



TURKISH INDUSTRIALISTS' AND BUSINESSMEN'S ASSOCIATION

**U.S. H. RES. 106:
FACTUAL AND LEGAL
DEFICIENCIES**



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FOREWORD

TÜSİAD (Turkish Industrialists' and Businessmen's Association), which was founded in 1971, according to the principles laid in the Constitution and in the Associations Act, is a non-governmental organization working for the public interest.

Committed to the universal principles of democracy and human rights, together with the freedoms of enterprise, belief and opinion, TÜSİAD tries to foster the development of a social structure which conforms to Atatürk's principles and reforms, and strives to fortify the concept of the paramountcy of the rule of law, a democratic civil society operating in a secular state where the government primarily attends to its main functional duties.

TÜSİAD aims at establishing the legal and institutional framework of the market economy and ensuring the application of internationally accepted business ethics. TÜSİAD believes in and works for the idea of integration within the international economic system, by increasing the competitiveness of the Turkish industrial and services sectors, thereby assuring itself of a well-defined and permanent place in the economic arena.

TÜSİAD supports all the policies aimed at the establishment of a liberal economic system which uses human and natural resources more efficiently by means of latest technological innovations and which tries to create the proper conditions of for a permanent increase in productivity and quality, thus enhancing competitiveness.

TÜSIAD, in accordance with its mission and in the context of its activities, initiates public debate by communicating its position supported by scientific research on current issues.

This report was prepared by Mr. David Saltzman initiating to analyze the factual and legal deficiencies of the U.S. H. Res. 106 that was approved by the U.S. House Foreign Affairs Committee but withdrawn from the agenda of the House of Representatives.

Reflections on the Politics of History

The Turkish Industrialists' and Businessmen's Association, TÜSİAD, wishes to initiate a new platform for discussing the fate of the Armenian citizens of the Ottoman Empire during World War I. The controversy over this issue and the overly politicized nature of the debate poison Turkey's relations with its closest allies and broaden the appeal of anti-Western sentiments among the Turkish public.

Most organizations of the Armenian Diaspora, academics as well as some political operatives insist on calling the tragic events of that period "genocide". Their further insistence on engaging in a serious debate over the historical record only after admission by Turkey that genocide had been committed makes it impossible to have an open discussion.

The closing of the mind on the debate over the most serious of accusations that can be thrown at a people as a whole then allows the politicization of the matter. The world public opinion has already been shaped by this one-sided argument. Political expediency, perhaps more so than a desire to set the historical record straight, leads Parliaments in democratic countries to self-righteously single the Turkish people out for this heinous crime. Disregard for the facts, refusal to recognize counterfactual arguments, ignoring the context facilitate the perpetuation of the received opinion.

Open or disguised censorship are applied to those who are knowledgeable or brave enough to challenge the militant version of the events. In some cases scholars, libeled as 'denialists', have been threatened with violence or have been physically attacked. Careers have been endangered because of the actions taken by fanatics who are more interested in scoring political points than seeking the truth.

There has never been a legal opinion that defined the tragic events of 1915 as "genocide". Those who claim that genocide had indeed been committed never took the matter to court. In Turkey, the historical record concerning the relocation of Armenian population and the violence that accompanied them; the revolt and the disappearance of Armenian communities are being discussed more openly than ever today.

Such a welcome development is being hampered by attempts to legislate history that most Turks see as ill intentioned, unfair and hostile to their national identity. Whereas the Turkish government has been gradually opening its archives to the use of researchers, many of the pertinent and relevant sources such as the Armenian Dashnak Party archives remain inaccessible.

Under these circumstances neither the efforts to get to the bottom of the historical truth nor the efforts to get the relations between Turkey and Armenia will lead anywhere. Instead yet more generations will have been brought up with hate and enmity and two neighboring countries will not benefit from one another's resources.

At TÜSIAD we believe that a more reasonable and politically less polluted way must be found for getting to the bottom of this matter. To begin with we feel the pain and suffering of all those who had become victims of war, violence, famine and epidemics during these turbulent times, Ottoman Armenians in particular. Turks and Armenians have lived together for almost a thousand years and shared a common history, culture, social habits and a land they all loved.

The Armenian community produced many important Ottoman statesmen who served their country well. At the time of the relocation order there were Armenian soldiers fighting in the Ottoman army, defending the realm in Gallipoli. We must recognize the terrible loss of life and the end of many communities' coexistence for the tragedy that it is and mourn our losses. But in doing so we must avoid a one-sided reading of history and the vilification of a people in essentialist terms.

Therefore TÜSIAD will undertake to create a variety of platforms whereby this issue can be discussed calmly, objectively and in a multifaceted way that will avoid a blame game. This report is a modest contribution to the larger debate and our first step in engaging with this issue.

We are not historians or jurists. We are simply concerned about seeking the truth on the Armenian issue. Equally we are interested in fighting a libel that has been accepted as historical truth by too many for far too long.

TÜSIAD Board of Directors

David Saltzman

David Saltzman is a principal member of Saltzman & Evinch, PC. He is now in his 15th year of representing clients involved in Turkish-American affairs. Mr. Saltzman has represented the Turkish Foreign Ministry and Ministry of National Defense in litigation before the U.S. courts and has advised the Turkish Embassy on a variety of issues important to its relations with the U.S. government and its services to Turks living in the U.S.

Mr. Saltzman also has represented or presently represents a number of Turkish American non-profit organizations, including the Turkish Coalition of America, the Union of Chambers and Commodities Exchanges of Turkey, U.S. Office (TOBB-USA), the Institute of Turkish Studies, the Bylaws Committee of the Assembly of Turkish American Associations, the American Turkish Veterans Association, the Atatürk Society of America, and the ARI Foundation USA. He also advises the TC-USA PAC bipartisan political organization.

In the private sector, Mr. Saltzman is lead counsel for franchising and leasing in Turkey for Subway Sandwiches, lead counsel for the Onacor USA, LLC trading company, which is the U.S. agent of the MKEK defense manufacturing company; U.S. counsel to Red Star Aviation (İstanbul), and has served in varying capacities Innovative Emergency Management (Baton Rouge), EYK Mining (Muğla), Turkey.

Mr. Saltzman has traveled extensively in Turkey and the surrounding region and has authored numerous papers and articles, many with his colleague, Günay Evinch. He has spoken before large audiences on international affairs on numerous occasions and has lectured at the Smithsonian Institution regarding the illicit trade in Turkish cultural property and at the National Foreign Affairs Training Center regarding the Turkish judicial system. Mr. Saltzman maintains at least one pro bono matter at all times.

Prior to forming Saltzman & Evinch, P.C., Mr. Saltzman was an associate in the New York office of Chadbourne & Parke LLP. Mr. Saltzman received his J.D. from Washington & Lee University School of Law. He conducted his Bachelor's studies at the College of William & Mary in Virginia and the Université Paul Valéry in Montpellier, France.

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INTRODUCTION

INTRODUCTION¹

The purpose of this analysis is not to state authoritatively or with exhaustive detail whether the Armenian allegation of genocide is valid, but rather to demonstrate summarily that a resolution expressly arguing in favor of the genocide thesis, which is presently pending before the U.S. House of Representatives, is deeply flawed and, therefore, unworthy of passage.

H. Res. 106, the “Affirmation of the United States Record on the Armenian Genocide Resolution,” was introduced in the U.S. House of Representatives on January 30, 2007.² The resolution ostensibly concerns historic events many decades old, while also calling upon the President to adjust U.S. foreign policy to reflect the resolution’s interpretation of those events. The resolution employs a prosecutorial tone and introduces numerous, carefully worded findings culled from our historical records. Yet as a work of historical objectivity the resolution fails because it too severely and selectively whittles down a complex sequence of events related to the collapse of the Ottoman Empire, thus stripping away their crucial historical context. The residual narrative, which forms the backbone of the resolution, is too slender to support the weight of the broader historical record.

Perhaps more importantly, the resolution issues a grave criminal charge, yet affords the accused no meaningful opportunity to defend itself.³ By leveling this charge and asking the President to adjust U.S. foreign policy to reflect it, the resolution impermissibly forces the President’s hand while unnecessarily creating an adversarial relationship with Turkey. And by rendering legislative judgment the resolution circumvents the United Nations Genocide Convention and usurps the statutory role of the International Court of Justice.

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2 A companion resolution of almost identical wording, S. Res. 106, has been introduced in the Senate; Congressional leaders have chosen to pursue passage of the House version first. These currently pending resolutions are nearly word for word iterations of a prior proposed resolution, H. Res. 316, introduced on June 14, 2005, which was not brought to a vote prior to the expiration of the 109th Congress.

3 When the House Foreign Affairs Committee considered the resolution on October 10, 2007, no testimony was taken or presented. The committee approved the resolution by a vote of 27-21. Debate concerning the resolution was limited to the possible impact on U.S. foreign relations in the event of the resolution’s passage, while largely avoiding discussion of the resolution’s content. The author was present in the committee room at that time.

P A R T

THE RESOLUTION'S CONSTRICTED
USE OF THE HISTORICAL RECORD

Below, the resolution's enumerated clauses are examined seriatim for accuracy and whether any contrasting evidence exists that would demonstrate that a particular finding is, at a minimum, incomplete or purposefully misleading.

Text of the Resolution:

SECTION 1. SHORT TITLE. This resolution may be cited as the 'Affirmation of the United States Record on the Armenian Genocide Resolution'.

Summary Reply:

The resolution mischaracterizes the U.S. record. There is no record on the "Armenian Genocide" per se; the complete U.S. record on the events in Eastern Anatolia during the closing years of the Ottoman Empire contains reports depicting a tragedy, but not a one-sided affair. The U.S. record includes reports not only of Ambassador Henry Morgenthau, who never left Istanbul, but also of respected envoys that documented the Armenian revolt and questioned accounts of massacres.

Analysis:

A. The U.S. Record Includes the Papers of Admiral Mark Bristol, U.S. High Commissioner to the Ottoman Empire Immediately Following World War I

Admiral Bristol's papers, some 33,000 items, can be found at the U.S. Library of Congress in the Manuscript Division. These oft-overlooked documents comprise part of the U.S. historical record concerning the Armenian revolt and the Ottoman military response. Any neutral assessment by the U.S. of the Armenian allegation of genocide must take Bristol into account. Unlike Morgenthau, Bristol visited eastern Anatolia, the region in which the tragedy unfolded, and took reports from eyewitnesses and investigators directly under his command. He stayed in the general area for a total of eight years, compared to Morgenthau, who spent less than three years in the Ottoman Empire, and all of them in the capital, Istanbul.

Certain Armenian scholars dismiss Bristol as a Turcophile.⁴ Bristol, however, had unkind things to say about most residents of the region, including the Turks.⁵ This stands in contrast to the blatant Turcophobia of Henry Morgenthau and several of his consuls. In other words, Bristol's words should not be construed as reflecting any innate favoritism toward Turks or Muslims.

Bristol's papers recount, for example, that he was in the region during the Ottoman recapture of Kars in October 1920. Armenian accounts of this action -- the accounts most likely to have been publicized outside of the region -- report up to 10,000 Armenians slaughtered. Yet Bristol wrote on November 7, 1920 that, "A telegram was received from Kars, through the Italian military authorities in Anatolia, stating that our Americans [relief workers sent to care for Christians] were safe and going ahead with their work and not being molested by the Turks; also that there were no massacres, and our relief workers were permitted to take care of the orphans as usual." Bristol later, on October 31, 1920, received a telegram from Edward Fox, District Commander for Near East Relief in Kars stating, "All the Americans in Kars are well, and the Turkish Army is full of concern for us and accords us all considerations. We have been given permission to continue our activities as before. The Turkish soldiers are well disciplined and there have been no massacres." It bears mention that Near East Relief's primary mission was to care for Armenians. Fox also provided a lengthy eyewitness memorandum on the fall of Kars. After a visit from Fox, Bristol concluded in his "Report on Operations" for the week of November 7, 1920 that, "There had been no massacres." Thus, Bristol's dissenting reporting stands in stark contrast to better-publicized reports of this one episode that have formed part of the genocide allegation.⁶

An exchange of letters, included among the Bristol papers, is also telling. In early 1921 Bristol wrote to James Barton, the Secretary of the American Board of Commissioners for Foreign Missions, "I see that reports are being freely circulated in the United States that the Turks massacred thousands of Armenians in the Caucasus. Such reports are repeated so many times it makes my blood boil. The Near East Relief have the reports

⁴ See e.g., a February 13, 2001 letter to The Washington Times by Levon Marashlian arguing that Bristol was pro-Turkish, and generally lacking in ethics.

⁵ "I have no use for the Turk." Bristol letter to Frank L. Polk, December 4, 1920.

⁶ A representative book describing the events at Kars as a massacre is Armenia, Survival of a Nation by Christopher Walker (1990), which is available in its entirety online at: <http://armenia-survival.50megs.com/index.htm>.

from Yarrow⁷ and our own American people which show absolutely that such Armenian reports are absolutely false. The circulation of such false reports in the United States, without refutation is an outrage and is certainly doing the Armenians more harm than good. ... In addition to the reports from our own American Relief workers that were in Kars and Alexandropol, and reports from men such as Yarrow, I have reports from my own Intelligence Officer [Dunn] and know that the Armenian reports are not true.”

In his response, Barton noted, “With reference to the false reports that come through reporting massacres of the Armenians by the Turks. There is no one who can deprecate this more than I do. But there is a situation over here which is hard to describe. There is a brilliant young Armenian, a graduate of Yale University, ... [who is] constantly reporting atrocities which never occurred and giving endless misinformation with regard to the situation in Armenia and in Turkey.”

That Bristol’s experiences, reports, and analyses, which in some important respects run counter to the allegation of genocide, are ignored by H. Res. 106, calls into doubt whether its findings are the product of careful historical research. The deliberate selection of accounts that do not include dissenting opinions like those given by Bristol indicate that the resolution’s drafters want to sidestep any inconvenient controversy in the genocide allegation.

B. The U.S. Record Includes the Papers of Lieutenant Robert Dunn

U.S. Naval Lieutenant Robert S. Dunn was an Intelligence officer attached to the mission of Admiral Mark Bristol. Between 1919-1921, Lieutenant Dunn traveled extensively with the Armenian rebel commander Drastamat Kanayan, also known as Dro, and his army in the region. In his book, “World Alive, A Personal Story”,⁸ he recounts some of his conversations with Dro in which Dro boasted of slaughtering Muslims. Dunn recounted his own experiences seeing the corpses of Muslims massacred by Armenians.

⁷ Dr. Earnest A. Yarrow was the civilian director of Near East Relief, a U.S. government funded humanitarian organization that primarily cared for Christian refugees in the Ottoman Empire.

