

History on Trial

**Turkey and the
Armenian Question**

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TABLE OF CONTENTS

INTRODUCTION	Turkey and the Armenian Question	p. 4
PART I	<i>Historical Dimensions of the Armenian Case</i>	p. 7
	1 <i>The Historical Setting</i>	p. 8
	1.1 The Armenians in the Ottoman Empire during the 19 th Century	p. 8
	1.2 The Internationalization of the Armenian Question	p. 10
	1.3 War, Massacre and Deportation	p. 15
	1.4 The Aftermath	p. 18
PART II	<i>Contentious Contemporary Themes</i>	p. 20
	2 <i>The Phenomenon of Genocide</i>	p. 21
	2.1 The Origins of Genocide	p. 21
	2.2 Genocide: A Legal and Social Concept	p. 23
	2.3 Genocide and the Armenian Question	p. 26
	2.4 The Political Connotation of the Holocaust	p. 27
	3 <i>The Armenian Case: Politics of Recognition and Denial</i>	p. 30
	3.1 The Armenian Campaign for Recognition	p. 30
	3.2 The Culture of Victimization	p. 32
	3.3 Origins and Aims of Turkish Denial	p. 33
	4 <i>European Leverage on Eastern Affairs</i>	p. 37
	4.1 Turkey and EU Accession	p. 37
	4.2 European Leverage Ambiguous?	p. 41
PART III	<i>History on Trial</i>	p. 46
	5 <i>Breaking the Vicious Circle</i>	p. 48
	5.1 Transitional Justice: an Integrated Approach	p. 48
	5.2 Unsilencing the Past	p. 58
CONCLUSION	Facing History: Turkey and the Armenian Question	p. 69
BIBLIOGRAPHY		p. 75

INTRODUCTION

TURKEY AND THE ARMENIAN QUESTION

After nearly a century of animosity and mistrust, the governments of Armenia and Turkey have signed a historic peace agreement on 10 October 2009 set to normalise ties between the two neighbouring countries. Under the agreement, Turkey and Armenia are to establish diplomatic relations and reopen their shared border, which has been shut since 1993 after Turkey objected to Armenia's war with Turkish ally Azerbaijan over the disputed territory of Nagorno-Karabakh.¹ Diplomatic ties between Turkey and Armenia have often been overshadowed by the dispute on the massacres of ethnic Armenians by the Ottoman government during the First World War. The Armenians accuse the Ottomans of committing genocide against ethnic Armenians starting in 1915, whereas modern day Turkey, the successor state of the Ottoman Empire, systematically rejects all allegations. In order to normalize the relations between the two countries, the agreement asks for a joint commission, including international experts, to examine the historical dimension of the two countries relations.²

Since collective memory fades with the passage of time, it may seem surprising that lately increased attention is paid to the Armenian question. The last of the survivors and witnesses will have passed away and with them the possibility of revealing the truth as regards the dispute on the nature of the Armenian massacres in the Ottoman era. Nonetheless, the Armenian question has been revived by the large Armenian diasporas, the new focus on transitional justice and most importantly the process of Turkey's EU candidature. Turkey's route to democratization and EU accession has put Turkey in the spotlights of the international community. The country is closely watched by the European Union (EU) and as a consequence the Armenian question has become a key issue, evolving in a test case for EU observers to measure the pace of progress of Turkey's route towards EU accession.³ It must be noted though that the Armenian question is not a formal criteria for eventual EU accession. However, it will send a powerful message to Europeans about Turkey's readiness to face its past and reconcile itself with it.⁴

Additionally, allegations of war crimes, crimes against humanity and genocide have received a lot of attention in the past decades and even more so the means to deal with these allegations. Increasing interest is paid to the response of states after a period of widespread violations of human rights in order to achieve peace and justice. Most of the time this discussion can be grouped under the common denominator of transitional justice, which is a 'response to systematic or widespread violations of human rights. It seeks recognition for victims and to promote possibilities for peace, reconciliation and democracy', as defined by the International Center for Transitional Justice.⁵ Apart from this, the large Armenian diasporas in Europe and the United States have systematically

¹ BBC news, 'How Turks and Armenians see new ties', Retrieved on 20 October 2009 at: <<http://news.bbc.co.uk/2/hi/8299996.stm>>

² BBC news, 'How Turks and Armenians see new ties', Retrieved on 20 October 2009

³ 2nd report of the Independent Commission on Turkey September 2009, 'Turkey in Europe, Breaking the vicious circle', (September 2009) p.32

⁴ Protocols and timetable for establishment of relations between Armenia and Turkey, Published: Tuesday September 01, 2009, Retrieved on 20 January 2010 at: <<http://www.reporter.am/index.cfm?objectid=B4BCBD98-96EC-11DEAD80003FF3452C2&pg=1>>

⁵ International Center for Transitional Justice, 'What is transitional Justice?' Retrieved on 20 October 2009 at: <<http://www.ictj.org/en/tj/>>

campaigns and lobbied for the recognition of the Armenian massacres as genocide. All in all, a solution to the enduring conflict on the nature of the Armenian massacres between Turkey and Armenia is being pushed from outside forces more than ever before. As a result, the literature available on the Armenian massacres in Ottoman Turkey is voluminous. Whereas the Armenians speak of the first genocide of the twentieth century, the Turks refer to inter-communal warfare and relocation.⁶ Yet, despite the enormous amount of writings, a bitter debate over what happened almost hundred years ago continues unabated.

The available literature on the Armenian question is as polarized as the burdened diplomatic relations between Turkey and Armenia and characterized by two different and radically distinct historiographies. The Armenian version claims that the Armenian population in the Ottoman Empire became the innocent victims of a state-sponsored campaign of destruction, intentionally initiated by the Ottoman government, thereby committing an unprovoked act of genocide. Whereas the Turkish version maintains that the relocation of the Armenian population in the Ottoman Empire was a necessary intervention in response to the radical rebellious activities of the Armenians, supported by Russia and Great Britain. The enormous numbers of Armenian deaths are attributed to famine, disease and inter-communal warfare.⁷

Both sides use historical evidence in order to create their own historical reality, serving a political goal, namely recognition on the Armenian side and denial on the Turkish side. On the Armenian side, writers such as Hovanissian, Dadrian and Akçam advance the recognition of the Armenian massacres as genocide in their academic publications and books.⁸ On the Turkish side, the official governmental discourse on the denial of the Armenian massacres as genocide is hardly ever questioned by Turkish scholars. In accordance, Heath Lowry is perceived as one of the key scholars denying the Armenian massacres as genocide.⁹ Some western scholars transcend the schism between Turkey and Armenia, for instance Zürcher and Bloxham are excellent examples.¹⁰ Nonetheless, valuable historical information and evidence is provided by both the Turkish and Armenian academicians as well, though it may be biased.

Although some authors provide a well-balanced perspective regarding the dispute on the nature of the Armenian massacres in the Ottoman era in the context of transitional justice, none of them has specifically focused on the joint commission which is to examine the historical dimension of the relation between the two countries. As a consequence further research needs to be done in this area. Therefore, the focus in this thesis will be on the following question: *Does the joint commission offer a solution to the conflict on the historical dimension of the Armenian question?* In which a solution

⁶ Guenter, Lewy, *The Armenian Massacres in Ottoman Turkey*, (Utah, 2005), p ix

⁷ Guenter, Lewy, *The Armenian Massacres in Ottoman Turkey*, p ix. In the context of this paragraph: Lewy Guenter presents an historical overview in his book on the historiography of the Armenian massacres, however, when reading between the lines he tends to the Armenian side.

⁸ Hovannissian, Richard G, *The Armenian Genocide in Perspective*, (New Jersey, 1986), Hovannissian, Richard G, *The Armenian Genocide: History, Politics, Ethics*, (London, 1992), Hovanissian, Richard, 'Denial of the Armenian Genocide in Comparison with Holocaust Denial', in: Hovanissian, Richard, (ed.), *Remembrance and Denial: The Case of the Armenian Genocide*, (Detroit, 1999); Dadrian, Vahagn, 'A Typology of Genocide', in: *International Review of Sociology* 5, 2: 201-212 (1975); Akçam, Taner, *A Shameful Act: The Armenian Genocide and the Question of Turkish Responsibility*, (New, York, 2006) Akçam, Taner, *From Empire to Republic: Turkish Nationalism and the Armenian Genocide*, (London, 2004)

⁹ Lowry, Heath W., *The story behind Ambassador Morgenthau's story* (Istanbul, 1990)

¹⁰ Bloxham, Donald, *The Great Game of Genocide: Imperialism, Nationalism, and the Destruction of the Ottoman Armenians*, (Oxford, 2005); Zürcher, Erik Jan, *Turkey, a modern history* (New York 2005)

refers to the reconciliation of Turkey and Armenia and the establishing of diplomatic relations between both countries, whereas the Armenian question entails the conflict on the nature of the Armenian massacres. In order to find out whether the joint commission offers a solution to the conflict, four major goals regarding the functioning of truth commissions, established by Popkin and Roth-Arriza, will be examined in view of the Armenian question.¹¹ Additionally, truth justice, reparations and reconciliation will be covered while examining these goals.

In order to answer the central question, the first part of this thesis is devoted to the historical dimension of the Armenian question in the Ottoman Empire, culminating in the Armenian massacres. An historical overview of what happened and why will be provided in order to put part II and III of this thesis in the historical context. Part II will focus on contentious contemporary issues which influence the relationship between Turkey and Armenia in such a way that they impede the functioning of the joint commission, as will be shown in part III. Firstly, attention will be paid to the question whether one should apply the judicial or political definition of genocide to the Armenian case since the epithet genocide carries a massive moral stigma which influences the dispute between Turkey and Armenia as well as the process of transitional justice. Additionally, the question will be addressed whether the Armenian massacres constituted genocide. Furthermore, attention will be paid to the Holocaust because states do not want to be placed on an equal level with Nazi Germany and this notion strongly influences the dispute between Turkey and Armenia. In addition to that, the influence of the Armenian diaspora, the influence of the Armenian culture of victimization and the aims and origins of Turkish denial will be incorporated, demonstrating their influence on the dispute between Turkey and Armenia. The subsequent chapter includes the role of the European Union regarding Turkey's stance towards the Armenian question in view of Turkey's accession process. Special attention will be paid to the influence of the European powers on the Armenian massacres and the central question will be whether European leverage is ambiguous.

In Part III the reader will be provided with a conceptual framework of transitional justice, covering the main aims and instruments in which specific attention is paid to the functioning of truth commissions. In the final chapter attention is paid to the question whether the joint commission offers a solution to the conflict on the nature of the Armenian massacres. The four major goals regarding the functioning of truth commissions will be examined in view of the Armenian question while taking the contentious contemporary issues into account. At the same time truth, justice, reparations and reconciliation will be covered. The final analysis of the effect of the contentious contemporary themes on the functioning of the joint commission seeks to cast new light on the dispute between Turkey and Armenia and the ways it has been used in the historical and political consciousness of the world ever since.¹²

¹¹ Popkin, Margaret and Roth-Arriza, Naomi, 'Truth as justice: investigatory commissions in Latin America', in: *Law and Social Inquiry*, 20 (1995) pp. 79-116

¹² Bloxham, Donald, *The Great Game of Genocide: Imperialism, Nationalism and the Destruction of the Ottoman Armenians*, (Oxford, 2005) preface

PART I: HISTORICAL DIMENSIONS OF THE ARMENIAN QUESTION

Putting the historical dimensions of the Armenian question in perspective, will lead to a better understanding of the impasse between Armenia and Turkey nowadays. As a consequence, part I of this research will provide the historical foundation for the remainder of this thesis. First of all the events will be described up to and during the Armenian massacres. This will provide the basis for the question whether the Armenian massacres constituted genocide, which will be addressed in the next part of this thesis in chapter 2. Secondly, the aftermath of the dispute on the nature of the Armenian massacres and the implications it has had on the relationship between Turkey and Armenia after 1991 will be addressed, covering inter-connected problems such as the Nagorno-Karabakh conflict. Additionally, in the chapter on European leverage extra attention will be paid to the historical dimension of the interaction between the Great Powers, the Ottoman government and the Armenians up to and during the Armenian massacres. This interaction was of great influence on the situation of the Christian Armenians in the Ottoman Empire in the short and long run, as will be argued hereafter in chapter 4.¹³

¹³ Bloxham, Donald, *The Great Game of Genocide*, preface

1. THE HISTORICAL SETTING

1.1 ARMENIANS IN THE OTTOMAN EMPIRE DURING THE 19th CENTURY

Armenian history reaches back more than two thousand years. Although tracing their lineage, according to epical-biblical traditions to Noah, whose Ark was said to have rested on Mount Ararat, the Armenians actually passed through a long era of formation and emerged as an identifiable nation around 600 BC. Their lands lay between the Black and Mediterranean seas, on both sides of the current Russian-Turkish frontier, an area now referred to as Asia Minor. The next two thousand years they were led by kings, nobles and patriarchs, sometimes independently but most of the time under the rule of foreigners.¹⁴ While living at the crossroads of the Orient and the Occident, the Armenians were able to survive and develop a distinctive culture, and at the turn of the fourth century AD they embraced Christianity.

At the end of the fourteenth century the last independent Armenian state, the Kingdom of Cilicia collapsed and the Armenian area came under control of the flourishing multinational Ottoman Empire. First, in accordance with Islamic law they were granted the status of *dhimmi* or protected non-Muslim, which meant that they were 'monotheistic subjects' of the Muslim state.¹⁵ In the Ottoman Empire the Islamic status of *dhimmi* was further formalized by the creation of the *millet system*.¹⁶ This communal framework, based on religion and ethnicity, perpetuated the separation and marginal integration of the Armenian communities in the Ottoman discourse. The Armenian population had to pay special taxes and wear a specific hat, they were prohibited from bearing arms and their legal testimony was inadmissible in court. Both from a political and religious point of view, being a Christian minority within the Ottoman Empire meant that the Armenians were second-class citizens.¹⁷ Under the millet system, most of the Armenian communities were placed under the jurisdiction of the Armenian Patriarchate of Constantinople.¹⁸

At the same time the Armenians were part of the Ottoman Empire, being subjects like most of the Muslim Ottomans and despite their second class citizenship, the majority of the Armenians lived in relative peace as long as the Ottoman Empire was strong and expanding. Most of the Armenians remained rooted in their historic homeland, being peasants under the dominant Muslim feudal elite in eastern Anatolia, together with Kurdish tribes.¹⁹ However, it is not to say that there were no prosperous Armenian merchants, traders and artisans throughout the Empire, for it is widely known that minorities played an important part in international commerce. The Armenian community experienced a period of cultural and economic expansion in the nineteenth century. Nonetheless, as the Empire's financial, administrative and military structure started to disintegrate under the weight of internal and external challenges during the eighteenth and nineteenth century, intolerance and exploitation increased.²⁰

¹⁴ Hovannisian, Richard, *The Armenian Genocide in Perspective*, (London, 1992) p. 20

¹⁵ Hovannisian, Richard G, *The Armenian Genocide: History, Politics, Ethics*, (London, 1992) p. 55

¹⁶ *Ibidem*

¹⁷ Guenter, Lewy, *The Armenian Massacres in Ottoman Turkey*, p. 4

¹⁸ *Ibidem*

¹⁹ *Ibidem*

²⁰ Hovannisian, Richard, *The Armenian Genocide in Perspective*, p. 20

The growth of discontent was paralleled by the cultural and political revival among the subject nationalities inspired by liberal European influences. The pattern was basically always the same: the discontent among (mostly Christian) communities in the Empire erupted into regional insurrections, partly caused by bad government and partly by the concept of nationalism which spread at the time. One of the European powers would intervene diplomatically, or even militarily, to defend the position of the local Christians. But, because of inter-power rivalry, this caused the other main powers to restore the balance of power. Most of the time the situation resulted in a loss of control over lands on the part of the Ottoman government.²¹ Illustrative crises in subsequently Lebanon, Greece and Serbia gave rise to the Eastern Question, namely what was to become of the weakening Empire.²²

The slow transformation of non-Muslim Ottomans in general, and Armenian Ottomans in particular, gained momentum during an era of reform also known as the *Tanzimat* or 'Reordering' (1839-1876). The two imperial decrees issued by Sultan Abdulmejid I, furthered the process of polarization by putting forward the concept of 'Ottomanism', providing equality between Muslims and non-Muslims. These elements of the rule of law established theoretical equality, thereby undermining Islamic law and centuries old Ottoman tradition. Not surprisingly, this development generated resistance and resentment within conservative religious circles, the state apparatus and most Muslim Ottomans. More importantly, the introduction of the principle of equality undermined the very existence of the established relations of power and paved the way for a potential end of the primacy of the Muslim Ottomans and the traditional Ottoman society.²³

Indeed, the Tanzimat introduced reforms on a legal and administrative level and marked the beginning of a modern society based on universal norms such as equality. By introducing these reforms, the Tanzimat wanted to break with the traditional Ottoman society. Indeed it caused the partial breakdown of the traditional Ottoman society in which 'legitimization was constituted by mythical, religious or metaphysical interpretations of reality'.²⁴ Nevertheless, the new reforms were contradictory in nature because the Tanzimat introduced new universal norms while at the same time the traditional millet system was preserved. This contradiction facilitated a 'secular concept of Ottoman citizenship based on universal laws while preserving a political structure, the millet, based on an ethno-religious conception of society. From this discrepancy would rise the ethnic self-perception as Turks instead of Muslim Ottomans from the end of the nineteenth century on'.²⁵

Nonetheless, the Tanzimat made all administrative and military positions in the Empire accessible for Jews and Christians and allowed them to have their say in administrative processes on all levels. Furthermore, it opened its doors to greater European economic penetration as well as to Western missionaries and their schools. The sense of individual development and emancipation contributed to a greater sense of nationalism. Furthermore, changes in the millet system furthered the process of communal progression. These reforms, introduced in 1856, specified secular input in the governance of the millets and increasing authority was placed in the Armenian millet.²⁶

²¹ Zürcher, Erik Jan, *Turkey, a modern history*, (New York 2005), p. 55

²² Ibidem

²³ Astourian, Stephan, 'The Armeno-Turkish Polarization' in: Hovannisian, Richard (Eds), *The Armenian Genocide: History, Politics, Ethics*, (London, 1992), p. 55

²⁴ Astourian, Stephan, 'The Armeno-Turkish Polarization', p. 56

²⁵ Hovannisian, Richard, *The Armenian Genocide: History, Politics, Ethics*, (London, 1992), p. 57

²⁶ Bloxham, Donald, *The Great Game of Genocide*, p. 43

All in all, non-Muslim Ottomans embraced the opportunities offered to them by the instigation of the Tanzimat reforms. However, at the same time it caused the relation with Muslim-Ottomans to deteriorate. They perceived the reforms as a threat to their own dominant position in the Empire. In the eyes of the conservative Muslims, the Tanzimat was the result of diplomatic and military pressure, exercised by western (Christian) powers and thus intrinsically suspected.²⁷ In sum, the Tanzimat reforms did not bring about the expected change while the problems that were sought to address intensified during the mid-nineteenth century. The promise of equality for all was not materialized while at the same time the consciousness of inequality increased among non-Muslim Ottomans.²⁸ These factors combined caused a sense of 'relative deprivation' according to Stephan Astourian, 'a feeling made all the more intense, since the heightened aspirations of the Armenian-Ottomans as individuals and as a 'nation' possessing universal rights, were not accompanied by any improvements'.²⁹

1.2 THE INTERNATIONALIZATION OF THE ARMENIAN QUESTION

From the 1860s onwards, the process of polarization rapidly advanced. The only political weapon in the hands of the Armenian leaders were repeated appeals to *the Porte* (the Ottoman Government), for instance 529 appeals were being sent by the patriarchate from 1860 to 1870.³⁰ Among the claims were 'land theft, arbitrary provincial rule, kidnap and rape of Armenian women, and not infrequent unpunished murders of the men folk were the primary grievances'.³¹ These petitions never resulted in an improvement concerning the security of life and property of the Armenians in the eastern provinces. As a consequence Patriarch Varzhapedian appealed to the European powers in order to ensure the enactment of reforms in the Ottoman Empire. The Patriarch first turned to Russia and Great Britain, pressing both powers to the end of administrative independence of Armenia, while threatening the British that unsatisfied demands would result in annexation of Armenia by Russia.³²

The Ottomans protested against the growing interest of the Europeans in the fate of the Armenians. Especially Russia was suspected of encouraging Armenian agitation in order to annex the remaining Armenian provinces in eastern Anatolia.³³ These matters came to a head when the Bulgarians revolted against the Ottomans in 1876. Bulgarian revolutionaries aimed at a general uprising against Ottoman rule in which Muslims were under attack. The Ottoman authorities responded with a quick and ruthless reaction, leading to massacres of the civilian population.³⁴ As a result Russia declared war upon Turkey in April 1877. In January 1878 Russian troops approached Constantinople, while Erzurum was taken at the Caucasian front. The war ended with a complete victory for Russia, spreading pro-Russian sentiments among the Armenians in Anatolia. On March 2, 1878 the Treaty of San Stefano was signed, it included a provision aimed at protecting the Armenians.

²⁷ Detrez, Raymond, 'De Armeense Genocide' in: Jan Wouters en Bart Pattyn (eds.), *Misdaden tegen de Menselijkheid*, (Leuven en Voorburg, 2006) p. 91

²⁸ Bloxham, Donald, *The Great Game of Genocide*, p. 43

²⁹ Astourian, Stephan, 'The Armeno-Turkish Polarization', p. 58

³⁰ Bloxham, Donald, *The Great Game of Genocide*, p. 44

³¹ *Ibidem*

³² *Ibidem*

³³ Guenter, Lewy, *The Armenian Massacres in Ottoman Turkey*, p. 7

³⁴ Zürcher, Erik Jan, *Turkey, a modern history*, p. 74

However, none of this provision was materialized because the Treaty of Berlin superseded the San Stefano Treaty and greatly reduced Russian gains.³⁵

As of the moment the Treaty of Berlin was signed the Great Powers were involved in the Armenian question. In the Treaty of Berlin it was stated that the responsibility of the Armenian reform provisions were placed in the hands of the Concert of Europe. However, the European powers did nothing to enforce these provisions. Nonetheless, the Treaty of Berlin meant a small achievement for the Armenians while at the same time it meant a greater failure. They were successful in making an international claim, but more importantly they were unsuccessful in enforcing the reforms envisioned. Furthermore, the Armenians fell short because they asked for the intervention of the European powers and this made them instant objects of suspicion to Sultan Abdulhamid II (1876-1909).³⁶

The reign of this Sultan was characterized by an attempt to return to the traditional Ottoman society, which was crumbling since the Tanzimat reforms were initiated. His policies were based on the first Constitution of the Ottoman Empire. Ottoman grip was weakening because of European economic penetration as well as an almost unbroken string of territorial losses since the end of the seventeenth century. Since the Ottoman Empire was forced away at the gates of Vienna at the end of the seventeenth century it was in decline, followed by 'the loss of Greece and effectively Egypt, in the first twenty-nine years of the nineteenth century alone the Empire had lost control of Bessarabia, Serbia, Abaza and Mingrelia. It ceded ownership over Moldavia and Wallachia in 1856, Bosnia, Herzegovina, Bulgaria, Kars, Ardahan and Cyprus in 1878. The losses of that year alone comprised one-third of the Ottoman territory and 20 percent of the Empire's inhabitants'.³⁷ A solution to Ottoman decline was needed and this solution took shape under the policies of Sultan Abdulhamid II.

From 1878 onwards, Sultan Abdulhamid II abandoned the Constitution and reigned and ruled as an absolute monarch for 30 years. He initiated an autocratic regime and wanted to generate the support of the Muslim-Ottomans, instigating a policy of Muslim unity and superiority within the Empire.³⁸ In doing so he tried to get a grip on the weakening Ottoman Empire which was disintegrating, corruption, inefficiency and arbitrariness being a day to day reality. The events of 1878 were a disaster for the Empire, not only in military, political and financial terms, it was also a tragedy in human terms.³⁹ Immigration of Muslims had been a feature of the Empire since the end of the eighteenth century with the Russian Empire expanding along the shores of the Black Sea. After the Crimean War (1854-56) and the integration of the Caucasus, Muslims emigrated to the Ottoman Empire in large numbers. In 1878, due to the Treaty of Berlin, Ottoman lands came under foreign occupation, for instance Romania and Serbia became sovereign principalities. This resulted in massive immigration of Muslims towards the Ottoman Empire, fleeing for random killings among Muslim villagers. This contributed to anti-Christian feelings in the late nineteenth century.⁴⁰

Under the reign of Sultan Abdulhamid II Armeno-Turkish relations worsened during the 1870s and 1880s. First of all because of the internationalization of the Armenian question as well as the

³⁵ Guenter, Lewy, *The Armenian Massacres in Ottoman Turkey*, pp. 7-9

³⁶ Bloxham, Donald, *The Great Game of Genocide*, p. 45

³⁷ Bloxham, Donald, *The Great Game of Genocide*, p. 31

³⁸ Guenter, Lewy, *The Armenian Massacres in Ottoman Turkey*, p. 11

³⁹ Zürcher, Erik Jan, *Turkey, a modern history*, p. 80

⁴⁰ Zürcher, Erik Jan, *Turkey, a modern history*, p. 81

willingness of the Armenians to involve the Great Powers to interfere in internal Ottoman affairs. Secondly, in response to the lack of interest in pressing for reforms by the European powers, the Armenians formed their first political parties and nationalist organisations. Armenian revolutionaries founded organisations which aimed for Armenian autonomy such as the *Henchack* and the *Dashnakzoutiun*.⁴¹ These organizations wanted to recapture the attention of the Great Powers by making use of terrorist methods and assassinations.⁴² Those methods were used on wealthy Armenians and Armenian opponents as well as oppressors of Armenians. The revolutionists wanted the Armenian population to rebel against the Ottoman government to force massive repression which would attract the attention of the European powers. Ultimately, this would result in Armenian independence. However, terrorist attacks, assassinations and provocations did not have the expected outcome. On the contrary, they made the situation even worse for the ordinary Armenians, who did not support the nationalists' actions.⁴³ All in all, these factors combined made the Armenian issue a dangerous one in the eyes of Sultan Abdulhamid II.

