves at local government buildings for deportation;<sup>20</sup> however, in some instances, Turkish soldiers simply provided notice by “slaughtering every male Armenian they encountered in the streets”<sup>21</sup> upon arriving at Armenian towns.<sup>22</sup> The surviving Armenian males promptly arrived at local town halls to be processed and detained.<sup>23</sup> After serving a brief stint in prison, they were “marched out of the town in batches, roped man to man,”<sup>24</sup> and then massacred.<sup>25</sup> The remaining women and children were subject to rape and either slavery or deportation in the same fashion as Armenian males.<sup>26</sup> Alternatively, Armenian women were offered the option of survival through conversion to Islam by marrying a Turkish citizen, with the condition that their children were to be surrendered and raised as Muslims.<sup>27</sup>

The atrocities committed during the Armenian Genocide were terrifying. The result was devastating. Those that survived—like my great-grandfather, an Armenian soldier from Van in the Turkish Army who was luckily captured by Russia as a prisoner of war—returned home to see entire villages decimated with no Armenian survivors. Amidst the starvation, brutality, slaughter, humiliation, rape, and severity of conditions suffered by Armenians along their death marches out of present-day Turkey, approximately 1.5 million Armenians—anywhere from one-half to three-quarters of the Ottoman Empire’s Armenian population—were annihilated.<sup>28</sup> Summarizing the tragic events of the Armenian Genocide, Ambassador Morgenthau wrote, “When the Turkish authorities gave the orders for these deportations, they were merely giving a death warrant to a whole race; they understood this well, and, in their conversations with me, they made no particular attempt to conceal the fact.”<sup>29</sup>

Further evidence suggests that a key purpose of the Armenian Genocide was to eradicate the Armenians from their ancestral homelands in Western Armenia (now Eastern Turkey).<sup>30</sup> In a telling conversation with Morgenthau, CUP leader Talaat Pasha, Minister of Interior Affairs of the Ottoman Empire, made a shockingly blunt request to the American ambassador:

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<sup>18</sup> See Kuper, *supra* note 10, at 47; Toynbee, *supra* note 5, at 641; MORGENTHAU, *supra* note 14, at 302, 309-313.

<sup>19</sup> See Kuper, *supra* note 10, at 47-48; Toynbee, *supra* note 5, at 641.

<sup>20</sup> See Kuper, *supra* note 10, at 48; MORGENTHAU, *supra* note 14, at 305.

<sup>21</sup> Toynbee, *supra* note 5, at 640.

<sup>22</sup> See *id.*; Kuper, *supra* note 10, at 48.

<sup>23</sup> See Kuper, *supra* note 10, at 48.

<sup>24</sup> Toynbee, *supra* note 5, at 640.

<sup>25</sup> See *id.* at 640-641; MORGENTHAU, *supra* note 14, at 305-312; Kuper, *supra* note 10, at 48.

<sup>26</sup> See Kuper, *supra* note 10, at 48; Toynbee, *supra* note 5, at 641-644. See also Jeremiah Harrelson, Note, *Genocide and the Rape of Armenia*, U. ST. THOMAS J. L. & PUB. POL’Y 163 (2010) (focusing on the “gender-specific violence in the Armenian Genocide . . . through the lens of modern international law”).

<sup>27</sup> See Toynbee, *supra* note 5, at 640; MORGENTHAU, *supra* note 14, at 312-313; Kuper, *supra* note 10, at 48.

<sup>28</sup> Mark D. Kielsingard, *Restorative Justice for the Armenians, Resolved: It’s the Least We Can Do*, 24 CONN. J. INT’L L. 1, 12 (2008); Shamsey, *supra* note 8, at 335.

<sup>29</sup> MORGENTHAU, *supra* note 14, at 309.

<sup>30</sup> For a map of the six Western Armenian provinces of the Ottoman Empire, see Richard G. Hovannisian, *The Armenian Question in the Ottoman Empire, 1876-1914*, in 2 ARMENIAN PEOPLE FROM ANCIENT TO MODERN TIMES 205 (Richard G. Hovannisian ed., 2d ed. 2004).

I wish that you would get the American life insurance companies to send us a complete list of their Armenian policy holders. They are practically all dead now and have left no heirs to collect the money. It of course all escheats to the State. The government is the beneficiary now. Will you do so?<sup>31</sup>

The CUP was not surreptitious in proclaiming its intention to take title to all Armenian property. In 1915, the Ottoman Government passed the “Abandoned Properties Law” to specifically deal with Armenian-owned lands. The Abandoned Properties Law authorized the distribution of the properties of Armenians who had been “deported.”<sup>32</sup> In the midst of the chaos during the Genocide and World War I, Turkish citizens wrongfully converted the personal property and took title to the real property of Armenians who had been uprooted from their homes.<sup>33</sup>

Finally, in 1923, the Grand National Assembly<sup>34</sup> of the Republic of Turkey passed a supplemental property law, which expressly ceded to the Turkish government all land and chattels owned by Armenians who had left Turkey for *any* reason prior to 1923.<sup>35</sup> As UCLA history professor Richard Hovannisian observed, “One of the ironies of the [post-World War I] era was that of all the defeated powers[,] Turkey alone expanded its boundary, and this only on the Caucasus front at the expense of the Armenians.”<sup>36</sup> Overall, Turkey seized much of the historic Armenian homeland known as “Western Armenia,” including the provinces of Van, Bitlis, Erzerum, and Trebizond.<sup>37</sup> Furthermore, the sacred site of Mount Ararat now looms over the Yerevan skyline just miles away from Armenia inside the borders of Turkey, every day serving as a reminder to the Armenian people of the Genocide and the total absence of justice.<sup>38</sup>

## B. Armenian “Genocide”?

### 1. Defining the Crime of Genocide

The most controversial issue concerning what historians and academics across the world term “the Armenian Genocide” is whether it was in fact a “genocide.” World-renowned international law professor and Holocaust survivor, Raphael Lemkin, coined the term “genocide” in 1943,

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<sup>31</sup> MORGENTHAU, *supra* note 14, at 339.

<sup>32</sup> See Levon Marashlian, *Finishing the Genocide: Cleansing Turkey of Armenian Survivors, 1920-1923*, in REMEMBRANCE AND DENIAL: THE CASE OF THE ARMENIAN GENOCIDE 113-120 (Richard G. Hovannisian ed., 1999) (describing “The Regulations Concerning the Management of the Land and Properties Belonging to Armenians Who Have Been Sent Elsewhere as a Result of the State of War and the Extraordinary Political Situation,” which is more commonly known as the “Abandoned Properties Law”).

<sup>33</sup> *See id.*

<sup>34</sup> The Grand National Assembly is the parliament of Turkey.

<sup>35</sup> See Marashlian, *supra* note 32.

<sup>36</sup> Hovannisian, *supra* note 9, at 36.

<sup>37</sup> *See id.* at 33-38. For a U.S. Department of State map of the Caucasus region, including Eastern Turkey and the former Western Armenian regions of Trebizond, Van, and Erzerum, visit University of Texas, Perry-Castañeda Library Map Collection, available at [http://www.lib.utexas.edu/maps/commonwealth/caucasus\\_region\\_1994.jpg](http://www.lib.utexas.edu/maps/commonwealth/caucasus_region_1994.jpg).