⁸ Crown Publishers, Inc., New York (1952).

C. The U.S. Record Includes the Papers of Colonel Charles Furlong

Charles W. Furlong was one of the great American explorers of distant lands and observers of foreign peoples. During WWI as a U.S. Army intelligence officer he spent significant time in the eastern Ottoman Empire. President Woodrow Wilson found his contributions so valuable that he appointed him to the U.S. delegation to the Paris Peace Conference. Furlong not only noted Armenian massacres of Turks, he criticized the U.S. Government for willfully ignoring Turkish losses at the hands of Armenians

In a March 23, 1920 letter to President Wilson, Furlong criticized what he perceived as America's susceptibility to pro-Armenian propaganda, he wrote, "We hear much, both truth and gross exaggeration of Turkish massacre of Armenians, but little or nothing of the Armenian massacres of Turks." In the same letter, Furlong suggested that some alleged massacres of Armenians were based on poor or politically motivated reporting: "The recent so-called Marash massacres [of Armenians] have not been substantiated, in fact, in the minds of many who are familiar with the situation, there is a grave question whether it was not the Turk who suffered at the hands of the Armenian and French armed contingents which were known to be occupying that city and vicinity."

In a July 25, 1921 speech, whose transcript survives, Furlong declared, "I know of no country today that is having more unjust propaganda put over against it [than Turkey]. Turkey has its faults, but half truths are worse than none. We hear half the truth when we hear of the massacres of Armenians in Turkey; we'll have the other half when we hear of the massacres of Turks by Armenians and Greeks."

One could consider Furlong's fears relevant today. In his March 23, 1920 letter to President Wilson, Furlong worried that the U.S.' overt partiality toward Christian pleas would harm our ability to carry out policy in the Muslim world. Furlong said, "[O]ur opportunity to gain the esteem and respect of the Moslem world ... will depend much on whether America hears Turkey's untrammled voice and evidence which she has never succeeded in placing before the Court of Nations." A right decision on the treatment of Turkey, Furlong continued, "will bind closer ... the eastern and western world ...," while a wrong decision, Furlong warned, "will be a calamity and may again set aflame an infinitely greater fire than that which seems to be smothered."

D. The U.S. Record Includes the Report of Consul General W.S. Hollis

As the reporting of Henry Morgenthau comprises that part of the U.S. record most central to the resolution's findings, one must consider whether other diplomats respected it. The U.S. record includes diplomatic dispatches indicating that Morgenthau and his successor, Elkus, relied too heavily on their Armenian translators and interlocutors, which resulted in skewed reporting.

On February 2, 1920, W. Stanley Hollis, the U.S. Consul General in Beirut and then London, wrote to the Secretary of State voicing extreme doubt about the quality of the reporting produced by the U.S. Embassy in Istanbul. He accused the Embassy of disregarding his reports and falling under the sway of the Embassy's Armenian translator, Mr. Arshag Schmavonian. Hollis wrote, "Although in all of my dispatches, and in my letters to the Embassy, I confined myself to statements of actual fact ... such reports of facts and actual occurrences were not well received by the Embassy. ... [T]he attitude of the Embassy at [Istanbul] towards a Consular Officer's reports was largely influenced by the opinions of its Armenian Dragoman, Mr. Schmavonian..."

E. The U.S. Record Includes the Report Captain Emory Niles and Mr. Arthur Sutherland

In 1919, immediately upon the cessation of hostilities in the east Anatolian war zone, the U.S. Government commissioned Captain Emory Niles and Mr. Arthur Sutherland to investigate the situation in order to provide support for the grant of aid to the Armenians by the American Committee for Near East Relief. They wrote,

"In this entire region [from Bitlis through Van to Bayazit] we were informed that the damage and destruction had been done by the Armenians, who, after the Russians retired, remained in occupation of the country, and who, when the Turkish army advanced, destroyed everything belonging to the Musulmans. Moreover, the Armenians are accused of having committed murder, rape, arson and horrible atrocities of every description upon the Musulman population. At first we were most incredulous of these stories, but we finally came to believe them, since the testimony was absolutely

unanimous and was corroborated by material evidence. For instance, the only quarters left at all intact in the cities of Bitlis and Van are the Armenian quarters as was evidenced by the churches and the inscriptions on the houses, while the Musulman quarters were completely destroyed. Villages said to have been Armenian were still standing whereas Musulman villages were completely destroyed.”

...

“[I]n the region which we traversed the Armenians committed upon the Turks all the crimes and outrages which were committed in other regions by Turks upon Armenians. ... Armenians massacred Musulmans on a large scale with many refinements of cruelty, and ... the Armenians are responsible for most of the destruction done to towns and villages.”⁹

Thus, the U.S. record contains primary documentation that there was an Armenian revolt, that it continued through and after World War I, that Armenians attacked Muslims just as Muslims attacked Armenians, and that the U.S. wartime Ambassador to the Ottoman Empire, then an enemy state, may have edited or suppressed reports in order to convey an anti-Ottoman message. None of this is acknowledged in H. Res. 106, further calling into doubt its honesty and historical credibility.

⁹ According to one historian, “Since the findings of Niles and Sutherland are so obscure (only one partial copy exists today in the U.S. Archives ... well-hidden among documents on very different topics, luckily not destroyed, but only buried”), one must wonder why it has been so ignored.” Justin McCarthy, Death and Exile: The Ethnic Cleansing of Ottoman Muslims, 1821-1922, (Darwin Press, 1992). A copy of the report can be downloaded at: http://louisville.edu/a-s/history/turks/Niles_and_Sutherland.pdf

Text of the Resolution:

[Finding] (1) The Armenian Genocide was conceived and carried out by the Ottoman Empire from 1915 to 1923, resulting in the deportation of nearly 2,000,000 Armenians, of whom 1,500,000 men, women, and children were killed, 500,000 survivors were expelled from their homes, and which succeeded in the elimination of the over 2,500-year presence of Armenians in their historic homeland.¹⁰

Summary Reply:

The resolution overstates the Armenian death toll and glosses over divergences among the historical resources with the objective of garnering an emotive response. While the resolution's authors would like to give the impression that the numbers given are carved in stone, there is no consensus among scholars on the Armenian death toll. Regarding the U.S. record, our archives from the Paris Peace Conference of 1919 reveal figures that are considerably lower than alleged in H. Res. 106.

Analysis:

Finding 1 provides no basis for the numbers employed despite the fact that there is agreement neither among the original sources for those figures nor among scholars who have later interpreted them. The figures selected for use in the resolution run counter to the weight of the historical record as derived from numerous sources, some of them Armenian or pro-Armenian. To dispute the numbers is not to challenge the existence of a tragedy, though it may challenge its scale. Nonetheless, to dishonestly inflate numbers does a great disservice to the pursuit of truth and hampers honest efforts to provide a full understanding of the Ottoman Armenian experience, making more difficult rapprochement between Turks and Armenians who share a rich and centuries-long history.

¹⁰ After reading this paper, one may make fair comment that many of the sources that would support a contra-genocide analysis are from 1918 or later. However, the resolution posits that the alleged genocide continued until 1923. Therefore, all sources from the period defined by the resolution should be considered germane to the question of the resolution's accuracy. Most works on the fate of the Ottoman Armenians indicate that the vast majority of deaths as a result of the relocation orders and intercommunal fighting occurred between the spring of 1915 and the end of 1916. H. Res. 106 would have done better to focus on this period. Regarding materials discussing the fate of the Armenians before 1918, one could consult reports of missionaries, the reliability of which is the subject to a certain amount of debate. See e.g., Robert Brenton Betts' reviews of books by Justin McCarthy and Guenter Lewy appearing in 15 Middle East Policy 176-179 (Spring 2008).

Counting civilian losses during wartime is far from an exact science. Even the current war in Iraq has generated its own civilian body count controversies, with low end estimates differing from high end estimates by as much as a factor of seven. And this is in a war zone where the news media and international aid workers are permitted to move freely and in which there is no famine or epidemic.¹¹ Therefore, for the losses of Armenians from eastern Anatolia the best one can do given the wide divergence in reporting sources is a population deficit study. By this method, any estimate of Armenian losses must proceed from a count of the prewar population of Armenians in the Ottoman heartland. Subtracting those known to have survived the relocations or those who migrated to Russia or other countries, a rough figure of losses can be derived.

A. Prewar Population Figures

Nearly every contemporary source of population figures from the late Ottoman Empire, whether Christian missionary¹², foreign diplomat, or government, estimates the prewar Ottoman Armenian population at between 1 million and 1.6 million. The higher figures generally appeared decades later from sources with no connection to the events in question. Consider the following figures for the prewar population of Ottoman Armenians, listed with their sources:

11 One would expect that the Iraq War would produce voluminous reliable data on civilian losses in the war zone. This, however, is not the case. Iraq Body Count (www.iraqbodycount.org) provides a low end figure of confirmed civilian deaths of approximately 82,000, while a Johns Hopkins University / Lancet study puts civilian deaths as a result of the U.S.-led invasion at over 650,000. (<http://www.jhu.edu/~gazette/2006/16oct06/16iraq.html>). And there are many studies that report findings above and below these figures.

12 Figures provided by missionaries are often, though not always, exaggerated. George M. Lamsa, himself a missionary, wrote in 1923 in his book, *The Secret of the Near East*, state, "In some towns containing ten Armenian houses and thirty Turkish houses, it was reported that 40,000 people were killed, about 10,000 women were taken to the harem, and thousands of children left destitute; and the city university destroyed, and the bishop killed..." Another missionary, Johannes Lepsius, who wrote extensively on the plight of the Ottoman Armenians apparently never visited Anatolia and spent just one month in Istanbul during World War I.

Russian General Selonoy	0.73 million
British Consul at Erzurum, Henry Trotter	0.80-1.0 million
British “Blue Book”, auth. Arnold Toynbee	1.06 million
Ottoman Census of 1914	1.22 million
French Consul at Van, M. Zarceshi	1.30 million
Vahan Vardapet, Armenian Cleric	1.26 million
British Historian H.F.B. Lynch	1.33 million
Armenia-American Society, George Montgomery	1.40-1.6 million
French “Yellow Book”, auth. Vital Cuinet	1.45 million
Encyclopedia Britannica (1911 ed.)	1.50 million
Armenian Patriarch Malakia Ormanian	1.58 million
German Missionary Johannes Lepsius	1.60 million

Prewar population figures exceeding 1.6 million are universally supplied by the Armenian Patriarchate or those relying on it. Such figures, presented immediately after WWI, likely were inflated with the goal of proving that Armenians were sufficiently numerous relative to other local populations to have merited a large, exclusively Armenian state in Eastern Anatolia, as was envisaged in the Sèvres Treaty and argued over at the Paris Peace Conference of 1919. Indeed, the notable Armenian Scholar Richard Hovannisian has agreed that the prewar population figures for Armenians have been overstated, while counts for Muslims have been understated.¹³

Further, recent research in the U.S. Archives has revealed documents from the Preliminary Peace Conference of Paris of 1919 that provide yet more sources on the Armenian population in the Ottoman Empire. Among this collection is the report of a Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties. In it the U.S., one of war’s victors, entirely blamed the vanquished: Germany and the Ottoman Empire. The report shows that a subcommission was appointed to (a) establish whether criminal acts were committed during the war and (b) prepare prosecutions. Among the charges leveled by the subcommission, which was chaired by U.S. Secretary of State Robert Lansing, was “Massacres of Armenians by the Turks.” The report presented to the conference lists as the primary source of this accusation a

¹³ Richard Hovannisian, *Armenia on the Road to Independence*, 1988 (U. of California Press, 1967). At page 37 of this work he estimates that the prewar Armenian population was between 1.5 and 2 million.

“Memorandum of the Armenian Patriarchate of [Istanbul] addressed to the Ambassadors of France and Great Britain.” The next source listed is an “Armenian Memorandum addressed to the Conference” and finally a “Report on the American Relief Committee in favor of the Armenians and the Syrians.” In other words, all three sources were linked to Armenian political and religious parties, not objective arbitrators.

Moreover, President Wilson’s own emissary to the Paris Peace Conference found that two-thirds of the Ottoman Armenians survived the war. Wilson’s appointee, George Montgomery, was born in Marash in the Ottoman Empire in 1870 to missionary parents. He traveled extensively in the region and, after pursuing doctoral studies at Harvard, accompanied the King-Crane Commission to Syria and Palestine. The U.S. government appointed him as an expert to the American Commission to Negotiate Peace in Paris in 1919. Among the issues to be considered was the partition of the Ottoman Empire, including the potential establishment of an Armenian state, which Montgomery supported. In short, Montgomery was an expert in the region. He was born there and had lived there. He was raised in a missionary family whose ambition was to minister to the Armenians.

Montgomery also was a member of the Armenia America Society. Among his papers is a letter from the President of the Armenian National Delegation to the Paris Peace Conference, Boghos Nubar, lauding him for his commitment to the Armenian cause.

Montgomery’s report, “The Non-Arab Portion of the Ottoman Empire,” nonetheless estimates the Armenians’ prewar population in Ottoman lands at 1.6 million. He added, “It is safe to say that the figures do not err on the side of exaggeration as to numbers of Armenians.”¹⁴

14. George Montgomery’s papers can be found in the Library of Congress Manuscript Division, Box 21, Armenia-America Society January-February 1920.

B. Calculating Losses on the Basis of the Remaining Population Post-War

Regarding the number who were subject to the wartime relocations but who remained after the war, whether in Turkey, in refugee camps, or in other countries, the figures are revealing:

Armenian General Boghos Nubar	390,000
British “Blue Book”, auth. Arnold Toynbee	500,000
Lausanne Peace Conf. Attendee Noradungian Gabriel	695,000
Armenia-American Society, George Montgomery	1.104 million
Near East Relief (U.S.)	2.14 million

From here the math is simple: For example, according to George Montgomery, the U.S.’ own representative to the Paris Peace Conference, Armenian wartime losses were did not exceed 500,000. For its part, the subcommittee on criminal acts of the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties Subcommittee described Armenian losses as “more than 200,000.” This is far short of the inflammatory 1.5 million figure used by H. Res. 106.¹⁵

According Georges de Maleville “Figures put forward by the Armenians increase moreover constantly from one year to the next, very widely until it exceeded the total of the Armenian population living in the Ottoman Empire in 1914!”¹⁶ In the words of the late Professor Stanford Shaw, then of UCLA, “Armenians claim that as many as 2 million were massacred, but no counts of the dead were ever taken, and the actual total can only be inferred. These claims are based on the supposition that the prewar Armenian population of the Empire was 2.5 million. According to the Ottoman census

15. The subcommission report contains no accusation that the Ottoman government contravened the 1899 and 1907 Hague Conventions, while it did accuse Germany, Austria, Hungary and Bulgaria of the same. Remarkably, the report presented to the Preliminary Peace Conference by the Commission on the Responsibility of the Authors of the War, discussed earlier, also did not consider that the Armenian relocations constituted a violation of the Hague Conventions.