In 1891 Sultan Abdulhamid II initiated the formation of Kurdish volunteer cavalry units. The *Hamidiye* units were to strengthen the defence of the border region in order to prevent Russia from interfering in eastern Anatolia. Furthermore it was an opportunity to control the Kurds and the Turkish notables who were in charge of the towns and challenged the power of the Sultan. Muslim Ottomans as well as non-Muslim Ottomans were affected by the *Hamidiye*, however the non-Muslim Ottomans were hardest hit.⁴⁴ For them the *Hamidiye* meant devastation and further plundering of their villages. During the disturbances of 1894-96 the *Hamidiye* were to have a great say in the punitive missions aimed against the Armenians.⁴⁵

By 1894, tensions between the Armenians and the Turks in eastern Anatolia had reached a dangerous point. Armenian revolutionaries were active in all of the six eastern provinces, while the Ottoman authorities hit back harder than ever before. 'Between 1894 and 1896 a wave of large scale massacres swept across Armenian-populated territories'.⁴⁶ According to Bloxham, the series of killings was composed of three phases. The first phase was the Sasun rising and its repression, the second was a sequence of massacres in the Ottoman Empire in the autumn and winter of 1895 and the third involved Armenian protest in Istanbul and in the Van province, both were met with widespread killings.⁴⁷ The episodes triggered a chain of events in Europe, external pressure becoming more explicit than ever before. However, negotiations between the Great Powers about how to force the Ottoman government to change its harsh policies and introduce reforms in the east failed. Nothing effective was decided upon and the Ottoman government slowly re-established control and the massive fights ended.⁴⁸ Revolutionary Armenians' idle hopes of European intervention were met with disappointment. Until the seizure of power by the Young Turks in 1908 the Armenian revolutionaries continued their attacks in order to force the intervention of the European powers.

⁴¹ Detrez, Raymond, 'De Armeense Genocide', p. 93

⁴² Ibidem

⁴³ Guenter, Lewy, *The Armenian Massacres in Ottoman Turkey*, p. 12

⁴⁴ Detrez, Raymond, 'De Armeense Genocide', p. 91

⁴⁵ Guenter, Lewy, *The Armenian Massacres in Ottoman Turkey*, p. 9

⁴⁶ Jones, Adam, *Genocide, a comprehensive introduction*, (New York, 1006), p. 104

⁴⁷ Bloxham, Donald, *The Great Game of Genocide*, p. 51

⁴⁸ Zürcher, Erik Jan, *Turkey, a modern history*, p. 83

After the massacres of 1895-96, Sultan Abdulhamid II was about to reign the Ottoman Empire for another twelve years in relative peace although tension in eastern Anatolia was a day to day reality. Gradually, feelings of Ottoman nationalism spread across the Ottoman Empire. These feelings were boosted because Japan defeated Russia in 1905 and was the first example of 'a non-European state defeating a Great Power by adopting western methods'.⁴⁹ Furthermore, the Ottoman Empire was subject of Russian imperialist ambitions again. Frustrated in the Far East, the Russians were destined to make up for the loss in the Near East by renewing their interest in the Ottoman Empire.⁵⁰

Feelings of Ottoman nationalism as well as foreign threats which could partition the Ottoman Empire, culminated in the restoring of the Constitution of 1876 and the overthrowing of the Ottoman Sultanate by the Young Turks in 1908. The coup was organised by a group of modernization-minded military officers who were grouped together in the Committee of Union and progress (CUP).⁵¹ Armenians, Kurds and many other people were relieved and welcomed the transformation. It seemed as if there was a place for all because of the constitutional rights which were granted to everybody. From the moment the CUP ceased power and restored the Constitution, Armeno-Turkish relations were better than ever before, however this soon shifted to bitter disappointment.

The turning point in this relation were the massacres which took place in Cilicia from 14 April 1909 up to the end of the month.⁵² A combination of factors led to the massacres. First of all Muslims were resentful because of the constitutional freedoms given to the Armenians, who celebrated these freedoms wholeheartedly. Furthermore, economic jealousy, demographic developments and old tensions between Christians and Muslims caused Armeno-Turkish relations to deteriorate, especially since the Armenians were suspected of the wish to establish an independent kingdom in Cilicia. The immediate trigger for the massacres was an attempted counter-coup on April 12, 1909 instigated by reactionaries in the military who called for the restoration of Islamic law. The insurgents were put down by forces loyal to the CUP. This riot turned in to a pogrom and large numbers of Armenians were killed, possibly 20,000.⁵³

At the same time the revolutionary movement of the CUP, which governed the Ottoman Empire, was split into a liberal-democratic and authoritarian faction. The latter was guided by ethnic nationalism, inspired by Islam and its leading ideologist was Ziya Gokalp.⁵⁴ According to Gokalp 'the road to salvation lay in replacing the mediaeval civilization that was partly Islamic-Arabian and partly Byzantine with a modern European one, while holding on to Turkish culture of which he considered purely religious Islam a part'.⁵⁵ For the Armenians this meant that this concept of Turkism was mutually exclusive since it excluded the Armenians not only from state power but it excluded them from civil society as well: they were neither Turkish racially, nor were they Muslim religiously. Within the CUP the vision of an empire existed that would unite all Turkish people and would stretch from

⁴⁹ Bloxham, Donald, *The Great Game of Genocide*, p. 57

⁵⁰ Ibidem

⁵¹ Jones, Adam, *Genocide, a comprehensive introduction*, p. 104

⁵² Hovannisian, Richard, *The Armenian Genocide: History, Politics, Ethics*, p. 63

⁵³ Bloxham, Donald, *The Great Game of Genocide*, p. 61 and Zürcher, Erik Jan, *Turkey, a modern history*, p. 99

⁵⁴ Jones, Adam, *Genocide, a comprehensive introduction*, p. 105

⁵⁵ Zürcher, Erik Jan, *Turkey, a modern history*, p. 132

Constantinople to Central Asia. Non-Muslim minorities, such as the Armenians, were not included in this vision.⁵⁶

In January 1913, in the wake of the Balkan wars one year earlier, the authoritarian faction of the CUP launched a coup against the more moderate members of the CUP and took power. The leading triumvirate of Enver, Cemal and Talat led the CUP. Shortly after the Unionist government was installed the Russians took the lead in proposing a reform programme in order to solve the Armenian question. They proposed 'an Ottoman Christian or European governor for one single Armenian province that was to be established in the six eastern provinces; the creation of an administrative council, a provincial assembly, and gendarmerie units composed of both Christians and Muslims; the dissolution of the Hamidiye regiments; and the institution of similar reforms in other provinces inhabited by Armenians, especially Cilicia. In accordance with the provisions of the Treaty of Berlin, the six European powers were to guarantee the implementation of all clauses of the agreement'.⁵⁷

During the summer of 1913, ambassadors of Russia, Great Britain, France, Germany, Austria-Hungary and Italy met in Constantinople to discuss the Russian reform plan. The Ottoman government was not invited and was afraid to lose its eastern provinces. Consequently they came up with their own Ottoman plan, but it failed to attract attention. The Russian plan was supported by Great Britain and France but Germany and Austria-Hungary objected to the plan. Finally a compromise was made, which included several concessions to the Turkish point of view, achieved through German lobbying. The six eastern provinces were to be divided in two provinces, each under the control of an European inspector. Armenia and Armenians were not mentioned, furthermore the European powers had the right to supervise the execution of the reforms but they were not obliged to guarantee their success. On 8 February, 1914, Russia (on behalf of the Europeans) and Turkey signed the revised agreement.⁵⁸

Since the internationalization of the Armenian question in 1878, no such an agreement in favour of the Armenians was agreed upon. It seemed a milestone in Armeno-Turkish relations. However, the signing of the revised agreement did not assure Turkey's willingness to actually implement the reforms. Especially regarding the fact that the Turkish government had signed the agreement under pressure, fearing a Russian intervention if they did not sign. The two European inspectors were admitted in the early summer of 1914. But the assassination of Austrian Archduke Frans Ferdinand at Sarajevo on June 28, 1914 caused the spark that set off World War I. On July 29 Germany declared war on Russia and on August 8, Turkey ordered general mobilization.⁵⁹ The Unionist government approached the European powers for an alliance, however France and Britain had excellent relations with Russia and intended to keep it that way. As the war included the Balkans once again, they expected more from collaboration with Balkan States than from an alliance with the Ottoman Empire. The Unionists then turned their eyes to the Central powers and in deepest secrecy with the Germans they signed an agreement on August 2, 1914. In December of that year the reform agreement was annulled.⁶⁰

⁵⁶ Jones, Adam, *Genocide, a comprehensive introduction*, p. 105

⁵⁷ Sazonov, *Fateful Years*, p. 143 and Guenter, Lewy, *The Armenian Massacres in Ottoman Turkey*, p. 37

⁵⁸ Sazonov, *Fateful Years*, pp. 144-145 and Guenter, Lewy, *The Armenian Massacres in Ottoman Turkey*, p. 38

⁵⁹ Guenter, Lewy, *The Armenian Massacres in Ottoman Turkey*, p. 39

⁶⁰ Zürcher, Erik Jan, *Turkey, a modern history*, p. 132

The annulment of the reform agreement had disastrous implications. Like Sultan Abulhamid II, the Young Turks also deeply resented the fact that the Armenians had turned to the European powers to intervene in internal affairs. For the Armenians the reform agreement was a move forward to liberate themselves from Turkish rule. At that time they did not realize that the Unionist government would do anything to prevent the loss of their Anatolian heartland. The Young Turks got convinced that only a total displacement of the Armenian population would provide a permanent solution to the returning revolting behaviour of the Ottoman minority.⁶¹

1.3 WAR, MASSACRE AND DEPORTATION

As of the moment the CUP government under Talat, Enver and Jamal took power they instigated a strong nationalist ideology, measures of enforced cultural Turkification becoming a day to day reality. Turkish nationalism spread nationwide while the Ottoman Empire faced two emergencies: an Allied invasion of the Dardanelles Peninsula, aimed at conquering Constantinople by forcing a way to the Black Sea and the mobilization of Russian forces on the north-east frontier.⁶² The radical nationalist Armenians saw the mobilization of the Russians as an incentive to a potential Russian victory which could lead to the establishment of an Armenian state in eastern Anatolia. Russian propaganda fuelled these aspirations. As a result a few thousand Armenians joined the Russian army, while many other Armenians deserted from the Ottoman army and contributed to guerrilla activities behind Ottoman lines. Confronted with this situation, the Ottomans started sporadic deportations in areas behind the front. These deportations were carried out by the Special Organization of the CUP, installed by the leading triumvirate of the CUP. Consequently, a number of small scale massacres occurred.⁶³

Zürcher and Bloxham argue that by the end of March in 1914 the CUP, in all probability, took the decision to relocate the Armenian population of war zone to the areas of southern Mosul, Der Zor and Urfa.⁶⁴ They were to be deported to the deserts of modern-day Iraq or Syria in the southern part of Anatolia.⁶⁵ An uprising of the Armenians in the city of Van made this decision even more pressing. The uprising was crushed by the Ottomans and provided an incentive for further deportations with the 'stated justification of removing a population sympathetic to the Russian army then battling the Ottomans in eastern Anatolia'.⁶⁶ Indeed, on April 24, 1915 in Constantinople and other major cities, Armenian notables were imprisoned. The majority was immediately murdered while others were tortured and had to work till death. These actions were aimed at the destruction of those who would be able to mobilize and defend the Armenians. This first step was followed by the disarming of Armenians, firstly the soldiers serving in the Turkish army, followed by the civilian population. As regards this regulation US Ambassador Henry Morgenthau writes to his superiors:

'In the early part of 1915, the Armenian soldiers in the Turkish army were reduced to a new status. Up to that time most of them had been combatants, but now they were

⁶¹ Guenter, Lewy, *The Armenian Massacres in Ottoman Turkey*, p. 39

⁶² Jones, Adam, *Genocide, a comprehensive introduction*, p. 105

⁶³ Zürcher, Erik Jan, *Turkey, a modern history*, p. 114

⁶⁴ Zürcher, Erik Jan, *Turkey, a modern history*, p. 114 and Bloxham, Donald, *The Great Game of Genocide*, pp. 83-85

⁶⁵ Bloxham, Donald, *The Great Game of Genocide*, p. 1

⁶⁶ Jones, Adam, *Genocide, a comprehensive introduction*, p. 105

all stripped of their arms and transformed into workmen ... If any stragglers succeeded in reaching their destinations, they were not infrequently massacred. In many instances Armenian soldiers were disposed of in even more summary fashion, for it now became almost the general practice to shoot them in cold blood. In almost all cases the procedure was the same. Here and there squads of 50 or 100 men would be taken, bound together in groups of four, and then marched out to a secluded spot a short distance from the village. Suddenly the sound of rifle shots would fill the air, and the Turkish soldiers who had acted as the escort would sullenly return to camp. Those sent to bury the bodies would find them almost invariably stark naked, for, as usual, the Turks had stolen all their clothes. In cases that came to my attention, the murderers had added a refinement to their victims' sufferings by compelling them to dig their graves before being shot...

Dreadful as were these massacres of unarmed soldiers, they were mercy and justice themselves when compared with the treatment which was now visited upon those Armenians who were suspected of concealing arms ... In many cases, however, the persecuted people patiently obeyed the command; and then the Turkish officials almost joyfully seized their rifles as evidence that a "revolution" was being planned and threw their victims into prison on a charge of treason ... The punishment inflicted upon these recalcitrants forms one of the most hideous chapters of modern history. Most of us believe that torture has long ceased to be an administrative and judicial measure, yet I do not believe that the darkest ages ever presented scenes more horrible than those which now took place all over Turkey'.⁶⁷

The disarming of Armenian soldiers as well as the civilian population was followed by deportations of the Armenian Ottomans to the Syrian desert. Two laws were passed by the executive at the end of May in 1915, they were called the 'Temporary Law of Deportation' and the 'Temporary Law of Confiscation and Expropriation'.⁶⁸ Henry Morgenthau states the following:

'The Central Government now announced its intention of gathering the two million or more Armenians living in the several sections of the empire and transporting them to this desolate and inhospitable region. Had they undertaken such a deportation in good faith it would have represented the height of cruelty and injustice. As a matter of fact, the Turks never had the slightest idea of fulfilling the Armenians in this new country. They knew that the great majority would never reach their destination and that those who did would either die of thirst and starvation, or be murdered by the wild Mohammedan desert tribes. The real purpose of the deportation was robbery and destruction; it really represented a new method of massacre. When the Turkish

⁶⁷ Morgenthau, Henry, *Ambassador Morgenthau's Story*, (New York, 1918), pp. 305-307

⁶⁸ Dadrian, Vahagn, *The History of the Armenian Genocide: Ethnic Conflict from the Balkans to Anatolia to the Caucasus*, (Providence, 1995) pp. 221-222

authorities gave the orders for these deportations, they were merely giving the death warrant to a whole race; they understood this well, and, in their conversations with me, they made no particular attempt to conceal the fact'.⁶⁹

Deportations started in May 1915. By the summer of 1915 eastern and central Anatolia had been cleared of Armenians. The deportation of Armenians in the West was yet to begin and took until the late summer of 1916. The pattern of these deportations was very similar although the execution differed from place to place. In general the Armenian population was called together to assemble in a central location, then they were told that they were to be shortly deported. Families were given 24 hours to a week to gather belongings for the journey and to sell whatever they could if their possessions were not 'taken into custody'.⁷⁰ Looting and pillaging of Armenian villages by local populations were an everyday reality, at the same time a determined campaign to erase Armenian culture from Anatolian soil was instigated. Minutes before the Armenian population was to be led away to the Syrian desert 'it became the regular practice to separate the young men from the families, tie them together in groups of four, lead them to the outskirts, and shoot them' in order to guarantee 'the systematic extermination of Armenian men' in Anatolia.⁷¹ Then, the Armenian population was led away, in some cases the Armenians were dispatched by train but most of the time they were sent away by foot.

These caravans of Armenian deportees on their way to the Syrian desert were guarded by gendarmerie troops.⁷² Generally, the deportees were treated brutally during the marches to the Syrian desert. Frequently anyone too weak to continue the march was killed on the spot. Armenians started to die from hunger and thirst, even when there was water available, the Armenians were not allowed to drink it. Morgenthau states:

'Thus, in a few days, what had been a procession of normal human beings became a stumbling horde of dust-covered skeletons, ravenously looking for scraps of food, eating any offal that came their way, crazed by the hideous sights that filled every hour of their existence, sick with all the diseases that accompany such hardships and privations, but still prodded on and on by the whips and clubs and bayonets of their executioners.'⁷³

The conditions were so bad that many Armenians died en route. Those who did not die of dehydration, exposure, starvation or disease were subjected to vicious attacks by the Ottoman Gendarmes, Turkish and Kurdish irregulars and local tribes people. Furthermore, along the deportation routes, the Armenians were subject to massive and repeated depredations - rape, kidnap, mutilation and outright killing.⁷⁴ In many cases children and women were kidnapped and seized by local villagers, the women

⁶⁹ Morgenthau, Henry, *Ambassador Morgenthau's Story*, pp. 307-309

⁷⁰ Zürcher, Erik Jan, *Turkey, a modern history*, p. 115

⁷¹ Morgenthau, Henry, *Ambassador Morgenthau's Story*

⁷² Zürcher, Erik Jan, *Turkey, a modern history*, p. 115 and Jones, Adam, *Genocide, a comprehensive introduction*, p. 107

⁷³ Morgenthau, Henry, *Ambassador Morgenthau's Story*

⁷⁴ Bloxham, Donald, *The Great Game of Genocide*, p. 1

were kept as servants and as sex-slaves and the children were converted to Islam and raised as 'Turks'.⁷⁵ Those who survived the dead marches were detained in camps alongside the Euphrates river, without food and water. They often died within days of reaching refuge. By 1917, many Armenian Ottomans had been exterminated, in total between 600,000 and 800,000 deaths seems most likely.⁷⁶

Large scale massacres continued during the final months of the First World War. At that time Turkey crossed the Russian frontier and occupied parts of Russian Armenian lands. Dadrian argues that 'the genocidal engine of destruction unleashed by the Young Turks was once more activated to decimate and destroy the other half of the Armenian population living beyond the established frontiers of Turkey'.⁷⁷ The killing was not one sided, based on reciprocity the Armenians attacked civilian populations in Turkish towns and villages. They massacred civilians and caused as much damage as they could. Having survived the atrocities of 1915, some Armenians attempted to avenge the harm done to them in 1915.⁷⁸

1.4 THE AFTERMATH

At the end of the First World War the Ottoman Empire was defeated and occupied by the Allied Powers. US President Woodrow Wilson delimited the new Armenian nation and in 1918, an independent Armenia was created in eastern Anatolia, formalized by the Treaty of Sèvres in 1920.⁷⁹ This treaty made the plans for the partitioning of the Ottoman Empire final, leaving the Ottoman Empire only a rump state in northern Asia Minor with Istanbul as its capital. The Treaty of Sèvres was not accepted by the new militant national movement, headed by Mustafa Kemal, since it would end Turkish independence.⁸⁰ The militant movement invaded and reconquered the provinces that had been granted to independent Armenia under the Treaty of Sèvres. Ultimately, the Treaty of Lausanne superseded the Treaty of Sèvres in which no mention was made of Armenians or an independent Armenia. What remained of the short-lived Armenian nation was incorporated in the new Soviet Union. Eventually, a separate Armenian Socialist Republic was created in 1936 under the umbrella of the Soviet Union (USSR), however, when the USSR collapsed Armenia re-established independence in 1991.

After the breakup of the USSR and the establishing of an independent Armenia, Turkey and Armenia failed to open diplomatic relations. One of the main reasons for this has been the dispute on the nature of the Armenian massacres. On top of this, Turkey, has linked any improvement in the relation with Armenia to a settlement of the Armenian conquest in 1992-1994 of Nagorno-Karabakh, an Armenian majority enclave in Azerbaijan. Turkey has a close partnership with Azerbaijan based on linguistic ties and now major oil and gas pipelines.⁸¹ Already throughout the Soviet era frustration smouldered and ethnic Armenian-Azeri frictions exploded into furious violence in the late 1980s. It caused the Azerbaijani to flee Armenia and Nagorno-Karabakh and the Armenians to flee to these regions. With the break-up of the Soviet Union, in late 1991, Karabakh declared itself an independent

⁷⁵ Jones, Adam, *Genocide, a comprehensive introduction*, p. 109

⁷⁶ Zürcher, Erik Jan, *Turkey, a modern history*, p. 115 and Guenter, Lewy, *The Armenian Massacres in Ottoman Turkey*, p. 240

⁷⁷ Balakian, Peter, *The Burning Tigris: The Armenian Genocide and America's response*, (New York, 2003) p. 320

⁷⁸ Balakian, Peter, *The Burning Tigris: The Armenian Genocide and America's response*, p. 320

⁷⁹ Zürcher, *Turkey a modern history*, p. 145-147

⁸⁰ Zürcher, *Turkey a modern history*, p. 147

⁸¹ 2nd report of the Independent Commission on Turkey September 2009, 'Turkey in Europe, Breaking the vicious circle', p.30

republic. Though there has never been a formal declaration of war, large-scale fighting occurred between Azerbaijani and ethnic Armenian forces. Eventually, it brought victory for the ethnic Armenians who wanted to occupy Azerbaijani territory outside Karabakh, which would link Karabakh and Armenia.⁸²

In 1994, a Russian-brokered truce was signed which left Karabakh effectively under ethnic Armenian control, as well as some parts of Azeri territory around the enclave. No final settlement was reached and nothing has ever been signed since. In response, Turkey and Azerbaijan closed their borders to Armenia. As for now, the Armenians show no sign of willingness to make a compromise or return the enclave to Azerbaijan. Only as of November 2008 Armenia's Serzh Sarkisian and Azerbaijan's Ilham Aliyev agreed to intensify their efforts to find a political settlement. Progress was made at talks between the two leaders in May and November 2009, however several hurdles need to be taken still.⁸³ As for Turkey, the historic peace agreement which was signed on 10 October 2010 displays Turkey's willingness to open its border to Armenia, however this happens only when the protocols are ratified. In sum, it can be concluded that the relationship between Turkey and Armenia is burdened by a number of inter-connected problems, among others the differences over the nature of Ottoman-era massacres of Armenians, the lack of diplomatic relations, the closure of the border and the Nagorno-Karabakh conflict between Armenia and Azerbaijan.⁸⁴

⁸² BBC news, 'Regions and territories: Nagorno-Karabakh', Retrieved on 2 March 2010 at:
< http://news.bbc.co.uk/2/hi/europe/country_profiles/3658938.stm>

⁸³ BBC news, 'Regions and territories: Nagorno-Karabakh', Retrieved on 2 March 2010

⁸⁴ 2nd report of the Independent Commission on Turkey September 2009, 'Turkey in Europe, Breaking the vicious circle', p.45-46

PART II: CONTENTIOUS CONTEMPORARY THEMES

The deportations (officially called relocation) resulted in the death of enormous numbers of Armenians, so much is an undisputed historical fact. However, several strong disagreements concerning the Armenian question remain contentious in this day and age. Themes which give rise to disagreement vary from the military necessity of the operation till the number of Armenian deaths. For example, some Turkish historians have put the numbers as low as 200,000, while some Armenians estimate the death toll ten times as many.⁸⁵ On the whole, there are many disputed themes when it comes to the Armenian question, themes which are still relevant today because they have a profound influence on Turkish-Armenian relations and hinder the process of reconciliation. This part will focus on three contentious contemporary issues which influence the relationship between Turkey and Armenia in such a way that they impede the functioning of the joint commission, as will be shown in part III.

The first theme addresses the phenomenon of genocide. In order to elaborate on the concept of genocide attention will be paid to the history of the term. Furthermore, the legal and the social concept of genocide will be dealt with as well as the implications which come along with these views. In addition, the question whether the Armenian massacres constitute genocide will be addressed. Besides, attention will be paid to the political connotation of the Holocaust, while also touching upon the influence of the political connotation of the Holocaust on processes of transitional justice and more specifically on the Armenian question. The second theme will cover the Armenian campaign for recognition of the Armenian massacres as genocide, in which the Armenian diaspora has been of profound influence in the international arena. In addition, attention will be paid to the Armenian culture of victimization. Finally, the origins and aims of Turkish denial of the Armenian massacres will be addressed. The third and last theme will cover the question whether EU leverage as regards Turkey's stance towards the Armenian question is ambiguous. The history of relations between the EU and Turkey will be addressed first in order to put Turkey's route towards EU accession in perspective.