<sup>38</sup> A faction of Armenians believes that the regions comprising Western Armenia, on which Mount Ararat sits, will one day be reunited with the Republic of Armenia. Armenian President Serzh Sarkisian was recently criticized by Turkish Prime Minister Recep Tayyip Erdogan for insisting that the reunification of Western Armenia (currently Eastern Turkey) with the Republic of Armenia depends on the young generation of Armenians. See *Erdogan Urges Sarkisian to Apologize for Western Armenia Remarks*, ASBAREZ.COM, July 27, 2011, available at <http://asbarez.com/97287/erdogan-asks-sarkisian-to-apologize-for-western-armenia-remarks>.

when he traced the similarities between the Armenian Genocide and the Holocaust.<sup>39</sup> Ironically, while attending the University of Lviv Law School—years before Hitler began his “Final Solution” to eliminate Europe’s Jewish population in the Holocaust—Lemkin studied the willful atrocities committed by the Turks against the Armenians.<sup>40</sup> Shocked by the barbarity of the mass murder of Armenians solely because of their identity as Christian outsiders in an Islamic, Turkish world, and dismayed by the fact that the Turkish officials responsible for such barbarity were never punished for their crimes, Lemkin dedicated his career to the study of institutionalized attempts to eliminate ethnic or religious groups.<sup>41</sup>

Lemkin combined “genos,” the Greek word for *race*, with “-cide,” the Latin word for *killing*.<sup>42</sup> Lemkin subsequently elaborated on the concept of genocide:

By ‘genocide,’ we mean the destruction of a nation or of an ethnic group. . . . Generally speaking, genocide does not necessarily mean the immediate destruction of a nation. . . . It is intended rather to signify a coordinated plan of different actions aiming at the destruction of the essential foundations of the life of national groups, with the aim of annihilating the groups themselves. . . . Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group.<sup>43</sup>

Just two years after Lemkin’s work was published, the first session of the United Nations (“UN”) General Assembly affirmed that “genocide is a crime under international law” when it unanimously adopted Resolution 96(I).<sup>44</sup> Given that the inventor of the term “genocide” based his entire life’s study on the intentional and methodical demolition of the Armenians by the Ottoman government and the adaptation of that same policy by Hitler against European Jewry, it stretches all credulity to assert that no genocide was committed against the Armenians.

The internationally accepted legal definition of “genocide” is found in the UN Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”).<sup>45</sup> There are currently 141 parties to the Genocide Convention.<sup>46</sup> As a framer of the Genocide Convention,<sup>47</sup> Lemkin’s concern with protecting national, ethnic, racial, and religious groups as entities was expressly incorporated into the Convention’s definition of “genocide”<sup>48</sup>:

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<sup>39</sup> See Lorie M. Graham, *Reparations, Self-Determination, and the Seventh Generation*, 21 HARV. HUM. RTS. J. 47, 65 (2008); Steven L. Jacobs, *Raphael Lemkin and the Armenian Genocide*, in LOOKING BACKWARD, MOVING FORWARD: CONFRONTING THE ARMENIAN GENOCIDE 125-133 (Richard G. Hovannisian ed., 3d. prtg. 2006).

<sup>40</sup> See Jacobs, *supra* note 39.

<sup>41</sup> See *id.*

<sup>42</sup> See RAPHAEL LEMKIN, AXIS RULE IN OCCUPIED EUROPE: LAWS OF OCCUPATION, ANALYSIS OF GOVERNMENT, PROPOSALS FOR REDRESS 79 (1944).

<sup>43</sup> *Id.*

<sup>44</sup> G.A. Res. 96(I), U.N. Doc. A/RES/96(I) (Dec. 11, 1946). Resolution 96(I) further affirmed that both principals and accomplices are punishable for the commission of genocide. See also Kurt Mundorff, *Other Peoples’ Children: A Textual Interpretation of the Genocide Convention, Article 2(E)*, 50 HARV. INT’L L.J. 61, 74 (2009).

<sup>45</sup> See JEFFREY L. DUNOFF, STEVEN R. RATNER & DAVID WIPPMAN, INTERNATIONAL LAW NORMS, ACTORS, PROCESS: A PROBLEM-ORIENTED APPROACH 615 (2d. ed. 2006); Kuper, *supra* note 10, at 44.

<sup>46</sup> United Nations Treaty Collection, Multilateral Treaties Deposited with the Secretary-General, <http://treaties.un.org/pages/ParticipationStatus.aspx> (follow “Chapter IV” hyperlink, then follow “Convention on the Prevention and Punishment of the Crime of Genocide. Paris, 9 December 1948”).

<sup>47</sup> Mundorff, *supra* note 44, at 75.

<sup>48</sup> *Id.* at 86-87.

[G]enocide 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 harm or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.<sup>49</sup>

It is important to note that the existence of *any* of these acts committed with the intent to destroy an ethnic group is sufficient to constitute genocide. Based on the Genocide Convention definition, there is substantial evidence that *all* of these acts were committed by the Ottoman Empire during the Armenian Genocide.

## 2. *The Numbers Game: Measuring the Casualties of Genocide*

Another major issue with respect to the Armenian Genocide is the debate over the Armenian death toll.<sup>50</sup> Although the Genocide Convention does not require a minimum number of deaths in order for events to be labeled “genocide,”<sup>51</sup> the definition of genocide includes intent to destroy a group, even *in part*.<sup>52</sup> The legislative history of the Genocide Convention establishes that “in part” means a “substantial part of the group.”<sup>53</sup> Special Rapporteur Benjamin Whitaker defines “in part” as “a reasonably significant number, relative to the total of the group as a whole, or else a significant section of the group such as its leadership.”<sup>54</sup> Therefore, the proportion of deaths within a national, ethnic, racial, or religious group to the total population of the group is a telling factor in evaluating genocide.

An estimated 600,000 to 2 million Armenians were slaughtered in the Genocide,<sup>55</sup> with the United States House of Representatives in 2007 estimating the Armenian death toll at 1.5 million.<sup>56</sup> These figures are horrifying, given that the entire pre-World War I Armenian population in the Ottoman Empire ranged from 1.465 million to 2.4 million.<sup>57</sup> While exact numbers will never be known,<sup>58</sup> it is clear from all estimates that fifty to seventy-five percent of

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<sup>49</sup> Convention on the Prevention and Punishment of the Crime of Genocide art. 2, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention] (emphasis added).

<sup>50</sup> See Melson, *supra* note 9, at 64-66. See also STANFORD J. SHAW & EZEL KURAL SHAW, 2 THE HISTORY OF THE OTTOMAN EMPIRE AND MODERN TURKEY: REFORM, REVOLUTION, AND REPUBLIC: THE RISE OF MODERN TURKEY, 1808-1975 315-316 (1977).

<sup>51</sup> See Genocide Convention, *supra* note 49, at art. 2.

<sup>52</sup> *Id.*

<sup>53</sup> Mundorff, *supra* note 44, at 88.

<sup>54</sup> *Id.* (quoting ECOSOC, Sub-Comm’n on Prevention of Discrimination & Protection of Minorities, Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide, ¶ 29, U.N. Doc. E/CN.4/Sub.2/1086/6 (July 2, 1985) (prepared by Benjamin Whitaker)).

<sup>55</sup> Kielsgard, *supra* note 28, at 12.

<sup>56</sup> *Id.* In 2007, California Representative Adam Schiff introduced House Resolution 106 to recognize the Armenian Genocide.

<sup>57</sup> *Id.* See also Kuper, *supra* note 10, at 52 (highlighting the debate of the Armenian death toll during the Armenian Genocide and the different estimates on the pre-World War I Armenian population in the Ottoman Empire).

<sup>58</sup> Because there is no official Ottoman record of its Armenian population before or after World War I, there are competing statistics of the Armenian population in the Ottoman Empire proffered by the Turkish government, academics and historians, and the American Committee for Armenian and Syrian relief. Kuper, *supra* note 10, at 52.

the entire Armenian population in the Ottoman Empire was eradicated during the Armenian Genocide.<sup>59</sup>

Even without access to the exact numbers or percentages of Armenians killed by the Ottoman deportation scheme, the events that transpired clearly constitute genocide under public international law. The heinous crimes committed by the Ottoman government with the intention of destroying its Armenian population, “in whole or in part,” fully meet the Genocide Convention’s definition of genocide.

### C. Turkey’s Denial of the Armenian Genocide

There are three prongs to the Republic of Turkey’s argument for denying the Armenian Genocide: (1) the Ottoman Empire is not related to the present-day Republic of Turkey, which was founded in 1923 after World War I;<sup>60</sup> (2) the killing of Armenians was neither intentional nor organized by the government, but rather a series of uncontrollable, sporadic massacres against Armenians by Kurds and Turkish citizens;<sup>61</sup> and (3) the mass killing of Armenians was a necessary wartime measure.<sup>62</sup>

The first prong of Turkey’s argument—that the Ottoman Empire is unrelated to the present-day Republic of Turkey—is without merit. This would be the equivalent of the Federal Republic of Germany not accepting responsibility for the Holocaust because it was devised and carried out by the Third Reich under the Nazi regime. Although the Third Reich was responsible for the Holocaust, the Federal Republic of Germany was still held accountable for its crimes.<sup>63</sup> Germany will always bear the burden of having been responsible for this nadir of human civilization.