16. De Maleville is the author of *La Tragedie Armenienne de 1915*, (Publications Fernand Lanore, Paris, 1988). The quote, contained on pages 82-83 of that work continues, “The truth is more moderate, and moreover it’s sinister enough. By basing itself on the official statistics of the Ottoman population in 1914, established by a service organized and managed at the time by an American, whose work was by no means disputed before examining the facts, we end at a figure of 300,000 victims. Still the latter includes (we have already indicated it) the ‘missing’, that is, the Armenians that have taken refuge in the area of Van taking a stand with the Russians and withdrew with them to later settle down in soviet Armenia. The figure missing 300,000 corresponds moreover exactly to that declared, exactly on December 11th, 1918, by the leader of the Armenian delegation in a letter to the Ministry of Foreign Affairs [Archives of French Foreign affairs, Levant, 1918-1929, Armenia V.M.2, fo.47]”

of 1914, however, it was at most 1.3 million. Half of these people lived in the areas affected by the [relocation], but ... it appears that about 400,000 people were actually transported in 1915-16. In addition, some 700,000 Armenians fled to the Caucasus, western Europe and the United States. As 100,000 remained in Turkey after the war, one can conclude that about 300,000 died if one accepts the Ottoman census reports, or 1.3 million if the highest Armenian figures are utilized.”¹⁷ The death toll cited by H. Res. 106 is, then, highly controversial and not reflective of historical accounts from, among other places, the U.S. archives.

Finally, Finding 1 of H. Res. 106 vastly understates the causes of death and other suffering in eastern Anatolia and deliberately ignores the suffering of Muslim civilians in the east Anatolian war zone, as many as three million dead, and Jews, as many as 20,000 dead. The tragic deaths of millions in eastern Anatolia were attributable to: (a) the Russian invasion of November-December 1914; (b) intercommunal fighting during the Armenian rebellion, an example of which was the siege of Van during which over 60,000 mostly Kurdish Muslims and 90% of the Jewish population were killed; (c) retaliation against Armenian civilians mostly by Kurdish tribes; (d) the Ottoman government’s poorly administered April 1915 decision to relocate several hundred thousand Armenian civilians from the eastern provinces to southern Anatolia and Ottoman Syria in an attempt to separate a portion of the Ottoman Armenians from the invading Russian Army; and (e) war-induced famine and disease, which afflicted all ethnicities, religious groups and nationalities in the region.

Thus, while is true and tragic that the Armenian existence in eastern Anatolia came to an end, it is equally true and tragic that the Armenians did not suffer alone.

In sum, H. Res. 106 passes off as fact a controversially puffed up figure that in actuality has been contrived to elicit emotion not historical understanding. Unfortunately, the rest of H. Res. 106 is equally manipulative of the historical record.

¹⁷ The New York Times, April 4, 1985.

Text of the Resolution:

[Finding] (2) On May 24, 1915, the Allied Powers, England, France, and Russia, jointly issued a statement explicitly charging for the first time ever another government of committing 'a crime against humanity'.

[Finding] (3) This joint statement stated 'the Allied Governments announce publicly to the Sublime Porte that they will hold personally responsible for these crimes all members of the Ottoman Government, as well as those of their agents who are implicated in such massacres'.

[Finding] (4) The post-World War I Turkish Government indicted the top leaders involved in the 'organization and execution' of the Armenian Genocide and in the 'massacre and destruction of the Armenians'.

[Finding] (5) In a series of courts-martial, officials of the Young Turk Regime were tried and convicted, as charged, for organizing and executing massacres against the Armenian people.

Summary Reply:

The statement referred to in Finding 2 lacks context. It was issued shortly after the Ottoman relocation orders went into effect and the first reports of massacres committed by Kurdish tribes reached the West, probably from missionaries. It is a propaganda piece meant to depict the suppression of an armed Armenian uprising as an act of spontaneous Muslim savagery. It totally ignores reports of the Armenian revolt, which long preceded the relocation orders, and which were long before received by the Allied governments from their own personnel. Indeed, as early as March 1896, the British vice-consul at Van reported to his government that Armenian insurgents had occupied part of Van. He added, "They terrorize their countrymen and by their outrages and folly, excite the Mohammedan population and render nugatory all efforts to carry our reforms. ... The more I learn of past events and the present state of this province, the more clearly I see that the criminal actions of these [Armenian revolutionary] societies have been largely responsible for the terrible scenes enacted here and all over Anatolia ..."

Nonetheless, Finding 2 is clear: the Allied Powers leveled the charges against the Ottoman government. However, it must first be acknowledged that the U.S., having not yet been fully convinced to enter the war, did not join this statement. Second, it must be acknowledged that the statement was rendered at a time when anti-Turkish and anti-Muslim propaganda was being issued constantly in an effort to enhance support for the war among the citizens of the Allied states. Third, under the American system of law, it is an absolutely bedrock principle that charges alone do not constitute convictions. Thus, we must look at whether the Allied Powers made good on their promises to “hold personally responsible” those alleged to have committed the crimes. When one does so, the answer is that the Allied Powers did not – The Allied Powers failed to obtain a single conviction of the Malta Detainees. It will be demonstrated that their failure, however, was not due to a lack of sustained effort.

Analysis:

Below the numerous efforts by the Allied Powers to hold Ottoman leaders responsible for crimes during the war are addressed chronologically.

A. The First Attempt to Hold the Defeated Powers Responsible: Post-War Ottoman Tribunals¹⁸

With the Mudros Armistice, the Allied Powers made their first attempt to hold responsible Ottoman leaders for wartime offenses. On March 4, 1919, with British support, members of the Liberty and Agreement Party took control of the Ottoman Cabinet, forcing out the Committee on Union and Progress (CUP), which had been the party in power during the war. A series of tribunals were established which, though nominally “domestic,” were overseen by the Allied Powers. One such tribunal, the Nemrut Mustafa Pasha Martial Courts, commenced on April 27, 1919 under the supervision of the Allied Powers. But by November 1918 many of the accused CUP leaders had already fled. Nonetheless, at the urging of the British, Liberty and Agreement Party Chairman Nuri organized the arrest of over 1,000 suspects, including members of the CUP who had been involved in the decision to relocate Armenian civilians. The Nemrut Mustafa Pasha Martial Courts of Allied-occupied Istanbul convicted and sentenced to death in absentia the Ottoman officials who had ordered the 1915 relocations.

¹⁸ See note 17 *infra*.

Courts such as the Nemrut Mustafa Pasha Martial Courts are best interpreted as ad hoc vengeance courts – the new government purging the protagonists of the old government. Indeed, the new government had much to dislike about the former government, which had gotten the Ottoman Empire into a ruinous war on the losing side. According to trial transcripts, although charges of mistreatment of Armenians were leveled, a majority of the charges and convictions were political retribution, related not to crimes against civilians, but to the war’s mismanagement. It is worth noting that in at least one set of hearings, the Yozgat Tribunals of February – April 1919, a rare one in which allegations of massacres against Armenians were charged, the prosecutor opined that Armenians instigated the massacres by engaging in a general revolt and by joining en masse with invading Russian forces. Although some individual soldiers were tried and convicted of crimes against Armenians and other civilians, characterizing these ad hoc tribunals as genocide trials is inaccurate. The U.S. Government apparently agreed: On April 4, 1919, Lewis Heck, the U.S. high commissioner in Istanbul, reported that, “It is popularly believed that many of [the trials] are made from motives of personal vengeance or at the instigation of the Entente authorities, especially the British.” Heck also expressed disapproval that the defendants in the Yozgat Tribunals were tried on the basis of “anonymous court material.”¹⁹

The U.S. House of Representatives has no jurisdiction to retroactively reinterpret these convictions as being for crimes not charged as is implied by Finding 4. This would put words and motives in the mouth of the original court of 1919. It would be more faithful to the cause of justice and the historical record for the resolution to cite the actual charges and convictions, and to weigh whether these trials met certain minimal standards of justice that are present in the judicial systems of most civilized states. Clearly, their standards were lacking.

B. A Commission of Neutral Nations was Thwarted by Great Britain

While the British government played a role in instigating the original charges discussed above, it apparently was not satisfied with the questionable standards of the spurious Ottoman tribunals. Thus, the British detained another group of Ottoman leaders on Malta in a second attempt to make good on threat to “hold personally responsible”

¹⁹ Heck’s correspondence can be found in Record Group 59, boxes 867 and 868 of the National Archives.

those who committed war crimes. But first, attempts were made to initiate neutral commissions.

Concerned that the British were manipulating the tribunals in an effort to have Turks essentially convict themselves of heinous crimes, on February 18, 1919, Reshid Bey, the Ottoman Minister of Foreign Affairs, appealed to five neutral European countries, Switzerland, Denmark, Sweden, The Netherlands and Spain, and invited them to appoint two legal assessors or magistrates to a “Turkish Commission” already constituted for investigating the alleged abuses in connection with the relocation of the Ottoman subjects of different race and religion.

Although the British occupation authorities in Istanbul attempted to prevent the local missions of the neutral governments from transmitting the appeal to their capitals, the messages got through. The British response from that moment forward was to thwart the neutral commission at all costs. The British Foreign Office, for example, informed the Spanish Ambassador on March 4, 1919, that “the acceptance of the Turkish invitation might, and probably would, run counter to the arrangements made at the [Paris] Peace Conference, and could cause serious complications.” Similarly, Mr. Balfour, the British delegate at the Paris Peace Conference, on March 25, 1919 suggested to Lord Curzon in a note that the Spanish Government should be discouraged from appointing any legal assessor to the so-called Turkish Commission.

Facing the intense opposition to the British Government, Spain, and then the other neutral governments declined the invitation of the Ottoman government either to take part actively in the process, or to act as independent observers.

C. An Appeal for a Neutral Inquiry by the Muslims of India Also was Thwarted by Great Britain

In early 1919, a delegation representing the Muslims of India, then British subjects, arrived at the Peace Conference to express concern that the British not subject the Ottoman Turks to vengeful acts. Mr. Lloyd George received the delegation on March 19, and in the course of the interview the delegation leader, Muhammad Ali, remarked with regard to the alleged Armenian massacres:

“The Indian Khilafat delegation must put on record their utter detestation of such conduct and their full sympathy for the sufferers, whether they be Christian or Muslim. However, if the Turks are to be punished as a criminal on the assumption that they have been tyrants in the past and their rule was intolerable, then the delegation claims that the whole question of these massacres must be impartially investigated by an international commission in which the All-India Khilafat Conference should be adequately represented. ... If in fact the supposed casualties have taken place, not only should their true extent be ascertained but the commission should go fully into the so-called ‘massacres’ and also the intrigues of the Tsarist Russia in Asia Minor after the success of similar intrigues in the Balkans; it should also address the secret revolutionary societies organized by the Christian subjects of the sultan, whose rebellious character was subversive of his rule. It should further go into the provocation of the Muslim majority in the region by the Armenians through armed revolts, massacres of the civilians and the terrorism acts. ... [A]nd if this thorough inquiry is carried out, and if it establishes to the satisfaction of the world that the Turks really have been guilty of these atrocities and horrible crimes, then we will wash our hands of the Turks.”

No action was taken on this sensible appeal for justice and fairness made by the Muslims of India, a group of British subjects numbering in the tens of millions.

D. The Second Major Attempt to Hold the Defeated Powers Responsible: The Malta Detainees and the Insufficiency of American Evidence

The Peace Treaty of Sèvres, which was imposed upon the defeated Ottoman Government, contained among its penalty clauses the requirement that the Ottoman government hand over to the Allied Powers those persons accused of massacres and to recognize the competence of Allied tribunals to try alleged Ottoman offenders. In this light, beginning, in May 1919, the Sultan’s government acting on behalf of its British masters undertook to furnish to the Allies “all documents and information of every kind” which would be applied as evidence the alleged crimes. British Admiral Richard Webb, in a cable to the Foreign Office did not mince words about the nature of the vengeance his government sought under the guise of a tribunal. The

Allied Powers sought, he said, “To punish all persons guilty of Armenian atrocities [which] would necessitate wholesale execution of the Turks, and I therefore suggest a retribution both on a national scale by dismembering the late Turkish Empire, as well as individually by the trial of high officials, such as those on my lists, whose fate will serve as an example.”

Eventually, apparently without serious investigation prior to their arrest, 144 ranking Ottoman officials were arrested and deported for trial to the island of Malta. The principal sources of information about the accused relied upon by the British High Commission at Istanbul were, however, local Armenians and the Armenian Patriarchate itself. Among the deportees were the Ottoman Grand Vizier, Speaker of Parliament, Chief of General Staff, State Ministers, Army Commanders, Sheikh-ul-Islam, Parliamentary Deputies, Generals, Colonels, Governors, University Professors, Editors, and well-known Journalists. The British accused them of three categories of offenses: (i) failure to comply with Armistice terms, (ii) ill-treatment of British prisoners of war, and (iii) outrages to Armenians in Turkey and Transcaucasia. Fifty-six of the deportees were eventually selected for prosecution.

While the accused Ottoman officials were interned on Malta, the British undertook to locate and examine documentary evidence with which to substantiate the charges. For the task they appointed an Armenian scholar, Mr. Haig Khazarian. His primary source of information was the Ottoman Archives. At the time, with Istanbul under occupation by Britain and France, the war’s victors, there was no issue about access to the archives.²⁰ Khazarian also sought the records of the British and U.S. governments.

Wary of the accuracy of the charges, Admiral de Roebeck, the British High Commissioner in Istanbul, wrote in September 1919 that “... it was impossible to rely on the allegations presented as facts, and that to sustain definite charges against these persons before an Allied Tribunal would be very difficult.” Sir Harry Lamb, working with Sir Rumbold, the British High Commissioner in Istanbul, commented, “No one of the [deported Ottoman officials] was arrested on any evidence in legal sense ... The whole case

²⁰ No party raised the issue of curtailed access to documents. Similarly, there were no allegations made that records had been purposefully destroyed.

of these deportees is not satisfactory. ... There are no dossiers in any legal sense. In many cases we have statements by Armenians of differing values, in some cases, we have nothing but what is common report and an extract from a printed pamphlet. It is safe to say that very few 'dossiers' as they now stand would be marked 'no case' by a practical lawyer ..."