⁸⁵ Zürcher, Erik Jan, *Turkey, a modern history*, p. 115

2. THE PHENOMENON OF GENOCIDE

2.1 THE ORIGINS OF GENOCIDE

Until the Second World War, the phenomenon of genocide was a 'crime without a name'.⁸⁶ The man who coined the term was Raphael Lemkin, a Polish-Jewish jurist and a refugee from Nazi occupied Europe. In 1943 Lemkin coined the term and in 1948 the UN Convention on the Prevention and Punishment of Genocide was adopted which embedded the term of genocide in domestic and international law.⁸⁷ By the time the General assembly of the UN completed its standard sitting 'with the 1948 adoption of the Convention on the Prevention and Punishment of the Crime of Genocide, genocide had a detailed and quite technical definition as a crime against the law of nations'.⁸⁸ This detailed and technical definition is as follows:

Article I: The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article II: In the present 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;*
- (e) Forcibly transferring children of the group to another group.*

Article III: The following acts shall be punishable:

- (a) Genocide;*
- (b) Conspiracy to commit genocide;*
- (c) Direct and public incitement to commit genocide;*
- (d) Attempt to commit genocide;*
- (e) Complicity in genocide.⁸⁹*

The definition of genocide as laid down in the UN Convention on the Prevention and Punishment of the Crime of Genocide contains three important elements. First of all 'the intent to destroy in whole or in part', followed by the second element a 'national, ethnic, racial or religious group' and the final

⁸⁶ Jones, Adam, *Genocide, a comprehensive introduction*, p. 113

⁸⁷ Ibidem

⁸⁸ Jones, Adam, *Genocide, a comprehensive introduction*, p. 12

⁸⁹ Convention on the Prevention and Punishment of the Crime of Genocide, adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948

element, the genocidal acts enlisted in Article III (a) till (e).⁹⁰ Lemkin's conviction that genocide needed to be confronted whatever the context is backed by the Convention's declaration that genocide is a crime 'whether committed in time of peace or in time of war' defined in Article I of the Convention. This took away the hurdle that was encountered in the Nuremberg trials, which only took Nazi crimes in to account after Germany's invasion of Poland on September 1, 1939. It meant that crimes that were committed before this date were not liable to be punished by the military tribunal.⁹¹ The second sentence of Article I of the Convention states that the Contracting Parties 'undertake to prevent and to punish' the crime of genocide, however this leaves actual obligations rather vague.

In contemporary discussions on allegations of genocide the question of 'intent' defined in Article II, has become a controversial issue. It is very difficult to establish intent in a court of law since not all perpetrators of genocide declare and document genocidal plans in the manner the Nazis did. Additionally, Lemkin emphasized ethnic and national groups, which were included in Article II of the Convention as follows, 'genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious groups'. However, nowhere in the Convention 'national, ethnical, racial or religious' groups are defined which leads one to wonder how i.e. political groups and social classes are covered by the Convention. Because the definition leaves room for interpretation, subsequent definitions are used.⁹² The position of the Rwanda Tribunal (ICTR) is that the term 'any stable and permanent group' should become the standard under the Convention.⁹³

When regarding Article II of the Convention several genocidal acts are qualified as committing genocide. All the acts mentioned in Article II of the Convention are violations of human rights, and may also be crimes against humanity or war crimes, depending on the context in which they were committed.⁹⁴ Theoretically, it would not be necessary to exterminate a group in whole or in part to commit genocide. In fact, one does not need to kill anyone at all to commit genocide. However, Jones states 'from a legal perspective genocide unaccompanied by mass killing is rare, and has stood little chance of being prosecuted'.⁹⁵ 'Causing serious bodily or mental harm to members of the group' or 'deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part' or 'imposing measures intended to prevent births within the group' and 'forcibly transferring children of the group to another group' are qualified actions to commit genocide.⁹⁶ All these actions which could be qualified as genocide are open to various interpretations since the acts which could be grouped under the descriptions in the Convention are not specified. However, trials and tribunals such as the Eichmann trial in 1961 and the Rwanda and Yugoslavia tribunals have

⁹⁰ Herik, Larissa van den, 'The schism between the Legal and the Social concept of genocide in the light of the responsibility to protect', in: Henham, Ralph and Behrens, Paul eds., *The criminal law of genocide. International, comparative and contextual aspects* (Ashgate, 2007)p. 77

⁹¹ Jones, Adam, *Genocide, a comprehensive introduction*, p. 13

⁹² Jones, Adam, *Genocide, a comprehensive introduction*, p. 12

⁹³ The Prosecutor versus Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement (TC), 2 September 1998. See para. 516: "In the opinion of the Chamber, it is particularly important to respect the intention of the drafters of the Genocide Convention, which according to the *travaux préparatoires*, was patently to ensure the protection of any stable and permanent group.

⁹⁴ Herik, Larissa van den, 'The schism', p. 94

⁹⁵ Jones, Adam, *Genocide, a comprehensive introduction*, p. 13

⁹⁶ Convention on the Prevention and Punishment of the Crime of Genocide, adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948 and Jones, Adam, *Genocide, a comprehensive introduction*, p. 13

contributed to specify these acts i.e. the ICTR has formulated 'acts of rape and mutilation' which can be grouped under 'causing serious bodily or mental harm to members of the group'.⁹⁷

'The word is new, the concept is ancient' wrote Leo Kuper in his book on genocide studies and he was right, genocide has been a phenomenon of all ages.⁹⁸ Until 1948 no official name existed for the crime and, in all probability, it is not a coincidence that in the aftermath of the Second World War the definition of the term genocide was born. In the highly political context of the post-war period, probably no agreement could have been reached without the horrors of the Second World War. Although the definition leaves room for interpretation, the Convention made genocide a crime under international law, whether committed in time of peace or war and parties to the Convention are 'to prevent and to punish' the crime. Since the Convention is part of international customary law, the Convention is applicable in all countries, irrespective of whether they have signed or ratified it.⁹⁹

2.2 GENOCIDE: A LEGAL AND SOCIAL CONCEPT

Between the 1950s and the 1980s the term genocide was almost unused by scholars until the article of Vakahn Dadrian 'A typology of Genocide' was published and sparked the interest of many scholars on the subject.¹⁰⁰ As of that moment a renewed interest in the phenomenon of genocide came up and above all studies on the Holocaust became popular. Towards the 1990s the explosion of public interest and the growth of genocide studies as an academic field culminated in a large amount of humanistic and social studies.¹⁰¹ Among these studies, an important theme is the discussion around the interpretation of the definition of genocide, which evolved in a legal and social concept of genocide. In the following paragraphs attention will be paid to the legal and social concept of genocide as well as the implication of both concepts. Furthermore attention will be paid to the political connotation of the word genocide which places responsibility on the international community to respond and to protect.

The legal concept of Genocide emerges from the 1948 Genocide Convention and is based on the definition of Genocide which is provided in the Convention. This concept is referred to as the narrow definition of genocide and its main characteristic is the specific intent to destroy a group in whole or in part. On the contrary, social scientists use a broader concept of genocide and focus more generally on the aspect of mass killing. The legal definition of genocide lists four specific groups namely 'national, ethnical, racial or religious groups'.¹⁰² These groups are protected by the prohibition of genocide. In contrast, some social scientists such as Chalk and Jonassohn, define victims as all human groups as defined by the perpetrators.¹⁰³ Some social scientists such as Charny go even further and depart entirely from the group component, focusing on the individual as the primary victim

⁹⁷ The Prosecutor versus Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement (TC), 2 September 1998 (?)

⁹⁸ Kuper, Leo, *Genocide: its political use in the twentieth century*, (Harmondsworth, 1981) p. 1

⁹⁹ United Nations, 'Booklet on what is genocide, why it happens and the role of the Special Adviser of the UN Secretary-General on the Prevention of Genocide, the United Nations system and the International Criminal Court'. Published by the UN Department of Public Information in collaboration with the Office of the Special Adviser, Retrieved on 9 December 2009 at: <http://www.un.org/preventgenocide/adviser/pdf/Booklet_prevention_of_genocide_Final_2009-03-24.pdf>

¹⁰⁰ Dadrian, Vakahn, 'A Typology of Genocide', in: *International Review of Sociology* 5, 2: 201-212 (1975)

¹⁰¹ Jones, Adam, *Genocide, a comprehensive introduction*, p. 14

¹⁰² Herik, Larissa van den, 'The schism' p. 17

¹⁰³ Herik, Larissa van den, 'The schism' p. 17

of genocide.¹⁰⁴ The legal definition of genocide thus specifically enumerates four groups of possible victims whereas the social concept makes use of a broader view which varies according to several interpretations. When taking these diverse views in account, it can be stated that in general, social scientists favour a broad concept of genocide, focusing on the aspect of mass killing and less on the intention of the perpetrators. The social concept avoids a narrow definition which facilitates the inclusion of victims who are not specifically named in the genocide convention. As already stated, only national, ethnic, racial and religious groups are protected under the genocide convention whereas in some cases this legal interpretation seems to narrow to achieve justice for victims.

However, inherent to the social concept are several downsides. Whereas the legal concept is based on the definition of genocide in the UN Convention, the social concept is based on several interpretations of genocide. Multiple social scientists have interpreted the phenomenon of genocide, sequential Dadrian, Horowitz, Kuper, Fein, Chalk and Jonassohn, Charny and Harff have published their definition of genocide.¹⁰⁵ It is unclear which definition should be applied in which case and inherently this causes the phenomenon of genocide to devalue. Furthermore, the social concept focuses on mass killing and less on the intention of the perpetrators which facilitates the focus on destruction. When the intention of the perpetrators is subordinate to the end result of mass killing, all acts which could threaten a group of people could be classified under genocide.¹⁰⁶ This leads the phenomenon of genocide to lose its specific intention, it weakens the legitimacy of its legal and social framework and it causes a further devaluation of the phenomenon.

The legal definition of genocide is, despite its ambiguities, advantageous in creating legal clarity as regards the crime of genocide, this is helpful when it comes to the prevention of genocide as well as retribution. In the last case it leads to clear cut results, either the three main important elements of genocide can be applied on a case or not. Furthermore, it is interesting to note that from one point of view the 'narrow' concept makes use of a wider definition than the social concept. Whereas in the legal concept rape may constitute a genocidal act other than killing, this is not the case for the social concept of genocide.¹⁰⁷ The narrow definition creates legal clarity, however in contemporary discussions on allegations of genocide several controversies are raised. As already described the question of 'intent', the fact that only 'national, ethnic, racial and religious' groups are referred to in the UN definition and the fact that the genocidal acts in Article III of the Convention are not specified, gives rise to speculation.

Moreover, it is stated in the Convention that the Contracting Parties 'undertake to prevent and to punish' the crime of genocide, however this leaves concrete responsibility to act vague. There is a moral conviction that there is a duty to act. However, the UN definition of genocide does not specify a legal obligation to live up to this moral conviction, which touches upon the political connotation within the term. This political connotation of genocide is significant in two respects. First of all it indicates the extreme gravity of the crime and secondly, it implies a duty to act. In general, genocide is perceived as the worst crime possible however, no specific legal hierarchy exists as regards genocide and i.e.

¹⁰⁴ Herik, Larissa van den, 'The schism', p. 76 and Jones, Adam, *Genocide, a comprehensive introduction*, p. 18

¹⁰⁵ Jones, Adam, *Genocide, a comprehensive introduction*, pp. 15-18

¹⁰⁶ Fein, Helen, 'Genocide: a sociological perspective', in: *Current Sociology* vol. 38 (1990)

¹⁰⁷ Herik, Larissa van den, 'The schism', p. 76

crimes against humanity. Both crimes are serious violations of international humanitarian law which can be met by the same judgment.¹⁰⁸ However, before genocide was laid down in the UN Convention, genocide could only be prosecuted as one crime within the broader legal category of crimes against humanity. Bloxham states that 'the records of most wars and states, certainly the imperial ones, were stained. Outright genocide was a rarer crime, and the stigma attached to the genocide perpetrator concomitantly greater'.¹⁰⁹ As regards the second political connotation, a duty to act, it must be noted that the moral conviction to act is indisputable. Whether this moral conviction is translated in legal terms is doubtful, since the legal obligation to act in Article I of the Genocide Convention is phrased in general terms.

All in all, both the social concept and the legal concept have difficulties covering the complexity of genocide. Based on the aforementioned it can be stated that both concepts have their advantages and disadvantages. In general, the most important issue at stake is the fact that the discussion between the jurists and the social scientists creates ambiguity as regards the definition and the interpretation of the term of genocide. This ambiguity devaluates the specific intention of the establishment of the Genocide Convention and causes a devaluation of the phenomenon. Furthermore, these developments influence parties to conflicts, which leads to further devaluation. For example, the ambiguity as regards the definition of genocide can be used by parties to avoid the crime of genocide by simply advocating a different definition of genocide. Furthermore, the existence of different definitions of genocide can be used by states to deny the crime of genocide, since there are so many definitions available one is able to pick a different definition of genocide which is not applicable on the specific case.

In order to counter a further devaluation of the phenomenon of genocide and to avoid polarization on the use of the term, it is of great significance to use a clear and strict definition of genocide. In the context of international criminal law, it is important to adhere to the legal definition of genocide specified in the UN Convention. International criminal law aims to qualify a prohibited act in legal terms while at the same time, the circumstances in which the act was committed are taken into account.¹¹⁰ It is stated that different circumstances may lead to different qualifications. Van den Herik illustrates this by providing the following example, 'for instance, if a man is murdered this may be qualified as a different crime depending on the circumstances. It may be simple murder, patricide, or even terrorism. In a similar vein, at the international level a distinction should be maintained between the different crimes of genocide and crimes against humanity. Not because genocide is necessarily a more serious crime than crimes against humanity but it is a different crime pertaining to different circumstances'.¹¹¹ Another characteristic of criminal law is that there can only be a conviction if guilt is proven beyond reasonable doubt. This characteristic inherently means that this specific intent must be proven by a thorough and strict construction of intent. There can be a conviction of genocide only, whenever all evidence that is taken into account leads to the conclusion that there was a specific intent to destroy a certain group.

¹⁰⁸ Herik, Larissa van den, 'The schism', p. 91

¹⁰⁹ Bloxham, Donald, *The Great Game of Genocide*, p. 216

¹¹⁰ Herik, Larissa van den, 'The schism', p. 76

¹¹¹ Herik, Larissa van den, 'The schism', p. 76

Furthermore, when considering genocide from a broader, sociological perspective it can be an advantage to adhere to a clear and strict definition of genocide. International or national criminal tribunals have an important educational function in society, they can only fulfil this function if their case law is not controversial and ambiguous. Additionally, a clear definition of genocide can help to avoid that the term genocide is used for a situation which has nothing to do with genocide as a legal concept.¹¹² In order to avoid further polarization between the legal and the social concept of genocide, which leads to a devaluation of the use of genocide, it is important to adhere to the legal definition of genocide specified in the UN Convention. The fact that the convention on genocide was adopted in 1948 and achieved wide acceptance by states, makes it problematical and arbitrary to neglect the definition which is provided in the Convention. It seems illogical to use other definitions or none at all.¹¹³ Adhering to the strict and legal definition of genocide specified in the UN Convention on Genocide eradicates ambiguity and guarantees the specific intention of the phenomenon; the legal safeguarding of genocide to indicate the gravity of a certain event.

2.3 GENOCIDE AND THE ARMENIAN QUESTION

When considering the strict and legal definition of genocide as specified in the UN Convention in relation to the Armenian case, it is interesting to note that the bitter debate on the question whether the Armenian massacres in the Ottoman era constitute genocide continues unabated. Part of the problem is the fact that 'genocide' is a legal term rather than a historical one, designed for judgements in the courtroom instead of an historian's attempt to understand and contextualize past events. The phenomenon genocide is thus an example of the past examined teleologically, which means that it is a retrospective projection.¹¹⁴ As the stigma attached to the genocide perpetrator became concomitantly enormous under international law, the legal and political battle between Turkish and Armenian representatives raged around the applicability of the term genocide and more specifically the intent to destroy.¹¹⁵ In the historiography on the Armenian massacres, the writing of reconstructive history has been used by both sides for ahistorical ends, whereas Armenian activists and historians try to keep the memory of the Armenian massacres alive and press for recognition, the Turkish government engages in active denial.¹¹⁶

The Armenians claim that the Armenian population in the Ottoman Empire became the innocent victims of a state-sponsored campaign of destruction, thereby committing an unprovoked act of genocide. The Turkish version maintains that the relocation of the Armenian population was a necessary intervention in response to the radical rebellious activities of the Armenians, supported by Russia and Great Britain. From the perspective of the ruling CUP it was a matter of national security, in line with the thought of ethnic homogeneity and territorial integrity of the Anatolian heartland. Armenians were perceived as an obstacle to each of these ends, accumulated by the fact that the Armenians sought rapprochement with the Entente powers, having their own imperial agenda. All in

¹¹² Herik, Larissa van den, 'The schism', p. 95

¹¹³ Dunér, Bertil, 'What can be done about historical atrocities? The Armenian case', in: *International Journal of Human Rights*, 8 (2004), p. 217-233p. 221

¹¹⁴ Bloxham, Donald, *The Great Game of Genocide*, p. 95

¹¹⁵ Ibidem

¹¹⁶ Bloxham, Donald, *The Great Game of Genocide*, p. 96

all, the presence of an internal 'alien' was not seen as an obstacle anymore but as an acute threat, which confirmed CUP suspicions of Armenian ethnic antagonism.¹¹⁷

Soon the distinction between innocent and guilty Armenians became meaningless in the eyes of the CUP, both from an ideological and practical point of view. The terroristic and treacherous activities of the Armenians as well as rapprochement to the European powers added to the notion that the threats posed by the Christian Armenians could be averted if the ethnic Armenian population within the Ottoman Empire was physically removed.¹¹⁸ If all Armenians were to be physically removed, it would leave Muslims in sole occupation of the Anatolian heartland and contest European imperialist aims.¹¹⁹ It must be noted though that only the Christian Armenians were to be annihilated. Thus for instance, when Dr Reşid took his orders too far in Diyarbakir in July 1915 and started annihilating all Christians, his Ministry of Interior informed him to restrict his measures to Armenians alone.¹²⁰ Although the deportation orders do not contain explicit sanctions of mass murder and the fact that much of the killing was done by irregulars, does not alleviate the responsibility of the centre of power. The destruction process developed in a somewhat improvised and often reactionary way, however it does not detract from the intent, which could be perceived in phases of radicalization and acceleration instead of specific shifts in intent.¹²¹

The much debated question as to whether the Armenian massacres constitute genocide as specified under the UN Genocide Convention is such a complex one that it should be left to legal experts. Almost hundred years after the Armenian massacres in the Ottoman Empire took place, both sides have used the reconstruction of history for ahistorical ends and as a result the dispute on the nature of the Armenian massacres has been thoroughly politicized. Nonetheless, the prevailing idea on the Armenian massacres tends towards the notion that the killing of the Armenians did constitute genocide, all aspects of the UN Genocide Convention seem applicable.¹²² International resolutions and declarations support this notion. However, at the same time the recognition of the Armenians massacres as genocide should be seen as 'a by-product of the historian's work, not its ultimate aim or underpinning'.¹²³ In that sense, the final verdict on the much debated question should be left to legal experts only.

2.4 THE POLITICAL CONNOTATION OF THE HOLOCAUST

The genocide of the European Jews, also known as the Holocaust, 'is perhaps the one genocide of which every educated person has heard'.¹²⁴ It was the Jewish Holocaust which led the world's states to decide upon the Convention on the Prevention and Punishment of Genocide. The Holocaust spawned a profusion of scholarly work which culminated in the development of a comparative discipline in the academic world. Nowadays, in both the academic world and the public domain the Holocaust still plays an important role in contemporary discussions on genocide. This can be

¹¹⁷ Bloxham, Donald, *The Great Game of Genocide*, p. 94

¹¹⁸ *Ibidem*

¹¹⁹ Bloxham, Donald, *The Great Game of Genocide*, p. 94

¹²⁰ Osmanlı Belgeler, 69-69, Interior Ministry to Diyarbakir, 12 July 1915. On Reşid's actions, DA, no. 126.

¹²¹ Bloxham, Donald, *The Great Game of Genocide*, p. 93, 96

¹²² See chapter 2.1 for the definition.

¹²³ Bloxham, Donald, *The Great Game of Genocide*, p. 95

¹²⁴ Niewyk quoted in: Jones, Adam, *Genocide, a comprehensive introduction*, p. 147

explained by the fact that numerous people living in western Europe have been, directly or indirectly, affected by the Second World War and its atrocities. First of all, the Holocaust took place in the Western world and secondly, World War II took place quite recently, only six decades ago. In addition, much documented information, including texts and images, has reached the public domain, which causes the Holocaust to remain vividly in public memory of the society.¹²⁵ As a consequence, MacDonald states 'the Holocaust is seen to provide a universalized standard of good and evil, designed to highlight the role of victims, perpetrators and bystanders'.¹²⁶ As a consequence, the Jewish Holocaust holds a unique place in western memory.

The Holocaust has given rise to the definition of genocide and some scholars perceive the systematical extermination of Jews as the maximal standard for genocide in comparative genocidal studies.¹²⁷ The Holocaust is perceived as an 'ideal type' of genocide against which other have to be measured.¹²⁸ By applying this unique standard on other genocides there is the pitfall that the 'Holocaust standard' will be applied in moral terms. This causes a devaluation of the phenomenon of genocide and influences the legal applicability of genocide because of the political connotation which is intrinsic to the term. Furthermore it implies that there is only one true genocide, which does not do justice to other genocides such as the Rwandan or Bosnian genocide.¹²⁹ The moral and historical significance of other genocides are downplayed, while assuring Holocaust uniqueness.¹³⁰

As a result states associate genocide with the Holocaust. The Holocaust defines the ultimate evil and it displays the values of the nation by demonstrating in strong terms what the nation is not.¹³¹ In combination with the moral stigma attached to the genocide perpetrator, which is much greater than the stigma attached to the perpetrator of crimes against humanity, states are hesitant to condemn mass atrocities as genocide. States do not want to be placed on an equal level with Nazi Germany and this notion strongly influences debates on genocide. In addition, these debates are fuelled when considering the fact that child-removal policies may constitute genocide under the UN Convention on Genocide whereas mass killings in many wars during the 20th century do not fall within its domain.¹³² In Australia for instance, unfamiliarity with other genocides meant that only the Holocaust featured in public and academic discussions, which confuses the notion that cases of child-removal policies and forced assimilation may constitute genocide under the UN Convention on Genocide as well. It might be legally correct, but the stigma of genocide remains the same, no matter which act of genocide is committed.¹³³

As a consequence, denial and misuse are brought into play by states in order to avoid the conviction of genocide, since it bears such a strong political connotation within it. This thoroughly influences diplomatic relations between states, of which an example is provided by the Armenian question. When considering the enduring conflict between Turkey and Armenia on the nature of the

¹²⁵ MacDonald, David B., *Identity politics in the age of Genocide. The Holocaust and historical representation* (New York, 2008), p. 3.

¹²⁶ Ibidem

¹²⁷ Jones, Adam, *Genocide, a comprehensive introduction*, p. 162 and Shaw, *What is genocide?*, (Malden, 2007) p. 44-45.

¹²⁸ Bloxham, Donald, *The Great Game of Genocide*, p. 210

¹²⁹ Jones, Adam, *Genocide, a comprehensive introduction*, p. 162

¹³⁰ MacDonald, David B., *Identity politics in the age of Genocide*, p. 7

¹³¹ MacDonald, David B., *Identity politics in the age of Genocide*, p. 5

¹³² MacDonald, David B., *Identity politics in the age of Genocide*, p. 5

¹³³ Ibidem

Armenian massacres in the Ottoman era, it is interesting to note that Diaspora activists and historians try to keep the memory of the Armenian massacres alive while facing the active denial of the Turkish government. Whereas several historians try to highlight the similarities between the Jews and the Armenians to disprove the uniqueness of the Holocaust, Turkey holds on to its stance of denial.¹³⁴ While trying to tackle both pressure from European actors and domestic clashes, Turkey realizes that the public-image factor is important for a state on its way to democracy, consequently Turkey has no desire for its history to be haunted by comparisons with Nazi Germany.¹³⁵ In general, it can be stated that the political connotation of the term genocide influences parties to a conflict. The moral stigma is of great influence on the process of transitional justice. If a state does not want to recognize an event in history as genocide because of the moral stigma attached to the term, it hinders the process of transitional justice. Whenever one denies the act of genocide to have taken place, perpetrators will not be punished, reparations will not be initiated and reconciliation will not be achieved.