The first prong of Turkey’s argument is deeply flawed. First, one of the major purposes of the genocidal acts committed by the Young Turk regime was to form a homogeneous Turkish

<sup>59</sup> See Shamsey, *supra* note 8, at 335; Kielsingard, *supra* note 28, at 13.

<sup>60</sup> See KAMURAN GÜRÜN, *THE ARMENIAN FILE: THE MYTH OF INNOCENCE EXPOSED* 282 (1985) (quoting ATATÜRK, *NUTUK* 443-447 (1938) (“A new Turkey was born of the old Ottoman Empire . . . This new Turkey will have its legality recognized, like every independent state.”)). See also BERNARD LEWIS, *THE EMERGENCE OF MODERN TURKEY* 250 (1961); Richard G. Hovannisian, *The Armenian Genocide and Patterns of Denial*, in *THE ARMENIAN GENOCIDE IN PERSPECTIVE* 113, (Richard G. Hovannisian ed., 9th prtg. 2004); Yves Ternon, *Freedom and Responsibility of the Historian: The “Lewis Affair,”* in *REMEMBRANCE AND DENIAL: THE CASE OF THE ARMENIAN GENOCIDE* 240-243 (Richard G. Hovannisian ed., 1999) (focusing on how Princeton University history professor Bernard Lewis, a firm denier of the Armenian Genocide, used the terms “Turkey” and “Ottoman Empire” interchangeably in his widely distributed textbook, *THE EMERGENCE OF MODERN TURKEY*). But see BERNARD LEWIS, *THE EMERGENCE OF MODERN TURKEY* 222 (1961) (stating that the rule of the CUP ended with the defeat of Turkey (as opposed to the Ottoman Empire) in 1918, which demonstrates that even Turkish history scholars use the term Turkey to refer to the Ottoman Empire).

<sup>61</sup> See SHAW & SHAW, *supra* note 50, at 316 (“Careful examination of the secret records of the Ottoman cabinet at the time reveals no evidence that any of the CUP leaders, or anyone else in the central government, ordered massacres”). See also GÜRÜN, *supra* note 60, at 205-221; Vigen Guroian, *Collective Responsibility and Official Excuse Making: The Case of the Turkish Genocide of the Armenians*, in *THE ARMENIAN GENOCIDE IN PERSPECTIVE* 137-139 (Richard G. Hovannisian ed., 9th prtg. 2004); Shamsey, *supra* note 8, at 355; Richard G. Hovannisian, *Denial of the Armenian Genocide in Comparison with Holocaust Denial*, in *REMEMBRANCE AND DENIAL: THE CASE OF THE ARMENIAN GENOCIDE* 211-217 (Richard G. Hovannisian ed., 1999).

<sup>62</sup> See ALTAMUR KILIC, *TURKEY AND THE WORLD* 17-18 (1959); GÜRÜN, *supra* note 60, at 106-221; SHAW & SHAW, *supra* note 50, at 314-317; Toynbee, *supra* note 5, at 627-633; Hovannisian, *supra* note 61, at 207-211; Kuper, *supra* note 10, at 53.

<sup>63</sup> See Hovannisian, *supra* note 60, at 111. Germany has paid more than 80 billion dollars to Holocaust victims since the World War II. See Michael J. Bazylar & Amber L. Fitzgerald, *Trading With the Enemy: Holocaust Restitution, the United States Government, and American Industry*, 28 *BROOKLYN J. INT’L L.* 683, 719 (2003).

nation.<sup>64</sup> In fact, “[m]ost of the early leaders of the [modern] Turkish Republic were high-ranking Ottoman officials who had participated in perpetrating the Armenian Genocide.”<sup>65</sup>

Second, under Article 36 of the Vienna Convention on Succession of States in Respect of State Property, Archives, and Debts, “A succession of States does not as such affect the rights and obligations of creditors.”<sup>66</sup> Consequently, as Vahakn Dadrian, Director of Genocide Research at the Zoryan Institute, summarizes, “Under international law, the modern Republic of Turkey is heir and successor to the Ottoman Empire. . . . Thus, the Republic of Turkey acquires all the rights of the Empire, while at the same time incurring all its liabilities.”<sup>67</sup> Furthermore, the Grand National Assembly, the parliament of the Republic of Turkey, was officially established in 1921.<sup>68</sup> Significantly, the Grand National Assembly’s first major political act was the ratification of the Treaty of Lausanne in 1923,<sup>69</sup> the peace treaty that settled all Ottoman, Allied, and Armenian claims arising out of World War I,<sup>70</sup> as well as any right of foreign states to supervise Turkey’s management of its minorities.<sup>71</sup> Thus, as a corollary to the official recognition of a Turkish state by the Allies, the Republic of Turkey—by accepting the terms of the Treaty of Lausanne as the official successor to the Ottoman Empire—expressly assumed responsibility for the Armenian Genocide.

Finally, the Unionists, the political party led by Mustafa Kemal (Atatürk) that “unified” the Republic of Turkey, established the nation-state through the resources provided by the CUP—that is, largely through property left behind by the Armenians who had been “deported” in order to form this united Turkish State.<sup>72</sup> Therefore, Turkey cannot shift the blame for the Armenian Genocide onto the former Ottoman Empire simply because it unified as an independent Turkish State in 1923 when it succeeded the dissolved Ottoman Empire.<sup>73</sup>

The second prong of Turkey’s argument—that the government did not officially sanction the mass murder of Armenians—is a fallacy. Substantial evidence from numerous Turkish and non-Turkish sources demonstrate that the CUP indeed initiated and ordered deportation measures,<sup>74</sup> and that these were not just random acts of violence initiated by Kurds and Turkish citizens. In

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<sup>64</sup> See Melson, *supra* note 9, at 71-81 (asserting that Turkish political philosopher Ziya Gökalp led a national political movement towards Turkism and notions of a Turkish state consisting entirely of Turks that was embraced and carried out by the CUP); Simeon A. Morbey, *International Justice Case Concerning Cultural Property and the Armenian Genocide (United States of America v. Republic of Turkey) Application for the Institution of Proceedings of the United States of America*, 4 U. ST. THOMAS J. L. & PUB. POL’Y 138, 148-150 (2010) (“The ‘final solution’ was the result of an intellectual commitment to Turkish nationalism, as ideology that suffused the [CUP] during the war years.”); Toynbee, *supra* note 5 (“The Turkish leaven was to permeate the non-Turkish lump, until it had all become one uniform Turkish substance.”).

<sup>65</sup> Sassounian, *supra* note 9, at 119. See also LEWIS, *supra* note 60, at 286 (proposing that Mustafa Kemal, a general in the Ottoman army, was the successor of the Young Turks as the leader of Turkey).

<sup>66</sup> Vienna Convention on Succession of States in Respect of State Property, Archives, and Debts, art. 36, Apr. 7, 1983, 22 I.L.M. 306, available at [http://untreaty.un.org/ilc/texts/instruments/english/conventions/3\\_3\\_1983.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/3_3_1983.pdf). *Accord Kolovrat v. Oregon*, 366 U.S. 187, 190-191 (1961) (concluding that a treaty signed by Serbia in 1881 was binding on Yugoslavia because Serbia was the successor state to Yugoslavia).

<sup>67</sup> Dadrian, *supra* note 9, at 75. *Accord Eren Keskin, Armenian Genocide “Yesterday and Today”*, 4 U. ST. THOMAS J. L. & PUB. POL’Y 31, 32 (2010) (“The Republic of Turkey, which assumed the financial debts of the Ottoman Empire at the Lausanne conference, did not assume and is still resisting assuming the biggest debt of the Empire, which is the debt of an apology.”).

<sup>68</sup> LEWIS, *supra* note 60, at 251.