British High Commissioner Rumbold wrote, "The American government is doubtless in possession of large amount of documentary information compiled at the time the massacres were taking place." Clearly he wanted American assistance in prosecuting his case. One could understand Rumbold's hopes. After all, Americans from Near East Relief had been permitted by the Ottoman government to care for the Armenians during the relocations. Therefore, on March 31, 1921, Lord Curzon cabled Sir Auckland Geddes, the British Ambassador in Washington, "There are in the hands of His Majesty's government at Malta a number of Turks arrested for alleged complicity in the Armenian massacres. There is considerable difficulty in establishing proofs of guilt. Please ascertain if the United States government is in possession of any evidence that would be of value for the purpose of prosecution." Lord Curzon, seeking action, wrote Geddes two months later, on May 27, "We should be glad to know whether there is any likelihood that evidence will be available." On June 1, Ambassador Geddes replied, "I have made several inquiries at the State Department, and today I am informed that while they are in possession of a large number of documents concerning the Armenian relocations, from the description, I am doubtful whether these documents are likely to prove useful as evidence in prosecuting Turks confined in Malta." The British Foreign Office then forwarded to Geddes a list of names and brief dossiers on 45 of those "who are being detained in Malta with a view of trial in connection with the alleged outrages perpetrated on Armenians and other native Christians." The Foreign Office asked Geddes "to ascertain as early as possible whether the United States Government can furnish evidence against any of these persons."

Rumbold's hopes, however, went unfulfilled. Approximately one month later, on July 13, 1921, the British Embassy in Washington replied, Charge d'Affairs Craigie writing,

“I have the honor to inform your Lordship that a member of my staff visited the State Department yesterday in regard to the Turks who are at the present being detained in Malta with a view to trial. He was permitted to see a selection of reports from the United States consuls on the subject of the atrocities committed on the Armenians during the recent war. These reports, judged by the State Department to be the most useful for the purpose of His Majesty’s government, being chosen from among several hundreds. I regret to inform your Lordship that there was nothing therein which could be used as evidence against the Turks who are being detained for trial in Malta. The reports seen made mention of only two names of the Turkish officials in question—those of Sabit bey and Suleyman Faik Pasha — and even in these cases the accounts given were confined to the personal opinions of the writers; no concrete facts being given which could constitute satisfactory incriminating evidence. [The] Department of State expressed the wish that no information supplied by them in this connection should be employed in a court of law. Having regard to this stipulation, and the fact that the reports in the possession of the Department of State do not appear in any case to contain evidence against these Turks which would be useful even for the purpose of corroborating information already in possession of H. Majesty’s government. I believe nothing is to be hoped from addressing any further inquiries to the Department of State in this matter.”

One may presume that the documents referred to in Craigie’s cable are precisely those that reside today in Record Group 59 in the U.S. Archives, referred to in Finding 8 of H. Res. 106. The British investigators and prosecutors considered these documents insufficient even to corroborate other evidence, yet alone to convict a single accused war criminal. Yet today astonishingly they are considered sufficient by H. Res. 106 to sustain a charge of genocide.

Thus, despite complete access to and control over Ottoman files in the conquered Ottoman Empire, despite a thorough review of U.S. Department of State documents, despite 30 months of exhaustive probing by Haig Khazarian and his corps of investigators, the British Procurator General determined that, since the evidence was lacking, it was “improbable that the charges would be capable of proof in a court of law.” The Malta

detainees, no longer criminal suspects, after two years and four months of detention without trial, were reduced to the status of bodies to be bartered in exchange for British prisoners of war.

Finding 4, by making great hay out of the Malta detainees' indictments, mentioning them among the spurious Ottoman tribunals, comes perilously close to reinterpreting acquittals as convictions. This ventures into the realm of historical revisionism.

E. The Allied Powers' Charges were without Basis in International Law²¹

The relocations of the Ottoman Armenians were matters internal to the Ottoman Empire, which at the time was facing an existential threat from, among others, a Russian Empire that had in the prior decades cleansed hundreds of thousands of Muslims from the Caucasus, Crimea, and the Balkans. The relocations, applying solely to Ottoman citizens, were not directed against any foreign power. International law during the World War I era was void of any treaty or principle by which one state could render judgment on the legality of the internal decisions of another state. American jurisprudence retains this principle in the Act of State Doctrine, by which American courts can reject jurisdiction in cases in which they would be asked to sit in judgment on the domestic affairs of a foreign state.²² The Allied powers also lacked justification to denounce the Ottoman actions as “crimes against humanity and civilization” since these also were concepts missing from the statutory, common, and treaty law of the day. The phrase, produced during wartime by one warring party to defame its opponent, could be considered propaganda.

One cannot argue that the adoption and implementation of the Ottoman Relocations Act of May 27, 1915 violated any positive prescription of the then existing law of nations. It was a piece of internal legislation and did not run afoul of any treaty engagement the Ottoman Empire maintained with other States. Therefore Armenian relocations of 1915-1916 were in line with the state of international law as it stood then.

²¹ The author would like to thank Dr. Yucel Guclu for providing much of this section.

²² See e.g., Underhill v. Hernandez, 168 U.S. 250 (1897) and Banco Nacional de Cuba v. Sabbatino, 360 U.S. 398 (1964).

Further, the Hague Conventions Respecting the Laws and Customs of War on Land of 1899 and 1907, though obviously in force at the time the Allied Powers were making severe statements against the Ottoman government and during which the British government was assiduously investigating the possible war crimes of the Malta detainees were never alleged to have been violated by the Ottoman government. Given the apparent zeal of the victorious Allied Powers to exact vengeance against and dismantle the Ottoman state, one should presume this was not a mere oversight as Germany, Austria, Hungary, and Bulgaria faced such allegations. Brigadier General Telford Taylor, who would later serve as Counsel to the Prosecution at the Nuremberg Tribunals commented on the possible application of the Hague Conventions to the Armenian case, concluding, “[T]he Armenians were citizens of the Ottoman Empire; there was no formal state of war between Turks and Armenians, and so the Hague Conventions were wholly inapplicable.”²³

²³ See Telford Taylor, The Anatomy of the Nuremberg Trials A Personal Memoir (Alfred Knopf, 1992), See also note 29 infra. Telford also noted, in a book review printed in The New York Times on March 28, 1982, that, “as far as wartime actions against enemy nationals are concerned, the Genocide Convention added virtually nothing to what was already covered (and had been since the Hague Convention of 1899) by the internationally accepted laws of land warfare, which require an occupying power to respect ‘family honors and rights, individual lives and private property, as well as religious convictions and liberty’ of the enemy nationals. But the laws of war do not cover, in time of either war or peace, a government’s actions against its own nationals ...”

Text of the Resolution:

[Finding] (6) The chief organizers of the Armenian Genocide, Minister of War Enver, Minister of the Interior Talaat, and Minister of the Navy Jemal were all condemned to death for their crimes, however, the verdicts of the courts were not enforced.

Summary Reply:

The three Ottoman Ministers deserve infamy for imprudently entering and horribly mishandling the war, which led to the deaths of hundreds of thousands of soldiers and civilians, Muslim and Christian alike. Yet the Ministers did not deserve the rough justice they received – assassination, which became the inspiration of and model for Armenian terrorist organizations whose leaders walk among us today.

Analysis:

The Nemrut Mustafa Pasha Martial Courts of Allied-occupied Istanbul convicted and sentenced to death Ottoman Minister of War Enver, Minister of Interior Talat, Minister of Navy Jemal, and prominent members of the Union and Progress Party, Bahaettin Shakir, Jemal Azmi, and Said Halim.

These Ottoman courts-martial, organized by the political enemies of the accused, proceeded under duress from the Allied powers that were then occupying Istanbul. The New York Times characterized the trials as, “officials of the new regime [clearing] the skirts of the Turkish people from blame for joining the war.²⁴ Although the prosecutors leveled charges of mistreatment of Armenians, the majority of the charges and convictions were not related to crimes against civilians; rather, they were related to the mismanagement of the war and so were more of the nature of political retribution. Vengeance was thus cloaked as justice through the artifice of these legal proceedings. Four members of the principal military tribunal were later arrested by the government on charges of contravening judicial procedure.

²⁴ “Turkey Condemns its War Leaders,” The New York Times, July 13, 1919. The story said the prosecutions, “were undertaken by officials of the new regime to clear the skirts of the Turkish people from blame for joining the war [and for atrocities committed during it].”

These abnormalities notwithstanding, in early 1921 Hagop Der Hagopian, leader of the Armenian terrorist network, “Nemesis,” assigned two young Armenian recruits, Soghomon Tehlirian and Arshavir Shirakian, to carry out the assassinations of the deposed Ottoman Ministers. After Tehlirian was briefed at the Boston, Massachusetts headquarters of the Armenian Revolutionary Federation, he traveled to Berlin where he shot and killed Interior Minister Talat at a restaurant on March 15, 1921. Shirakian shot and killed Navy Minister Jemal in Tbilisi, Georgia on July 25, 1922.²⁵ Shirakian also shot and killed Union and Progress Committee members Said Halim in Rome on December 5, 1921, and Bahaettin Shakir and Jemal Azmi a short time later in Berlin. Minister of War Enver died in battle in Central Asia some time later.

Finding 6 also conceals the gruesome toll taken by Nemesis’ successors. Primarily in the 1970’s and 1980’s Armenian terrorist groups ASALA and JCAG committed over 200 armed attacks, mostly bombings in public areas, killing 70 innocent people, including 31 Turkish diplomats, and seriously wounding over 520 people in a campaign of blood revenge in Western Europe, Turkey, and the U.S. More recently, Mourad Topalian, Chairman of the Armenian National Committee of America²⁶ until his indictment, was convicted in 2001 by a U.S. federal court in Ohio for terrorist crimes associated with a JCAG bombings in New York City and Los Angeles and with the attempted assassination of the Turkish Honorary Consul General in Philadelphia. The Armenian youths whom Topalian directed and who conducted these attacks were recruited from the Armenian Youth Federation and Armenian Revolution Federation in Boston, Massachusetts. Topalian’s crimes and his capture were the subject of a report on “Dateline NBC,” which aired on June 12, 2005.

The brutal vigilantism justice carried out against the deposed Ottoman leaders and the innocents slain by Armenian terrorists who may still walk in our midst stands in contrast to the type of justice ordinarily upheld in the United States. As the U.S. has a firm policy on condemning all terrorism, the U.S. ought to condemn Armenian terrorism and commemorate its victims. Perhaps H. Res.106 can be amended for this purpose. Further, the fact that many of the organizations supporting the resolution have remained silent on this era of terror on U.S. soil seriously undermines the moral basis of the resolution.

25 Many scholars, Turkish and Armenian alike, today single out Jemal for his righteousness in opposing mistreatment toward Armenians and helping those that he could.

26 The Armenian National Committee of America (ANCA) is a vocal supporter of H. Res. 106. At their website, www.anca.org, one can find numerous “action alerts” and press releases on the subject.

Text of the Resolution:

[Finding] (7) The Armenian Genocide and these domestic judicial failures are documented with overwhelming evidence in the national archives of Austria, France, Germany, Great Britain, Russia, the United States, the Vatican and many other countries, and this vast body of evidence attests to the same facts, the same events, and the same consequences.

Summary Reply:

Evidence is “overwhelming” only if one disregards the evidence to the contrary.

Analysis:

The deaths and killings of Ottoman Armenians, Muslims and Jews are documented in the national archives of the nations listed in Finding 7. The complete archival record is often contradictory; some reports of identical events differ as to who victimized whom. For this reason, to disregard the contrary evidence or to not even make an effort to account for the discrepancies is disingenuous. The U.S. should support the efforts of neutral historians to make sense of these discrepancies that, as this report proves, exist even among the archives of the United States (e.g., the reports of Morgenthau vs. the reports of Bristol, Niles, and Sutherland). This sort of vital historical analysis of the contested events surrounding the Armenian revolt and the Ottoman government’s response should not be the exclusive domain of the concerned parties, Turks and Armenians, because of their understandably partisan tendencies, but also ought to interest the United States as it pursues Turkish-Armenian reconciliation.

Moreover, the list of national archives provided in Finding 7 is far too restrictive from which to constitute the complete record on the Armenian tragedy. One should also examine the archives of: the Armenian Revolutionary Federation (ARF), which may be located in Boston, Massachusetts, but which have remained resolutely closed to researchers; the Armenian Secret Army for the Liberation of Armenia (ASALA), thought to be located in Lebanon; the Justice Commandos of the Armenian Genocide (JCAG), possibly in Armenia and/or Lebanon; Azerbaijan; Georgia; Italy; Spain, and of course; the Ottoman Empire, among others.

Having already demonstrated that the U.S. record from the period in question is far from unanimous in supporting the Armenian viewpoint, the same can be done for other countries.

A. Russian Accounts at Odds with the Genocide Accusation

Stationed in Erzurum in the winter of 1917-1918, Russian Lieutenant Colonel Tverdo-Klebov (sometimes spelled Tverdokhlebof) of the Second Russian Garrison Artillery Regiment recorded a diary that reveals that eastern Anatolia was not the site of a one-sided slaughter, but of open life-and-death warfare between Armenian insurgents who sought to secure a “Greater Armenia” and local Muslims who feared being cleansed from their lands to create what would have been an ethnically pure Armenian Christian state.²⁷

At the time, the Russian general army had withdrawn, leaving the province in the control of Tverdo-Klebov’s regiment, and a military unit comprised of pro-Russian Armenians who were then being armed and supplied by the Russian army. Tverdo-Klebov records the fate of local Turkish Muslim civilians at the hands of the Armenian unit.

“In these days the Armenians were perpetrating indescribably cruel murders among the poor Turkish inhabitants of the neighborhood of Erzindjan (Erzincan); the Turks were unarmed and without any means of self-defense. On hearing that the Turkish troops were approaching, the Armenians, committing fresh crimes, fled in the direction of Erzerum. ...

According to the reports of the Commander-in-Chief, confirmed by officers who were actually present at the scene of the crime, the Armenians slew more than 800 Turks in Erzindjan, and so avenged one of their miserable accomplices who had been killed by a Turk in justified self-defense. Furthermore, the Armenians massacred the unhappy Mohammedan population of Ilidja, in the neighborhood of Erzerum, without sparing the women and children. ...

²⁷ His journal can be downloaded from: <http://louisville.edu/a-s/history/turks/Khlebof%20War%20Journal.pdf>

On February 7th the following incident came to my notice: I ascertained that the Militia and the Armenian soldiers of the town were carrying off some hundreds of Mohammedans to an unknown destination. When I inquired into the reasons for this, I received the answer that these men were being recruited to clear the railway of snow. I expressed myself satisfied with this explanation. ...

I ... finally discovered in the bathroom seventy Mohammedans, victims of the most ghastly horrors. ...