¹³⁴ MacDonald, David B., *Identity politics in the age of Genocide*, p. 6

¹³⁵ Bloxham, Donald, *The Great Game of Genocide*, p. 207

3. THE ARMENIAN CASE: POLITICS OF RECOGNITION AND DENIAL

3.1 THE ARMENIAN CAMPAIGN FOR RECOGNITION

Having to deal with displacement, massacres and finally Sovietization, survival was the utmost priority for the Armenians of the Caucasus, replacing almost everything else on the political agenda.¹³⁶ The Armenians whom had found a safe haven in Syria, Lebanon, France and the USA had to adapt themselves to their newfound countries. Many Armenian intellectuals had been killed during the massacres, because of this the research process devoted to the massacres had been limited. It is even stated that the intellectuals who survived were 'dazed by the catastrophe' until after the Second World War.¹³⁷ Another reason for the events to become the 'forgotten massacres' until the mid-1960s was the fact that as of the 1920s, commemoration of the genocide within Soviet Armenia was banned by the Soviet authorities. Furthermore, the Armenian massacres were superseded by the Holocaust and other German atrocities.¹³⁸

Modern Armenian protests began on April 24, 1965 on the fiftieth anniversary of the Armenian massacres in 1915. It caused an outbreak of activities across the diaspora and within Soviet Armenia. Huge crowds gathered in Erivan on April 24 to mark the Armenian massacres and call for the return of western Armenian lands.¹³⁹ It became a key commemorative turning point in the history of the Armenian campaign for recognition of the Armenian massacres as genocide. During the Soviet era, the Soviet Armenians were not able to influence commemoration of the genocide outside their own borders. As a consequence, it led the Armenian diaspora to acquaint the outside world more accurate with Armenian causes and as a consequence the diaspora came to represent Armenian interests worldwide.¹⁴⁰ The most influential political body within the diaspora was the Armenian Revolutionary Federation (ARF), active since the end of the nineteenth century, which became a sort of 'government-of-exiles', combating Turkish denialism and keeping the memory of the Armenian massacres alive in America, Europe and elsewhere.¹⁴¹ Genocide recognition formed an important mobilizing and unifying factor.¹⁴²

With the establishment of the UN Genocide Convention in 1948, the definition of genocide seemed applicable to the Armenian experience. It was embraced wholeheartedly by the Armenian diaspora, and at this stage it was easily applied without a legal justification. Other elements of the proliferating Armenian discourses on 1915 were coloured by connections with the Jewish Holocaust because of the establishment of the Genocide Convention in the aftermath of the Nazi atrocities. Additionally, in an oft-quoted statement of Hitler he says to his officers 'Who, after all speaks today about the annihilation of the Armenians?'¹⁴³ The Armenian diaspora embedded this saying in their

¹³⁶ Bloxham, Donald, *The Great Game of Genocide*, p. 212

¹³⁷ Oshagan, Vahé, 'The Theme of the Armenian Genocide in Diaspora Prose', *Armenian Review* 38/1 (1985) p. 55 Quoted by Bloxham, Donald, *The Great Game of Genocide*, p. 212

¹³⁸ MacDonald, David B., *Identity politics in the age of Genocide*, p.119

¹³⁹ Bloxham, Donald, *The Great Game of Genocide*, p. 215

¹⁴⁰ MacDonald, David B., *Identity politics in the age of Genocide*, p. 119

¹⁴¹ Shain, Y., 'The Role of Diasporas in Conflict Perpetuation of Resolution', in: *SAIS Review*, vol. 22, no. 2, 2002, p. 131

¹⁴² Bloxham, Donald, *The Great Game of Genocide*, p. 215

¹⁴³ The text above is the English version of the German document handed to Louis P. Lochner in Berlin. It first appeared in Lochner's *What About Germany?* (New York: Dodd, Mead & Co., 1942), pp. 1-4. The Nuremberg Tribunal later identified the document as L-3 or Exhibit USA-28. Two other versions of the same document appear in Appendices II and III. For the German original cf. *Akten zur Deutschen Auswärtigen Politik 1918-1945, Serie D, Band VII, (Baden-Baden, 1956)*, pp. 171-172

campaign stating that the Armenians had been the first victims of genocide and that the Armenian massacres had been the first genocide of recent times. They even argued that Hitler would not have dared to instigate his policies if the perpetrators of the Armenian massacres had been punished.¹⁴⁴

As of the 1960s a new culture of state awareness and accountability was promoted by social protest and civil rights movements. As for the Armenian campaign, the next major phase was about to be introduced. A terroristic campaign was instigated by the Armenians in 1973 when an elderly survivor of the genocide assassinated two Turkish consular officers in California. All in all, some 30 Turkish diplomats were murdered from 1973 till 1985 by ASALA, the Armenian Secret Army for the Liberation of Armenia.¹⁴⁵ As of the mid 1980s terrorist activities came to an end, placing the focus on constructive memorial work, expressed through commemoration, scholarship, education and political lobbying. Newspapers were founded and university chairs were donated as well as the establishment of institutes where researchers could devote themselves to studies on the genocide.¹⁴⁶

Along with the lobby for recognition of the Armenian massacres as genocide which started in the 1970s, calls on the side of the nationalist ARF for a return to the terms of the Sèvres treaty have become more explicit. Bloxham states that 'even putting aside questions of their legal justness in 1920, they would be patently inequitable today with almost no Armenians living in the eastern provinces, and a present day population – composed of Turks, Kurds and others, - there that cannot be considered a fair game to suffer personal punishment for past acts of the state'.¹⁴⁷ It is not reasonable at all to demand compensation by retrieving parts of Anatolia which would negatively affect the people residing there nowadays, having no connection to the Armenian massacres whatsoever. Thus, there is no logical connection between the cause of genocide recognition and retrieving land from Turkey.¹⁴⁸ The Armenians demand something which they have never been entitled to.

During the 1970s the Armenian diaspora started a lobby in order to gain 'affirmation and acknowledgement' of the Armenian massacres as genocide.¹⁴⁹ By 1986 the United Nations Commission on Human Rights recognized the genocide, although the UN has not taken an official position as regards the Armenian massacres. In addition in 1987 the European Parliament adopted a resolution in which the genocide was recognized.¹⁵⁰ However, most of the international resolutions and declarations on the Armenian case came after Armenia achieved its independence in 1991. According to Bloxham:

'Of the Latin countries with relatively large Armenian populations, Argentina joined Uruguay in 1993 but it specifically used the word genocide. In 1996 Greece joined Cyprus (1990), both happy to cause discomfort to Turkey, as was Bulgaria (1995). The Russian Duma passed a resolution in 1995, undoubtedly to maintain its influence in independent Armenia, though it has failed to reconfirm this. Belgium, Sweden,

¹⁴⁴ Bloxham, Donald, *The Great Game of Genocide*, p. 217

¹⁴⁵ MacDonald, David B., *Identity politics in the age of Genocide*, p. 119

¹⁴⁶ Bloxham, Donald, *The Great Game of Genocide*, p. 219

¹⁴⁷ Bloxham, Dennis, *The Great Game of Genocide*, p. 232

¹⁴⁸ Bloxham, Dennis, *The Great Game of Genocide*, p. 232

¹⁴⁹ MacDonald, David B., *Identity politics in the age of Genocide*, p. 120

¹⁵⁰ Hovanissian, Richard, 'Denial of the Armenian Genocide in Comparison with Holocaust Denial', in: Hovanissian, Richard, (ed.), *Remembrance and Denial: The Case of the Armenian Genocide*, (Detroit, 1999) p. 201-202

Switzerland and Canada followed suit in 1998, 2000, 2003 and 2004 respectively, as did Italy (2000) a convinced opponent of Turkish entry into the EU, and Lebanon(2000), with its large Armenian colony. The European parliament also passed a genocide declaration in 2000, and between 1998 and 2001 the murder of the Armenians was recognized as genocide by both branches of the French legislature'.¹⁵¹

A concentration of declarations around the year 2000 can be explained by the fact that the Kocharian government of the Armenian Republic came to power and put the recognition of the Armenian massacres as genocide on top of the agenda. Up till then, most recognition pressure had come from the Armenian campaign instigated by the diaspora, exerting great influence because of rich resources. Additionally, the diaspora cannot be threatened in a political sense by Ankara. Kocharian boosted an international recognition offensive in cooperation with the Armenian diaspora and their joint forces almost gained the highly prized recognition of Clinton's government. Turkish threats against economic, political and military American interests caused Clinton to withdraw the recognition bill on 10 October 2000. Whereas things had looked more promising for the Armenians at the end of the Cold War, for the US Turkey remained vital in order for their strategic foreign policy in the USA.¹⁵²

Overall, the large European and American diasporas, approximately seven million strong, has been of profound influence in the international arena. Recognition of the Armenian massacres as genocide is on top of their agenda as well as their desire for Turkey to recognize the genocide. Shain observes that 'diaspora hard-liners are said to care less about the homeland's present and future than about the past's dead'.¹⁵³ This notion reflects the fact that the recognition of the Armenian massacres as genocide has become central to the identity of the Armenians, who define themselves as historical victims. This notion plays an important role in the life and politics of the diaspora and their homeland. This tendency to focus on identity through victimization has become a central theme in contemporary society, in the following paragraph attention will be paid to its significance.¹⁵⁴

3.2 THE CULTURE OF VICTIMIZATION

Along with the increase of the public morality factor, moral issues have come to dominate public discussions. The spread of the so-called culture of victimization has been often criticized and has had implications for the perpetrators' willingness to acknowledge and to compensate the victims or their descendants. Either way it implies a specific interactivity between the perpetrator and the victim, which can positively fuel the process of transitional justice. However, it must be noted that the culture of victimization can also negatively influence the interactivity between the perpetrator and the victim. According to Buruma, there are several controversial aspects of the focus on identity through victimization in contemporary society. He finds the extent alarming 'to which so many minorities have come to define themselves above all as historical victims'. Nothing good will come out of a community

¹⁵¹ Bloxham, Donald, *The Great Game of Genocide*, p. 223

¹⁵² Bloxham, Donald, *The Great Game of Genocide*, p. 225

¹⁵³ Shain, Y., 'The Role of Diasporas in Conflict Perpetuation of Resolution', p.121

¹⁵⁴ Barkan, Elazar, *The Guilt of Nations: Restitution and Negotiating Historical Injustices*, (London, 2000) p. xvii

which finds its roots in sentimental solidarity of remembered victimhood. According to Buruma this will never lead to mutual understanding between the perpetrator and the victim. He views victimhood as a growing industry, because the public validates these policies.¹⁵⁵

However, Barkan states that 'it is the growth of both identities – the victim and the perpetrator, both as subjective identities – which informs this new space in international and national politics'.¹⁵⁶ Though, Barkan does agree with the view that there is a potential risk of self-pitying victimization. For the process of transitional justice the uniqueness is that there is an interactive discussion between the perpetrators and their victims in which flexibility is demanded from both sides. According to Barkan, the interaction between the perpetrator and victim in the process of transitional justice is a new form of 'political negotiation that enables the rewriting of memory and historical identity in ways that can be shared by both'.¹⁵⁷ The specific interaction in a specific case is unique, which avoids the pitfall of a universal restitution policy which does not fit the situation. Thus, instead of seeing the downsides of an increased focus on identity through victimization, one can positively regard the added value of political negotiation between the perpetrator and the victim and flexibility which is demanded on both sides. Only if the perpetrator and the victim have the intention to move forward, progress will be achieved. This notion has become particularly powerful in the post-cold war years.

In the case of the Armenians, it has already been indicated that many Armenians care more about the past's dead than about the homeland's present. And indeed, the Armenian campaign for recognition of the Armenian massacres as genocide has become intrinsic to the identity of the Armenians. However, an increased focus on identity through victimization, based on a shared historical perspective, has not had the desired interactive effect between the perpetrator and the victims which is advocated by Barkan. Shared Armenian victimhood and an active campaign for recognition have led to further polarization between Turkey and Armenia. Along with Armenian endeavour the Turkish machinery of denial has grown in size and sophistication.¹⁵⁸ Whereas interaction between the perpetrator and the victim could lead to the willingness of nations to self-reflect on their past, it has only led to a greater schism. This schism can be explained by the fact that both the perpetrator and the victim need to show flexibility in order to move forward, so far this has not been the case. Up to now, the pattern of restitution cases which reflect the international trend of nations willing to embrace their own guilt is not applicable in the case of Turkey and Armenia. Chapter four will elaborate on several instruments of transitional justice which could be constructive in order to move beyond this impasse between Turkey and Armenia. However, firstly, attention will be paid to the Turkish response of institutionalized denial so as to counter the Armenian campaign for recognition.

3.3 ORIGINS AND AIMS OF TURKISH DENIAL

The denial of the Armenian massacres by the Turkish state is often compared with the denial of the Holocaust.¹⁵⁹ The techniques which are used are mostly the same: false equivalencies of the genocides with other types and episodes of human and wartime suffering in order to undermine

¹⁵⁵ Buruma, Ian, 'The Joys and Perils of Victimhood', in: *New York Review of Books*, vol. 46, no. 6 (April 8, 1999), 4-9

¹⁵⁶ Barkan, Elazar, *The Guilt of Nations: Restitution and Negotiating Historical Injustices*, p. xvii

¹⁵⁷ Barkan, Elazar, *The Guilt of Nations: Restitution and Negotiating Historical Injustices*, p. xvii

¹⁵⁸ Bloxham, Donald, *The Great Game of Genocide*, p. 220

¹⁵⁹ Bloxham, Donald, *The Great Game of Genocide*, p. 208

evidence of state intent; determined misinterpretation of evidence; labelling the killings as wartime propaganda; minimization of death tolls; and blaming the victims for provocation and treachery.¹⁶⁰ However, when considering the imperatives on which the denial strategy is based, the Armenian massacres and the Holocaust differ. At the core of the Turkish nationalist discourse of denial lies the territorial integrity of the nationalist Turkish state and the prevention of external intervention in Turkish affairs. The foundation for this nationalist discourse of denial was established during the declining years of the Ottoman Empire throughout the end of the nineteenth century.

As will be described in chapter four, the rise of international attention for the Armenian Christians in the Ottoman Empire at the end of the nineteenth century was an imperative for the Great Powers to exercise influence on Ottoman affairs. More often than not the Great Powers used Christian suffering within the Ottoman Empire as an incentive to exert greater 'influence' in Ottoman affairs and on Ottoman territory.¹⁶¹ The Turks strongly opposed to the influence of the Great Powers in the Ottoman Empire, fearing a further decline of the empire by the cession of outright territory. Mustafa Kemal Atatürk led the Turkish Nationalist resistance movement towards the establishment of the Turkish Republic. It is interesting to note that plans for the resistance movement originated within the CUP in 1915, when the Unionists feared an Ottoman defeat in the First World War.¹⁶² Still, the taint of mass murder was unpleasant for the Ottoman successor state led by the national resistance movement. Former CUP members, willing to switch allegiance, joined the national resistance movement in order to avoid prosecution and trial for the crimes they had committed up to and during the Armenian massacres.¹⁶³ Since this information could seriously dent the national resistance movement, it added to the urgency to deny the Armenian massacres.

The Kemalist regime, headed by Mustafa Kemal Atatürk, 'was highly sensitive to slights invoking 'traditional' images of Turkish barbarity. Denial also grew to serve as a vital function in the process of myth making about the origins of modern Turkey, and therefore in the formation of a Turkish national identity'.¹⁶⁴ Besides the taint of mass murder, the Kemalist rulers wanted to break with the multinational Ottoman Empire. In order to create a homogeneous and unified state, the government operated as an active agent to institutionalize a new identity on the people through which the boundaries of Turkishness and Turkish citizenship were clearly defined.¹⁶⁵ The nationalist rulers wanted to equalize the whole nation living on Turkish soil, imposing characteristics belonging to the new Turkish culture in a top-down manner in order to secure the continuation of the Kemalist state, thereby ignoring all ethnic and cultural differences. There was no room for religious, political or ethnic others, according to the new Kemalist notion they were seen as something backward from the past and as a threat to the undividable integrity of the Turkish state. 'The Kemalist state wanted to transform all forms of difference into sameness. This was based on a model reflecting a set of

¹⁶⁰ Hovanissian, Richard, 'Denial of the Armenian Genocide in Comparison with Holocaust Denial', in: *Remembrance and Denial: The Case of the Armenian Genocide* (New Brunswick, 2003) p 201-236.

¹⁶¹ Bloxham, Donald, *The Great Game of Genocide*, p. 208

¹⁶² Zürcher, Erik, 'The last phase in the history of the committee of Union and Progress'. Retrieved on 17 March 2010 at: <https://openaccess.leidenuniv.nl/bitstream/1887/2507/1/350_005.pdf> p. 1 (1923-1924)

¹⁶³ Zürcher, Erik, 'The last phase in the history of the committee of Union and Progress'. Retrieved on 17 March 2010, p. 1

¹⁶⁴ Bloxham, Donald, *The Great Game of Genocide*, p. 208

¹⁶⁵ Colak, Yilmaz, 'Cultural diversity and Official Ideology in Post-Cold war Turkey: Towards a multicultural Integration', (United Nations University, 2004), p 7-8

relations between the civilized and the savage, the modern and the traditional, the West and the East'.¹⁶⁶

The denial of the Armenian massacres started as of the moment the crime was committed and developed during the Kemalist era into an institutionalized method of denial. It led to 'systematic and state-sponsored' rewriting of Turkish and Armenian history in which the Turks attempted to blame the victims for the deportations because of their collaboration with the Russian enemy and the terrorist activities in which some Armenians were involved. In their attempt to portray the Armenians as an unreliable, treacherous minority, the ruling CUP are portrayed as responsible leaders, who guaranteed the well treatment of the deportees.¹⁶⁷ This is only one example in the debate on the causes and effects of the decisions which led to the deportation of Armenians in 1915.¹⁶⁸ Examples are numerous, for instance Turkish historians focus on the rebellious activities of Armenians during the war and the difficulty of deciding which Armenians were rebellious and which were not, whereas the other side points out that the deportations of the Armenians took place throughout the Ottoman Empire and were not limited to the warzone. Some Turkish historians have put the numbers as low as 200,000, while some Armenians estimate the death toll ten times as many. However, it must be noted that the discrepancy between the numbers, apart from propaganda, partly stem from the differing views concerning the numbers of Armenians that lived in the Ottoman Empire before the massacres and the numbers which emigrated.¹⁶⁹ Furthermore, minimization of the number of victims was part of the strategy to avoid Armenian claims for autonomy.

Another issue which adds up to the notion of the institutionalized method of denial is the fact that the term genocide was invented during the Second World War and is intrinsic to Nazi Germany and the atrocities which were committed during that era. Turkey has no desire to be compared to Nazi Germany and the moral stigma which comes along with the phenomenon of genocide. After the end of the Second World War, the notion of genocide sparked the Armenian campaign for recognition of the Armenian massacres as genocide. In reaction, Turkey has always systematically combated the label of genocide, because of the massive moral stigma which is intrinsic to the term. Turkish diplomats have always been eager to stress their condemnation of the Holocaust and its unique nature while pointing out the civil war in which the Armenian deportations took place.¹⁷⁰ In addition, as of the 1980s Turkish chairs on American Universities were funded and several research institutes were established. These academic attempts were to legitimate the institutionalized method of denial, instigated by the Turkish state.¹⁷¹ It can thus be concluded that the Turkish institutionalized machinery of denial grew along with Armenian initiatives.

Moreover, with the end of World War II Turkey wanted to secure itself to counter a renewed threat of Soviet expansionism. At first the relations between Turkey and the USA had been strained because of several reasons. A period of détente in the Cold War and the reassessment of NATO strategies on the side of the USA provided Turkey with a window of opportunity to negotiate its foreign

¹⁶⁶ Colak, 'Cultural diversity and Official Ideology in Post-Cold war Turkey: Towards a multicultural Integration', p 10

¹⁶⁷ Bloxham, *Donald, The Great Game of Genocide*, p. 208

¹⁶⁸ Bloxham, *Donald, The Great Game of Genocide*, p. 208

¹⁶⁹ Zürcher, Erik Jan, *Turkey, a modern history*, p. 115

¹⁷⁰ Bloxham, Donald, *The Great Game of Genocide*, p. 218

¹⁷¹ MacDonald, David B., *Identity politics in the age of Genocide*, p. 121

policy with the USSR. Furthermore, closer political and economic ties with the Arab countries and a continuing Turkish stance on the enduring Cyprus issue caused the relationship between Turkey and the USA to deteriorate. However, the 1979 Soviet invasion of Afghanistan and the Islamic Revolution in Iran changed the US position towards Turkey.¹⁷² Tensions between NATO and the Warsaw pact were about to increase and as a result Turkey, as a key NATO ally, could once again rely on its alliance with the USA. Political leverage in the wake of the Cold War remained Turkey's main advantage in order to prevent an American recognition of the Armenian massacres as genocide, it even quashed several Armenian appeals of US Congressional genocide resolutions in the 1980s.¹⁷³

All in all, the institutionalized method of denial of the Armenian massacres was established long before the phenomenon of genocide was invented. Initially, denial of the Armenian massacres served a political goal because it was directly related to the historical Armenian question in the Ottoman Empire, reflected by the fear of the cession of territory and foreign intervention in external affairs.¹⁷⁴ When Mustafa Kemal Atatürk came to power he wanted to break away from the Ottoman Empire, which had left the Kemalist regime with the taint of mass murder. In order to sustain the policy of denial, the debate on the causes and effects of the decisions which led to the deportation of Armenians in 1915 became the foundation of the 'systematic and state-sponsored' rewriting of Turkish and Armenian history. Bloxham states that for Turkey 'Denial was and is the final phase of the Armenian question itself, and is intrinsically associated, as was the First World War murder process, with the simultaneous goals of securing Anatolian land and fighting off external intervention in Turkish affairs'.¹⁷⁵

¹⁷² Bloxham, Donald, *The Great Game of Genocide*, p. 221

¹⁷³ MacDonald, David B., *Identity politics in the age of Genocide*, p. 121-122

¹⁷⁴ Bloxham, Donald, *The Great Game of Genocide*, p. 211

¹⁷⁵ Bloxham, Donald, *The Great Game of Genocide*, p. 207

4. EUROPEAN LEVERAGE ON EASTERN AFFAIRS

Turkey's route to democratization and EU accession has a long history. Turkey's first application to join the European Economic Community dates back to 1963 and ever since the country has been closely watched by EU observers to measure the pace of progress of Turkey's route towards accession. At this moment it is not wrong to say that 'Turkey is the only 'still-not-a-member' state with the longest history of relations with the EU'.¹⁷⁶ The Kurdish question which touches upon the treatment of minorities in Turkey, the Cyprus problem, Turkey's poor human rights record, the islamisation of Turkey and the differences with Armenia have halted the EU accession process.¹⁷⁷ As the years passed by the Armenian question has become a key issue for EU observers. 'Any accession treaty must ultimately be ratified by the European Parliament, which has in the past shown sensitivity about the Armenian issue'.¹⁷⁸ However, the Armenian question is not a formal criteria for eventual EU accession, although it will send a powerful message to Europeans about Turkey's readiness to face its past and reconcile itself with it.¹⁷⁹

In order to comply with EU conditionality Turkey will need to take steps which contribute to the normalization of relations between Turkey and Armenia. The EU wants Turkey to reconcile itself with its past and show that it is able to have good relations with all its neighbours.¹⁸⁰ In order to do so, Turkey will need to face the Armenian massacres and find a way to solve the enduring Armenian question. At this moment, the Armenian question has become a bend in Turkey's road towards EU accession because the EU takes the moral high ground as regards Turkey's stance towards the Armenian question. This leverage can be perceived as ambiguous when considering the position of the European powers in the early nineteenth century towards the Armenians in the Ottoman Empire, up to and during the Armenian massacres. The firm and moral position of the EU nowadays is difficult to relate to the attitude of the European powers in the past. It raises the question whether EU leverage as regards Turkey's stance towards the Armenian question is ambiguous. In the following paragraphs attention will be paid to this question but firstly, the history of relations between the EU and Turkey will be addressed in order to put Turkey's route towards EU accession in perspective.

4.1 TURKEY AND EU ACCESSION

Turkey's efforts to join the European Union (EU) have a long history.¹⁸¹ The official relations between Turkey and the European Economic Community (EEC) started in 1963 with the Ankara Agreement, which established an association between the two parties.¹⁸² The fundamental differences that Turkey and the EU faced ever since Turkey is trying to comply with EU conditionality can be traced back to 1923 when Mustafa Kemal Atatürk established the Republic of Turkey. Turkey's aspiration to become

¹⁷⁶ Erdogan, Birsen, 'Compliance with EU democratic conditionality: Turkey and the political criteria of the EU', Retrieved on 10 January 2010 at: <<http://www.jhubc.it/ecpr-istanbul/virtualpaperroom/042.pdf>>

¹⁷⁷ 2nd report of the Independent Commission on Turkey September 2009, 'Turkey in Europe, Breaking the vicious circle', p.32

¹⁷⁸ 2nd report of the Independent Commission on Turkey September 2009, 'Turkey in Europe, Breaking the vicious circle', p.33

¹⁷⁹ 2nd report of the Independent Commission on Turkey September 2009, 'Turkey in Europe, Breaking the vicious circle', p.32

¹⁸⁰ 2nd report of the Independent Commission on Turkey September 2009, 'Turkey in Europe, Breaking the vicious circle', p.32

¹⁸¹ Parts of paragraph 4.1 stem from 'Turkey, Human Rights and EU Accession, Another bend in the road?' written by the author in June 2007

¹⁸² Ankara Agreement, 'Agreement establishing an Association between the European Economic Community and Turkey signed at Ankara 12 September 1963', Retrieved on 10 January 2010 at: <<http://www.deltur.cec.eu.int/kitap/e-ankara.rtf>>

a more 'Western' country dates back to this period when Turkey became a democracy under the leadership of Mustafa Kemal Atatürk. Based on Kemalism, Atatürk established a democratic, secular and constitutional republic. Atatürk pushed the country into a more pro-western and secular direction, but he imposed his ideology in a repressive manner on society.¹⁸³ Thereby, he created a foundation for the fundamental differences that Turkey faces ever since Turkey started the process of complying with EU conditionality. One of these fundamental differences is the diverging view of the EU and the Turkish authorities concerning the concept of a state. In Turkey, state authorities maintain an air of mystery around the state. The principles of Kemalism are intrinsic to the Turkish Republic and are thoroughly protected by institutions of the Turkish state. The system is developed in such a way that criticism of state policy will be subject to Turkish Law. Some even describe the state as 'sacred'.¹⁸⁴

Within this view the military had and still has a main role in protecting the principles of Kemalism, supporting a secular and democratic state. After 1950, a multi-party system was introduced but military coups in 1960, 1971 and 1980 interrupted the democratic process.¹⁸⁵ Nevertheless, relations between the European Economic Community (EEC) became official with the signing of the Ankara Agreement in 1963, which established an Association between the EEC and Turkey. The agreement incorporated a customs union in three stages, accompanied by a Financial Protocol.¹⁸⁶ Despite the fact that Turkey was searching for closer ties with Europe, it took several decades before the development of a stable relationship was initiated. This was due to conflicting interests and the military coups in Turkey.

