

CHAPTER 1

# History of the Turko-Armenian Conflict

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Even though this study has a legal-criminological framework and thus a rather narrow focus, its extralegal underpinnings and ramifications nevertheless require a broad perspective. A proper definition of the term “genocide” is necessary to such a perspective. Presently that definition is anchored in four basic determinants. Genocide presupposes:

1. A protracted perpetrator-victim conflict that has a history and that persists in defying a resolution.
2. A substantial disparity in power relations between perpetrator and victim, yielding the correlative victim vulnerability factor.
3. The opportunity factor: even a most adept criminal must know how to bide his time until the moment when a suitable opportunity presents itself. This is the foremost condition—in fact precondition—for eventual success. The operative formula for such success is minimum risk for optimum result. Wars, especially global wars, do afford such opportunities, as attested by the spectacular success of two of the twentieth century’s three major genocides, the Armenian and the Jewish.
4. The drive for a radical resolution of the lingering conflict reaches its climactic and terminal stage by the eradication of the targeted victim group through the actual act of genocide.

Within this framework, a brief review of the historical antecedents of this Turko-Armenian conflict is in order. Such a review will inevitably have to reflect the theocratic underpinnings of the Ottoman Empire and the Islamic thrust of that theocracy. As discussed in the main body of this study, the religiously dogmatic and imperious denial of the right of equality to the non-Muslim subjects of the empire rendered that empire ripe for perennial conflicts. This was due in part to Islamic theocracy but to an equal degree to another totally different and totally disconnected condition: demography. Half of the population of the empire consisted of a plethora of non-Muslim subject nationalities, almost all of them Christians of various denominations. Their statutory inferiority, which was dictated by the canon laws of Islam, led to a

host of legal inequalities and the consequent social practices of prejudice and discrimination. In brief, demography clashed with religion, thereby producing unabating domestic conflicts. In time these conflicts transformed themselves into international conflicts as European powers intermittently intervened in attempts to protect their coreligionists, who were suffering from bouts of prosecution that often degenerated into serial massacres.

The end result of all these conflagrations was that the subject nationalities in the Balkan Peninsula eventually managed to emancipate themselves from Ottoman-Turkish dominion. The decisive factor in this series of emancipatory movements was, however, the factor of external—specifically European—intervention, as well as active European political and occasionally military support. In a belated and almost desperate effort to emulate the emancipatory initiatives of these European nationalities, some of the political leaders of the Ottoman Empire's Armenian population decided to likewise adopt revolutionary goals and tactics. But they failed disastrously, mainly if not only because, unlike their European counterparts, they had absolutely no effective external support. This total absence of external patronage not only produced repeated failures but, most critical for the destiny of the entire people, also produced repeated calamities. Fully aware of the abiding vulnerability of these Armenians, the Ottoman-Turkish authorities pounced upon them again and again with a vengeance. It seemed that all the cumulative bitterness and frustration associated with the woes of a steadily declining empire were being discharged and channeled into deadly outbursts against the discontented but highly vulnerable Armenians. The Armenian Reform movement, which had succeeded the Armenian Revolutionary movement, became the catalyst, and the Ottoman Empire's Armenian population at large was consequently reduced to the status of a perennial shock absorber. The shocks would only increase in scope and intensity.

With the outbreak of World War I, the Turko-Armenian conflict reached its apogee due to the February 1914 Reform Accord that was finally imposed upon Turkey by the combined exertions of the European powers—Germany and Russia in particular. The contemporary reactions of CUP leaders leave no doubt that this particular episode was the critical turning point in the steady escalation of the Turko-Armenian conflict. This Reform Accord provided not only the institutional changes ensuring actual equality for the Armenian subjects, but also a faint degree of local autonomy that infuriated these CUP leaders and at the same time filled them with anxiety about the future ramifications of the statutory changes. At this very juncture of political development, the die was cast for the Armenians. Utterly resolved to prevent a repetition of the Balkan Syndrome—i.e., the road to projected independence via equal rights, semi-autonomy, and autonomy—CUP authorities systematically proceeded to pave the ground for a radical solution to the problem. Radicalism meant the

adoption of the Hamidian formula: to solve the Armenian question by way of eliminating the Armenians themselves.