<sup>69</sup> See *id.* at 255; SHAW & SHAW, *supra* note 50, at 366-367.

<sup>70</sup> See *Deirmenjian v. Deutsche Bank, A.G.*, 526 F. Supp. 2d 1068, 1076-1077 (C.D. Cal. 2007)

<sup>71</sup> See SHAW & SHAW, *supra* note 50, at 366-367.

<sup>72</sup> See *infra* text accompanying notes 30-36. See also Fatma Müge Göçek, *Reconstructing the Turkish Historiography on the Armenian Massacres and Deaths of 1915*, in LOOKING BACKWARD, MOVING FORWARD: CONFRONTING THE ARMENIAN GENOCIDE 211-218 (Richard G. Hovannisian ed., 3d. prtg. 2006).

<sup>73</sup> See LANDEAU, *supra* note 5, at 74-78.

<sup>74</sup> See *infra* text accompanying notes 76-82. See also Shamsy, *supra* note 8, at 335-336; Dadrian, *supra* note 9, at 62-69.

fact, after World War I, the Mazhar Inquiry Commission—a special commission headed by the Turkish Departments of the Interior and Justice with extensive investigative powers—submitted forty authenticated documents introduced into evidence in the special (Fevkâlade) Courts Martial.<sup>75</sup> The findings of the Courts Martial, corroborated by party admissions made by Young Turk leaders, confirmed that Ottoman government officials planned and coordinated the Armenian Genocide,<sup>76</sup> and the penalty for premeditated murder under Article 170 of the Turkish Penal Code was death.<sup>77</sup> Interestingly, “the Istanbul trials were entirely based upon domestic penal code rather than international law.”<sup>78</sup> Thus, at the time of the trials, not only did Turkey recognize that the mass murder of Armenians was premeditated and deliberate, it also prosecuted the perpetrators under its *domestic* penal code, which assuredly constitutes Turkey’s concession that it is the state successor to the Ottoman Empire. Accordingly, this procedural admission further defeats the first prong of Turkey’s argument, an attempt to fully distinguish the modern Republic of Turkey from the Ottoman Empire.

In an eerie conversation with Enver Pasha, one of the CUP leaders,<sup>79</sup> Ambassador Morgenthau diplomatically attempted to detach the CUP from responsibility for the mass murder of the Armenians.<sup>80</sup> Taking offense to Ambassador Morgenthau’s remark, Enver replied:

You are greatly mistaken. . . . We have this country absolutely under our control. I have no desire to shift the blame onto our underlings and I am entirely willing to accept the responsibility myself for everything that has taken place. The Cabinet itself has ordered the deportations. . . . [W]e are the real rulers of Turkey, and no underling would dare proceed in a matter of this kind without our orders.<sup>81</sup>

Enver Pasha’s admission underscoring the centralized decision-making with respect to the decimation of the Armenians confirms the indictments of the Courts Martial, which disclosed weighty evidence of the CUP’s critical role in the Armenian massacres.<sup>82</sup> Thus, the rationale behind Turkey’s argument that the Ottoman government did not officially commit genocide stands on historical fiction.

Lastly, the evidence undermines the third prong of Turkey’s argument: that the murders were the product of necessary wartime measures.<sup>83</sup> According to that argument, the “deportation” of Armenians out of what is now Eastern Turkey was necessary because of Armenian uprisings and

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<sup>75</sup> Dadrian, *supra* note 9, at 65-66.

<sup>76</sup> *Id.* at 66-68.

<sup>77</sup> *Id.* at 67.

<sup>78</sup> *Id.*

<sup>79</sup> See Hovannisian, *supra* note 9, at 27 (stating that the CUP was headed by a triumvirate: Enver, Minister of War; Talaat, Minister of Internal Affairs and Grand Vizier; and Jemal, military governor of Constantinople and Minister of the Marine).

<sup>80</sup> See MORGENTHAU, *supra* note 14, at 351 (“Of course I know that the Cabinet would never order such terrible things as have taken place. You and Talaat and the rest of the Committee can hardly be held responsible. . . . I realize that it is not always easy to control your underlings.”).

<sup>81</sup> *Id.* at 351-352.

<sup>82</sup> See Shamsey, *supra* note 8, at 344-345 (stating that the Court-Martial found that the acts of deportation and killing were premeditated and that CUP party was responsible for creating “the Special Organization” and giving secret orders to destroy the Armenian population).

<sup>83</sup> See Toynbee, *supra* note 5, at 632 (“It is a significant fact that all these Turkish complaints [of Armenians aiding Russia] are directed against Russian Armenians in Russian service.”); KILIC, *supra* note 62; Kuper, *supra* note 10, at 53; Dadrian, *supra* note 9, at 62-63. See also Morbey, *supra* note 64, at 142-148 (tracing the history of the Ottoman Empire’s distrust of Armenians since the Russo-Ottoman War of 1877-1878, when Armenians sought protection from the Russians).

Armenian collusion with Russia against the Ottomans during World War I.<sup>84</sup> Turkish historians have sought to contextualize the massacres as a response to Armenian disloyalty, claiming that the Armenians were in open revolt against the Ottoman Empire.<sup>85</sup> However, ample evidence establishes that there was no such rebellion by the Ottoman Armenian population.<sup>86</sup> Toynbee asserts that an Armenian rebellion was practically impossible, as nearly every able-bodied Armenian male in the Ottoman Empire between the ages of twenty and forty-five was serving in the Ottoman army at the time of the deportations.<sup>87</sup> Moreover, the deportation measures had already begun before the “Van Rebellion,”<sup>88</sup> the uprising of Armenians in the region of Van cited most frequently by Turkish scholars as an example of Armenian disloyalty.<sup>89</sup> Finally, Article 6 of the Rome Statute—which adopted the Genocide Convention definition of genocide<sup>90</sup> and established the International Criminal Court<sup>91</sup>—“makes no distinction between justified or unjustified genocidal acts; no exception is present for officials claiming they were acting in the best interest of the state.”<sup>92</sup> Thus, even if some rogue Armenians were resisting genocide, or assisting Russia in World War I—an assumption refuted by most reports—the mass murder of Armenians by the CUP is indefensible under international law.

#### D. Current Status of Armenian Genocide Recognition

Despite the fact that the Turkish government vehemently denies its role in the Armenian Genocide and disputes the fact that genocide ever occurred,<sup>93</sup> overwhelming evidence demonstrates that the Ottoman Empire, through enforcement by Turkish soldiers in the army, engaged in genocide against its Armenian population. The Vatican, the European Parliament, the UN Sub-Committee on Prevention of Discrimination and Protection of Minorities, the legislatures of more than twenty countries, and the legislatures of forty-two of fifty American states have all recognized the Armenian Genocide.<sup>94</sup> Nevertheless, perhaps the most important entities to Armenians as far as recognition of the Armenian Genocide is concerned—the United Nations, Turkey, and the United States—have balked at recognizing these atrocities committed against the Armenians as a “genocide.”<sup>95</sup>

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<sup>84</sup> See KILIC, *supra* note 62, at 17-18; GÜRÜN, *supra* note 60, at 106-221; Kuper, *supra* note 10, at 53. See also JUSTIN MCCARTHY & CAROLYN MCCARTHY, *TURKS AND ARMENIANS: A MANUAL ON THE ARMENIAN QUESTION* 46-51 (1989) (citing the a rebellion by the Armenians in Zeitun and the Van Rebellion).

<sup>85</sup> See Shamsey, *supra* note 8, at 355.

<sup>86</sup> See Kuper, *supra* note 10, at 53 (stating that because the Armenian homeland stood between Russia and the Ottoman Empire, Armenian soldiers fought for both the Russian and the Turkish armies respectively; however, there is substantial evidence from the records of Arnold Toynbee and German missionary Dr. Johannes Lepsius refuting any allegations of Armenian disloyalty towards the Ottoman Empire); Shamsey, *supra* note 8, at 355 (“[T]he top CUP leaders openly admitted that they were in all likelihood punishing innocent Armenians for the alleged ‘misdeeds’ of a few”). See also MORGENTHAU, *supra* note 14, at 344-346 (asking Enver Pasha, “Why sacrifice a whole race for the alleged crime of individuals?”).