The application of Western pressure started in the 1980s when, following the coup of 1980, the EC decided to suspend the Ankara Agreement officially and for that reason froze its political relations with Turkey as a result.¹⁸⁷ The EC could not agree with the fact that the 'guardians' of democracy undermined the basic principles of democracy themselves. Resulting from the coup of 1980 a new Turkish Constitution was adopted by referendum in 1982. It concentrated power around the executive branch and it gave the President more freedom. Moreover, it limited the freedom of the press, the freedom of trade unions and the rights and liberties of the individual.¹⁸⁸ The preamble of the Constitution states that 'the determination that no protection shall be afforded to thoughts or opinions contrary to Turkish national interests, the principle of the existence of Turkey as an indivisible entity with its state and territory, Turkish historical and moral values, or the nationalism, principles, reforms and modernism of Atatürk'.¹⁸⁹

With the implementation of the Constitution in 1983, which involved multi-party elections, relations between Turkey and the EC were restored. On 14 April 1987, Turkey applied for full EC membership, which the European Commission decided to refuse. The Commission noted 'the

¹⁸³ Dalacoura, *Engagement or Coercion*, (London 2003), p.8

¹⁸⁴ Sugden, J, 'Leverage in theory and practice: Human Rights and Turkey's EU candidacy'. In: Ugur, Mehmet and Canefe, Nergis (eds.), *Turkey and European Integration* (London 2004)

¹⁸⁵ Dalacoura, *Engagement or Coercion*, p.8

¹⁸⁶ Ankara Agreement, 1963, §6

¹⁸⁷ Erdemli, Ozgul 'Chronology: Turkey's Relations with the EU', in: Carkoglu, Ali and Rubin, Barry (eds.), *Turkey and the European Union* (London 2003) p. 4

¹⁸⁸ Zürcher, *Turkey, a modern history*, p. 281

¹⁸⁹ The Original 1982 Constitution of Turkey, Retrieved on 10 January 2010 at: <<http://www.cecl.gr/RigasNetwork/databank/Constitutions/Turkey.htm>> p. 1

negative effects' of the dispute between Greece and Turkey and 'the situation in Cyprus'.¹⁹⁰ Moreover, the decision was based on a number of other factors, including internal restructuring issues within the EC, as well as Turkey's lack of adherence to Human Rights standards, its population size and its underdevelopment.¹⁹¹ Nevertheless, the Customs Union entered into force on 31 December 1995 thereby creating the closest economic and political relationship between the EU and any non-member country.¹⁹² It might seem as if the Turkish government acquired an agreement which it did not deserve, especially in relation to Turkey's lack of adherence to Human Rights standards and its economic underdevelopment. Yet, it should be noted that at the same time the Customs Union was agreed to, Turkey was excluded from the list of formal candidates during the Luxembourg Summit of 1997. It can be concluded that the customs union was a meagre alternative for an accession process.

At the Luxembourg Summit in 1997 the EU put the Turkish accession on indefinite hold. The continuation of Human Rights violations and the lack of respect towards minorities were among its reservations.¹⁹³ Not being put in the same status as the former communist states of which several had comparable problems caused humiliation on the Turkish side.¹⁹⁴ Turkey responded by freezing the relations with the EU. Nonetheless, the Helsinki Summit in 1999 brought about the second step towards EU membership. Two years after the exclusion of Turkey from the list of formal candidates, the EU member states changed their attitudes and 'decided to give Turkey a carrot, instead of stick to foster the democratization without isolating Turkey'.¹⁹⁵ During the Helsinki summit of 1999 the European Council recognized Turkey as a candidate for membership. Fearing that a rejection could have negative consequences, such as a shift from democracy towards Islamic fundamentalism, Member States accepted Turkey's candidature.¹⁹⁶

By March 2002 Turkey should have completed reform packages that were formulated in the Accession Partnership Document, yet it failed to do so. Difficult topics were the abolishing of the death penalty and language restriction for minorities; no legislative changes were made concerning these issues. Consequently, in the Regular report on Turkey's progress towards accession of 2001, the most important fact was that 'compared to last year, the situation on the ground has hardly improved and Turkey still does not meet the Copenhagen Criteria'.¹⁹⁷ A significant change of policy was to be initiated if Turkey wanted to be taken seriously by the European Union.

The election of the party called the Justice and Development Party (APK), a pro-European political force in Turkey, marked the beginning of a new era. The government started a number of reforms.¹⁹⁸ These reforms led to the third significant step in the Turkish – EU relationship at the Copenhagen summit in 2002. 'At this Summit, the EU officially accepted Turkey's candidacy and following this decision, a pre-accession strategy started to apply in order to prepare Turkey for EU

¹⁹⁰ Commission Opinion, 'Turkey's Request for Accession to the Community Brussels 20 December 1989', Retrieved on 10 January 2010 at: <http://aei.pitt.edu/4475/01/001842_1.pdf> p. 4

¹⁹¹ Commission Opinion, 'Turkey's Request for Accession to the Community Brussels 20 December 1989', p.4

¹⁹² Customs Union, '1995 on implementing the final phase of the Customs Union', Retrieved on 10 January 2010 at: <http://www.deltur.cec.eu.int/_webpub/documents/gb%20ortakl%C4%B1k%20konseyi%20karar%C4%B1.pdf> p.1

¹⁹³ Presidency Conclusions, 'Luxembourg Summit December 1997', Retrieved on 10 January 2010 at: <http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/032a0008.htm> p. 3.

¹⁹⁴ Erdogan, 'Compliance with EU democratic conditionality: Turkey and the political criteria of the EU', p. 9.

¹⁹⁵ Erdogan, 'Compliance with EU democratic conditionality: Turkey and the political criteria of the EU', p. 9.

¹⁹⁶ Smith, Julie, 'Enlarging the European Union', JCMS 2005 Volume 43, Annual Review, p. 129

¹⁹⁷ Commission of European Communities, 'Regular Report on Turkey's Progress towards Accession 2001', Retrieved on 10 January 2010 at: <http://ec.europa.eu/enlargement/turkey/key_documents_en.htm> p. 21.

¹⁹⁸ Yildiz, *The Kurds in Turkey, EU accession and Human Rights*, p. 22.

membership, as it had been the case in other candidate countries'.¹⁹⁹ The AKP continued to implement the reform packages, the death penalty was abolished and legal obstacles were removed concerning education in minority languages.²⁰⁰ The efforts of the Turkish government were soon to be rewarded by the EU with a sudden breakthrough in the everlasting process of Turkey trying to join the EU.

On 17 December 2004 the European Council decided to open formal accession negotiations with Turkey, despite the fact that there were rumours stating that Turkey did not fulfil the Copenhagen Criteria yet.²⁰¹ Chislett states 'a rejection, given the progress that Turkey had made, would have confirmed the saying of Atatürk that 'the West has always been prejudiced against the Turks, but we Turks have always consistently moved towards the West'.²⁰² The EU could not put off accession negotiations forever since that would have a negative impact on the credibility of EU accession procedures and would trigger repercussion in Turkey for double standards.²⁰³ Furthermore, Romania and Bulgaria were offered to join the EU in 2007 and an additional gesture to Turkey was considered an appropriate move to enhance bilateral relations. Membership negotiations were symbolically opened with Turkey on 3 October 2005 and on 12 June 2006 the examination and assessment of the Acquis Communautaire, which is the body of common rights and obligations which connects all Member States within the EU, began.²⁰⁴ This decision was described by the EU's president as a qualified yes, because 'the negotiations will be open-ended, which means that their outcome cannot be guaranteed beforehand'.²⁰⁵

The EU accession process will bring Turkey closer to the European Union. Turkey, however, has to comply with EU-conditionality first. Turkey's legal system will have to meet the terms set by the European Union, which are laid down in the Acquis Communautaire. The prospect of accession has generated quick and extensive legislative reforms since 2002. Though it must be noted that reforms on paper do not always coincide with general practice. Emblematic to the staggering integration process of Turkey are the Kurdish question which touches upon the treatment of minorities in Turkey, the Cyprus problem, Turkey's poor human rights record, the islamisation of Turkey and the differences with Armenia.²⁰⁶

On the side of the EU the lack of Turkish reforms has generated more open European opposition towards Turkey's convergence with the EU, which in turn caused demoralization of the Turkish government. In general, on the Turkish side, support in Turkey has faded for the EU accession process as well as the implementation of the reform packages. In addition, the past years have witnessed increasing opposition towards the ruling AKP. Sceptics have tried to delay the integration

¹⁹⁹ EU Bulletin 12 -2002, 'Copenhagen European Council on 13 and 14 December 2002', Retrieved on 10 January 2010 at: <<http://europa.eu/bulletin/en/200212/i1001.htm>>

²⁰⁰ Commission of European Communities, 'Regular Report on Turkey's progress towards Accession 2002', Retrieved on 10 January 2010 at: <http://ec.europa.eu/enlargement/turkey/key_documents_en.htm> p.10

²⁰¹ Commission of the European Communities, 'Recommends to start Negotiations with Turkey under Certain Conditions', Retrieved on 10 January 2010 at: <<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/04/1180&format=HTML&aged=0&language=EN&guiLanguage=en>> p. 9.

²⁰² Chislett, William. 'Turkey's EU membership: The moment of truth', Retrieved on 10 January 2010 at: <<http://www.realinstitutoelcano.org/documentos/101/WP-17-2004-I.pdf>> p. 2.

²⁰³ Chislett, William. 'Turkey's EU membership: The moment of truth', p. 2.

²⁰⁴ Euractiv, 'EU-Turkish relations', Retrieved on 10 January 2010 at: <<http://www.euractiv.com/en/enlargement/eu-turkey-relations/Article-129678>>

²⁰⁵ Commission of the European Communities, 'Recommends to start Negotiations with Turkey under Certain Conditions', p. 9

²⁰⁶ 2nd report of the Independent Commission on Turkey September 2009, 'Turkey in Europe, Breaking the vicious circle', p.32

process by accusing the AKP of advocating Islamism, which conflicts with the principle of secularity, innate to the Turkish Republic. These developments have been undermining the many achievements of the past decades inspired by Turkey's wish to comply with EU conditionality.²⁰⁷ 'In particular, progress has stalled in strengthening democracy, broadening respect for human rights and building up a free and vibrant civil society'.²⁰⁸ In addition, the Turkish economy has slowed down, which has been further worsened by the global economic crisis. 'On the other hand, Turkey's new charisma and prosperity have made it increasingly attractive to nearby countries and its proactive regional policy has proved that an EU-anchored Turkey can project stability into volatile areas of its neighbourhood in the Caucasus and Middle East'.²⁰⁹

4.2 EUROPEAN LEVERAGE AMBIGUOUS?

As already stated, the Armenian question has become a bend in the road on Turkey's route towards accession because of the EU taking the moral high ground as regards Turkey's stance towards the Armenian question. Nowadays, the EU has a firm and moral position as regards Turkey's standpoint towards the Armenian question but this has not always been the case. In order to analyse the position of the EU as regards the Armenian massacres, the relation between the Ottoman Empire and the European powers such as Great Britain, France, Russia and Germany will be assessed. Attention will be paid to the position of the European powers towards the Armenians in the Ottoman Empire previous to and during the Armenian massacres. Furthermore, the intrinsic motivation of the European powers to get involved in the Armenian case will be addressed. Based on this information the standpoint of the EU nowadays as regards Turkey's stance towards the Armenian question will be compared to the point of view of the European powers in the past. This information will facilitate the answer to the question whether EU leverage as regards Turkey's stance towards the Armenian question is ambiguous.

More often than not the Great Powers used Christian suffering within the Ottoman Empire as an incentive to exert greater 'influence' in Ottoman affairs and on Ottoman soil, as was the case with the Armenians in 1878, 1894-1896 and 1913-1914.²¹⁰ Armenian deprivation in the Ottoman Empire caused the internationalization of the Armenian question which in 1878 led to the signing of the Treaty of Berlin. In the Treaty of Berlin it was stated that the responsibility of the Armenian reform provisions were placed in the hands of the Concert of Europe. However, the European powers did nothing to enforce these provisions and the situation of the Armenians deteriorated even further.²¹¹ The Armenians successfully made an international claim, but more importantly they were unsuccessful in enforcing the reforms envisioned. Furthermore, the Armenians fell short because they asked for the intervention of the European powers and this made them instant objects of suspicion to Sultan Abdulhamid II (1876-1909), which led to further deprivation.²¹²

²⁰⁷ 2nd report of the Independent Commission on Turkey September 2009, 'Turkey in Europe, Breaking the vicious circle', p.7

²⁰⁸ 2nd report of the Independent Commission on Turkey September 2009, 'Turkey in Europe, Breaking the vicious circle', p.7

²⁰⁹ 2nd report of the Independent Commission on Turkey September 2009, 'Turkey in Europe, Breaking the vicious circle', p.7

²¹⁰ Bloxham, Donald, *The Great Game of Genocide*, p. 208

²¹¹ Detrez, Raymond, 'De Armeense Genocide', p. 93

²¹² Bloxham, Donald, *The Great Game of Genocide*, p. 45

Although the Armenians asked the European powers to intervene, division and mutual suspicion prevented the international community from acting. The main aim of the Great Powers was to maintain the balance of power and to facilitate individual political and economic gain. Russia wanted to weaken the Ottoman Empire by forging a pretext to intervene whenever a humanitarian military intervention was deemed necessary. The Russians fuelled Armenian nationalist feelings, encouraging Armenian agitation in order to annex the remaining Armenian provinces in eastern Anatolia. At the same time the Russians wanted to avoid the spread of nationalism which would lead to further autonomy demands including the Russian Armenian region. As for France and Great Britain, they supported the Armenians in their struggle to achieve autonomy though they wanted to preserve the territorial integrity of the Ottoman Empire, which functioned as a buffer zone against the Russians.²¹³ The Russians formed a threat to the colonial aspirations of France and Great Britain in the eastern part of the Mediterranean and Asia. Therefore, they wanted the Ottoman Sultan to give the Armenians more rights in order to keep Russia at a distance and weaken Armenian nationalist aims.²¹⁴ The Porte did not want to irritate its protectors, but could not give in to the demands of the Armenians such as autonomy since it would further disintegrate the Ottoman Empire because of sensitive Christian and Muslim relations.²¹⁵

By 1894, tensions between the Armenians and the Turks led to outright bloodshed and triggered a chain of events in Europe, external pressure becoming more explicit than ever before. However, negotiations between the Great Powers about how to force the Ottoman government to change its harsh policies and introduce reforms failed because of inter power rivalry and fear of change in the balance of power.²¹⁶ Revolutionary Armenians' idle hopes of European intervention were again met with disappointment. Nonetheless, revolutionary Armenians continued their attacks in order to force the intervention of the European powers until the seizure of power by the Young Turks. In January 1913 the authoritarian faction of the Young Turks, assembled in the CUP launched a coup against the more moderate members of the CUP and took power.

Shortly after the Unionist government was installed the Russians took the lead in proposing a reform programme in order to solve the Armenian question. In accordance with the provisions of the Treaty of Berlin, the six European powers were to guarantee the implementation of all clauses of the agreement.²¹⁷ During the summer of 1913, ambassadors of Russia, Great Britain, France, Germany, Austria-Hungary and Italy met in Constantinople to discuss the Russian reform plan. On 8 February, 1914, Russia (on behalf of the Europeans) and Turkey signed the revised agreement.²¹⁸ The six eastern provinces were to be divided in two provinces, each under the control of a European inspector. Armenia and Armenians were not mentioned in the reform plan, furthermore the European powers had the right to supervise the execution of the reforms but they were not obliged to guarantee their success. The outbreak of the First World War prevented the reform plan from being implemented.

²¹³ Detrez, Raymond, 'De Armeense Genocide', pp. 92-93

²¹⁴ Detrez, Raymond, 'De Armeense Genocide', pp. 92-93

²¹⁵ Ibidem

²¹⁶ Zürcher, Erik Jan, *Turkey, a modern history*, p. 83

²¹⁷ Guenter, Lewy, *The Armenian Massacres in Ottoman Turkey*, p. 37 and Sazonov, *Fateful Years*, p. 143

²¹⁸ Guenter, Lewy, *The Armenian Massacres in Ottoman Turkey*, p. 38 and Sazonov, *Fateful Years*, pp. 144-145

During this War, throughout the months from autumn 1914 to summer 1915 the Ottoman government made a series of decisions which resulted in the Armenian massacres.²¹⁹

As can be concluded from the aforementioned, the Armenians already called upon the European powers to intervene as of the 1870s. In 1878, this led to the internationalization of the Armenian question, involving the European powers and making them aware of the deprivation of the Armenian population in the Ottoman Empire. Even though the European powers were aware of the deteriorating situation of the Armenians in the Ottoman Empire, which eventually culminated in the Armenian massacres, they did nothing to prevent it from happening. The issue at stake is the fact that the European powers were aware of the deprivation of the Armenians and never intervened, at the time they finally did in 1914 it was already too late.

Trying to legitimate their strategy, the European powers discredited news about atrocities committed by the Ottoman Empire, for instance Disraeli (British Prime Minister) discredited the first news of Bulgarian atrocities in 1876 as 'coffee house babble'.²²⁰ Whereas the Salisbury government was reserved about revealing the extent of the massacres of 1894-96 to the public, imperial Germany actively blamed the victims of the massacres, legitimizing their cooperation with the perpetrating regime.²²¹ All in all it can be concluded that the position of the European powers as regards Armenian suffering in the Ottoman Empire was used as a stick to beat the Ottomans, trying to exercise greater influence on Ottoman affairs and Ottoman soil which was favourable to their own political and economic situation. European imperial ends also fuelled Armenian nationalist feelings which led to a deteriorating situation for the Armenians in the Ottoman Empire. Intervention of the European powers might have changed the situation for the Armenians but maintenance of the balance of power, individual political and economic gain as well as division and mutual suspicion prevented the international community from acting up to and during the Armenian massacres.

After the end of the First World War the Ottoman Empire was defeated and occupied by the Allied Powers. This situation offered a window of opportunity for the Armenians as regards the issue of national self-determination. US President Woodrow Wilson was granted the right to delimit the new Armenian nation and in 1918, an independent Armenia was created in eastern Anatolia, formalized by the Treaty of Sèvres in 1920.²²² This treaty made the plans for the partitioning of the Ottoman Empire final, leaving the Ottoman Empire only a rump state in northern Asia Minor with Istanbul as its capital. By the time the Treaty was signed, the signature of the interim government that had replaced the CUP regime was merely a formality. The terms would have to be imposed on a country that was already in the hands of a new militant national movement, headed by Mustafa Kemal. He did not accept the Treaty of Sèvres, since it would end Turkish independence.²²³ The regime invaded and reconquered the provinces that had been granted to independent Armenia under the Treaty of Sèvres. What remained of Armenia was incorporated in the new Soviet Union.

Between the Ottoman collapse and seizure of power by the nationalist regime of Mustafa Kemal, the interim Turkish government, at British insistence, held a series of military trials against

²¹⁹ Bloxham, Donald, *The Great Game of Genocide*, p. 211

²²⁰ Bloxham, Donald, *The Great Game of Genocide*, p. 208

²²¹ Bloxham, Donald, *The Great Game of Genocide*, p. 208

²²² Zürcher, *Turkey a modern history*, p. 145-147

²²³ Zürcher, *Turkey a modern history*, p. 147

those accused of directing and implementing the Armenian massacres.²²⁴ Over a hundred former government officials were charged, most of them being transferred to British Malta. A number were convicted, Enver, Talat and Jamal and some other CUP leadership figures were sentenced to death. Since those people were not in Allied custody only three minor figures were executed.²²⁵ If the trials were supposed to achieve self-reflection on the Turkish side and justice for the Armenian population, they did not have the desired effect. At first, public opinion supported the trials, however, soon this predominant view changed. The trials were perceived as a means employed by the Turks to please the British and to avoid the partitioning of the Ottoman Empire by the Allied powers.

Nonetheless, the Treaty of Sèvres made the partitioning of the Ottoman Empire final which caused a sense of betrayal among the Turks. Additionally, it spawned nationalist feelings and fuelled the National Liberation Movement of Mustafa Kemal. By means of military campaigns against offensives of Greece and the Turkish-Armenian and Franco-Turkish War, the need to make most of the concessions that the Turkish revolutionaries demanded was obvious for the Allies, who did not want another war.²²⁶ For the Great Powers there was still much to play for, for instance sovereignty over the Mosul Province, ensuring the freedom of the straits and the safeguarding of Istanbul's status quo. Thus, the Europeans had significant economic and political interests while negotiating the Treaty of Lausanne. On the Turkish side, the preparedness to fight created the strongest bargaining position. In July 1923, the Allies abandoned the Treaty of Sèvres and the Treaty of Lausanne was signed, through which Turkey finally entered a period of peace after a disastrous decade of warfare. No mention was made of the independent Armenia pledged at Sèvres.²²⁷ Again, individual political and economic interests of the Great Powers caused disillusionment for the Armenians.

Nowadays, almost hundred years later, the Armenian question has become a bend in Turkey's route towards EU accession because of the EU taking the moral high ground as regards Turkey's stance towards the Armenian question. Though not a formal condition, the EU has a firm and moral standpoint regarding Turkey's position towards the Armenian question and wants Turkey to take steps which contribute to the normalization of relations between Turkey and Armenia. The EU wants Turkey to reconcile itself with its past and show that it is able to have good relations with all its neighbours.²²⁸ In order to do so, Turkey will need to face the Armenian massacres and find a way to solve the enduring Armenian question. As for now, the EU uses the Armenian question as an obstacle in Turkey's EU accession process, though it is not a formal condition for Turkey in order to comply with EU conditionality.

It must be noted though that the Armenian question is not the only constraint in Turkey's EU accession process. Other political and economic constraints on the side of the EU member states are Turkey's population size and hence its political weight and number of migrants in the EU. Relative poverty and thus the size of aid the EU is to provide causes mainly East European EU members to fear that it will detriment their interests. Furthermore, other issues are the Muslim population, limits on

²²⁴ Jones, Adam, *Genocide, a comprehensive introduction*, p. 113

²²⁵ Ibidem

²²⁶ Zürcher, *Turkey a modern history*, p. 147

²²⁷ Ibidem

²²⁸ 2nd report of the Independent Commission on Turkey September 2009, 'Turkey in Europe, Breaking the vicious circle', p.32

democracy, human rights issues, the Kurdish question and the Cyprus question.²²⁹ Numerous political and economic reasons are presented which hinder Turkey's accession process. Although this list has been present all the time, it can be stated that the emphasis changes at differing times serving political and economic needs of the EU member states.²³⁰

The firm attitude of the EU as regards Turkey's position towards the Armenian question nowadays seems to contradict with the attitude of the European powers almost hundred years ago. Whereas the European powers played an important part in the deteriorating situation of the Armenians in the Ottoman Empire motivated by individual political and economic gain, the maintenance of the balance of power as well as division and mutual suspicion, at present they hold Turkey responsible for it, which seems not fair given the history of the Armenian question and the role of the European powers within it. In addition, after the Treaty of Lausanne was signed, in which the Great Powers secured their own position and paid no attention to the Armenian massacres anymore, the Armenian question did not give rise to any diplomatic obstacles until the moment Turkey wanted to become an EU member. Additionally, Turkey is not the only state failing to confront the dark pages of its past. The key European powers which have been involved in the recognition game all have unsavoury records of imperialism that have yet to be addressed.²³¹

The answer to the question whether EU leverage as regards Turkey's stance towards the Armenian question is ambiguous, can be answered with yes. The European powers used the Armenian question as a stick to beat the Ottomans, trying to exercise greater influence on Ottoman affairs and Ottoman soil which was favourable to their political and economic situation. Nowadays, the Armenian question is used as a stick in Turkey's EU accession process too, serving political and economic interests of the EU member states and thereby creating another bend on Turkey's road towards EU accession. It can thus be concluded that the pattern of European powers trying to exercise influence on Turkish affairs repeats itself, not much has changed in that respect.