On the same day the Armenians murdered other Turks and set fire to the Turkish bazaar. It was generally known that during these days several murders were committed in Erzerum and its neighborhood. I personally arrested an Armenian who had killed Turks in the neighborhood of Tafta and handed him over to the Commandant. It was said in the town that the Turk who had been told off to work in the fields never returned from their work, and that nothing could be learnt as to their whereabouts. The magistrates reported the disappearance of these men to the Commander-in-Chief. In a report which we handed to the Commander-in-Chief on the occasion of an officers' conference we requested his permission to leave the fortress of Erzerum in view of our complete uselessness and the impossibility of preventing the Armenian crimes. We were afraid of besmirching our reputation. ...

The reply contained the announcement that an ultimatum had been dispatched to the Armenian National Assembly, demanding the immediate cessation of all Armenian atrocities in order to put an end finally to these lamentable occurrences, and that Dr. Zavrieff and Andranik had been sent as delegates to Erzerum. ... On February 12th some Armenian bandits, armed to the teeth, had openly shot ten or twelve Turks in the neighborhood of the station. Two Russian officers, infuriated by these impudent outrages, had tried to interfere, but had been compelled to give way before armed threats and to leave the victims to their fate. ...

The outrages continued in the town, and the unhappy Turkish population, unarmed and defenceless, was continually attacked by the Armenians. Their only

refuge was the Russian officers, who, however, could only offer them very limited protection. A few officers under my command had been obliged to use force to save the lives of a couple of Turks who were being robbed in the street. A military engineer, Karaieff, shot down with his rifle an Armenian who was taking to his heels after robbing a Turk in the street in the middle of the day. The promise to punish the bandits who murdered peaceful, unarmed Mohammedans remained, as usual, a dead letter. ...”

Armenian researcher, Vakhan Dadrian, has attempted to dismiss the words of Tverdo-Klebov, who was a Christian, not by providing an alternate account, but merely by noting that Tverdo-Klebov may have been ethnically Turkish by familial descent.²⁸ This argument is patently racist, implying that anyone who bears Turkish blood must be lying. It also falls back upon the mentality of the Armenian insurgent groups who felt that those Christians who did not support their rebellion were traitors to their faith.

At Erzurum, Russian First Lieutenant Abgral filed reports similarly disturbing to those of Tverdo-Klebov.

“While leaving Erzurum [to check on a group of Turks pressed into work gangs by Armenian General Antranik] I saw on the road of Kars more than 70 dead [Turkish] bodies riddled with bullets on the head, neck and the chest as well as wounds from bayonets in the region of the heart and abdomen. ... The Turks were enclosed in barracks, made of wood, where they were so crowded up that they could hardly sit down. On that night, according to the testimonies of the workers on the railway line, the Armenians began shooting the Turks one by one and at a given moment they began firing on the barracks. ...

Once I asked them where they were taking the Turks and if it was to make them work? ‘No,’ replied the soldiers with an air of satisfaction, ‘we shall probably kill them. ... For the love of God, do not prevent us. We do not touch you at all and what we do with them it is not your business.’”

28 Vakhan Dadrian, *The Perversion by Turkish Sources of Russian General Mayewski's Report on the Turko-Armenian Conflict*, 5 *Journal of the Society for Armenian Studies* 139-152 (1990-1991).

One should expect to find further corroboration reports should an appropriately thorough examination of the Russian archives be undertaken by neutral experts.

B. British Accounts Confirm the Armenian Revolt and Call into Question the Genocide Allegation

The British record on the fate of the Armenians consists of a great deal more than the infamous “Blue Book,” which was likely a product of the wartime propaganda machine.²⁹ When objective scholars debate this era with reference to British archival records they will undoubtedly find, for instance, the reports of Captain C.B. Norman, a Royal Artillery officer who was sent as an observer to the Ottoman-Russian War of 1877-1878. After spending additional time in Istanbul, Norman, in 1895, wrote, “The Armenians Unmasked,” an essay in response to panic-stricken reports of the day alleging Armenian massacres in Sassoun and Zeitoun. He recalled the Armenian separatist newspaper, Hinchak, which declared, “Today we shall carry fire and sword into his (the enemy’s) land.” Referencing these Armenian militaristic slogans, Norman contends, “These are scarcely the Proclamations of a people striving peacefully to obtain an amelioration of their condition, but rather of a people stirred up to revolt by unscrupulous agitation who [will] ... consign thousands of their ignorant co-religionists to misery and death.” Commenting on an Istanbul riot, he wrote, “It has been proved beyond the possibility of doubt that the Armenians provoked the disturbance in Stamboul on the 30th of September last and I see no reason to believe that they were not the aggressors on every other occasion.”

The British record will also include the record of C.F. Dixon-Johnson who in 1916 published a book entitled, “The Armenians,” in order to give the public, “an opportunity of judging whether or not the Armenian Question has another side than that which has been recently so assiduously promulgated throughout the Western World.” Dixon-Johnson’s book begins with a brief history of the Armenians and then refers to numerous British works describing the long prosperity of Armenians living among Turks and the lenient rule of the Ottoman government toward the Armenian community.³⁰

29 In a March 16, 1966 letter to a Mrs. James Etmekjian, Toynbee began, “It is true that the British Government’s motive in seeking Lord Bryce to compile the blue book was propaganda.” The letter continues, however, with Toynbee stating his belief that the originators of evidence in the blue book, whom he called, “all American missionaries with no political axe to grind” provided a true account. One can decide for him or herself whether it was with guile or naivety that Toynbee considered the American missionaries to be without political agenda.

30 Dixon-Johnson’s book can be downloaded from: <http://louisville.edu/a-s/history/turks/Dixon-Johnson.pdf>

Indeed, Dixon-Johnson's work is composed partially of quotations of other British authors, which lends to its veracity and historical utility. He even quoted Sir Mark Sykes who, even though he helped promulgate anti-Turkish propaganda at times, derided Armenian revolutionaries writing, "They will undertake the most desperate political crimes without the least forethought or preparation; they will bring ruin and disaster on themselves and others without any hesitation ... The Armenian revolutionaries prefer to plunder their co-religionists to their enemies; the anarchists of Constantinople threw bombs with the intention of provoking a massacre of their fellow-countrymen."

Commenting on British reports of massacres of Armenians prior to 1915, Dixon-Johnson wrote, "[E]very alleged massacre in Turkey is almost the same, whether we consider the Bulgarian atrocities in 1876, the disturbances in Sassun in 1896, those in Constantinople in the same year, or those at Van in 1915 ... In every case we find the same charges of connivance by local officials acting under orders from Constantinople, the same gross exaggerations and the same stories of bestiality..." Dixon-Johnson then quoted Sir Edmund Pears, who wrote in, "Forty Years in Constantinople," "As a friend to the Armenians, revolt seemed to me purely mischievous. Some of the extremists declared that while they recognized that hundreds of innocent persons suffered from each of these attempts, they could provoke a big massacre which would bring in foreign intervention."

Dixon-Johnson also referred to the impressions of Sidney Whitman, an American who came to Istanbul in 1896 as correspondent of The New York Herald. His visit was in direct connection with the "so-called Armenian atrocities," as Whitman termed them. Whitman stated, according to Dixon-Johnson, "The agitation on the part of the Armenian Committees in the different capitals of Europe had been carried on to such purpose, that there was hardly an American or an English newspaper which had a good word left to say of the Turks. A horde of adventurers of various nationalities, déclassés of every sphere of life, cashiered officers among the rest, who had left their native country for its good, were eking out a precarious livelihood by providing newspaper correspondents, if not Embassies, with backstairs information."

Commenting on the relocations, Dixon-Johnson surmised, "It appears obvious that the Turkish authorities, anxious for the safety of their lines of communication, had no

other alternative than to order the removal of their rebellious subjects to some place distant from the seat of hostilities, and their internment there. The enforcement of this absolutely necessary precaution led to further risings on the part of the Armenians. The remaining Moslems were almost defenceless, because the regular garrisons were at the front as well as the greater part of the police and able-bodied men. Already infuriated at the reports of the atrocities committed at Van by the insurgents, in fear for their lives and those of their relatives, they were at last driven by the cumulative effect of these events into panic and retaliation and, as invariably happens in such cases, the innocent suffered with the guilty.”

Regarding inflated population figures in news reports, Dixon-Johnson referred to Lord Bryce’s accusation that from Mersin “about 25,000” Armenians were sent out. Dixon-Johnson reminds that the total population of Mersin was 20,966 persons, of whom 11,246 were Moslems, 2,441 Jews and the remaining 7,279 Christians of various sects Greek, Armenian, Latin and Nestorian. Responding to inflated figures in a published report, he questions, “How 25,000 Armenians could have been sent from Mersin out of a total Christian population of 7,279 (at least one-half of whom were Greeks), is difficult to understand.”

C.F. Dixon-Johnson also submitted letters to the publication, “The New Age,” which was a scholarly and literary journal of significance in London. In the December 16, 1915 issue, he responded to a letter by an Armenian in London alleging mass atrocities:

“Mr. Bodigian’s statement that nearly 330,000 Armenians were killed in the massacres of 1895-96 is a model of moderation when we consider the numerical flights of some other massacre-mongers. For instance, a compatriot of his, Mr. Melick, a year or two ago, put down the Armenian ‘massacres’ at 500,000. Again, Lord Bryce – who, like Sir Edwin Pears, was one of the original boomers of the Gladstonian atrocities – estimates the total of the present alleged massacres at 800,000. I would suggest that as a general proposition one should take such opulent figures with a considerable amount of reserve. The need for this would be clear when we remember that the original figure of 60,000 which was given as the number

of Bulgarian Christians slaughtered in 1876 was proved on the authority of Sir Henry Layard, the British Ambassador in Constantinople, to have been 'about 3,500 souls, including the Turks, who were, in the first instance, slain by the Christians.' Similarly in the case of the 'massacres of Sassun' of 1894, the total number of Armenians killed was at first stated to be 8,000, and afterwards reduced in the final report of the Commission of Enquiry to 900. With such appalling fabrications before us, it is small wonder that the latest campaign of Armenian atrocities should have fallen so completely flat."

Finally, after reports of massacres reached England in 1915, Dixon-Johnson urged caution and sober investigation. As we have seen, such was not to occur until after the war, the result of which were the Malta Trials, which failed to secure a single conviction. He wrote, "The accounts of the recent atrocities, reported to have been committed in the Provinces of Turkish Armenia, are certainly appalling. But I think in the interests of justice that the British public should be warned that the Turk has never in his history pleaded his own cause nor attempted to refute charges brought against him, even when these have been unfounded: whereas the case of the Christians of the Turkish Empire has always been extremely ably stated. It being impossible at this moment for us fully to investigate the present charges, it would, therefore, be only fair to an enemy who had fought us honourably and treated our wounded and prisoners with the greatest kindness to reserve judgment until it is possible to know the truth."

Another British source worthy of consideration is Marmaduke William Pickthall, the son and grandson of Anglican ministers. Pickthall was a novelist and reporter and spent significant time in the Ottoman Empire just before the outbreak of World War I. Like Dixon-Johnson, Pickthall, in several essays published in the journal, "The New Age," urged caution in interpreting news reports alleging massacres of Armenians. On November 4, 1915 he wrote,

"That the recent massacres of Armenians-whatever their extent, and that we cannot ascertain at present took place at the command, or in any sense with the connivance, of the Turkish Government, seems most improbable. We are not now in Abdul Hamid's reign. The chief desire of the present

rulers in Turkey has always been to prove their country worthy to take rank among the civilised, enlightened empires or the world, and their ideas of civilisation and enlightenment are derived from English and French sources, not from German frightfulness. The most that can be fairly laid to the charge of the Turkish Government, I should say, is the military execution of proved traitors and the removal of reputedly disaffected populations from the danger zones-this last a forcible proceeding involving hardship and discomfort to the deported; but, considering the state of war, and the straits in which the Turks were placed, a necessary military precaution, no 'atrocious'. Therefore, it seems unfair to count the many thus removed among the victims, especially as it is possible that in some cases they were removed to save their lives. We have the evidence of British prisoners of war at Urfah on the Euphrates, as to the kind of treatment the Armenians received from infuriated patriots in small provincial towns, inadequately garrisoned and unpoliced, on the news of the betrayal of Van. And the general order for removal seems to have followed pretty closely upon those disorders. Yet, I came the other day upon the headline: 'Armenian Horrors: 800,000 Victims,' to a newspaper paragraph, which stated that the number of the victims could not be much less than eight hundred thousand killed and deported. The statement loses all its force when one reflects that the total number of the deported from a hundred districts might easily be eight hundred thousand. ...

And now we hear about Armenian massacres, and Englishmen are filled with pious horror, laying all the blame upon the Turks. Let us try to understand what has actually happened. Some Armenians, in Armenia proper, Turkish subjects, rose in arms and betrayed the town of Van to the Russians. When the news of this occurrence spread throughout the Empire, the common people in some places rioted against Armenians, just as the people in the East End of London rioted against the Germans upon the news of the sinking of the 'Lusitania' but with this difference, that the Arab and the Kurdish mobs, being three hundred years, at least, behind the London mob in civilisation, did what the London rabble of three centuries ago would have done, and killed their victims. Following on these disorders the Turkish Government ordered the removal of the whole Armenian population from the war zones to concentration camps of some sort-as much with a view to their protection,

it seems but fair to suggest, as with a view to prevent further treachery. When the Turkish forces retook Van, there was a slaughter of Armenians in that district by the Kurds, their ancient enemies, who, as we have seen, were armed with Russian rifles before the war, at a moment when the Turks were wishing to disarm them. In one American report that I have seen, the Kurds, not Turks, are specified as the offenders. But it is all one to the enemies of Islam and they are powerful just now in England-since Kurds are Muslims of a sort. Unruly as the Scottish Highlanders three centuries ago, the Kurds have always raided the Armenians on the least excuse whenever the Turkish Government had its hands too full to deal with them. They are enemies to Turkish government in time of peace, and very uncongenial and mistrusted friends in time of war. And it must be remembered that the Armenians, in their native land, are far from being the sheep-like, inoffensive crowd that they are sometimes painted.”