<sup>87</sup> See Toynbee, *supra* note 5, at 629.

<sup>88</sup> See *id.* at 627.

<sup>89</sup> See GÜRÜN, *supra* note 60, at 186-204; MCCARTHY & MCCARTHY, *supra* note 84.

<sup>90</sup> See Rome Statute of the International Criminal Court, art. 6, U.N. Doc. A/Conf. 183/9 (July 17, 1998), available at [http://untreaty.un.org/cod/icc/statute/english/rome\\_statute\(e\).pdf](http://untreaty.un.org/cod/icc/statute/english/rome_statute(e).pdf).

<sup>91</sup> See *id.* art. 1. See also Shamsey, *supra* note 8, at 329.

<sup>92</sup> Shamsey, *supra* note 8, at 355.

<sup>93</sup> See Keskin, *supra* note 67 (explaining that Turkish laws, such as Article 301 of the Turkish Penal Code, prohibit citizens from criticizing the government or urging it to acknowledge the Armenian Genocide).

<sup>94</sup> See Michael J. Kelly, “Genocide” – *The Power of a Label*, 40 CASE W. RES. J. INT’L L. 147, 152 (2007-2008); Shamsey, *supra* note 8, at 376; Sassounian, *supra* note 9, at 117.

<sup>95</sup> See Shamsey, *supra* note 8, at 374, 376.

## II. THE QUEST FOR RESTORATIVE JUSTICE

### A. The Importance of Restorative Justice for Armenians and Possible Avenues for Restorative Justice

The absence of worldwide recognition of the Armenian Genocide has plagued Armenians since the end of World War I.<sup>96</sup> “This sense of total loss of one’s origins plays a significant role in the psychological experiences of the surviving generations of Armenians,” psychiatrists Levon Boyajian and Haigaz Grigorian assert.<sup>97</sup> The complete lack of general knowledge of what transpired places a peculiar burden upon the children and grandchildren of survivors who feel a familial obligation to vindicate their past and avow their ethnic identity.<sup>98</sup> Boyajian and Grigorian expound on the psychological effect of the Armenian Genocide:

Because of the historical differences between public recognition of the events of the Jewish Holocaust and the denial of the Armenian genocide by the Turks, the impact upon the subsequent generations is very different. The issue of Armenian identity and insistence upon the recognition of that event by the world plays a central role in the identity formation of subsequent generations of Armenians. How do you explain who you are to others as well as to yourself when no one acknowledges the reality and validity of your past?<sup>99</sup>

According to Boyajian and Grigorian, “All Armenians consider themselves survivors and all consider the events their own background because all either were victims or had close relatives who perished, and all have lost their ancestral homeland.”<sup>100</sup> Consequently, “[t]he genocide is not the experience of only a portion of the Armenian people; it is the experience of *all*.”<sup>101</sup> Armenians have taken on a *de facto* identity of victimization and martyrdom;<sup>102</sup> as long as denial of the Armenian Genocide persists, the ghosts of the genocide will not go away.<sup>103</sup>

Because of a majority of the international community’s indifference towards the Armenian Genocide and Turkey’s evasion of punishment for its crimes, Armenians feel the need for restorative justice.<sup>104</sup> According to Marquette University philosophy professor Margaret Urban Walker, “Restorative justice embodies a view of crime or violence as a violation of people and relationships that entails an obligation to set things right, repairing victims and communities, and ideally humanizing and reintegrating offenders.”<sup>105</sup> Restorative justice emphasizes the repairing of relations by acknowledging victims’ needs and requiring that those responsible for harm be

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<sup>96</sup> Joe Verhoeven, *The Armenian Genocide and International Law*, in LOOKING BACKWARD, MOVING FORWARD: CONFRONTING THE ARMENIAN GENOCIDE 138 (Richard G. Hovannisian ed., 3d. prt. 2006) (“[T]he very fact that there was no punishment and even no official recognition of the genocide by the perpetrator side keeps the wounds open and prevents healing”). See also Hovannisian, *supra* note 9, at 37; Sassounian, *supra* note 9.

<sup>97</sup> Levon Boyajian & Haigaz Grigorian, *Psychosocial Sequelae of the Armenian Genocide*, in THE ARMENIAN GENOCIDE IN PERSPECTIVE 181 (Richard G. Hovannisian ed., 9th prt. 2004).

<sup>98</sup> See *id.* at 182.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 183. See also Hovannisian, *supra* note 9, at 37 (asserting that the Treaty of Lausanne marked the international abandonment of the “Armenian Question” and resulted in the loss of Armenian ancestral lands).

<sup>101</sup> *Id.*

<sup>102</sup> See *id.*

<sup>103</sup> See *id.*

<sup>104</sup> See Michael Bobelian, *Vartkes’s List*, LEGAL AFF., Mar.-Apr. 2006, at 38, 39, 42; Hovannisian, *supra* note 9, at 37-38; Sassounian, *supra* note 9.

<sup>105</sup> MARGARET URBAN WALKER, MORAL REPAIR: RECONSTRUCTING MORAL RELATIONS AFTER WRONGDOING 15 (2006).

held accountable.<sup>106</sup> The means by which this is done is through public apology, truth-telling, and restitution or compensation.<sup>107</sup> Unfortunately, many of the ideal mechanisms of restorative justice, such as the right of Armenian Genocide victims to confront the perpetrators and hold them accountable, are not possible, inasmuch as nearly all of the actual victims and perpetrators of the Armenian Genocide have long since passed away. Nevertheless, public apology, truth-telling and compensation are necessary—and attainable—to help heal the ongoing wounds of Armenians collectively.

Notwithstanding all of the options for restorative justice, the Armenian Diaspora wants Turkey, at a minimum, to pay for its wrongdoings.<sup>108</sup> Literally.<sup>109</sup> Author Harut Sassounian has proclaimed, “A simple acknowledgement of what took place and mere apology [from Turkey] . . . would not heal the wounds and undo the consequences of the Genocide.”<sup>110</sup> While money and official recognition by Turkey could never make up for what Armenians as a whole have experienced—from the tremendous loss of our families to the loss of a majority of our ancestral homeland—it is the only feasible remedy in the current political context.

Yet, the symbolic impact of official recognition from the United States, United Nations, and most importantly, Turkey, is nonetheless important to Armenians.<sup>111</sup> Recognition in the United States could stem from either federal legislation creating a private right of action for Armenian Genocide-related litigation or Congressional resolutions.<sup>112</sup> According to international law scholar Mark D. Kielsgard, “In terms of hard law, [Congressional] resolutions are merely symbolic, but in terms of restorative justice, they can be an indispensable step in the healing process.”<sup>113</sup>

Even though official U.S. government recognition has not been forthcoming, the symbolic effect of common law recognition from U.S. courts through an award for damages in a judgment for Armenian survivors serves as a tangible step toward restorative justice for Armenians.<sup>114</sup> While court-awarded damages for descendants of victims do not technically suffice as reparations from the standpoint of public international law, they would still give heirs of Armenian Genocide victims something of value.<sup>115</sup> More importantly, according to New York attorney and journalist Michael Bobelian, “forcing their payment could be a way of getting people to recognize that something horrible had happened in Turkey [almost one hundred years ago].”<sup>116</sup> Finally, recognition of the Armenian Genocide by the United States would exert significant pressure on Turkey—a political ally<sup>117</sup> that expends tremendous resources to lobby against Congressional recognition of the genocide<sup>118</sup> and criminalizes discussion of the

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<sup>106</sup> *See id.*

<sup>107</sup> *See id.*

<sup>108</sup> *See* Bobelian, *supra* note 104; Sassounian, *supra* note 9, at 119.

<sup>109</sup> *See* Sassounian, *supra* note 9, at 119 (“A gross injustice was perpetrated against the Armenian people, which entitles them, as in the case of the Jewish Holocaust, to just compensation for their enormous losses.”).

<sup>110</sup> *Id.* at 118.

<sup>111</sup> *See* Kielsgard, *supra* note 28, at 2-4.

<sup>112</sup> *See id.*

<sup>113</sup> *Id.* at 2.