²²⁹ Carkoglu, Ali and Rubin, Barry, *Turkey and the European Union* (London 2003) p. 2

²³⁰ Ibidem

²³¹ Bloxham, Dennis, *The Great Game of Genocide*, p. 226

PART III: HISTORY ON TRIAL

On 10 October 2009 the governments of Armenia and Turkey have signed an historic peace agreement in Zurich aimed at establishing diplomatic ties and reopening the shared border. The rapprochement process between Turkey and Armenia is a major development after nearly a century of conflict. Exchange of ideas between Armenian and Turkish scholars started at the end of the 1990s and culminated in the ambitious Turkish-Armenian Reconciliation Commission (TARC), which was created in 2001. The TARC, comprised of Turkish and Armenian representatives mediated by David Phillips of the US State Department, was not mandated to investigate the Armenian massacres, however this soon led to an internal argument over the genocide 'issue'. The International Center for Transitional Justice (ICTJ) was asked to investigate whether the Armenian massacres constituted genocide under the 1948 Genocide Convention. Mutual discussion and suspicion led the Armenian members to withdraw from the Commission. However, the Commission reconvened in 2002 and the inquiry by the ICTJ went ahead.²³² In January 2003 the ICTJ memorandum stated 'the Events, viewed collectively, can thus be said to all of the elements of the crime of genocide as defined in the Convention'.²³³ However, the ICTJ report also stressed the fact that according to the Convention retroactive application to events that occurred prior to the treaty's adoption, was not allowed. In response, Turkey largely ignored the outcome of the inquiry.²³⁴

In 2005 however, the government of Turkey wanted a Turkish-Armenian joint commission of historians to research the Armenian question, which was not accepted by Armenia since it would not debate 'the veracity of the Armenian genocide'.²³⁵ This proposal was followed up by Armenia inviting Turkish President Gül to attend a Turkey-Armenia football match in Yerevan in September 2008, which he accepted. This meeting led the way to discreet diplomatic contacts, including contacts on the level of Foreign Ministers.²³⁶ 'In April 2009, the two sides announced agreement on a "comprehensive framework" for normalization. Without being publicly spelled out, it was widely known to foresee the establishing of diplomatic relations, the re-opening of the border and the setting up of a bilateral commission including a sub-commission to deal with the events of 1915'.²³⁷ Whereas both sides seemed to mutually engage to the deal, Turkey withdrew from it a few weeks later, linking any progress to the Nagorno-Karabakh situation. On 10 October 2009, both countries signed a historic peace agreement which aims at normalizing the relations between the two neighbouring countries by establishing diplomatic and bilateral relations, the opening of the border and the creation of a committee of international experts examining the historical dimension of the two countries.

The reconciliation incentives of 2001, 2005 and 2008 did not offer a solution to the enduring problems between Armenia and Turkey and died with the passage of time. Primarily, because of the complex relationship between Turkey and Armenia, which is burdened by a number of inter-connected

²³² MacDonald, David B., *Identity politics in the age of Genocide*, p. 125

²³³ Legal Analysis prepared for the International Center for Transitional Justice, Retrieved on 20 January 2010 at: < <http://www.umd.umich.edu/dept/armenian/news/ictj.pdf>>

²³⁴ MacDonald, David B., *Identity politics in the age of Genocide*, p. 125

²³⁵ Hakobyan, Tatul, 'Armenia and Turkey initial agreement "to open the common border" (updated)', Retrieved on 28 February 2010 at: < <http://www.reporter.am/go/article/2009-09-04-armenia-and-turkey-initial-agreement-to-open-the-common-border---updated->>

²³⁶ 2nd report of the Independent Commission on Turkey September 2009, 'Turkey in Europe, Breaking the vicious circle', p. 31

²³⁷ 2nd report of the Independent Commission on Turkey September 2009, 'Turkey in Europe, Breaking the vicious circle', p. 31

problems such as the conflict on the nature of the Armenian massacres, the Nagorno-Karabakh conflict and the absence of diplomatic relations. As such, the peace agreement between Armenia and Turkey signed in 2009 revives reconciliatory hopes since it is the first time that a peace agreement is actually signed by Turkey and Armenia which aims at establishing diplomatic ties and the reopening of the shared border. Hopefully, the latter peace agreement will facilitate the normalization of relations between Turkey and Armenia, instead of the former two initiatives, which died an early death.

All three rapprochement initiatives between Turkey and Armenia can be placed within the broader framework of transitional justice, which searches for a response to systematic or widespread violations of human rights.²³⁸ This chapter will place the differences over the nature of Ottoman-era massacres of the Armenians within the framework of transitional justice in order to explore the options the joint commission has to contribute to the normalization of relationships between Turkey and Armenia. Firstly, the following key transitional justice terms will be addressed - truth, justice, reparations and reconciliation - in order to provide a theoretical framework of transitional justice which encompasses the multitude of themes related to it. Special attention will be paid to the functioning of truth commissions within this framework since the last paragraph will explore which options the joint commission has to offer a solution to the Armenian question on the basis of four major goals of truth commissions. While examining these goals, truth, justice, reparations and reconciliation will be covered. Eventually, the content of this final chapter will facilitate the answer to the central question: *Does the joint commission offer a solution to the conflict on the historical dimension of the Armenian question?*

²³⁸ International Center for Transitional Justice, 'What is transitional Justice?' Retrieved on 20 October 2009 at: <<http://www.ictj.org/en/tj/>>

5 BREAKING THE VICIOUS CIRCLE

5.1 TRANSITIONAL JUSTICE: AN INTEGRATED APPROACH

The claim that nations act morally and acknowledge their own gross historical injustices is a novel phenomenon according to Barkan. Whereas traditionally *Realpolitik* dominated international diplomacy, nowadays human rights, morality and justice receive growing attention as political questions.²³⁹ This development started at the end World War II and accelerated after the end of the Cold War. With the end of the bipolar balance of power, a power vacuum was left behind which gave room to religious and ethnic conflicts to come to the surface, developing into instability and conflict. Many of these conflicts resulted in human rights violations, for instance in Europe where civil war and ethnic cleansing devastated the Balkans and in Africa, where Rwanda and Somalia had to deal with genocide and anarchy.²⁴⁰ The same period also included the liberation of Eastern Europe and South Africa and the return to democracy in many Latin American countries.

Along with the diminishing of the *realpolitik* of the Cold War, the United Nations, NATO and individual countries had to define their own place in the new world order, a world order in which increased attention was paid to human rights, morality and justice. Paradoxically, a positive result of the conflicts which led to gross human rights violations was the increasing awareness that human rights 'had to be regarded as a precondition for political stability and socio-economic progress, human rights started to climb the ladder of international political priorities and became strongly interrelated with the "higher objective" of maintaining international peace and security'.²⁴¹ The Security Council of the UN implemented human rights in existing peace and security instruments, such as UN peacekeeping and enforcement operations as well as the establishing of ad hoc tribunals for the former Yugoslavia in 1993 and Rwanda in 1994. These developments culminated in the establishment of the International Criminal Court. Since 1 July 2002, the ICC tries persons accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes.²⁴² One of the main implications of the ICC is rightfully outlined by Malcontent who argues that 'national sovereignty no longer guaranteed immunity and impunity'.²⁴³

Concurrently, as of the early 1990s a demand for justice emerged along with the increasing awareness that human rights had to be regarded as a precondition for political stability and economic progress. In response to the political changes in Eastern Europe and Latin America, human rights activists wanted to address the systematic human rights abuses by former regimes without endangering the processes of political transformation. People started to call this multidisciplinary field transitional justice, which is defined by the International Centre for Transitional Justice (ICTJ) as follows: 'Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition for victims and to promote possibilities for peace, reconciliation and democracy.

²³⁹ Barkan, Elazar, 'Restitution and Amending Historical Injustices in International Morality', p. 1

²⁴⁰ Malcontent, Peter, 'Introduction, Human Rights and peace: Two sides of the same coin', in: Thakur, Ramesh and Malcontent, Peter, (eds.) *From Sovereign Impunity to International Accountability, The Search for Justice in a World of States*, (Tokyo, 2004) p. 1

²⁴¹ Malcontent, Peter, 'Introduction, Human Rights and peace: Two sides of the same coin', p. 1

²⁴² ICC, 'ICC at a glance', Retrieved on 1 February 2010 at: < <http://www.icc-cpi.int/menus/icc/about%20the%20court/icc%20at%20a%20glance/icc%20at%20a%20glance?lan=en-GB>>

²⁴³ Malcontent, Peter, 'Introduction, Human Rights and peace: Two sides of the same coin', p. 2

Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly; in others, they may take place over many decades'.²⁴⁴ According to the Dutch Advisory Council on International Affairs, 'the main goals of transitional justice – establishing the truth, justice, peace, reparation, reconciliation and action to prevent recurrence – can only be attained by a combination of mechanisms. An integrated approach is important: the various mechanisms are often complementary, and a given mechanism will often prove less than effective unless others are also applied'.²⁴⁵

In order to provide a theoretical framework of transitional justice which encompasses the multitude of themes related to it, the following key transitional justice themes will be shortly addressed - truth, justice, reparations and reconciliation. In the paragraph on truth special attention will be paid to the functioning of truth commissions, which will provide the foundation for paragraph 5.2. All in all, the four themes will lead to the main goals of transitional justice at a higher level of abstraction, facing the past and sustainable peace,²⁴⁶ which will be addressed in the concluding paragraph. It must be noted though that the key themes of transitional justice are commonly understood as a basis for transitional justice efforts, however they do not represent an all-inclusive list. According to the ICTJ many societies have developed other, creative approaches to past abuse which is one of the reasons why the field has gained both strength and diversity over the years.²⁴⁷

Truth

The subject of truth in post-conflict societies is a recurrent theme in transitional societies. What does 'truth' entail in the context of post-conflict societies? Generally speaking Clark argues that truth after conflict relates to people's understandings of what occurred during periods of mass violence.²⁴⁸ Rotberg states that 'if societies are to prevent recurrence of past atrocities and to cleanse themselves of the corrosive enduring effects of massive injuries to individuals and whole groups, societies must understand – at the deepest possible levels- what occurred and why'.²⁴⁹ It must be noted though that truth-finding is a political process in which *the* truth can never be determined.²⁵⁰ To approach truth, transitional societies have the possibility to engage in various processes during post-conflict reconstruction. Legal procedures are an option when it concerns the weighing and the provision of evidence related to crimes as will be later discussed in the paragraph on justice. The truth-seeking process is another option if it concerns testimony related to personal experiences of conflict.²⁵¹ The

²⁴⁴ International Center for Transitional Justice, 'What is transitional Justice?' Retrieved on 1 February 2010 at: <<http://www.ictj.org/en/tj/>>

²⁴⁵ Advisory Council on International Affairs and the Advisory Committee on Issues of Public International Law, 'Transitional Justice and Peace in Situations of Transition', No 65, AIV/No 19, CAVV April 2009, p. 42

²⁴⁶ Ibidem

²⁴⁷ Ibidem

²⁴⁸ Clark, Phil, 'Establishing a Conceptual Framework: Six Key Transitional Justice Themes', in; Clark, Phil and , Kaufman, Zachary, (eds.) *After Genocide* (London, 2008) p. 203

²⁴⁹ Rotberg, R, 'Truth Commissions and the Provision of Truth, Justice and Reconciliation' in Rotberg and Thompson (eds), *Truth v. Justice* (Princeton, 2000) p. 3

²⁵⁰ Advisory Council on International Affairs and the Advisory Committee on Issues of Public International Law, 'Transitional Justice and Peace in Situations of Transition' (April, 2009), p. 36

²⁵¹ Clark , Phil, 'Establishing a Conceptual Framework: Six Key Transitional Justice Themes', p. 203

latter includes 'a number of investigative steps to help societies make sense of the atrocities they have suffered and to help prevent future injustices'.²⁵²

The ICTJ states that 'truth-seeking offers a means by which societies can challenge the official discourse to find alternative explanations for what occurred in the past, creating a more democratic and inclusive dialogue. Through the truth-seeking process victims are able to find closure by learning more about the events they suffered, such as the fate of disappeared individuals, or why certain people were targeted for abuse'.²⁵³ In order to facilitate the truth-seeking process, there is the possibility of installing truth commissions. 'Truth commissions are non-judicial, independent panels of inquiry typically set up to establish the facts and context of serious violations of human rights or of international humanitarian law in a country's past'.²⁵⁴ Usually, members of the truth commission are authorized to conduct research, have access to key documentation, support victims and propose policy recommendations which transform institutions and mechanisms responsible for abuse in order to prevent the recurrence of crimes.

The most famous Truth Commission is the South African Truth and Reconciliation Commission (TRC), created in 1995 by the Parliament of South Africa.²⁵⁵ The TRC sought to establish the truth about crimes committed by apartheid leaders and offered amnesty in exchange for the truth. The TRC differed from previous truth commissions because reconciliation was listed as a key objective in its mandate. Ever since its creation the TRC has served as a touchstone for other post-conflict institutions.²⁵⁶ It led to the notion that truth commissions contribute to an environment of reconciliation and other transitional justice approaches. Truth commissions may meet domestic and international demands for accounting, increased by the notion of international awareness and insistence that governments or successor governments must take some action against those responsible for grave human rights violations in past and present times.

However it must be noted that truth commissions also have a downside, namely the attempt to create an 'official' version of the truth: a synthesis of evidence gathered from tens of thousands of people having experienced or witnessed alleged atrocities. The remembrance of the past by individuals is at all times a subjective occupation, let alone the various reasons upon which people base their recollection of the past. Clark concurrently outlines that 'attempts to produce an account of the past that will adequately represent, and be acceptable to, all individuals and groups who engage in the post-conflict truth process are inherently limited and likely to prove acrimonious'.²⁵⁷ Despite these reservations, not all post-conflict societies have the possibility to handle abuse, for instance when the judiciary does not have the sufficient capacity, truth commissions, whether they are official or unofficial, are a positive alternative for doing nothing. In addition, truth commissions aim to discover and learn more about past abuses and prepare the way for prosecutions and recommend institutional reforms. In addition, they aim to provide a public stage for people who can share their experiences and suffering with the rest of the nation. Providing this public platform helps groups to understand each

²⁵² International Center for Transitional Justice, 'What is transitional Justice?' Retrieved on 1 February 2010.

²⁵³ Ibidem

²⁵⁴ Ibidem

²⁵⁵ Minow, Martha, *Between Vengeance and Forgiveness*, (Boston, 1998) p. 53

²⁵⁶ Clark, Phil, 'Establishing a Conceptual Framework: Six Key Transitional Justice Themes', p. 191-192

²⁵⁷ Clark, Phil, 'Establishing a Conceptual Framework: Six Key Transitional Justice Themes', p. 203

other and rebuilt trust between citizens and the state.²⁵⁸ In sum, truth commission can be viewed as an attractive option to handle past atrocities.

In order for truth commissions to function successfully, Popkin and Roth-Arriza argue that four factors are important, namely: 'creating an authoritative record of what happened; providing a platform for the victims to tell their stories and obtain some form of redress; recommending legislative, structural, or other changes to avoid the repetition of past abuses; and establishing who was responsible and providing a measure of accountability for the perpetrators'.²⁵⁹ First and foremost, the goal of the commissions is to assemble and present a version of authoritative history which can be shared by both, covering the 'scope, means and victims' of the past human rights violations.²⁶⁰ Creating a shared version of authoritative history is not an easy job, especially in a politicized environment. Authority of a commission is thus important and can be achieved through the composition of the commission and the scope and method of investigation.

To be successful truth commissions must 'establish both their independence from all the actors in a contested history and their moral authority to examine and judge the acts and motivations of others'.²⁶¹ To establish independence and moral authority several routes can be chosen. The commission could include well-known figures from the political spectrum, human rights activists as well as well-respected foreign dignitaries. An international commission might have the advantage of a greater claim to objectivity, distance from domestic politics, the power to publicize its recommendations internationally as well as the use of international pressure to see them implemented. Nevertheless, it may also lead the conclusions of the report to be an outside vision of a national historical period which will be discounted rather than taken seriously. National, international or hybrid commissions are options, however in every specific case the route should be chosen which is most likely to succeed.²⁶²

As regards the scope and methodology of the report, 'a commission's work should be broad enough to cover the principal harms and to focus on the appropriate time period; it must be detailed enough to convince sceptics that the facts found are true, yet must also provide the overall patterns and explanations that shape historical accounts; and it must use fact-finding methods that are beyond challenge'.²⁶³ In order to create an authoritative account of history one needs to take into account the set of crimes which it will investigate, whether it chooses to focus on exemplary cases or whether it provides information on a wider range of events. This choice depends on the context and should first and foremost add to the credibility of the report. Other factors might add to the credibility of the report as well, such as reliance on primary sources, the listing of the names of victims rather than overall numbers and combining an investigation of government acts with those of non-governmental forces, which creates a sense of balanced treatment as well as the avoiding of victor's justice.²⁶⁴

²⁵⁸ International Center for Transitional Justice, 'What is transitional Justice?' Retrieved on 1 February 2010

²⁵⁹ Popkin, Margaret and Roth-Arriza, Naomi, 'Truth as justice: investigatory commissions in Latin America', in: *Law and Social Inquiry*, 20 (1995) p. 269

²⁶⁰ Popkin, Margaret and Roth-Arriza, Naomi, 'Truth as justice', p. 269

²⁶¹ *Ibidem*

²⁶² *Ibidem*

²⁶³ Popkin, Margaret and Roth-Arriza, Naomi, 'Truth as justice', p. 271

²⁶⁴ Popkin, Margaret and Roth-Arriza, Naomi, 'Truth as justice', p. 271-274

A second major goal of truth commissions concerns redress and reconciliation. These aims are based on the notion that in order to forgive, knowledge of what is to be forgiven is of utmost importance. Furthermore, the foundation for redress and reconciliation lies in the recognition of the harms done to victims and their rights. As a consequence, recommendations in the final report of a truth commission try to respond to the need of the victims, focusing on reparations and compensation.²⁶⁵ As for fostering a sense of redress, the listening to the victim's stories as well as the presentation of the report is important. However, taking testimony inevitably raises expectations which cannot always be answered. Apart from the compilation of the report and how the report is presented, equally important is the way the government receives the report and whether it acknowledges the state's past acts. An essential part is the process of acknowledgement and subsequent healing which fosters reconciliation.²⁶⁶

'One measure of the effectiveness of a truth commission is the degree to which the recommendations are accepted and implemented'.²⁶⁷ Recommendations are context based and may differ in emphasis, for instance providing reparations to victims, education in human rights and judicial and political reform. To some extent, international pressure has contributed to the recommendations being carried out. Peace agreements may create some pressure for compliance by making both sides agree to follow the truth commission's recommendations. Thus, for instance UN sponsorship and international involvement may increase the possibility that international actors would press a particular state to comply with the recommendations of a truth commission.²⁶⁸

To judge the effectiveness of a truth commission, the contribution to individual and institutional accountability for past acts can be examined. From the perspective of a truth commission truth as well as justice are important elements to face the past, especially the link between the two is important. This link can be established in two ways, for instance by publicizing the names of individuals found responsible for the killings and disappearances in the report or by passing the report on to the court system, expecting the courts to follow up. Pursuing accountability can thus also be achieved through criminal prosecution, turning the names obtained by the truth commission over to the regular courts. Lastly, amnesty in exchange for truth is also among the options, preferable only whenever there is a broad national consensus supporting this approach.²⁶⁹

All in all, 'truth commissions have become an increasingly common tool for examining prior periods of widespread human rights violations when state institutions have failed to respond to such abuses'.²⁷⁰ It can be stated that the presentation of an authoritative history is among the greatest achievements of a truth commission, based on the involvement of broad sectors of the society. The process of compiling the historical record is of utmost importance as well, since it facilitates the listening to and the validation of the victim's stories, adding to their human dignity. A report prepared by respected members of the commission will eventually be widely accepted and form the basis of a

²⁶⁵ Popkin, Margaret and Roth-Arriza, Naomi, 'Truth as justice', p. 275

²⁶⁶ Ibidem

²⁶⁷ Popkin, Margaret and Roth-Arriza, Naomi, 'Truth as justice', p. 277

²⁶⁸ Popkin, Margaret and Roth-Arriza, Naomi, 'Truth as justice', p. 278

²⁶⁹ Popkin, Margaret and Roth-Arriza, Naomi, 'Truth as justice', pp. 281-287

²⁷⁰ Popkin, Margaret and Roth-Arriza, Naomi, 'Truth as justice', p. 287

historical record.²⁷¹ Furthermore, the value of the commission might be the official character of the truth commission as well as a time frame.

'Thus truth commissions do not bring about transitions to democracy but instead are most useful after such transitions are well underway- once there is a considerable need to break with the past However, the danger is that commissions will be viewed as a substitute for other actions, rather than one panoply of initiative designed to uncover the truth, do justice, and thereby facilitate national reconciliation'.²⁷²

Even truth commission have difficulties to overcome decades of embedded thoughts. More is needed to create conditions for a just society. Even though considering the limitations, truth commissions may foster a climate in which necessary changes may take place.²⁷³

Justice

The central question of post-conflict institutions as regards justice entails the question how to respond to perpetrators of mass crimes in order to do justice to victims of mass crimes. According to Clark, justice can be divided into three broad categories: retributive, deterrent and restorative justice. Retributive justice accounts for the perpetrators to be punished, to bring them to account and to give the blame and punishment they deserve.²⁷⁴ According to Minow, 'retribution motivates punishment out of fairness to do those who have been wronged and reflects a belief that wrongdoers deserve blame and punishment in direct proportion to the harm inflicted'.²⁷⁵ The deterrent view of justice holds that the perpetrators of the crime should be punished, not only because the perpetrator deserves it but more importantly, the punishment should have a deterrent effect on the perpetrator and potential criminals, discouraging them to commit crimes. Finally, restorative justice holds that punishment alone is insufficient to punish the perpetrator. Punishment is seen as a necessary ingredient to achieve justice however, the punishment should be facilitated in ways that 'allow perpetrators and victims to rebuild relationships, for example by requiring perpetrators to compensate victims and provide reparations which may contribute to restore the traumatised relationship'.²⁷⁶

Restorative justice emphasizes the humanity of both offenders and victims. It focuses on building relationships between the perpetrator and the victims which forges ties across the community and takes precedence over punishment.²⁷⁷ Gerry Johnstone describes restorative justice as an approach to criminality which outlines 'the idea that crime is, in essence, a violation of a person by another person (rather than a violation of legal rules); that in responding to a crime our primary concerns should be to make offenders aware of the harm they have caused, to get them to understand and meet their liability to repair such harm, and to ensure that further offences are

²⁷¹ Ibidem

²⁷² Popkin, Margaret and Roth-Arriza, Naomi, 'Truth as justice', p. 289

²⁷³ Popkin, Margaret and Roth-Arriza, Naomi, 'Truth as justice', p. 289

²⁷⁴ Clark, Phil, 'Establishing a Conceptual Framework: Six Key Transitional Justice Themes', p. 197

²⁷⁵ Minow, Martha, *Between Vengeance and Forgiveness*, p. 12

²⁷⁶ Clark, Phil, 'Establishing a Conceptual Framework: Six Key Transitional Justice Themes', p. 198

²⁷⁷ Minow, Martha, *Between Vengeance and Forgiveness*, p. 92

prevented; that the form and amount of reparation from the offender to the victim and the measures to be taken to prevent re-offending should be decided collectively by offenders, victims and members of their communities through constructive dialogue in an informal and consensual process; and that efforts should be made to improve the relationship between the offender and victim and to reintegrate the offender into the law-abiding community'.²⁷⁸

The approach of post-conflict institutions to respond to perpetrators of mass crimes in order to do justice to victims of mass crimes is connected to the question whether amnesty instead of punishment may better facilitate truth, reconciliation, peace or another goal.²⁷⁹ Minow argues that retributive justice may reinforce anger and victimhood whereas restorative justice can help victims move beyond anger and powerlessness, which facilitates the possibility of the offenders reintegrating in the community.²⁸⁰ The aforementioned TRC had a restorative approach of justice, focusing on truth-telling, public acknowledgement, and reparations as crucial elements for the restoration of justice. However, no prima facie reason exists to assume that one particular approach of justice will lead to one particular justice outcome.²⁸¹

Reparations

According to the Center of Transitional Justice reparations constitute a critical dimension of transitional justice because it focuses on the recognition of the harms done to the victims and the victim's rights. The main question when considering reparations is 'how the right to reparations can be meaningful and effective in practice through approaches that repair harm and ensure respect for rights and human dignity'.²⁸² A variety of policy options are possible, requiring a nuanced approach depending on different country contexts, institutional frameworks and the availability of resources. The demand of reparations often emerge in post-conflict societies, however the demand also surfaces in the context of unresolved historical injustices and in negotiations to settle armed conflicts.²⁸³

From a legal point of view, parties to the various human rights instruments are obliged 'to investigate suspected human rights violations, to prosecute the suspects at national level, and to offer the victims effective reparation'.²⁸⁴ The Resolution on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by the General Assembly of the UN in 2005 specifies the law which is applicable to victims of international crimes. The Basic Principles and Guidelines underline the prevention and the punishment of crimes, as well as the prosecution of the perpetrators and the investigation of violations. In sum, victims of violations are legally entitled to (1) equal and effective access to justice, (2) adequate, effective and prompt reparation for the harm suffered and (3) Access to relevant information concerning violations and reparation.²⁸⁵

²⁷⁸ Johnstone, Gerry, *Restorative Justice: Ideas, Values, Debates* (cullumpton, 2002) p. ix. Cited in , Phil, 'Establishing a Conceptual Framework: Six Key Transitional Justice Themes', p. 198

²⁷⁹ Clark, Phil, 'Establishing a Conceptual Framework: Six Key Transitional Justice Themes', p. 197

²⁸⁰ Minow, Martha, *Between Vengeance and Forgiveness*, p. 92

²⁸¹ Clark, Phil, 'Establishing a Conceptual Framework: Six Key Transitional Justice Themes', p. 199

²⁸² International Center for Transitional Justice, 'Reparations', Retrieved on 1 February 2010 at: < <http://ictj.org/en/tj/782.html>>

²⁸³ International Center for Transitional Justice, 'Reparations', Retrieved on 1 February 2010

²⁸⁴ Advisory Council on International Affairs and the Advisory Committee on Issues of Public International Law, 'Transitional Justice and Peace in Situations of Transition', p. 22

²⁸⁵ Resolution adopted by the General Assembly, Basic Principles and Guidelines on the Right to a Remedy

According to the Resolution on the Basic Principles and Guidelines, victims of gross human rights violations are to be provided with full and effective reparation, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.²⁸⁶

These forms of reparation reflect the variety of reparation which are also rooted in a variety of institutions. This is confirmed by the Advisory Council on International Affairs which states that 'reparation schemes are sometimes part of peace agreements, later translated into legislation or policy. Specific legislation or policy sometimes makes provision for reparation. In other cases, special commissions may be set up ... Reparation may be provided through other transitional justice mechanisms, such as the ICC Victims Trust Fund'.²⁸⁷ Many options are available when considering reparations in the process of transitional justice and although the context of the reparations generally differ, the challenges they pose are the same. The ICTJ lists the challenges as follows: 'defining concepts and objectives clearly; addressing financial questions; responding fairly to massive numbers of victims and a range of violations; attending to gender and other disparities; and reinforcing victims' dignity by relating reparations to truth-seeking, accountability, and reform, as well as to national agendas for social change that will advance victims' rights and prevent further abuses'.²⁸⁸

When considering reparations from the perspective of victims, the Advisory Council on International Affairs outlines that victims consider reparation important, however the kind of reparation they prefer may vary.

and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', [on the report of the Third Committee (A/60/509/Add.1)] 60/147, p. 22

²⁸⁶ Resolution adopted by the General Assembly, Basic Principles and Guidelines on the Right to a Remedy', p. 22.