Regarding the Blue Book relied upon by supporters of the genocide thesis, Pickthall was challenged directly in the pages of “The New Age” by Arnold Toynbee, one of the Blue Book’s authors, to read the book and comment. Pickthall responded on December 16, 1915,

After a careful reading of all Mr. Toynbee’s evidence, which, with but one exception, has a strong Armenian flavour, I have come to the conclusion, and so I think would anybody else who knew the state of Turkey, that all that the Turkish Government planned or ordered was the forcible deportation of the Armenians from a number of districts to concentration camps. The camps were of a very rough description and were sometimes distant more than a month’s journey from the Armenian’s home. In what one can imagine to be the condition of the provinces, for so vast an undertaking to be done humanely the Turks would have had to give up fighting for six months and devote their best troops and their best officials to this work. As things were, the deportations were a real martyrdom for the deported and an occasion for plunder and brutality to local malefactors, high and low. The mere order for deportation was enough to make the Armenians think that they were going to be massacred; and, as Mr. Toynbee with his Oriental experience must be

well aware, the mere conviction of impending massacre produces a large crop of circumstantial narratives concerning massacres in other places. On p. 38 there is a good description of the panic:-

‘All the morning the ox-carts creaked out of the own, laden with women and children, and here and there a man who had escaped the previous deportations. The women and girls all wore the Turkish costume that their faces might not be exposed to the gaze of drivers and gendarmes—a brutal lot of men brought in from other regions. The panic in the city was terrible. The people felt that the Government was determined to exterminate the Armenian race, and they were powerless to resist. ... Most of the Armenians in the district were absolutely hopeless. Many said it was worse than a massacre. No one knew what was coming, but all felt that it was the end. ...’

Poor wretches! But compare that picture with the Stoicism of the Turks on similar occasions—for many such have been—and you will understand that the latter could not realise the sufferings of a more timid race in deportation. The first batch of the deported are always believed to have been murdered a day’s or two days’ journey from their starting-point. But there is no statement from an actual witness of such murder. The horrible list furnished by the President of a Missionary College (evidently American) in a town of Anatolia (there is here good reason for the omission of the name of the place, but in other cases, where no description of the informant is given, no imaginable reason) on p. 99 ff. is evidently three parts hearsay from Armenian sources; and the item, ‘one reported taken to a Turkish harem,’ shows a thoroughly Armenian ignorance of Turkish manners in the present. The evidence of Fraulein Beatrice Rohner, a Swiss lady missionary, the only evidence with name and place attached, as to the condition of the deported after their arrival at Deyr el-Zor -- their destination—and their tale of sufferings upon the road is woeful reading; but the numbers of Armenians seen by her on three successive days seemed to me to dispose of the idea of their extermination by order of the Government; so does Mr. Toynebee’s statement on p. 60, based no doubt on further evidence: ‘These swamps (near Aleppo) were allotted to the first comers; but they did not suffice for so great a company, and the later batches were forwarded five days’

journey farther on, to the town of Deyr el-Zor.' If the Turkish Government had really wished to exterminate the Armenians there was nothing to prevent its doing so that I can see. I notice that Mr. Toynbee mentions only four of the camps to which the dispossessed Armenians have been sent-Aleppo, Deyr el-Zor, Sultaniyeh, and, in one place, Konia. My information says that there are several others. ...

I turn now from the deportations to what Mr. Toynbee calls 'murder outright'-the slaughter of Armenians near the Russo-Turkish frontier-which is described as altogether unprovoked. On p. 84 we read: 'When the Russians began to cross the frontier in their turn, the Ottoman authorities in the border province of Van let loose the Turkish troops and Kurdish irregulars on the Armenian population. In the countryside the Armenians were overwhelmed, but in the town of Van itself, when they had seen some of their leading men murdered and massacre overshadowing the rest, they took up arms, expelled the murderers, and stood a siege of 27 days -- 1,500 defenders against 5,000 assailants equipped with artillery-till they were triumphantly relieved by the advancing Russians.' The whole account given by Mr. Toynbee of this portion of the war being derived from Russian-Armenian sources-an Armenian journal, 'The Horizon' of Tiflis, being freely quoted-it is natural that we find no mention of the intrigues which have been worked from Tiflis, and the smuggling of arms into Turkish Armenia in the two years previous to the war. The Turkish version is that the Armenians rose on the approach of the Russians and succeeded in holding the town of Van for them. It was immediately upon this news that the Turkish Government ordered the deportation of all Armenians in proximity to the frontier or the coast, in view of the ramifications of the Armenian revolutionary societies and the desperate nature of their propaganda.

Pickthall's suspicions were correct. For example, in his Wellington House publication, "The Armenian Atrocities, the Murder of a Nation," Toynbee mentioned that the Armenian refugees who had come to Alexandria were suffering terribly, that they were starving, and that they were, "dying of disease, exposure and starvation." Upon reading this, a British Foreign Office document shows, British relief workers in Alexandria who

had been taking care of these people that Toynbee described became upset. Shortly afterward, the heads of the British agencies in Alexandria wrote back to the Foreign Office bitterly complaining, saying that they were indeed feeding those people, who were not dying of starvation and disease. Both births and deaths, they reported, were both completely normal.” Toynbee apologized.

Even The New York Times recounted the first part of the Armenian revolt in Van. On Saturday, November 7, 1914 they published under the title, “ARMENIANS FIGHTING TURKS, Besieging Van—Others operating in Turkish Army’s Rear”:

“A dispatch received by The Daily Telegraph from Tiflis, capital of the Government of Caucasia, by way of Moscow, says: “The Turkish town of Van (140 miles southeast of Erzerum) is being besieged by a detachment of Armenians, who are aiding the Russians. The town has a large arsenal. “Another Armenian detachment is operating in the rear of the Turkish Army.” ...

The Russians in Armenia are operating along a front of 160 miles. They entered Turkey by two routes, one column toward Erzerum and the other striking southward. The Armenians everywhere welcomed the Russians, regarding the war as one of liberation. Several entire Turkish regiments have been taken prisoners. The name of Constantinople has been replaced in the Russian Press by the old Slavonic name of Tzargrad.

[Subheadlines] TURKISH ARMENIANS IN ARMED REVOLT, We’re Ready to Join Russian Invaders. Having Drilled and Collected Arms, SEE DAY OF DELIVERANCE. Native Paper Says They Are Prepared for Any Sacrifice—Refuse to Join Turkish Army.

Reports reaching the Russian capital from the Turkish border attach increasing importance to the part the Armenians are playing in the Russo-Turkish war. In several towns occupied by the Russians the Armenian students have shown themselves ready to join the invading army, explaining that they

had prepared themselves for the Russian approach by constant drilling and by gathering arms secretly. All along the line of march, according to these dispatches, the Armenian peasants are receiving the Russian troops with enthusiasm and giving provisions to them freely.

An Armenian newspaper, referring to this crisis in the history of Armenia publishes the following: "The long-anticipated day of deliverance for the Turkish Armenians is at hand and the Armenians are prepared for any sacrifice made necessary by the performance of their manifest duty."

From this border country there have come to Petrograd further reports of armed conflicts arising from the refusal of Armenians to become Turkish conscripts and to surrender their arms. It is now rumored that the important city of Van is today besieged by Armenian guerrilla bands in great force. In Feltun the number of insurgents is said to exceed 20,000 and they are reported to have defeated all the Turkish troops sent against them, causing heavy losses to the Turks."

These sources, though not common, are not unique. One should expect to find further corroboration should an appropriately thorough examination of all of the relevant archives be undertaken by neutral experts. One must question why the sort of reports above are rarely if ever included in the data gathered for supposed historical recitations of fact on the Ottoman Armenian controversy, of which H. Res. 106 is a purported example. The answer, sadly, is that objective exploration of the history of the late Ottoman Empire has been overrun by the non-stop prosecution of Turks and Turkey for a litany of crimes that only become plausible once events are completely removed from their historical context.

C. British Admissions of False Wartime Propaganda

As detailed in Thomas Fleming's, "The Historian Who Sold Out,"³¹ On May 13, 1915, British propaganda headquarters in Wellington House released the Bryce Report on German atrocities in Belgium. It went to nearly every newspaper in America and its impact was sensational. It alleged, among other things, group rapes by German soldiers, desecration of corpses, and the amputation of boys' hands, presumably to prevent them from fighting. Most newspapers reproduced the report or portions of it as actual news and a group of Belgians even testified to the White House. Yet some Americans doubted the Bryce report. For example, the famous American lawyer Clarence Darrow traveled to Europe to search for a single eyewitness who could confirm even one of the Bryce stories. Increasingly dubious, Darrow announced he would pay \$1,000 to anyone who could produce one of the alleged amputees. He found none.

After the war, historians determined that much of the Bryce's report on the outlandish behavior of the German 'Huns' was fabricated, contaminated by fictitious rapes, amputations and even speared babies. Most tellingly, even a Belgian commission of inquiry found Bryce's stories to be mainly untrue. Indeed, on December 2, 1925, Foreign Secretary Sir Austin Chamberlain appeared before the House of Lords to declare that Bryce's German atrocity report, far from being historically accurate, in actuality was baseless war propaganda.

Bryce and Toynbee's "Blue Book" has not received both the same scholarly attention and the corresponding disavowal, though it ought to. As stated by biographer William H. McNeill in "Arnold Toynbee - A Life,"³² Toynbee's work on the Armenian massacres was "a disinformation book favoring the Allied states and aiming at shaping the public opinion, which does not go beyond the obsessive task of humiliating the Turks." Despite such findings by Professor McNeill, Toynbee's findings continue to be used as categorical proof of specific atrocities committed by Ottoman forces.

31 <http://hnn.us/articles/1489.html>

32 Oxford, 1989.

D. French Accounts Document the Armenian Rebellion as well as the Limited Extent of the 1915 Relocations

At the conclusion of the war, the French had been given the protectorate over southeastern Anatolia. Commenting on Armenians leaving Anatolia, the French High Commissioner in Istanbul sent a letter on September 27, 1919 to French Minister of Foreign Affairs Pichon, stating, "During the journey which he has just completed, Lieutenant Dubreuil has established that the Armenians of the region of Kayseri are leaving the region; this exodus was not motivated by any sudden fear felt by the Armenians, as they have attested to the security which reigns at least at the present time in the province, but rather by the advice and exhortations which are given to them by their co-religionists and even by their bishops who reside in Constantinople, in other cities of Turkey, and even in Europe."³³

According to Paul de Veou, in "La Passion de la Cilicie: 1919-1922," published in Paris in 1937, the French also sent several thousand refugees who had settled in Syria and Beirut during the war in order to remove what had become a disruptive element in the population. About 120,000 Armenian settlers were thus brought to Cilicia, the plain abutting the far northeastern corner of the Mediterranean, during these years, in addition to the 50,000 who came from Istanbul and elsewhere in Anatolia to Antep, Marash and Zeytun, all for the purpose of establishing an Armenian state in Cilicia under the permanent protection of France.

The returning Armenians, whom the French expected to be settlers, according to Richard Hovannisian, instead joined the Armenian Legion, an ad hoc brigade under French control, in attacking the Muslims throughout the region.

Reporting from this region, British Lt. General Sir W. N. Congreve addressed a letter to the Chief of Imperial General Staff, General Sir Henry Wilson in Cairo on October 19, 1919, "I am just back from Cilicia and Syria and have had an interesting time. ... [The] Armenians who we have been flooding Cilicia -- Poor devils, no one seems to want them anywhere, and yet despite all they have gone through, I did not see a thin one

³³ France, Archives de la Guerre, AAEF-Levant 1918-29 (Arménie), vol. 7, fol. 148.

amongst a good many thousand I saw, and most looked cheery too. The massacres seem to have been a good deal exaggerated but the destruction of their villages is very complete for hardly a stone remained on another. The women and children seem anyway to have survived, and the former are reported content to live with Turks and have children by them...”

The French Army, apparently horrified by the Armenian Legion’s attacks on Turkish civilians, reassigned the Armenian soldiers to guard railway lines away from population centers. But many of the Armenians disobeyed the order, left their French units, came together in insurrectionary groups, and continued to attack Turkish villages in the vicinity. This is corroborated by documents in the U.S. archives among the papers of Admiral Mark Bristol.

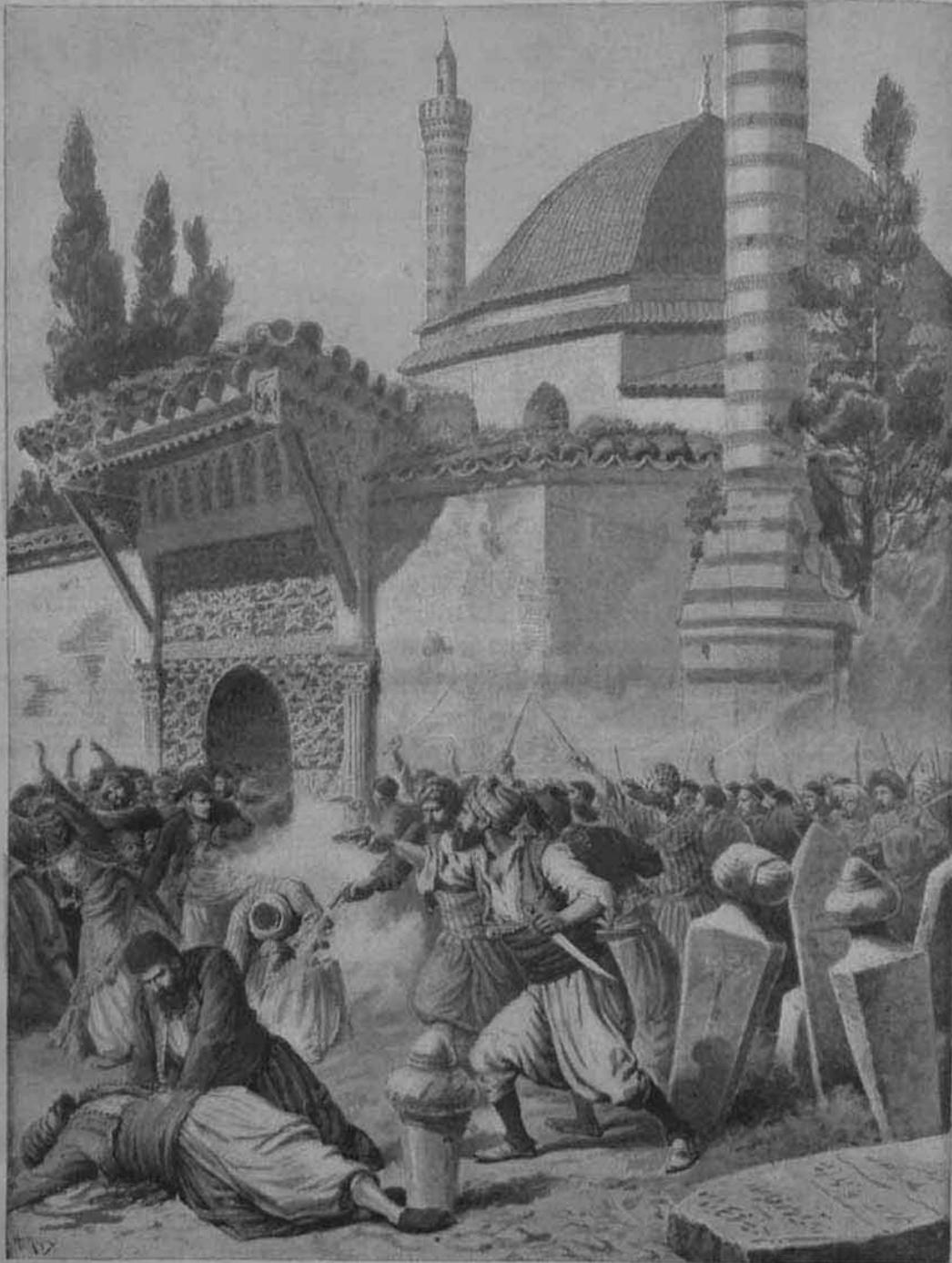
Finally, in 1921, the French evacuated the area, fearing reprisals from local Turks for the cruel treatment they received at the hands of the Armenian soldiers and from other Armenian gangs that roamed the province. Not surprisingly, as the French occupying powers withdrew, the Armenians, fearing Turkish retaliation, fled the area in an Armenian exodus of sorts. Some left with the departing French forces. Some went on British and French merchant ships that came to the ports of the area to pick them up. Some migrated on foot to Syria, Palestine and Lebanon, where they eventually settled. According to the Armenian author, Anahide Ter Minassian, possibly 175,000 Armenians thus left the region, many who had lived before during and after the war in central Anatolia.³⁴ Consciously ignoring the Armenian attacks that led to this exodus, some Armenians depict this departure as part of the alleged deliberate destruction of their community.