<sup>114</sup> *See* Bobelian, *supra* note 104.

<sup>115</sup> *See id.* at 42.

<sup>116</sup> *Id.*

<sup>117</sup> *See* Kielsgard, *supra* note 28, at 37 (“In the Cold War Era, Turkey became a strategic ally and a bulwark against Soviet expansionism in Asia.”).

<sup>118</sup> *See* Kielsgard, *supra* note 28, at 4. *See also* *Turkish Lobbies in U.S. Stepping Up Efforts*, TURKISH DAILY NEWS, Sept. 18, 2007, available at 2007 WLNR 18233489; Carl Hulse, *Bill on Armenian Genocide Falters U.S. Lawmakers Waver After Stern Warnings from Turkey*, INT’L HERALD TRIB., Oct. 18, 2007, available at 2007 WLNR 20446949; Mark Arax, *Jews Pressed*

Genocide<sup>119</sup>—to recognize the Armenian Genocide, acknowledge its wrongdoings, and provide reparations to descendants of Armenian victims.

## B. Actors Behind the Armenian Genocide Litigation Movement

At the heart of the Armenian quest for restorative justice today is high-profile attorney, Mark Geragos. Over the last ten years, Geragos, along with other Los Angeles-based Armenian attorneys, has spearheaded major Armenian Genocide-related class action lawsuits against banks and life insurance companies on behalf of descendants of victims who were clients of those companies. But the battle actually began with another Armenian attorney.<sup>120</sup> While reading Henry Morgenthau's memoirs, attorney Vartkes Yeghiayan discovered that thousands of Armenian Genocide victims owned life insurance policies, and realized that most heirs had probably not collected the proceeds because Armenian families were broken apart and dispersed all over the world after the Genocide.<sup>121</sup> In 2000, Yeghiayan filed a lawsuit against the New York Life Insurance Company ("New York Life") in U.S. District Court in Los Angeles,<sup>122</sup> home of the largest Armenian community in United States.<sup>123</sup> Yeghiayan enlisted Geragos, along with attorneys Brian Kabateck—whose grandparents were Armenian Genocide survivors—and William Shernoff to form the Armenian Genocide class action "Dream Team."<sup>124</sup>

The attorneys still faced serious obstacles. The most obvious problem was the statute of limitations on claims arising under the insurance policies.<sup>125</sup> The attorneys rallied influential Armenians in California, such as former California Governor George Deukmejian, to persuade the state legislature to extend the statute of limitations on Armenian Genocide claims.<sup>126</sup> In April 2001, New York Life offered \$10 million to settle the lawsuit.<sup>127</sup> While Kabateck and Shernoff urged Yeghiayan to accept the settlement and even issued press releases of the settlement, Yeghiayan refused.<sup>128</sup> Bobelian describes Yeghiayan's rationale for rejecting the settlement in terms of restorative justice:

Yeghiayan wanted the insurer to pay his clients so that they would get the money they were owed, but also as an act of *public recognition* for a genocide that most Armenians believed had been too little noticed—and that its perpetrators had consistently denied. In Yeghiayan's view, a settlement could serve both purposes

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to Ignore Armenian Genocide, HOUSTON CHRON., Apr. 23, 1985, available at 1985 WLNR 1265200 (describing threats from Turkish lobbyists made to Jewish leaders implying that the Jewish community of Turkey would be harmed if Jewish leaders in the U.S. continued supporting Armenians in their Genocide recognition efforts).

<sup>119</sup> Criminal Code art. 299, Law No. 5237 (Sept. 26, 2004) (Turk.), available at [http://www.justice.gov.tr/basiclaws/Criminal\\_Code.pdf](http://www.justice.gov.tr/basiclaws/Criminal_Code.pdf). See also Kielsingard, *supra* note 28, at 17.

<sup>120</sup> See Bobelian, *supra* note 104, at 41-42.

<sup>121</sup> See *id.*

<sup>122</sup> See *id.* at 43.

<sup>123</sup> See Consulate General of the Republic of Armenia in Los Angeles, <http://www.armeniaconsulatela.org> (follow "Community Affairs" hyperlink; then follow "Armenian Community in west US" hyperlink) (last visited Aug. 4, 2011).

<sup>124</sup> See Bobelian, *supra* note 104, at 43.

<sup>125</sup> See *id.*

<sup>126</sup> See *id.*

<sup>127</sup> See *id.*

<sup>128</sup> See *id.*

only if it were large enough to attract the world's attention. Otherwise, he would seek the recognition that his people deserved by trying the case in court.<sup>129</sup>

After Judge Snyder denied New York Life's motion to dismiss, however, the parties did agree to settle the case for \$20 million.<sup>130</sup>

This began an era of Armenian Genocide lawsuits. Since the groundbreaking New York Life settlement, Geragos, Kabateck, and Yeghiayan have earned notoriety for their representation of descendants of Armenian Genocide victims. In 2005, French insurance company AXA settled a lawsuit led by Geragos on behalf of heirs of life insurance policy-owning Armenian Genocide victims for \$17 million.<sup>131</sup>

### C. Recent Litigation of Armenian Genocide-Related Claims

Despite these victories for Armenians, the road to reparations has not been easy. After the successful settlements in the New York Life and AXA cases, Geragos and Kabateck filed two more Armenian Genocide class action lawsuits in California on behalf of heirs of Armenian Genocide victims. In *Deirmenjian v. Deutsche Bank*, the U.S. District Court for the Central District of California granted several German bank defendants' motion to dismiss.<sup>132</sup> The court held that section 354.45 of the California Code of Civil Procedure—which extends the statute of limitations to 2016 for Armenian Genocide-related cases involving looted or unpaid bank assets—is preempted because it conflicts with the federal government's resolution of claims arising out of World War I.<sup>133</sup> In 2009, the U.S. Court of Appeals for the Ninth Circuit ruled similarly in *Movsesian v. Victoria Versicherung AG* (“*Movsesian I*”), holding that section 354.4 of the California Code of Civil Procedure—which stretched the statute of limitations for claims arising under Armenian Genocide-related life insurance policies to 2010—is preempted because it impermissibly infringes on the national government's power to conduct foreign affairs.<sup>134</sup>

On December 10, 2010, however, the same Ninth Circuit judicial panel reversed its *Movsesian I* ruling in the second round of *Movsesian* (“*Movsesian II*”).<sup>135</sup> As Judge Harry Pregerson, author of the 2009 dissenting opinion, concluded in the 2010 majority opinion, “California Code of Civil Procedure § 354.4 is not preempted by federal law. . . . There is no clearly established, express federal policy forbidding state references to the Armenian Genocide.”<sup>136</sup> On July 8, 2011, in light of the *Movsesian II* decision, the California legislature amended section 354.4 of the California Code of Civil Procedure to extend the statute of limitations to 2016 for heirs of Armenian Genocide victims to bring insurance policy claims.<sup>137</sup>

<sup>129</sup> *Id.* at 39 (emphasis added).

<sup>130</sup> *See id.* at 43.

<sup>131</sup> *See id.*

<sup>132</sup> *Deirmenjian*, 526 F. Supp. 2d at 1093. *See also* *Deirmenjian v. Deutsche Bank, A.G.*, No. CV 06-00774 (MMM) (CWx), 2010 WL 3034060, at \*17 (granting Defendant banks' motion for summary judgment as to all of the Armenian plaintiffs' claims for various reasons unrelated to the court's prior decisions).

<sup>133</sup> *Id.* at 1076-1077.

<sup>134</sup> *Movsesian v. Victoria Versicherung AG (Movsesian I)*, 578 F.3d 1052, 1053, 1055-1056 (9th Cir. 2009).

<sup>135</sup> *See* Carol J. Williams, *Armenian Genocide Victims' Descendants May Sue, Court Rules*, L.A. TIMES, Dec. 11, 2010, <http://articles.latimes.com/2010/dec/11/local/la-me-armenian-genocide-20101211>; Paul Elias, *Appeals Court Reverses Itself over Armenian Suit*, ABCNEWS.COM, Dec. 10, 2010, available at <http://abcnews.go.com/US/wireStory?id=12368105>.