Article 19 . *Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property. 20. *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services. 21. *Rehabilitation* should include medical and psychological care as well as legal and social services. 22 *Satisfaction* should include, where applicable, any or all of the following: (a) Effective measures aimed at the cessation of continuing violations; (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities; (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; (e) Public apology, including acknowledgement of the facts and acceptance of responsibility; (f) Judicial and administrative sanctions against persons liable for the violations;(g) Commemorations and tributes to the victims; (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels. 23. *Guarantees of non-repetition* should include, where applicable, any or all of the following measures, which will also contribute to prevention: (a) Ensuring effective civilian control of military and security forces; (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality; (c) Strengthening the independence of the judiciary; (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders; (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces; (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises; (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution; (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

²⁸⁷ Advisory Council on International Affairs and the Advisory Committee on Issues of Public International Law, 'Transitional Justice and Peace in Situations of Transition', p. 39

²⁸⁸ International Center for Transitional Justice, 'Reparations', Retrieved on 1 February 2010

'An admittedly unrepresentative study among 1,114 war victims in eleven countries revealed considerable regional differences. Preferences (respondents could give more than one answer) were 42% for monetary compensation, 29% for memorials to victims, 24% for forgetting the past, 22% for apologies from the perpetrators, 19% for apologies from an official representative. Other preferences were also expressed: thus 3% favoured prosecution. The following figures point to extreme regional variation. Victims in the Democratic Republic of the Congo and Kosovo considered material compensation less important. There was an above-average preference for memorials in Israel, Cambodia and Croatia, but this was less important to Afghans and Filipinos. In Sudan, 62% of respondents wanted apologies, but the equivalent figure in Cambodia was just 11%. In Kosovo, 31% wanted apologies from an official representative'.²⁸⁹

All in all, this study adds to the notion that context-based choices are favoured. The particular mechanism of reparations in the field of transitional justice need to be applied in the context of each specific case and above all reparations should be perceived from the perspective of the victim, who have the right to adequate, effective and prompt reparation for harm suffered.

Reconciliation

Within the field of transitional justice, reconciliation has become a focal theme. It not only figures prominently in the literature on transitional justice but also in practice, despite the lack of consensus about what reconciliation actually is and how it may be achieved. The ICTJ has worked on a definition of reconciliation and the ways in which it can be achieved in practice. It states;

'Reconciliation is something that occurs in the civic or political sphere, rather than at the level of individuals; Legitimate reconciliation must be distinguished from efforts to use reconciliation as a substitute for justice; There cannot be significant inequities in the distribution of the burdens that reconciliation inevitably entails; It cannot involve transferring responsibilities from perpetrators to victims. Reconciliation efforts should not focus unduly on wiping the slate clean; It is not reasonable to seek unqualified closure or a comprehensive ideal of social harmony; Reconciliation cannot be reduced to a state of mind, nor can it expect extraordinary attributes on the part of those being reconciled; Reconciliation must be articulated in terms that do not depend entirely on a particular set of religious beliefs'.²⁹⁰

²⁸⁹ Kiza, E., Rathgeber, C. and Holger-Rohne, C. (2006), *Victims of War: An Empirical Study on War Victimization and Victims' Attitudes towards Addressing Atrocities*. Freiburg: Max-Planck-Institut für ausländisches und internationales Strafrecht, pp. 117-122 quoted in Advisory Council on International Affairs and the Advisory Committee on Issues of Public International Law, 'Transitional Justice and Peace in Situations of Transition', p. 39

²⁹⁰ International Center for Transitional Justice, 'Reconciliation', Retrieved on 1 February 2010 at: < <http://ictj.org/en/tj/784.html>>

Clark states that reconciliation in the broadest sense possible involves 'the rebuilding of fractured individual and communal relationships after conflict, with a view to encouraging meaningful interaction and cooperation between former antagonists'.²⁹¹ He outlines that reconciliation means more than peaceful coexistence, which implies that parties do not act violently towards each other and seek separation instead of rapprochement. Reconciliation forges the reshaping of the relationships between parties to lay the foundation for future engagement between them. When approaching reconciliation this way, it can be perceived as both a process and an endpoint. It requires parties to address the causes of past conflict in order to engage in a positive dynamic for the future.²⁹² According to the ICTJ 'reconciliation is the condition under which citizens can once again trust one another as citizens. That means that they are sufficiently committed to the norms and values that motivate their ruling institutions; sufficiently confident that those who operate those institutions do so also on this basis; and sufficiently secure about their fellow citizens' commitment to abide by these basic norms and values'.²⁹³ This way parties can overcome bitter divisions in the future.

Facing the Past and Sustainable Peace

A country dealing with gross human rights violations in the past is likely to be confronted with many practical difficulties, its political balance may be endangered, a government may be unwilling to initiate far-reaching initiatives or the country is hindered because it might put its own stability at risk. The problems that arise from past injustices are often too complex to be solved by any one action.²⁹⁴ Two decades of experience suggest that an integrated transitional justice approach is important: 'the various mechanisms are often complementary, and a given mechanism will often prove less than effective unless others are also applied'.²⁹⁵ For instance, punishing a small group of perpetrators may seem arbitrary without any truth-telling or reparations. However, telling the truth without further prosecution of the perpetrators can be perceived as nothing more than words. Reparations that are not linked to prosecutions may be viewed as blood money, which can be perceived as an attempt to silence the victims. Governments refraining from reparations sometimes reflect the fear that compensation of past injustices may imply an admission of guilt. The reforming of institutions without an attempt to satisfy the demand of victims as regards justice, truth and reparation is ineffective and unlikely to succeed.²⁹⁶

Transitional justice can thus be viewed as the set of mechanisms and processes that is most capable of stabilising and reconstructing a society torn apart by past injustices. It contributes to the reconstruction of a society by facing the past and the focus on justice, the rule of law and the creation of a culture of human rights.²⁹⁷ If those mechanisms and processes are perceived by the public as a legitimate process, which is more likely to be achieved with active consultation and participation of victims and the public, a feeling that the past has been faced and has been put into perspective will

²⁹¹ Clark, Phil, 'Establishing a Conceptual Framework: Six Key Transitional Justice Themes', p. 194

²⁹² Clark, Phil, 'Establishing a Conceptual Framework: Six Key Transitional Justice Themes', p. 194

²⁹³ International Center for Transitional Justice, 'Reconciliation', Retrieved on 1 February 2010

²⁹⁴ International Center for Transitional Justice, 'What is transitional Justice?' Retrieved on 1 February 2010

²⁹⁵ Advisory Council on International Affairs and the Advisory Committee on Issues of Public International Law, 'Transitional Justice and Peace in Situations of Transition', p. 42

²⁹⁶ International Center for Transitional Justice, 'What is transitional Justice?' Retrieved on 1 February 2010

²⁹⁷ Advisory Council on International Affairs and the Advisory Committee on Issues of Public International Law, 'Transitional Justice and Peace in Situations of Transition', p. 42

prevail, which will bring lasting peace closer and prevent recurrence. All in all, the key goals of transitional justice – establishing the truth, justice, peace, reparation, reconciliation and action to prevent recurrence– can best be achieved by a combination of mechanisms.²⁹⁸ In addition the ICTJ outlines that ‘ultimately, there is no single formula for dealing with a past marked by large-scale human rights abuse. All transitional justice approaches are based on a fundamental belief in universal human rights. But in the end, each society should choose its own path’.²⁹⁹

5.2 UNSILENCING THE PAST

As has been written in the foregoing paragraph, a country dealing with gross human rights violations in the past is likely to be confronted with many practical difficulties. The country may be endangering its internal political balance or might be hindered because it could put its external political stability at risk. In the case of Turkey and Armenia, diplomatic relations have long been burdened by differences over the nature of the massacres of Armenians in the Ottoman era. Because of this conflict Turkey and Armenia failed to open diplomatic relations after the breakup of the Soviet Union. On top of this, the Nagorno-Karabakh conflict between Armenia and Azerbaijan has further problematized the conflict, culminating in the closure of the border between Turkey and Armenia. Triggered by, among others, Turkey’s EU candidature and the opening of the accession negotiations, the need of coming to terms with the past has become more urgent. Despite the fact that it is not a formal criteria for EU accession, facing the Armenian question will send positive sign towards Brussels.

The signing of the historic peace agreement between Turkey and Armenia on 10 October 2009, expresses the intention of installing a ‘sub-commission on the historical dimension to implement a dialogue with the aim to restore mutual confidence between the two nations, including an impartial scientific examination of the historical records and archives to define existing problems and formulate recommendations, in which Armenian, Turkish as well as Swiss and other international experts shall take part’.³⁰⁰ In order for the joint commission to face the past and contribute to an environment of reconciliation between Turkey and Armenia, the following question needs to be answered: *Does the joint commission offer a solution to the conflict on the historical dimension of the Armenian question?* In order to find out whether the joint commission offers a solution to the conflict, four major goals regarding the functioning of truth commissions will be examined in view of the Armenian question. Additionally, truth, justice, reparations and reconciliation will be covered while examining these goals.

The dispute between Turkey and Armenia on the nature of the Armenian massacres in the Ottoman Empire is an exceptional post-conflict situation, especially since the massacres took place almost 100 years ago. After nearly a century of animosity and mistrust, the last of the survivors and witnesses will have passed away and with them the possibility of establishing the truth regarding the massacres of the Armenian people in the Ottoman era. Nevertheless, the political stakes on both sides became high again with the revival of the Armenian question by the cumulative actors of the Armenian

²⁹⁸ Ibidem

²⁹⁹ International Center for Transitional Justice, ‘What is transitional Justice?’ Retrieved on 1 February 2010

³⁰⁰ Protocols and timetable for establishment of relations between Armenia and Turkey Published: Tuesday September 01, 2009, Retrieved on 20 January 2010 at < <http://www.reporter.am/index.cfm?objectid=B4BCBD98-96EC-11DE-AD800003FF3452C2&pg=1>>

diaspora campaigning for recognition of genocide, the new focus on transitional justice and Turkey's EU candidature. At this moment, the Armenian question has become a key issue to measure the pace of progress of Turkey's route towards EU accession. It is fascinating to note that the Armenian question has become such an obstacle for the European powers since it only became a problem as of the moment Turkey aspired to become a member of the EU. What makes it even more fascinating is the fact that the same European powers were partly responsible for the sad history of the manipulated aspirations of the Armenians in the Ottoman Empire.³⁰¹ Those European powers want Turkey to reconcile itself with its past and in order to move forward both Turkey and Armenia need to commit to the process of truth-finding with the purpose of coming to terms with the past.

Establishing an Authoritative Record

The first and foremost goal of the joint commission in which Armenian, Turkish and foreign experts will investigate the historical dimension of the relationship, is to assemble and present a version of authoritative history which can be shared by both, covering the 'scope, means and victims' of the past human rights violations.³⁰² Creating a shared version of authoritative history is not an easy job for the joint commission when taking into account the complexity of the Armenian question. The subject of truth in post-conflict Turkey and Armenia has been a recurrent and complex theme, contributing to the politicized environment between the Turks and the Armenians, which until date has not been solved. The origins of the thoroughly politicized environment in relation to the Armenian question, can be traced back to the period after the Armenian massacres took place.

Throughout the end of the First World War and the signing of the Treaty of Sèvres which was shortly thereafter superseded by the signing of the Treaty of Lausanne, no urgency was felt to engage in truth-finding since political and economic interests by both Turkey and the Great powers surpassed the need to do justice to the Armenians. As for the Armenians themselves, having to deal with displacement and massacres, starvation and finally Sovietization, it took until the 1960s until the Armenians started to actively campaign for the recognition of the Armenian massacres as genocide. As of the fiftieth anniversary of the Armenian massacres in 1965, the diaspora came to represent Armenian interests worldwide.³⁰³ The most influential political body within the diaspora was the Armenian Revolutionary Federation (ARF), active since the end of the nineteenth century, which became a sort of 'government-of-exiles', combating Turkish denialism and keeping the memory of the Armenian massacres alive in America, Europe and elsewhere.³⁰⁴ Along with the lobby for recognition of the Armenian massacres as genocide, calls on the side of the nationalist ARF for a return to the terms of the Sèvres treaty have become more explicit.

With the establishment of the UN Genocide Convention in 1948, the definition of genocide seemed applicable on the Armenian experience. It was embraced wholeheartedly by the Armenian diaspora, requesting that the events be recognized as genocide by Turkey. The large Armenian diasporas in Europe and America became radical in pursuing this demand as of 1973 till 1984 when

³⁰¹ Bloxham, Dennis, *The Great Game of Genocide*, p. 226

³⁰² Popkin, Margaret and Roth-Arriza, Naomi, 'Truth as justice', p. 269

³⁰³ MacDonald, David B., *Identity politics in the age of Genocide*, p. 119

³⁰⁴ Shain, Y., 'The Role of Diasporas in Conflict Perpetuation of Resolution', in: *SAIS Review*, vol. 22, no. 2, 2002, p. 131

diaspora terrorists killed 30 members of the Turkish diplomatic service and their families. As of the 1980s this demand was pursued politically, resulting in several genocide recognition resolutions from parliaments, of which several in Europe. However, Turkish threats against economic, political and military American interests caused Clinton to withdraw the recognition bill on 10 October 2000. Overall, the large European and American diasporas, approximately seven million strong, has been of profound influence in the international arena. Recognition of the Armenian massacres as genocide has become central to the identity of the Armenians, who define themselves as historical victims.

Armenian victimhood is reflected by the culture of victimization, which implies a specific interactivity between the perpetrator and the victim, which can positively fuel the process of transitional justice. According to Barkan, the interaction between the perpetrator and victim in the process of transitional justice is a new form of 'political negotiation that enables the rewriting of memory and historical identity in ways that can be shared by both'.³⁰⁵ This new form of political negotiation should be accompanied by flexibility on the side of the perpetrator as well as the victim's side. The Armenian campaign for recognition of the Armenian massacres as genocide has become intrinsic to the identity of the Armenians. However, the increased focus on identity through victimization, based on a shared historical perspective, has not had the desired interactive effect between the perpetrator and the victims which is advocated by Barkan. Shared Armenian victimhood and an active and rigid campaign for recognition have led to further polarization between Turkey and the Armenians. Along with Armenian endeavour the Turkish machinery of denial has grown in size and sophistication.³⁰⁶ Turkey has no desire for its history to be haunted by comparisons with Nazi Germany including the massive moral stigma which comes along with the term. Whereas interaction between the perpetrator and the victim could lead to the willingness of nations to self-reflect on their past, inflexibility on both the Turkish and the Armenian side has only led to a greater schism.

Authority of a commission is thus of utmost importance in a situation which is as politically charged as the conflict between Turkey and Armenia on the nature of the Armenian massacres. It can be achieved through the composition of the commission and the scope and method of investigation. To be successful, the composition of the commission must 'establish both their independence from all the actors in a contested history and their moral authority to examine and judge the acts and motivations of others'.³⁰⁷ It has already been stated in the protocols that the joint commission will be comprised of Armenians, Turks as well as Swiss and other international experts.³⁰⁸ The joint commission could thus include well-known figures from the political spectrum, human rights activists as well as respected foreign dignitaries. However, it must be noted that it will be a troublesome process for the Armenians and Turks to agree on a convincing and acceptable composition of the joint commission, especially since the ingrained habits of thought have grown to be part of the historical identity of both nations.

³⁰⁵ Barkan, Elazar, *The Guilt of Nations: Restitution and Negotiating Historical Injustices*, p. xvii

³⁰⁶ Bloxham, Donald, *The Great Game of Genocide*, p. 220

³⁰⁷ Ibidem

³⁰⁸ Protocols and timetable for establishment of relations between Armenia and Turkey Published: Tuesday September 01, 2009, Retrieved on 20 January 2010

The joint commission is to include Swiss and other international experts. In general an international commission might have the advantage of a greater claim to objectivity, distance from domestic politics, the power to publicize its recommendations internationally as well as the use of international pressure to see them implemented. However, when the joint commission is to include European representatives from specific EU countries or representatives from the EU it will be very difficult to establish their independence from all the actors in the contested history of the Armenian question. In this contested history, the European powers have a disputed position. At this moment the EU wants Turkey to take steps which contribute to the normalization of relations between Turkey and Armenia, though it is not a formal condition for Turkey in order to comply with EU conditionality.

This firm attitude of the EU as regards Turkey's position towards the Armenian question nowadays seems to contradict with the attitude of the European powers almost hundred years ago. Whereas the European powers played an important part in the deteriorating situation of the Armenians in the Ottoman Empire, culminating in the Armenian massacres, at present they hold Turkey responsible for it, which seems not fair given the history of the Armenian question and the role of the European powers within it. EU leverage as regards Turkey's stance towards the Armenian question can be regarded as ambiguous. The European powers used the Armenian question as a stick to beat the Ottomans, trying to exercise greater influence on Ottoman affairs and Ottoman soil which was favourable to their own good. Nowadays the Armenian question is used as a stick in Turkey's EU accession process, serving political and economic needs of the EU member states and thereby creating another bend in the road in Turkey's accession process. It can be concluded that the pattern of European powers trying to exercise influence on Turkish affairs repeats itself, not much has changed in that respect. Because of this it will be difficult to establish their independence from all the actors in the contested history of the Armenian question.

The joint commission could also include international academicians, who have no political connotation as regards the Armenian question. However, it must be noted that it will be hard to find them since most of the academicians are as polarized as the burdened diplomatic relations between Turkey and Armenia. Additionally, their discourses are characterized by two different and radically distinct historiographies. Both sides use historical evidence in order to create their own historical reality, serving a political goal, namely recognition on the Armenian side and denial on the Turkish side. Thus, even in the academic world it will be hard to find objective committee members of the joint commission who could transcend the division between Turkey and Armenia on the Armenian question. If a few objective experts are to be found, they may possibly withdraw from the commission because they fear they may become a means for redressing nationalist grievances. Let alone the question whether both sides would agree on and be convinced of the objectiveness of the potential committee members.

When taking the aforementioned into account, it will thus be difficult to achieve an authoritative joint commission including Armenian, Turkish and international experts. A century of suspicion and mistrust has led to ingrained habits of thought which have grown to be part of the historical identity of both nations. The choice which Armenian and Turkish experts will be included in the joint commission will lead to great difficulties, since they will not agree on the independence and moral authority of each

other's committee members to examine and judge the acts and motivations of others. Let alone the international experts which are to be chosen, especially when considering the ambiguous position of the European actors as regards Turkey and the Armenian question and the polarization of academicians on the subject. All in all, it seems hardly possible for the joint commission to establish both their independence from all the actors in a contested history and their moral authority to examine and judge the acts and motivations of others. In that sense it might be a possibility to involve experts from an independent international body such as the United Nations to take place in the joint commission.

To create authoritative history, the scope and methodology of the report on the Armenian massacres should be broad enough to cover the principal harms done to the victims and to focus on the appropriate time period. Furthermore, it must be detailed enough to convince sceptics that the facts found are true, leaving no opening for opposing visions. It must also provide the overall patterns and explanations that shape historical accounts. Finally, it should make use of fact-finding methods that are beyond challenge. The joint commission must decide which set of crimes it will investigate and whether it chooses to focus on exemplary cases or whether it provides information on a wider range of events. Other possibilities which could be covered in the report are the use of primary sources, the listing of the names of victims rather than overall numbers and combining an investigation of government acts with those of non-governmental forces. This will create a sense of balanced treatment as well as the avoiding of victor's justice.³⁰⁹

In case of the Armenian question, the scope and methodology of the report as regards the historical dimension of the relation between Turkey and Armenia will be a problematic subject matter. Especially the scope of the report will lead to severe problems since it forges the question whether the responsibility of the European powers should be investigated as well. Additionally, it will be hard for both parties to decide upon the appropriate time period. Should the report only cover the historical events of 1915 and 1916, or should the investigation cover the end of the nineteenth century too? Apart from that question, the issue should be raised whether the period after the First World War should be covered by the report since irregularities among Armenians committed by the Turkish forces continued on a large scale. However, the killing was not one sided. Armenians massacred Turkish civilians and caused as much damage as they could in order to avenge the harm done to them. Additionally, the question should be raised whether the Nagorno-Karabakh conflict, in which much blood was shed by the Armenians, should be covered in the report as well.

All these questions will lead to mutual division on the scope and methodology of the report as regards the historical dimension of the relation between Turkey and Armenia. Not to mention the effect the aforementioned questions could have. The pressure which is exercised by the EU as regards the Armenian question in view of the EU accession process could be seriously dented in case of an investigation of the role of the European powers on the Armenian question. Furthermore, it would influence the extent to which the EU could put pressure on Turkey to comply with the recommendations which are provided by the joint commission. Depending on the outcome of the investigation, it is highly likely that the notion will prevail that the EU applies double standards as

³⁰⁹ Popkin, Margaret and Roth-Arriza, Naomi, 'Truth as justice', p. 271-274

regards Turkey and the Armenian question. In all likelihood, the historical dimension of the conflict between Turkey and Armenia is so complex that it will only lead to disagreement and further division on the scope and methodology of the report.

Nonetheless, if both parties are able to agree upon the scope and methodology of the report, the joint commission should make choices which add to the credibility of the report. In case of the conflict between Turkey and Armenia, it would be the ultimate challenge for the joint commission to bring together both parties to research the disputed Armenian question. In order for the rapprochement initiative to succeed, both the Turkish and the Armenian side should forge a liberalisation of the academic discussion on the sensitive past, leaving an opening for the joint commission to create an historical record, which comprises a version of the truth which can be shared by both, be it subjective or not. Because of the complexity of the conflict on the nature of the Armenian massacres, it is of utmost importance that Turkey and Armenia agree on a shared version of authoritative history since 'any reconciliation is impossible without acknowledgement of the wrong done and the establishment, thereby, of common ground for dialogue'.³¹⁰

Redress and the Effect on Victims

The notion that in order to forgive, knowledge of what is to be forgiven is of utmost importance leads to the second major goal of the joint commission regarding redress and reconciliation. The basis for redress and reconciliation lies in an authoritative version of shared history. In the dispute on the nature of the Armenian massacres, knowledge of what is to be forgiven is the first priority of the joint commission and will lead the way to a common ground for dialogue. When a shared version of history is established, the joint commission can focus on redress and reconciliation. Only then, the joint commission can respond to the needs of victims through recommendations which are focused on reparations, compensation and commemorative efforts. It must be noted though that providing a platform for the victims, the listening to the stories of the victims and compiling and presenting the report also have a deep impact on the success of fostering a sense of redress for victims.

The way the government receives the report and whether it acknowledges the state's past act is also important to foster a sense of redress for victims. In order to be able to forgive, the joint commission should firstly focus on what is to be forgiven. When the joint commission has succeeded in establishing a shared authoritative history, the next phase of acknowledgement presents itself. For the victims the process of acknowledgement and subsequent healing is essential and fosters reconciliation. As for Turkey and Armenia, the several rapprochements initiatives have proven that both countries do not easily agree on initiatives to establish a shared authoritative history. For instance, the outcome of the independent research of the ICTJ memorandum facilitated by the TARC was largely ignored by Turkey in 2001. Additionally, in 2005 the government of Turkey wanted a Turkish-Armenian joint commission of historians to research the Armenian question, which was not accepted by Armenia since it would not debate the veracity of the Armenian genocide.³¹¹ This

³¹⁰ Bloxham, Dennis, *The Great Game of Genocide*, p. 234

³¹¹ Hakobyan, Tatul, 'Armenia and Turkey initial agreement "to open the common border" (updated)', Retrieved on 28 February 2010 at: < <http://www.reporter.am/go/article/2009-09-04-armenia-and-turkey-initial-agreement--to-open-the-common-border---updated->>

proposal was followed up by Armenia inviting Turkish President Gül to attend a Turkey-Armenia football match in Yerevan in September 2008, which he accepted. Whereas both sides seemed to mutually engage to a deal, Turkey withdrew from it a few weeks later, linking progress in the field of diplomatic relations to the Nagorno-Karabakh situation. And although the historic peace agreement signed in 2009 revives reconciliatory hopes, it has not been ratified yet by the Turkish and Armenian parliaments. Facts speak louder than words.