The French experience in Cilicia, then, proves several important points. First, that significant numbers of Armenians remained in Anatolia following the war – not all had been relocated or subject to massacres or other ravages as has been claimed. Second, significant populations of Armenians remained in the relocation centers – not all had perished. Third, Armenian nationalists, despite all of the suffering they instigated against their people, still insisted on using the most brutal means possible to create an

34 La République d’Arménie (Éditions Complexe, Paris, 1989).

ethnically homogenous homeland from lands formerly occupied by a mix of Muslims and Christians.

Finally, the French, though having recently enacted a controversial law that criminalizes speech that does not agree with the Armenian version of events, have ample evidence among their own journalistic archives proving that the Armenians were in full revolt in the Ottoman Empire and that the eventual relocation orders were for a valid political purpose. For example, the newspaper, "Le Petit Journal," reported on the 1895-1896 incidents in the Armenian revolt, including a graphic illustration of Armenians attacking Muslim worshippers at a mosque.



ÉVÉNEMENTS D'ORIENT
Attaque d'une mosquée par les Arméniens

Text of the Resolution:

[Finding] (8) The United States National Archives and Record Administration holds extensive and thorough documentation on the Armenian Genocide, especially in its holdings under Record Group 59 of the United States Department of State, files 867.00 and 867.40, which are open and widely available to the public and interested institutions.

Summary Reply and Analysis:

Again, contrary to this claim, there is no such record available. The files referred to in this finding are general State Department archives and contain the diplomatic correspondence between the U.S. and the Ottoman Empire from that era. As it was U.S. policy to support the Allied war effort against the Ottoman Empire, the prejudicial correspondence mainly vilifies Turks and describes suffering among Christians only. This followed U.S. wartime practice to paint its enemies, from the “Savage [Indians]” to the “Krauts” and “Gooks,” in an unflattering light. But as noted above, this is neither necessarily accurate nor is it the complete U.S. record from the period. Other archived records of U.S. officials place the State Department records in their proper context and even refute some of the more controversial reporting contained within them.

Text of the Resolution:

[Finding] (9) The Honorable Henry Morgenthau, United States Ambassador to the Ottoman Empire from 1913 to 1916, organized and led protests by officials of many countries, among them the allies of the Ottoman Empire, against the Armenian Genocide.

[Finding] (10) Ambassador Morgenthau explicitly described to the United States Department of State the policy of the Government of the Ottoman Empire as ‘a campaign of race extermination,’ and was instructed on July 16, 1915, by United States Secretary of State Robert Lansing that the ‘Department approves your procedure . . . to stop Armenian persecution’.

Summary Reply:

Morgenthau’s reporting from the Ottoman Empire is far from an objective historical account: He never left Istanbul, the European capital of the Ottoman Empire; He reported events selectively for political impact, and; His accounts, by his own admission, were edited and sometimes changed outright by his Armenian interlocutors. That the Turks appear entirely in the wrong in such partisan reports is unsurprising.³⁵

Analysis:

A. Morgenthau’s Unreliable Record as an Historian

The most often cited portion of the U.S. Record from this period is the correspondence of Henry Morgenthau, U.S. Ambassador to the Ottoman Empire for a twenty-six month period from late 1913 to early 1916. Morgenthau, it should be acknowledged, was sent to the Ottoman Empire with political, not humanitarian aims. His correspondence with President Wilson clearly reveals that his true intent was to uncover or manufacture news that would goad the U.S. into joining the war against Germany. On November 26, 1917, Morgenthau actually confessed in a letter to President Wilson that he intended to write a book vilifying Turks and Germans to, “win a victory for the war policy of

³⁵ Some of the following is drawn from “An Unjust Trial,” a pamphlet published by the Assembly of Turkish American Associations in Washington, DC. It is used with permission.

the government.” Given that motive, Morgenthau’s denigration of the Ottoman Empire, an enemy of the Triple Entente, was entirely consistent. Note also that Morgenthau, like his successor, Abram Elkus, was not a career diplomat, and he was certainly not a professional historian trained in objectivity. His background was in finance and business; he was rewarded with the post in Istanbul for having raised funds for the election of President Wilson.

Morgenthau, as confederate of President Wilson and an instrument of his policies, surely adopted Wilson’s attitudes toward the war. Wilson proclaimed the need to be ruthless in war and that such ruthlessness should enter all aspects of public life. On the eve of war Wilson declared, “Once lead this people into war, and they’ll forget there ever was such a thing as tolerance. To fight you must be brutal and ruthless, and the spirit of ruthless brutality will enter into the very fibre of our national life, infecting Congress, the courts, the policeman on the beat, the man in the street.”³⁶

Wilson also pushed the Espionage Act through Congress that made it a crime to do nearly anything that would oppose the war effort. Socialist presidential candidate, Eugene V. Debs was convicted and imprisoned under that Espionage Act for making a speech that prosecutors alleged, “obstructed recruiting.” In total, nearly 900 Americans were imprisoned, including five Jewish activists in New York. A sixth, Jacob Schwartz, was beaten to death by members of the Military Intelligence Police who came to arrest him.³⁷ The Act also allowed Postmaster General Sidney Burleson to refuse to deliver any piece of mail he felt was unpatriotic or critical of the administration. In such a climate, then, how could one expect Morgenthau to do anything other than utterly and unreservedly vilify the Ottoman government.

Further, Morgenthau’s personal racial and religious bigotry exposed in his writings. Using racist language that would never stand today, he variously described: “the Turk is a bully and a coward;” “A fairly insane pride is the element that largely explains this strange human species;” “[H]umanity and civilization, never for a moment enters their mind;” They are possessed of “an inferior blood.” Morgenthau’s racist theories

³⁶ Arthur Walworth, Woodrow Wilson (Boston, Houghton Mifflin 1965 v. 2 p 97).

³⁷ See Abrams et al v. United States, 250 U.S. 616 (1919).

occupy an entire chapter of his biography, “Ambassador Morgenthau’s Story,” Chapter XXII, entitled, “The Turk Reverts to Ancestral Type.” Conversely, about Armenians Morgenthau enthused, “What is definitely known about the Armenians, however, is that for ages they have constituted the most civilized and most industrious race in the eastern section of the Ottoman Empire. ... Everywhere they are known for their industry, their intelligence, and their decent and orderly lives. They are so superior to the Turks intellectually and morally...”

Moreover, Morgenthau, by his own admission, never left Istanbul, never ventured to the east Anatolian areas about which he reported such terrible crimes, during his twenty-six months in the Ottoman Empire. And, Morgenthau had another mark against him; he could not speak Turkish, Greek, French, or Armenian, the four languages used commonly in the Ottoman capital. Unable to communicate directly with the people about whom he was writing, Morgenthau relied upon English-speaking Armenians in many cases to gather his information. Indeed, to gather evidence of alleged crimes in eastern Anatolia in order to malign the Ottoman government, Morgenthau employed the services of Arshag Schmavonian and Hagop Andonian, two Armenians. It is not known whether either of them ever visited the areas in question or whether they relied on the second- or third-hand reports of others. This may partly explain why the British Ambassador to Washington immediately following World War I, Sir Auckland Geddes, wrote to the British Foreign Office that the American government could not provide evidence of crimes against Armenians because the information “given by the American Consuls did not consist of eye witness reports, but were rumors.”³⁸

In sum, what Morgenthau reported was largely hearsay. Morgenthau both admitted that Andonian placed his own elaborations above his signature, and that perhaps Andonian would peddle falsities in the process. Morgenthau wrote, “I have really found it impossible to sit down and dictate a letter quietly. So I have instructed Andonian to take my diary and copy it with some elaborations of his own. Of course this relieves me of all responsibility for any error.” This attitude is remarkable in an author whose seminal work many now claim as unimpeachably true.³⁹ Very few if any authors today

38 British Foreign Office document 371/6503/9647/E.6311.

39 On Andonian’s role in writing, “Ambassador Morgenthau’s Story,” which damned the Ottoman Turks, Morgenthau com-

would be content to let someone else, particularly a party to a particular conflict, write their reports of that conflict.

In contrast, much of what Bristol, Dunn, Niles, and Sutherland reported was first hand or from direct eyewitness account, and they certainly wrote their own reports.

Morgenthau's prejudices and reliance primarily on anti-Turkish sources raised the suspicions of a journalist who apparently knew him well. George A. Schreiner, a U.S. correspondent who had spent most of 1915 in the Ottoman Empire, observed Morgenthau's efforts to skew Washington's view of the Ottoman condition. His conclusions have bear critically on the pending resolution. Schreiner concluded, "It is to be hoped that the future historian will not give too much heed to the drivel one finds in the books of diplomatist-authors. I at least have found these books remarkably unreliable on the part played by the author. It would seem that these literary productions are on a par with the 'blue books' published by governments for the edification of the public and their own amusement, as in some cases I will show."⁴⁰ Schreiner knew Morgenthau as more than a passing acquaintance. "Ambassador Morgenthau's Story" demonstrates that that Schreiner and Morgenthau met often in Istanbul.⁴¹ Yet in December 1918 Schreiner still felt compelled to write a letter to Morgenthau criticizing him for taking liberties with the truth in his book. It reads in part,

"...In the interest of truth I will also affirm that you saw little of the cruelty you fasten upon the Turks. Besides that you have killed more Armenians than ever lived in the districts of the uprising. The fate of those people was sad enough without having to be exaggerated as you have done. I have probably seen more of the Armenian affair than all the Armenian attaches of the American embassy together. ... To be perfectly frank with you, I cannot applaud your efforts to make the Turks the worst being on earth, and the German worse, if that be possible...."

mented to Asst. Secretary of State Breckenridge Long in a letter of January 9, 1918, "You probably know that with the approval of the President, I have undertaken to write a book. Mr. Andonian is assisting me in the preparation of that work and owing to his intimate knowledge of the east and his unusual experience, his services to me are really indispensable."

40 In "The Craft Sinister: A Diplomatico-Political History of the Great War and its Causes," (G. Albert Gayer, New York, 1920).

41 Morgenthau's diary recorded no less than 30 meetings in a four-month period between February and May, 1915.

Schreiner ends his letter announcing,

“I do not want you to look upon this as a declaration of war. My purpose in mentioning these matters is to let you know that there is at least one human being not afraid to break a lance with an ex ambassador of the United States. Ultimately truth will prevail. I have placed my limited services at her command... Of diplomatic events on the Bosphorus more will be heard as soon as I can get at my notes and documents now in Europe. I do not rely on memory in such cases, as my book may have shown to you already. Being a newspaper man, instead of a diplomat, I must be careful in what I say.”

But objectivity did not prevail. On the contrary, several of Morgenthau’s consuls sent inflammatory reports to him, usually in the form of stories that they had “heard” of atrocities against Armenians. But far from being treated as hearsay, over time, these stories have ossified into objective proof of atrocities. Yet little attention is paid to the other consul reports that did not support Morgenthau’s pro-war agenda, which were, therefore, squelched. For example, the U.S. Consul in Mersin, Edward Natan, reported to Morgenthau on August 30, 1915 that the railway route from Tarsus to Adana was full of Armenians; and that they traveled from Adana onwards with a ticket; and despite some difficulties due to crowds of people, the government organized this process in the most orderly fashion; and that the Government did not allow any act of violence or disorder, provided sufficient number of tickets to the immigrants and assisted those who were in need. Conclusions such as these obviously did not promote the war effort, but they ought to nonetheless be considered when weighing the veracity of Morgenthau’s damning conclusions.

B. U.S. Secretary of State Lansing Changes Course After the War

After the war’s end, more sober heads prevailed. An effort was made to distinguish between propaganda and fact and between the general horrors of war and war crimes. Secretary of State Lansing played a leading role in the deliberations of the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties for Violations of the Laws and Customs of War at the Paris Peace Conference in 1919. And despite his earnest instruction to Morgenthau four years earlier to intercede on behalf

of Armenians, Lansing objected to the commission holding trials for the “Armenian massacres” and to the creation of so-called crimes against the laws of humanity. He reasoned that creating new laws to punish the Turks would not only offend general legal principles against ex post facto laws, but also would tread into uncharted areas of international jurisprudence. He stated, that he knew, “of no international statute or convention making a violation of the laws and customs of war—not to speak of the laws of principles of humanity—an international crime.” Ultimately, the commission omitted these crimes and the associated charges.⁴²

⁴² See “Memorandum of Reservations presented by the Representatives of the United States to the Report of the Commission on Responsibilities,” April 4, 1919, pp. 51-63. These are found in Box 28 of the James Brown Scott Papers at the Georgetown University Library.

Text of the Resolution:

[Finding] (11) Senate Concurrent Resolution 12 of February 9, 1916, resolved that ‘the President of the United States be respectfully asked to designate a day on which the citizens of this country may give expression to their sympathy by contributing funds now being raised for the relief of the Armenians’, who at the time were enduring ‘starvation, disease, and untold suffering’.

[Finding] (12) President Woodrow Wilson concurred and also encouraged the formation of the organization known as Near East Relief, chartered by an Act of Congress, which contributed some \$116,000,000 from 1915 to 1930 to aid Armenian Genocide survivors, including 132,000 orphans who became foster children of the American people.

Summary Reply and Analysis:

S. Con. Res. of 1916 explicitly states that the Armenians were suffering from the “conditions growing out of the state war.” No mention of intentional harm is made. Further, during World War I accounts of Christian suffering, supplied primarily by American missionaries, poured into the United States. Though the U.S. government knew that Muslim civilians also were suffering terribly from many of the same conditions, absolutely no effort was made to publicize their plight or lessen their misery. Thus, while the formation of Near East Relief represents a magnanimous humanitarian gesture it also reflects the shameful prejudices of our government during that time.