The outbreak of world war was deemed to be the long-awaited ideal opportunity for this endeavor. In stages, starting with the military conscription of most able-bodied Armenian men, the Armenian population of the empire was completely uprooted, dislocated, deported, and through attendant massive massacres all but eliminated. The exigencies of war and warfare provided all the requisite opportunities to consummate this end. The military, with all its organizational resources, executive discipline, and proficiency, served as the mainstay of the lethal enterprise. The same war context was utilized by the ruling CUP leadership to effect the release of thousands of convicts from the various prisons of the empire—all for massacre duty.

The vastness and intensity of this exterminatory undertaking is matched and even exceeded by the singular boldness attending it. And in examining the conditions underlying this boldness, one's attention is drawn to the contagiousness of the successes of previous Armenian massacres, such as those identified with the regime of Sultan Abdulhamit II. What stands out throughout these past episodes of massacres is the constancy, and hence the predictability, of impunity accruing to the whole gamut of organizers, supervisors, and implementers of these serial massacres. As a rule, such impunity serves to embolden the perpetrators not only to deny their crimes, and deny them vehemently when needed, but also to seriously consider repeat performances when challenged, provoked, or otherwise motivated. It is, therefore, almost impossible to fully understand the World War I Armenian Genocide without fully taking into account the cumulative history of impunity attending the episodes of Armenian massacres perpetrated in the decades preceding World War I.

It is worth observing that when responding to the calamity of the wartime Armenian experience, Winston Churchill, the foremost contemporary British statesman, did not limit himself to merely castigating the mass murder in question in terms that in contemporary legal language are coterminous with "genocide." He used, for example, such language as "a crime" resulting from a "deliberate policy" that "was planned and executed," with the result that "the clearance of a race from Asia Minor was about as complete as such an act on a scale so great, could well be." At the operational level, however, Churchill, in "a final attempt to break through Turkish defenses at the Dardanelles," ventured to offer to the War Cabinet an inordinate plan that is rarely mentioned, much less discussed, in history books. Namely, he proposed to the Cabinet in December 1915 that poison gas be used against the Turkish defenders, in part in retaliation for "the massacre of Armenians" that was then still going on.<sup>1</sup>

The present study explores the World War I Armenian Genocide in a particularly significant legal context, namely, prosecution through legally validated documentation. This significant context is further accentuated by several other

aspects. For the first time in modern Ottoman-Turkish history, for example, the highest-ranking governmental and ruling party authorities were subjected to criminal prosecution. Likewise, for the first time Armenian victims of centrally organized massacres were legally represented by Ottoman Turkish authorities bent on punishing the perpetrators. For the first time also, multitudes of Turks, civilian and military, of all ranks and stations of life, volunteered to publicly testify on behalf of the Armenian victims, in the process putting themselves at great risk. Notwithstanding these individuals' contributions, the successive courts-martial in charge of the criminal prosecution, when reaching and framing the series of verdicts, relied mostly on authenticated wartime official documents, only occasionally taking into account courtroom testimony. This fact alone imparts to the proceedings, and especially to the verdicts, inordinate substance and value, the more so since each one of the documents had two particular attributes. First, as noted in the Introduction, every one of them was examined and authenticated by competent officials, most of them holdover partisans of the defamed CUP regime attached to the Ministries of Justice and Interior; they then would affix on top or at the bottom of each document the formula "It conforms to the original" (*aslına muafıktır*). Second, in nearly all cases the defendants were asked to examine the documents bearing their signatures and verify their authenticity. This iron-clad procedure of document verification by the defendants themselves renders these courts-martial an invaluable source of historical scholarship, above and beyond their legal-criminal import.