So far, Turkey has ignored the outcome of an independent inquiry on the Armenian question, whereas Armenia opposed to a Turkish initiative to research the Armenian questions. In return, Turkey withdrew from a peace deal in 2008. In sum, it can be concluded that the peace agreement of 2009 in which a joint commission is to investigate the historical dimension of the relationship between Turkey and Armenia will be a tough job. It will be hard to create a shared version of authoritative history which is shared by both and accepted by both. Especially, since the process could already be brought to a halt while composing the commission at the very beginning of the process. Whether both states will make the commission's potential conclusions and recommendations its own and whether Turkey accepts the state's responsibility for the harmful acts it committed in the past is not sure yet. The only conclusion which can be drawn is that no concrete progress has been made as regards the Armenian question in the past ninety-five years.

Design and Implementation of the Recommendations

The third major goal of the joint commission is the design and implementation of the joint commission's recommendations. Recommendations as regards the Armenian question will be presented after the facts have facilitated the creation of a version of shared authoritative history which is accepted by both. Recommendations are at all times context based and may differ in emphasis, they may provide reparations to victims, offer education in human rights and forge judicial and political reform. In the following paragraph those possibilities will be addressed in detail. To some extent, international pressure may contribute to the recommendations to be carried out. In case of the joint commission on the Armenian question, the composition of the commission including foreign experts possibly linked the UN, may create external pressure to comply with the recommendations. External EU pressure, ambiguous or not, may foster Turkey's commitment to follow the recommendations of the joint commission. As for Turkey, Bloxham contends that 'it is improbable that Ankara will fully address the record of 1915-16 without external pressure. Political recognition can therefore only be the first step, but it is no less important for that'.³¹² Thus, for instance UN sponsorship and international involvement may increase the possibility that international actors would press Turkey and Armenia to comply with the recommendations of a truth commission.³¹³

Accountability

Whenever a shared version of history is established, the effectiveness of the joint commission's contribution to individual and institutional accountability for past acts is the fourth and final goal of the joint commission. In the case of Turkey and Armenia, truth as well as justice are important elements to

³¹² Bloxham, Dennis, *The Great Game of Genocide*, p. 226

³¹³ Popkin, Margaret and Roth-Arriza, Naomi, 'Truth as justice', p. 278

face the past and especially the link between the two is important. This link can be established in two ways, for instance by publicizing the names of individuals found responsible for the killings and disappearances in the report or by passing the report on to the court system, expecting the courts to follow up. Pursuing accountability can thus also be achieved through criminal prosecution, turning the names obtained by the truth commission over to the regular courts.³¹⁴ Thus, justice in relation to the conflict on the nature of the Armenian massacres between Turkey and Armenia entails the question of how to respond to the Ottoman perpetrators of the Armenian massacres in order to do justice to the Armenian victims.

As has been shown, three possibilities are available, varying from retributive justice which focuses on the punishment of the perpetrator, deterrent justice which not only punishes the perpetrator but which should also have a deterrent effect, till restorative justice which holds that punishment alone is insufficient to punish the perpetrator and emphasizes the humanity of both offenders and victims. Almost one century ago, after the end of the First World War, the interim Turkish government, pressured by the British, chose the retributive approach and held a series of military trials against those accused of directing and implementing the Armenian massacres. Over a hundred former government officials were charged, most of them being transferred to British Malta. A number were convicted, Enver, Talat and Jamal and some other leadership figures were sentenced to death, however they were not in Allied custody so only three minor figures were executed.³¹⁵ When the Treaty of Lausanne superseded the Treaty of Sèvres in 1923, no more efforts were made to do justice to the victims of the Armenian massacres.³¹⁶

At this moment, it is almost hundred years ago that the Armenian massacres took place and many of the victims and perpetrators have passed away. The retributive and deterrent forms of justice, in which 'criminal justice is an essential part of a response to massive human rights violations to reveal how large-scale crimes are committed and restore victims' dignity and public confidence in the rule of law' are not possible to pursue in the form of prosecutions since both the perpetrators and the victims have perished.³¹⁷ Only restorative justice is left, which focuses on building relationships between the perpetrator and the victims in order to forge ties across the community which takes precedence over punishment.³¹⁸ Regardless whether the perpetrators and victims have perished or not, it is a fact that Turkey and Armenia find themselves in an impasse as regards the Armenian question.

In order to end this impasse, restorative justice could still be pursued through focusing on truth-telling, public acknowledgement and reparations as crucial elements for the restoration of justice. In order for the countries to take steps which will contribute to the normalization of the relations between them, restorative justice should be pursued. It could be a component of the joint commission's mandate, as part of an integrated response to gross human rights violations. The commission's priority should be to work on a version of the truth which can be shared by both, be it subjective or not. Restorative justice could forge the focus on truth, public acknowledgement and

³¹⁴ Popkin, Margaret and Roth-Arriza, Naomi, 'Truth as justice', pp. 281-287

³¹⁵ Jones, Adam, *Genocide, a comprehensive introduction*, p. 113

³¹⁶ Jones, Adam, *Genocide, a comprehensive introduction*, p. 113

³¹⁷ International Center for Transitional Justice, 'What is transitional Justice?' Retrieved on 1 February 2010.

³¹⁸ Minow, Martha, *Between Vengeance and Forgiveness*, p. 92

reparations as crucial elements for the restoration of justice. This could lead to the recognition of the past injustices and the commitment to reparations.

Those reparations constitute a critical dimension of transitional justice because it focuses solely on the recognition of the harms done to the victims and the victim's rights. In the Armenian case, the demand for reparations surfaces in the context of the unresolved historical injustices committed by the Ottoman regime. A variety of policy options are possible, requiring a nuanced approach. One option in which reparations are legally documented in an international human rights treaty is the Resolution on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by the General Assembly of the UN in 2005, which specifies the law applicable to victims of international crimes.³¹⁹

According to the Resolution on the Basic Principles and Guidelines, victims of gross human rights violations are to be provided with full and effective reparation, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.³²⁰ The following paragraphs will explore which of the forms of reparations as documented in the Resolution on the Basic Principles and Guidelines are constructive options for the joint commission to engage in so as to contribute to an environment of reconciliation. It must be noted though that the possibilities will be restrained since most of the perpetrators and victims have perished. However, the several options which might contribute to the normalization of relations will be highlighted in the following paragraphs starting with the first reparation option, namely restitution.

Restitution, should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law.³²¹ It will be hard to achieve this since most of the victims have passed away. However the article also specifies compliance with human rights as an important form of reparation which can still be applied nowadays. As for compensation, the second form of reparation, it should provide for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case.³²² Some financial compensation may be justified for the victims, however this could only work in a selective fashion, favouring the few who can provide documentary evidence of their loss. Demands on the side of the nationalist ARF call for recognition of the Armenian massacres as genocide and a return to the terms of the Sèvres treaty. Bloxham states that 'even putting aside questions of their legal justness in 1920, they would be patently inequitable today with almost no Armenians living in the eastern provinces, and a present day population – composed of Turks, Kurds and others, - there that cannot be considered a fair game to suffer personal punishment for past acts of the state'.³²³ There is no logical connection between the cause of genocide recognition and retrieving land from Turkey.³²⁴

The third reparation possibility, rehabilitation, should include medical and psychological care as well as legal and social services.³²⁵ This form of reparation is hard to pursue in the Armenian case

³¹⁹ Resolution adopted by the General Assembly, Basic Principles and Guidelines on the Right to a Remedy' p. 6-8

³²⁰ Resolution adopted by the General Assembly, Basic Principles and Guidelines on the Right to a Remedy', p. 7

³²¹ Resolution adopted by the General Assembly, Basic Principles and Guidelines on the Right to a Remedy', p. 7

³²² Resolution adopted by the General Assembly, Basic Principles and Guidelines on the Right to a Remedy', p. 7

³²³ Bloxham, Dennis, *The Great Game of Genocide*, p. 232

³²⁴ Bloxham, Dennis, *The Great Game of Genocide*, p. 232

³²⁵ Resolution adopted by the General Assembly, Basic Principles and Guidelines on the Right to a Remedy', p. 7

since most of the victims have passed away. The following possibility, however, lists several reparation options which could be favourable to the process of transitional justice between Turkey and Armenia. They fall under the article of satisfaction, which should include, where applicable, any or all of the following: Verification of the facts and full and public disclosure of the truth, which coincides with the process of truth-seeking. This option could be covered by the mandate of the joint commission on the Armenian question and be favourable to both perpetrators and victims in order to move forward. Additionally, satisfaction as reparation includes an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim.³²⁶ Such a declaration is only possible whenever the joint commission will succeed in creating a shared version of authoritative history. Such a declaration may be beneficial to restore justice for survivors and their descendants. This also applies to a public apology, including acknowledgement of the facts and acceptance of responsibility. An apology could function as the foundation for building relationships between the Turkish and the Armenian state and society and forge ties across the communities which takes precedence over the ever widening gap between the Armenian campaign for recognition and the Turkish institutionalized method of denial. It could also lead the way to commemorations and tributes to the victims, which is also a possibility under the article of satisfaction.

Additionally, instead of state-sponsored educational programmes of misrepresentations and falsehoods the last possibility under the article of satisfaction calls for the inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels. This would add up to the guarantees of non-repetition. In this article, measures are provided to promote mechanisms for preventing and monitoring social conflicts and their resolution. They vary from promoting and protecting international norms and standards till the reviewing and reforming of laws which contribute to or allow gross violations of international human rights law and serious violations of international humanitarian law. In order to add to the notion of sustainable peace, the particular mechanism of reparations in the field of transitional justice needs to be applied in the context of each specific case and above all reparations should be perceived from the perspective of the victim, who have the right to adequate, effective and prompt reparation for harm suffered.³²⁷

Towards Reconciliation?

All in all, the four major goals as regards the functioning of truth commissions which have been explored in relation to the Armenian question, provide several options for the joint commission to contribute to an environment of reconciliation between Turkey and Armenia. The creation of an authoritative record of what happened, providing a platform for the victims to tell their stories and obtain some form of redress, recommending legislative, structural, or other changes to avoid the repetition of past abuses and the commitment to accountability could lead the way to end a century of animosity and mistrust based on the conflict on the nature of the Armenian massacres during the Ottoman era. Because of the complexity of the conflict on the nature of the Armenian massacres, it is of utmost importance that Turkey and Armenia agree on a shared version of authoritative history since

³²⁶ Resolution adopted by the General Assembly, Basic Principles and Guidelines on the Right to a Remedy', p. 8

³²⁷ Resolution adopted by the General Assembly, Basic Principles and Guidelines on the Right to a Remedy', p. 8

'any reconciliation is impossible without acknowledgement of the wrong done and the establishment, thereby, of common ground for dialogue'.³²⁸

In order for the rapprochement initiative of 2009 to succeed, it is important that Turkey and Armenia are committed to face the past in order to engage in a positive dynamic for the future. For Turkey, while not a formal criteria for eventual EU accession, engagement to settle the controversy with Armenia will send a positive message to the EU about Turkey's readiness to face its past and reconcile itself with it. In the case of Armenia, it would mean the end of its isolated position and dependence on Russia, furthermore it would open doors to Europe.³²⁹ Overall, the conclusions and recommendations of the joint commission could provide both Turkey and Armenia with the feeling that the past has been faced and has been put into perspective, which will bring lasting peace closer and prevent recurrence.

³²⁸ Bloxham, Dennis, *The Great Game of Genocide*, p. 234

³²⁹ 2nd report of the Independent Commission on Turkey September 2009, 'Turkey in Europe, Breaking the vicious circle', p.32

6. CONCLUSION

FACING HISTORY: TURKEY AND THE ARMENIAN QUESTION

Diplomatic relations between Turkey and Armenia have repeatedly been overshadowed by the dispute on the nature of the Armenian massacres in the Ottoman era. The Armenians accuse the Ottomans of committing genocide against ethnic Armenians in early 1915, whereas modern day Turkey, the successor state of the Ottoman Empire, systematically rejects all allegations. On top of this the relationship between Turkey and Armenia is blurred by Turkey's objection to Armenia's war with Turkey's ally Azerbaijan over the disputed territory of Nagorno-Karabakh. All in all, both countries never engaged in diplomatic relations after the break-up of the Soviet Union because of these interconnected problems. In order to end the enduring impasse between Turkey and Armenia, this thesis has focused on the dispute on the nature of the Armenian massacres in the Ottoman era in the context of transitional justice. It has specifically focused on the functioning of the joint commission which is to examine the historical dimension of the relation between the two countries, with the intention to answer the central research question: *Does the joint commission offer a solution to the conflict on the historical dimension of the Armenian question?*

The deportations of Armenians starting in earnest May 1915 resulted in the death of enormous numbers of Armenians at the hands of the Ottoman government, so much is an undisputed historical fact. The young Turkish Republic, never faced up to the atrocities committed during the last breath of the Ottoman Empire. Instead, it developed an institutionalized method of denial of the Armenian massacres. Initially, denial of the Armenian massacres served a political goal because it was directly related to the historical Armenian question in the Ottoman Empire, reflected by the fear of the cession of territory and foreign intervention in external affairs.³³⁰ With Mustafa Kemal Atatürk coming to power, all strings attached to the Ottoman Empire were to be cut, since it had left the Kemalist regime with the taint of mass murder. In order to sustain the policy of denial, the debate on the causes and effects of the decisions which led to the deportation of Armenians in 1915 became the foundation of the 'systematic and state-sponsored' rewriting of the joint history. Thus, denial of the Armenian massacres was accommodated long before the phenomenon of genocide was laid down in the UN Convention of Genocide in 1948. As a result the Convention on Genocide only contributed to the institutionalized method of denial in Turkey, which has no desire for its history to be haunted by comparisons with Nazi Germany including the massive moral stigma which comes along with the term. All in all, for Turkey 'denial was and is the final phase of the Armenian question itself, and is intrinsically associated, as was the First World War murder process, with the simultaneous goals of securing Anatolian land and fighting off external intervention in Turkish affairs'.³³¹

Having to deal with displacement and massacres, starvation and finally Sovietization, it took until the 1960s until the Armenians started to actively campaign for the recognition of the Armenian massacres as genocide. As of the fiftieth anniversary of the Armenian massacres in 1965, the diaspora came to represent Armenian interests worldwide.³³² The most influential political body within

³³⁰ Bloxham, Donald, *The Great Game of Genocide*, p. 211

³³¹ Bloxham, Donald, *The Great Game of Genocide*, p. 207

³³² MacDonald, David B., *Identity politics in the age of Genocide*, p. 119

the diaspora was the Armenian Revolutionary Federation (ARF), active since the end of the nineteenth century. The ARF became a sort of 'government-of-exiles', combating Turkish denialism and keeping the memory of the Armenian massacres alive in America, Europe and elsewhere.³³³ With the establishment of the UN Genocide Convention in 1948, the definition of genocide seemed applicable on the Armenian experience. It was embraced wholeheartedly by the Armenian diaspora, requesting that the events be recognized as genocide by Turkey. The large Armenian diasporas in Europe and America became radical in pursuing this demand as of 1973 till 1984 when diaspora terrorists killed 30 members of the Turkish diplomatic service and their families. As of the 1980s this demand was pursued politically, resulting in several genocide recognition resolutions from parliaments, of which several in Europe. However, Turkish threats against economic, political and military American interests caused Clinton to withdraw the recognition bill on 10 October 2000. Overall, the large European and American diasporas, approximately seven million strong, has been of profound influence in the international arena. Recognition of the Armenian massacres as genocide has become central to the identity of the Armenians, who define themselves as historical victims.

Armenian victimhood is reflected by the culture of victimization, which implies a specific interactivity between the perpetrator and the victim, which can positively fuel the process of transitional justice. According to Barkan, the interaction between the perpetrator and victim in the process of transitional justice is a new form of 'political negotiation that enables the rewriting of memory and historical identity in ways that can be shared by both'.³³⁴ The Armenian campaign for recognition of the Armenian massacres as genocide in 1915 has become intrinsic to the identity of the Armenians. However, the increased focus on identity through victimization, based on a shared historical perspective, has not had the desired interactive effect between the perpetrator and the victims which is advocated by Barkan. Shared Armenian victimhood and an active campaign for recognition have led to further polarization between Turkey and the Armenians. Along with Armenian endeavour the Turkish machinery of denial has grown in size and sophistication.³³⁵ Whereas interaction between the perpetrator and the victim could lead to the willingness of nations to self-reflect on their past, it has only led to a greater schism. Thus, the international trend of nations willing to embrace their own guilt is not applicable in the case of Turkey and Armenia.

As for the last decades, the Armenian question has been revived by the Armenian diaspora, the new focus on transitional justice and most importantly the process of Turkey's EU candidature. At the moment, the Armenian question has become a bend in the road on Turkey's route towards EU accession. The EU takes the moral high ground as regards Turkey's stance towards the Armenian question. The EU wants Turkey to take steps which contribute to the normalization of relations between Turkey and Armenia, though it is not a formal condition for Turkey in order to comply with EU conditionality. The firm attitude of the EU as regards Turkey's position towards the Armenian question nowadays seems to contradict with the attitude of the European powers almost hundred years ago. Whereas the European powers played an important part in the deteriorating situation of the Armenians in the Ottoman Empire, culminating in the Armenian massacres, at present they hold Turkey

³³³ Shain, Y., 'The Role of Diasporas in Conflict Perpetuation of Resolution', in: *SAIS Review*, vol. 22, no. 2, 2002, p. 131

³³⁴ Barkan, Elazar, *The Guilt of Nations: Restitution and Negotiating Historical Injustices*, p. xvii

³³⁵ Bloxham, Donald, *The Great Game of Genocide*, p. 220

responsible for it, which seems not fair given the history of the Armenian question and the role of the European powers within it. EU leverage as regards Turkey's stance towards the Armenian question is thus ambiguous. Whereas the European powers used the Armenian question as a stick to beat the Ottomans, trying to exercise greater influence on Ottoman affairs and Ottoman soil which was favourable to their own good, nowadays the Armenian question is used as a stick in Turkey's EU accession process, creating another obstacle on Turkey's road towards accession. It can be concluded that the pattern of European powers trying to exercise influence on Turkish affairs repeats itself, not much has changed in that respect. At present, the political and economic stakes have become so high that the EU applies double standards, Turkey's role in the Armenian massacres is highlighted while it deliberately fails to remember its own share.

Triggered by, among others, Turkey's EU candidature and the opening of the accession negotiations, the Armenian campaign for recognition and the new focus on transitional justice, the need of coming to terms with the past has become more urgent. The signing of the historic peace agreement between Turkey and Armenia on 10 October 2009, expresses the intention of installing a joint commission on the historical dimension of the relationship between Turkey and Armenia to implement a dialogue with the aim to restore mutual confidence between the two nations, including an impartial scientific examination of the historical records and archives to define existing problems and formulate recommendations. Whether the joint commission may actually offer a solution to the conflict has been explored by examining four major goals regarding the functioning of truth commissions in relation to the Armenian question. Additionally, truth, justice, reparations and reconciliation have been covered while examining these goals.

The first and foremost goal of the joint commission in which Armenian, Turkish and foreign experts will investigate the historical dimension of the relationship, is to assemble and present a version of authoritative history which can be shared by both, covering the 'scope, means and victims' of the past human rights violations. Creating a shared version of authoritative history is not an easy job for the joint commission when taking into account the complexity of the Armenian question. Especially when considering the subject of truth in post-conflict Turkey and Armenia which has been a recurrent and complex theme, contributing to the politicized environment between the Turks and the Armenians. The Armenian campaign for recognition and the Armenian culture of victimization have fostered Turkish denial which was amplified by the massive moral stigma which comes along with the term genocide. In this highly politically charged atmosphere, it will be difficult, not to say impossible, to achieve an authoritative composition of the joint commission including Armenian, Turkish and international experts. The ingrained habits of thought which have grown to be part of the historical identity will preclude the agreement on the independence and moral authority of each other's committee members. Let alone the international experts which are to be chosen, especially when considering the ambiguous position of possible European experts and the polarization in the academic world as regards the subject. All in all, it seems almost impossible for the joint commission to establish both their independence from all the actors in a contested history and their moral authority to examine and judge the acts and motivations of others.

The scope and methodology of the report on the Armenian massacres should be broad enough to cover the principal harms done to the victims and focus on the appropriate time period. It must also provide the overall patterns and explanations that shape historical accounts. When relating these issues to the Armenian question, it will give rise to complex problems. In all likelihood, the historical dimension of the conflict between Turkey and Armenia is so complex that it will only lead to disagreement and division on the scope and methodology of the report. If possible though, the joint commission should forge both Turkey and Armenia to liberalise the academic discussion on the sensitive past, leaving an opening for the joint commission to create an historical record, which comprises a version of the truth which can be shared by both, be it subjective or not.

The notion that in order to forgive, knowledge of what is to be forgiven is of utmost importance leads to the second major goal of the joint commission regarding redress and reconciliation. When the joint commission has succeeded in establishing a shared authoritative history, the next phase of acknowledgement presents itself. As for Turkey and Armenia, the several rapprochement initiatives have proven that both countries do not easily agree initiatives to establish a shared authoritative history. So far, Turkey has ignored the outcome of an independent inquiry on the Armenian question, whereas Armenia opposed to a Turkish initiative to research the Armenian questions. In return, Turkey withdrew from a peace deal in 2008. In sum, it can be concluded that it will be a tough process for the joint commission to create a shared version of authoritative history and propose recommendations. Whether both states will make the commission's conclusions and recommendations its own and whether Turkey accepts the state's responsibility for the harmful acts it committed in the past is not sure yet. As for now, no concrete progress has been made in the past ninety-five years. The historic peace agreement signed in 2009 revives reconciliatory, although it has not been ratified yet. Facts speak louder than words.

The third major goal of the joint commission is the design and implementation of the joint commission's recommendations. In case of the joint commission on the Armenian question, the composition of the commission including foreign experts possibly linked to the UN, may create external pressure to comply with the recommendations. As for Turkey, external EU pressure, ambiguous or not, may foster its commitment to follow the recommendations of the joint commission. The fourth and final goal is the joint commission's contribution to individual and institutional accountability for past acts. Accountability in relation to the conflict on the nature of the Armenian massacres between Turkey and Armenia entails the question of how to respond to the Ottoman perpetrators of the Armenian massacres in order to do justice to the Armenian victims. To contribute to the normalization of relations between Turkey and Armenia, the recommendations of the joint commission could focus on restorative justice which focuses on building relationships between the perpetrator and the victims in order to forge ties across the community which takes precedence over punishment.

As for reparations, they constitute a critical dimension of transitional justice because they focus solely on the recognition of the harms done to the victims and the victim's rights. Based on the Resolution on the Basic Principles and Guidelines, constructive options in the recent rapprochement initiative have been considered, although the possibilities are restrained because most of the

perpetrators and victims have perished. As for restitution, compliance with human rights is still possible. As for compensation, it should provide for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case. Some financial compensation may be justified for the victims in the Armenian case, however this could only work in a selective fashion. Demands on the side of the nationalist Armenians call for recognition of the Armenian massacres as genocide and a return of land. Since, there is no logical connection between the cause of genocide recognition and retrieving land from Turkey, it will cause further enmity between on the Turkish side, which does not forge an environment of reconciliation. The next option, satisfaction, lists several reparation options which could be favourable to the process of transitional justice. Verification of the facts and full and public disclosure of the truth, which coincides with the process of truth-seeking could be covered by the joint commission on the Armenian question. Additionally, an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim could be recommended. This also applies to a public apology, including acknowledgement of the facts and acceptance of responsibility. An apology could function as the foundation for building relationships between the Turkish and the Armenian state and society and forge ties across the communities. This could take precedence over the ever widening gap between the Armenian campaign for recognition and the Turkish institutionalized method of denial. It could also lead the way to commemorations and tributes to the victims. Additionally, instead of state-sponsored educational programmes of misrepresentations and falsehoods the last possibility calls for the inclusion of an accurate account of the violations that occurred in international human rights law and training and in educational material at all levels. This would add up to the guarantees of non-repetition.

All in all, the four major goals as regards the functioning of truth commissions which have been explored in relation to the Armenian question provide several options for the joint commission to contribute to an environment of reconciliation between Turkey and Armenia. The creation of an authoritative record of what happened, providing a platform for the victims to tell their stories and obtain some form of redress, recommending legislative, structural, or other changes to avoid the repetition of past abuses and the commitment to accountability could lead the way to end a century of animosity and mistrust based on the conflict on the nature of the Armenian massacres during the Ottoman era. In order to succeed, both Turkey and Armenia need to flexibly engage to the process which the joint commission initiates. Armenia should let its rigid attitude towards the recognition of the Armenian massacres as genocide go and put aside its irrational demand of retrieving land from Turkey. On the other side, Turkey should abandon its institutionalized method of denial in order to face the past. However, the problems which the joint commission could encounter are numerous. The composition of the joint the commission, the scope and methodology of the report, the possibilities for redress and most importantly the creation of a shared authoritative history give rise to complex problems. The several rapprochements initiatives in which Armenia and Turkey did not agree on the process or the outcome of inquiries have proven that both countries are reluctant to agree on a shared authoritative history.

The signing of the historic peace agreement on 10 October 2009, revives reconciliatory hopes. Yet, the signing of the peace agreement has only been a small step on the road which goes back

more than ninety years in history. In this sense the peace agreement can be viewed as a minor achievement in a chain of events, constituting a small stage of a process, not its endpoint. It is not likely that the joint commission will offer a solution to the conflict between Turkey and Armenia on the nature of the Armenian massacres in the Ottoman era. Because of the complexity of the dispute many factors could hinder the joint commission to successfully create a shared version of authoritative history. Instead of becoming a success, it is more likely that the joint commission facilitates further enmity, with the possibility of an ultimate breakdown.

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