<sup>136</sup> *Movsesian v. Victoria Versicherung AG (Movsesian II)*, 629 F.3d 901, 909 (9th Cir. 2010).

<sup>137</sup> Cal. Civ. Proc. Code § 354.4 (2011).

The *Deirmenjian* and *Movsesian I* decisions stand in sharp contrast to the treatment of Holocaust reparations cases by American courts. While most of the Holocaust lawsuits filed in American courts between 1945 and 1995 for damages suffered during World War I were summarily dismissed, recent Holocaust-era settlement distributions resulting from United States-based litigation over the past decade have totaled over 8 billion dollars.<sup>138</sup> Although the Holocaust occurred in Europe, the United States legal system has emerged as the leader in delivering justice for Holocaust survivors.<sup>139</sup> According to international law professor Michael J. Bazylar of the Chapman University School of Law, “American courts have a long history of recognizing jurisdiction over defendants where courts of other countries would find jurisdiction to be lacking.”<sup>140</sup>

United States courts have general jurisdiction over all companies that maintain “continuous and systematic” contacts with the forum state.<sup>141</sup> Moreover, American courts have jurisdiction over human rights cases “even if (1) the acts complained of did not occur in the United States and (2) the plaintiff is not American.”<sup>142</sup> Thus, “[a]s with all transnational litigation today, the highly-developed and expansive system of American justice makes the United States the best, and in most instances, the *only*, legal forum for the disposition of such claims.”<sup>143</sup> Even Bazylar, however, is surprised at the successful trend of Holocaust litigation, stating:

The fact that American Courts are being used today to deal with wrongs committed during World War I, over one-half century after the events took place, is astounding. In the history of American litigation, no class of cases has ever appeared in which so much time had passed between the wrongful act and the filing of the lawsuit. Most surprisingly, almost all of the Holocaust restitution lawsuits have been successful.<sup>144</sup>

Because both Holocaust and Armenian Genocide cases involve claims brought by plaintiffs for atrocities committed outside the United States more than fifty years after the causes of action arose, the jurisprudence behind Holocaust cases should also apply to Armenian Genocide-related claims.

The U.S. legal system is the only forum with jurisdiction that is broad enough to encompass the claims of Armenian Genocide victims.<sup>145</sup> The Ninth Circuit’s recent change of heart in the *Movsesian II* decision finally opens the door for the resolution of Armenian Genocide claims in California. It likely also revives *Deirmenjian* and other cases with Armenian plaintiffs against World War I-era banks and insurance companies and their subsidiaries. Less than one week after the Ninth Circuit’s *Movsesian II* decision, Vartkes Yeghiayan sued the Turkish government and two Turkish banks for \$63 million over land encompassing Incirlik Air Base—which is currently

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<sup>138</sup> See Michael J. Bazylar, *The Holocaust Restitution Movement in Comparative Perspective*, 20 BERKELEY J. INT’L L. 11, 12 (2002).

<sup>139</sup> See *id.*

<sup>140</sup> *Id.*

<sup>141</sup> See *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 445-446 (1952). See also *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 415-416 (1984).

<sup>142</sup> See Bazylar, *supra* note 138, at 13. See also *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980) (holding that a victim of state-sponsored torture and killing committed in a foreign country could sue the perpetrator if the perpetrator is a government official and if served in the U.S.).

<sup>143</sup> *Id.* (emphasis added).

<sup>144</sup> *Id.* at 11-12.

<sup>145</sup> See *id.* at 12.

being used by the United States military—because it was allegedly confiscated from Armenians without compensation during the Armenian Genocide.<sup>146</sup>

Nevertheless, despite the windfall from the *Movsesian II* decision, heirs of Armenian Genocide victims deserve a forum to resolve their claims in all fifty states without having to rely on case-by-case determinations by courts or state laws such as California's that affirmatively permit such lawsuits, and without having to worry about the interplay of statutes of limitations with *stare decisis*. Official recognition of the Armenian Genocide by federal legislation that simultaneously extends or eliminates altogether the statute of limitations for Armenian Genocide-related claims would eradicate such concerns, and serve as a symbolic acknowledgement that would ultimately compel Turkey to address its wrongdoings.

Vartkes Yeghiayan originally thought about sidestepping the statute of limitations issue by arguing that “there is no statute of limitations on genocide”;<sup>147</sup> however, even Yeghiayan admitted that he thought it was a weak argument.<sup>148</sup> But such an assessment may be premature. How could Armenian Genocide survivors—who lost most of their family members and documents during the Genocide and who were scattered around the world after being uprooted from their homeland<sup>149</sup>—be expected to find missing insurance policies and bring their claims within a limited amount of years after such trauma and chaos?

The United Nations supports the waiving of statutes of limitations for genocide cases. Pursuant to General Assembly Resolution 60/147, “statutes of limitations *shall not* apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.”<sup>150</sup> The General Assembly, composed of representatives from all UN Member States, is the deliberative organ of the UN charged with drafting such important resolutions.<sup>151</sup> While General Assembly resolutions are not binding on UN Member States as a matter of international law,<sup>152</sup> they merit deference as persuasive authority when addressing specific cases of wrongdoing, because they serve as a blueprint for mending existing defects in international law, ratified by the majority of the UN Member States. This particular Resolution was aimed at addressing punishment and reparations on an international level for serious human rights crimes; it should thus be applied to all claims arising under gross violations of international human rights law and, in particular, genocide.

Further, while the purpose of a statute of limitations is to prevent claims brought by plaintiffs years after the cause of action occurred given inherent unreliability of evidence, poor memory, and overall difficulty in litigating, the main purpose behind extending statutes of limitations in cases of genocide is because these litigation problems arise principally as a result of genocide. The reason for insufficient or unreliable evidence or poor memory in claims arising from genocide is because such evidence is often physically destroyed during the commission of genocide or mentally repressed due to the accompanying trauma. Moreover, after experiencing

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<sup>146</sup> Associated Press, *Armenian-Americans Sue Turkey Over Land Claims*, ABCNEWS.COM, Dec. 16, 2010, available at <http://abcnews.go.com/US/wireStory?id=12405129>.

<sup>147</sup> Bobelian, *supra* note 104, at 43.

<sup>148</sup> *Id.*

<sup>149</sup> See Sassounian, *supra* note 9, at 115-116 (“The destitute refugees, abandoned to their tragic fate, were forced to settle down in permanent exile. In those early years, their first priority was survival, fending off starvation and disease.”).

<sup>150</sup> 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, G.A. Res. 60/147, ¶ 6, U.N. Doc. A/RES/60/147 (Mar. 21, 2006) (emphasis added).

<sup>151</sup> DUNOFF, RATNER & WIPPMAN, *supra* note 45, at 26.

<sup>152</sup> See Kielsingard, *supra* note 28, at 2; Sassounian, *supra* note 9, at 122.

the horrors of genocide, survivors are typically not positioned to bring a genocide claim: most have suffered abuse, lost their family, and simply cannot comprehend their right to file a suit. So whereas statutes of limitation in the ordinary practice of law penalize plaintiffs who *should* have brought their claims earlier, statutes of limitations applied to genocide victims punish plaintiffs who *could not possibly* have brought their claims at an earlier time. Applying statutes of limitation to genocide victims further penalizes these victims for the unavoidable consequences of genocide.

Recent history has proven that passage of time after the occurrence of genocide need not be dispositive for the recovery of damages in genocide-related cases. Although more than fifty years passed since Nazi crimes were committed in World War II, compensation was paid to Holocaust victims<sup>153</sup> and looted assets and properties were returned to them “without strict adherence to the technicality of any system of law and without the formal intervention of [international political] institutions.”<sup>154</sup> Clearly, Holocaust survivors prevailed in these cases over fifty years after their causes of action arose because courts relaxed the statute of limitations, as well as other stringent legal doctrines that may have barred their claims. United States courts can and should apply these same standards in Armenian Genocide lawsuits, and carve out an exception to statutes of limitations for genocide-related claims. Such a groundbreaking judicial policy would open the door—not only for proper compensation for Armenian Genocide survivors—but also for restorative justice and recognition of the Armenian Genocide. Furthermore, Congress should follow the principles set forth by the UN General Assembly and enact legislation eliminating the statute of limitations for Armenian Genocide claims. Yet, to accomplish this, Congress must first *recognize* the Armenian Genocide.