Transcending these confines of domestic penal law, however, are the broader parameters of emerging international criminal law that form the general framework of this study. As noted in the main body of this work, in the immediate aftermath of the war, the highest authorities identified with the postwar Ottoman government raised their voices to severely condemn the wartime treatment of the Armenians. In doing so, they remarkably used the term "crimes against humanity." The sultan, the supreme Ottoman-Turkish authority, for example, used exactly these words when denouncing the crime (*kanuni insaniyete karşı ika edilen ceraim*). When introducing a motion in the parliament to launch an investigation of the crimes committed during the war, Deputy Fuad, referring to the atrocities involved, invoked in the parliament the principle of "the rules of humanity" (*kavaidi insaniye*). And the preeminent Ottoman statesman Reşit Akif, the first postwar president of the Council of State, a supreme judicial organ, in a speech in the Senate on 21 November 1918, likewise invoked "the world's sense of humanity" (*cihani insaniyeti*) when decrying the massacres perpetrated against the Armenians. Moreover, in the Yozgat court-martial verdict, the condemned perpetrators of the Armenian massacres were accused of having violated the principle of "human sentiment" (*hissiyatı insaniye*).

This principle of international law came into special prominence on 24 May 1915, when the Allies—Great Britain, France, and Russia—jointly warned Ottoman Turkey about the legal criminal consequences of the ongoing wartime massacres against the Armenians. In doing so they introduced, and thus promulgated for the first time as a general principle of law, the term “crimes against humanity.” Equally significant, this norm of “crimes against humanity,” with a special reference to the Armenian case, was embedded as a legal precedent in Article 6 (c) of the Nuremberg Charter and Article 5 (c) of the Tokyo Charter. Moreover, Article II of the Control Council Law No. 10, applied to Germany under occupation, stipulates also “crimes against humanity” as a basis for prosecution against individual Nazis.

The Commission of 15—the post-World War I Sub-Commission III on the Responsibility for the Violation of the Laws and Customs of War—made a reference in its final report of 29 March 1919 to the “customs of war, laws of humanity, and clear dictates of humanity.” In doing so it embraced the so-called Martens clause, which had become part of the Preamble of the 1907 Hague Convention IV, formally introducing for the first time the norm of “laws of humanity” to be applied to civilian populations trapped in the vortex of warfare.

The significance of these initiatives ushering in a new principle of international criminal law is that they exude a transnational or universal ethos in the application of criminal justice, which, as will be seen later, was administered strictly in terms of a subtext of Ottoman national, rather than international, penal codes. By doing so they helped set the broader parameters of such justice: what stands out here is that all three branches of the Ottoman government, the executive, legislative, and judicial, configure in this unique resolve to prosecute and punish the perpetrators involved. Equally significant, these international legal initiatives, providing for a new set of principles of criminal law—ones that target state and governmental officials and that essentially emerged in connection with the Armenian Genocide—in which war crimes, crimes against humanity, and genocide are inextricably entwined, also signal the prosecution of that genocide as a telling precedent for Nuremberg.

Apart from defining justice and to some extent even exercising a measure of punitive justice (though without actually delivering the requisite justice), these legal proceedings stand as the most formidable bulwark against all attempts at denial, irrespective of their persistence and state-sponsored arrangements of institutionalization. The array of attested documents, showcasing the magnitude of the crime, is in this sense the most potent antidote against such denial. The paramount fact is that a crime does not dissipate or disappear because it is denied, or even because it is denied for a long time by some individuals or entities identified with the perpetrator camp. Remarkably, the deniers themselves, often entrapped in the vortex of the turbulence of the crime, unwittingly end up attesting to that crime, thereby rendering any subsequent denials not only

specious but even more incriminating. A recently uncovered official wartime Ottoman document punctuates this fact, albeit in veiled language. In the thick of the criminal operations, Talaat, the principal taskmaster, is quoted as saying, “the aim of the Armenian deportations is the final solution of the Armenian Question” (*Ermeni meselenin suret-i katiyede halli*).<sup>2</sup>

## Notes

1. Winston Churchill, *The World Crisis: The Aftermath*. Vol. 5 (London: Thornton Butterworth Ltd., 1929), p. 405.
2. Interior Ministry Archives, D.H. Cipher Office, SFR File 54.426, 13 July 1915 report.