#### D. Federal Legislative and Executive Policy with Respect to the Armenian Genocide

*Deirmenjian* and *Movsesian I* effectively ruled that a court is not the proper forum for the resolution of Armenian Genocide claims. Until the Ninth Circuit’s reversal of *Movsesian I* in its 2010 *Movsesian II* decision, both earlier rulings held that California laws extending the statute of limitations for Armenian Genocide cases were preempted because they interfered with foreign policy as well as the resolution of World War I claims in the 1923 Treaty of Lausanne. Unfortunately, it has been U.S. foreign policy *not* to recognize the Armenian Genocide for fear of losing Turkey as a Muslim ally in the Middle East.<sup>155</sup> According to then-President George W. Bush, “Congress has more important work to do than antagonizing a democratic ally in the Muslim world, especially one that is providing vital support for our military everyday.”<sup>156</sup> Further, on April 24, 2009—Armenian Genocide Remembrance Day<sup>157</sup>—President Barack Obama stated, “The Meds Yeghern must live on in our memories, just as it lives on in the hearts of the Armenian people.”<sup>158</sup> In what was a essentially a slap in the face to Armenians, Obama sneakily sidestepped using the term “genocide” by his use of the phrase “Meds Yeghern,” a term

<sup>153</sup> See Bazylar & Fitzgerald, *supra* note 63.

<sup>154</sup> Verhoeven, *supra* note 96, at 154.

<sup>155</sup> See Kielsingard, *supra* note 28, at 2-3; Kelly, *supra* note 94, at 153.

<sup>156</sup> Carl Hulse, *House Speaker Now Unsure if Armenian Genocide Motion Will Reach a Vote*, N.Y. TIMES, Oct. 18, 2007, at A16, available at <http://www.nytimes.com/2007/10/18/washington/18cong.html>.

<sup>157</sup> See Sassounian, *supra* note 9, at 116.

<sup>158</sup> Press Release, The White House Office of the Press Secretary, Statement of President Barack Obama on Armenian Remembrance Day (Apr. 24, 2009), [http://www.whitehouse.gov/the\\_press\\_office/Statement-of-President-Barack-Obama-on-Armenian-Remembrance-Day](http://www.whitehouse.gov/the_press_office/Statement-of-President-Barack-Obama-on-Armenian-Remembrance-Day).

known as the “Great Calamity” in the Armenian language.<sup>159</sup> Additionally, while resolutions recognizing the Armenian Genocide have been sponsored in both houses of Congress, they have run into the same roadblocks that exist in both the executive and legislative branches regarding foreign policy and the fear of jeopardizing the United States’ relationship with Turkey.<sup>160</sup>

If the executive and the legislative branches remain uncommitted to a policy recognizing the Armenian Genocide, then American courts are the only viable forum for restoring justice to Armenian Genocide victims. Thus, a judicial policy that defers to federal legislation (or its lack thereof) with respect to victims of the Armenian Genocide poses a serious dilemma for descendants of these victims, particularly because federal policy is so attuned to the Turkish government’s powerful lobby.<sup>161</sup> Consequently, as federal policy stands now, if *Movsesian II* were overturned, Armenian Genocide victims would again be left without a proper forum to resolve their causes of action.

## II. CONCLUSION

An estimated 1.5 million Armenians—anywhere from one-half to three-quarters of the Ottoman Empire’s entire Armenian population—were murdered during the Armenian Genocide. All five acts listed in the Genocide Convention’s definition of “genocide” were committed by the Ottoman government with the intent to destroy the Armenians, though evidence of only one such act is necessary for a finding of genocide. Finally, substantial evidence supports the fact that the Young Turks—Ottoman leaders who sought to create a homogeneous Turkish state—orchestrated the Armenian Genocide. As official successor to the Ottoman Empire, the Republic of Turkey bears continuing responsibility for the Armenian Genocide. Astonishingly, Turkey has yet to suffer *any* consequences, and the Armenian Genocide is not recognized as such by Turkey, the United Nations, or the United States.

Official recognition of the Armenian Genocide by the executive or legislative branches of the United States government would facilitate the process for descendants of Armenian Genocide victims to receive damages for looted assets or unpaid life insurance policies by extending, or even suspending altogether, the statute of limitations for such claims. Given the high population of Armenians in the United States relative to other countries outside of Armenia, such official recognition would serve as a symbol to Armenians that people actually know and care about the Armenian Genocide; this will help our collective healing. Finally, recognition from the United States would not only draw significant worldwide attention to the Armenian Genocide, it would also place political pressure on Turkey to follow suit. At present, however, the only avenue for Armenians to achieve restorative justice is through American courts.

Spurred by the Ninth Circuit’s green light to Armenian Genocide claims in *Movsesian II*, Mark Geragos is presently taking on the most monumental of all challenges: suing the Republic

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<sup>159</sup> See Katie Connolly, *Obamameter: Did Obama Break His Promise to Armenians*, NEWSWEEK.COM, Apr. 27, 2009, <http://www.newsweek.com/blogs/the-gaggle/2009/04/27/obameter-did-obama-break-his-promise-to-armenians.html>. See also Sassounian, *supra* note 9, at 116.

<sup>160</sup> See Kielsgard, *supra* note 28, at 2-3.

<sup>161</sup> See *id.* at 4 (“[T]he government of Turkey hired a team of lobbyists to spell out the potential backlash from their country and highlight the need to avoid antagonizing Turkey, which has strategic value in the War on Terror.”). See also *Gunduz Aktan: Legal Battles*, TURKISH DAILY NEWS, May 11, 2006, available at 2006 WLNR 8584940 (describing Turkey’s indignation over France’s proposed Armenian Genocide bill”); Carl Hulse, *U.S. and Turkey Thwart Armenian Genocide Bill*, N.Y. TIMES, Oct. 26, 2007, at A12, available at <http://www.nytimes.com/2007/10/26/washington/26cong.html> (discussing heavy Turkish pressure on Congress not to approve the Armenian Genocide Resolution).

of Turkey.<sup>162</sup> Prior to Vartkes Yeghiayan's \$63 million lawsuit against the Turkish government and two Turkish banks over land encompassing Incirlik Air Base, Geragos's lawsuit was the first Armenian Genocide lawsuit to formally name the Republic of Turkey as a defendant.<sup>163</sup> While *Movsesian II* assists Geragos's cause, it is by no means settled law, and might well be appealed to an *en banc* Ninth Circuit panel or eventually granted certiorari by the Supreme Court to definitively settle the legality of private causes of action for Armenian Genocide claims. And should the Supreme Court decide to either defer to Congress, rule that California's laws are preempted, or declare it a political question unfit for judicial review, then descendants of Armenian Genocide victims would have no forum to bring their causes of action in the United States unless there was a sudden shift in federal policy.

Armenians are a people dispersed all over the world—not by choice, but as a result of brutality, ethnic cleansing, religious bigotry, and oppression. The Armenian Diaspora is linked through a common heritage, language, and history of survival. Accordingly, Armenians generally form a tight-knit network, and stay informed and involved in Armenian-related issues all over the globe, particularly through the Armenian press and their local Armenian communities. Mark Geragos's and Vartkes Yeghiayan's battles through the American judicial system against the Republic of Turkey for recognition of the Armenian Genocide will be followed closely by Armenians all over the world. The Armenian Diaspora awaits—and deserves—restorative justice.

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<sup>162</sup> See Linda Deutsch, *Lawsuit Filed in California Against Turkey, Banks Seeking Compensation*, ARMENIAN OBSERVER, August 4, 2010.

<sup>163</sup> See *id.* See also Associated Press, *supra* note 146 (explaining that on December 15, 2010, Vartkes Yeghiayan filed a suit against the Turkish government and two Turkish banks for \$63 million for land encompassing Incirlik Air Base – which is currently being used by the United States military – because it was allegedly confiscated without compensation during the Armenian Genocide).