Finally, H. Res. 106 comes at a time when the U.S. critically needs to demonstrate that it is not engaged in a war against Islam. Yet the resolution glorifies the U.S. record in helping Christians while consciously ignoring the suffering of Muslims in the same region suffering from many of the same hardships as their Christian neighbors.

Text of the Resolution:

[Finding] (13) Senate Resolution 359, dated May 11, 1920, stated in part, 'the testimony adduced at the hearings conducted by the sub-committee of the Senate Committee on Foreign Relations have clearly established the truth of the reported massacres and other atrocities from which the Armenian people have suffered'

[Finding] (14) The resolution followed the April 13, 1920, report to the Senate of the American Military Mission to Armenia led by General James Harbord, that stated '[m]utilation, violation, torture, and death have left their haunting memories in a hundred beautiful Armenian valleys, and the traveler in that region is seldom free from the evidence of this most colossal crime of all the ages'.

Summary Reply:

Harbord's full report records his observations that Muslims were victims of the Armenian revolt while also displaying his anti-Muslim, anti-Turkish prejudices. H. Res. 106 selectively uses those portions of the report that are most likely to inflame anti-Turkish sentiment. Read closely and in its entirety, Harbord's report supports the thesis that Muslim and Christian alike suffered in great numbers from similar causes and that the blame cannot so neatly be apportioned solely upon the Turks.⁴³

Analysis:

In discussing the history of Armenians from antiquity Harbord displays a pro-Christian bias. He describes the Armenian adoption of Christianity in rapturous terms: "Armenia was evangelized by Apostles fresh from the memory of our Lord..." He adds with no historical foundation, "Persians, Parthians, Saracens, Tartars, and Turks have exacted more martyrs from the Armenian church in proportion to its numbers than have been sacrificed by any other race." Overlooking the Turks' rich heritage, Harbord introduces them with derision: "The Turk to whom they now fall prey was a raiding nomad from Central Asia. His mainsprings of action were plunder, murder and enslavement: his

⁴³ See Major General James Harbord, "Conditions in the Near East: Report of the American Military Mission to Armenia," 66th Congress, 2nd Session, Document no. 266, April 13, 1920.

methods the scimitar and the bowstring.” By contrast, Armenians, “were translators, bankers, scholars, artisans, artists, and traders, and even under their tyrannical masters filled posts which called for administrative ability, became ambassadors and ministers, and more than once saved a tottering throne.”

Thus, Harbord, like Morgenthau, arrived in Ottoman lands believing in the ethnic, intellectual, and religious superiority of the Armenians and the corresponding inferiority of the Turks. Indeed, the entire historical preface to Harbord’s report is replete with figures that have since been proven false, or at least without reliable source. Most importantly, Harbord whitewashes the armed Armenian revolt. Ironically, this revolt is a topic honestly addressed by Armenian warriors such as Dro and Boghos Nubar and modern Armenian scholars such as Richard Hovannisian and Louise Nalbandian.

Harbord’s report, then, is predictable in placing great blame on the Ottoman government, believing all stories of Ottoman treachery but none of Armenian treachery, and lamenting the loss of Christian life but shedding not a tear for the millions of missing Muslims.

Nonetheless, Harbord’s report, if it is to be considered of value at all, contains a few phrases worthy of consideration. The Armenian revolt, instigated by Armenian revolutionary bands, had as its goal the creation of an ethnically pure Armenian state likely based on the model of Bulgaria, Romania, Serbia, and other Balkan states that had in the prior 40 years exiled or annihilated their Muslim populations after achieving independence. But to achieve this, either the Armenians would have had to eliminate the Muslims from the lands on which the state would be proclaimed, or, would have had to rule over Muslims, mainly Kurds, who would outnumber the Armenians. According to Harbord, “Even before the war the Armenians were far from being in the majority in the region claimed as Turkish Armenia, excepting in a few places.” This interesting admission forms part of the motive of Armenian and pro-Armenian sources who have amplified the population counts of Armenians in the Ottoman Empire in an effort to shift the demographics in their favor. In the very next sentence, Harbord hints at Muslim population losses, but spends no time speculating just where the missing Muslims could have gone: “To-day we doubt if they [the Armenians] would be in the majority in a single community even when the last survivors of the massacres and

deportations have returned to the soil, though the great losses of Turkish population to some extent offset the difference...”

Determining the ethnic makeup of the region was precisely within Harbord’s mandate of considering whether an independent Armenian state in eastern Anatolia would be viable. Yet while Harbord goes on at great length and in gruesome detail as to the exact suffering of the Armenians and its causes, his curiosity as to the underlying causes for the “great losses of Turkish population” remains strangely dormant.

He nonetheless reluctantly acknowledges that, “Things are little if any better with the peasant Turks in the same region. ... Villages are in ruins, some having been destroyed when the Armenians fled or were deported; some during the Russian advance; some on the retreat of the Armenian irregulars and Russians after the fall of the Empire. Not over 20 percent of the Turkish peasants who went to war have returned. The absence of men between the ages of 20 and 35 is very noticeable. Six-hundred-thousand Turkish soldiers died of typhus alone, it is stated, and insufficient hospital service and absolute poverty of supply greatly swelled the death lists.”

Harbord goes on to describe a denuded, depopulated war zone. He then finally notes in a rather offhand way that there was indeed some intercommunal warfare, “In the territory untouched by war from which the Armenians were deported the ruined villages are undoubtedly due to Turkish devilry, but where the Armenians advanced and retired with the Russians their retaliatory cruelties unquestionably rivaled the Turks in their inhumanity.” Harbord’s report, then, is not the unequivocal document H. Res. 106’s drafters would have one believe. To the contrary, if one reads in its entirety the document proffered by the resolution’s drafters, evidence comes to light that contradicts the resolution’s black-and-white thesis that the Armenians suffered alone and that they were not belligerents.

This contradiction is crucial in understanding the factual vulnerabilities of the resolution. For decades, Turks and others have been telling the world that Armenians and Turks died from a variety of causes, including combat at each others’ hands, but that the major causes of the suffering afflicted all in the region regardless of ethnicity or religion

– disease, famine, lack of medical care, etc. Losses from these war-induced causes ought not be blamed on the Turks alone who, after all, did not instigate World War I, and who experienced massive population loss and displacement. Yet this is precisely what has been done; the Turks have been blamed for all Armenian losses, no matter what the actual cause and little has been done to investigate these causes in detail.

Harbord's report is schizophrenic, as if his eyes were telling him one thing but his biases were telling him another. He shifts from one moment comparing Turk and Armenian as wolf and lamb to another moment more equitably stating, "There is much to show that, left to themselves, the Turk and the Armenian when left without official instigation have hitherto been able to live together in peace. Their existence side by side on the same soil for five centuries unmistakably indicates their interdependence. ... We saw nothing to prove that Armenians who have returned to their homes in Turkey are in danger of their lives..."⁴⁴

Perhaps recognizing the prevailing bias against the Turks, Harbord ultimately concluded, "There is no wisdom in now incorporating Turkish territory in a separate Armenia, no matter what the aspirations of the Armenians."

⁴⁴ Further, in the report's introduction, Harbord refers to the report of Captain Emory Niles, discussed above, and notes that his report, "corroborates our observations in the neighboring regions." Recall that Niles, along with Arthur Sutherland, reported their belief that much of the destruction was owing to Armenian attacks on Muslims and that in certain cities it was obvious by physical evidence that the Turks had been massacred.

Text of the Resolution:

[Finding] (15) As displayed in the United States Holocaust Memorial Museum, Adolf Hitler, on ordering his military commanders to attack Poland without provocation in 1939, dismissed objections by saying '[w]ho, after all, speaks today of the annihilation of the Armenians?' and thus set the stage for the Holocaust.

Summary Reply:

The alleged quotation is of dubious provenance. Records of the speech from which it is said to derive contain differing content. Most tellingly, however, the single version of the speech in which the quoted phrase appears was found insufficiently reliable by the prosecutors at Nuremberg and they rejected it as evidence. The U.S. Holocaust Memorial Museum is currently reviewing the validity of the quotation. Exploiting the phrase to equate the Ottoman Armenian experience to the Holocaust serves the historic memory of neither because the distinctions between them are vast and numerous.

Analysis:

A. The Alleged Hitler Quotation Requires Further Verification⁴⁵

First, obviously Hitler is far from a reliable source upon which to base an examination of history, much less a congressional resolution. That said, nearly every analysis of the quote written to date has attributed it to a November 24, 1945 Times of London article, "Nazi Germany's Road to War." The article's unnamed author cites the quote as having been included in an address given by Hitler to his commanders-in-chief on August 22, 1939 at Obersalzberg. The Times of London author claims the speech was introduced as evidence during the November 23, 1945 session of the Nuremberg Tribunal.

⁴⁵ See Heath Lowry, The U.S. Congress and Adolf Hitler on the Armenians, 3 Communication and Persuasion (No. 2, 1985) for an extensive discussion of this controversy. Lowry has been widely attacked because his former teaching chair at Princeton University was funded in part by a grant from the Turkish government and because he apparently accepted consulting fees from the Turkish government. See e.g. Lis Verderman, Professor Feels the Heat: Chairman of NES Department is At Center of Academic Debate About Armenians, Princeton Alumni Weekly, January 24, 1996. The criticism unmasks a double standard: most American universities accept grants from corporations, industry groups, and governments for the purpose of promoting studies of subject matter areas of interest to them. They do so understanding that the works produced in the endowed chairs and funded programs will be subject to peer review. Lowry's work has been extensively reviewed and yet few have challenged the thoroughness of his research or its conclusions.

The quote actually first appeared three years earlier in a 1942 book by Louis Lochner, the Associated Press' Berlin bureau chief during the war. But Lochner, like the Times of London author, bizarrely enough, never disclosed his source.

At least four versions of the Obersalzberg speech were presented at Nuremberg for consideration as evidence. Yet, the Nuremberg transcripts do not contain the alleged quote. In fact, the transcripts demonstrate that the tribunal examined and then rejected Lochner's undated, unsigned, third-hand version of Hitler's address, which was three pages in length. Lochner's version also includes some phrases that render it highly suspicious, such as this peculiar account of Hermann Goering's reaction to Hitler's purported reference to the Armenians, "[Goering] jumped on a table, thanked bloodthirstily and made bloodthirsty promises. He danced like a wild man." And, "Carol of Roumania is a thoroughly corrupt slave of his sexual desires," and "The King of Belgium and the Nordic Kings are soft jumping jacks," and "Mussolini is threatened by a nit-wit of a king and the treasonable scoundrel of a crown prince." For obvious reasons the Holocaust Museum left these portions of the Lochner version off of its walls, even as it indelibly embraced Lochner's reference to the Armenians.

Instead, the Nuremberg tribunal entered into evidence two official versions of the August 22, 1939 address found in captured German military records quoting those who were present at Obersalzberg.⁴⁶ Compellingly, neither document contains any reference to Hitler's remark about Armenians. In fact, neither document refers to the Jews; Hitler's address was an anti-Polish tirade, delivered years before the documentary record presents evidence of his having considered the Final Solution. The versions of the tirade that the tribunal entered into evidence were 12 pages in length, once translated, four times longer than Lochner's version.

The authenticity of alleged quote, therefore, is doubtful and its use in this legislation is both suspect and prejudicial. Its inclusion is meant to link the Nazi extermination of the Jews of Europe with the wartime losses of Ottoman Armenians. Scholars should be left to conduct further research into the veracity of this quotation before Congress employs it to link Hitler's "Final Solution" to the Ottoman Armenian revolt and its consequences.

⁴⁶ These bear document numbers US-29/789 PS and US-30/1014 PS under the nomenclature used for Nuremberg evidence.

B. The Holocaust and the Ottoman Armenian Experience are Dissimilar

The Holocaust, acknowledged universally as wickedness without provocation, characterized by racist Nazi principles whereby the Jews were a sub-race worthy of extermination, is increasingly employed to bring publicity to other instances of mass suffering. And though the Ottoman Armenians and the victims of the Holocaust both suffered, the similarity ends there.

Possibly the most distinguishing feature of the Holocaust is its lack of motive other than pure evil. The Nazis wished to remove the Jews from Europe “by the root,” despising Jews for the blood that ran in their veins. Other than positing Jews as communists, the Nazi government presented no credible justification for the ever-tightening raft of laws imposed upon them, culminating in The Final Solution. Jews neither aided the Russians nor took up arms against the German government offensively to carve out a Jewish homeland, or defensively even as Hitler’s sinister plans became known. Jews had not tried to wrest sovereignty of any part of any European state away from its temporal rulers. In short, they demonstrated none of the armed disloyalty that characterized the Armenian ultra-nationalist revolutionary societies during the last years of the Ottoman Empire.

The Holocaust, then, can be seen not as an act of self-defense by the German state, but as the climactic consequence of centuries of European Anti-Semitism. Crusaders slaughtered Jews on their way to the Holy Lands. Jews were forced to practice certain professions, others being forbidden from them, and to live in certain parts of cities, known as ghettos. Every Jew was individually responsible for this crimes ascribed to the ancient Jews according to Anti-Semites. Jews were routinely subjected to pogroms by Russian Cossacks and forced to live in a zone known as the pale. With the Nazi rise to power, restrictions on Jews steadily increased. With the outbreak of war, the Jews were forced into ghettos, which were finally liquidated in the Nazi’s frighteningly efficient extermination camps. They were exterminated in a systematic fashion by industrial methods. And, the Nazis applied this to Jews living far beyond their borders.

Following the war, twelve Nazis were condemned to death by hanging at Nuremberg.

In contrast to the condition of the Jews of Europe, the Armenians of the Ottoman Empire lived for centuries under a system that protected their civil and religious rights. As a “People of Book” they were allowed to live in a country governed by Muslims as long as they accepted Muslim rule, though not religion, and paid special taxes. Neither of these was onerous or prevented Armenians from prospering or from serving in government, which many did.⁴⁷ In addition, far from confining the Armenians to ghettos or pales or killing them in the name of racial purity, as the Nazis did to the Jews, the Ottomans relied upon the Armenians for commerce and protected them until they fell under the sway of ultra-nationalists who sought the destruction of the Ottoman state.

There is no record of “Anti-Armenianism” to compare to the volumes that have been written about European Anti-Semitism. The Ottomans ruled over many, many Christian populations in the Caucasus and Balkans roughly from the 14th-19th centuries; yet during this period there is no record of religious prejudice or mistreatment by the Ottomans who, as a rule, allowed all citizens to maintain their religion and language. This speaks volumes about the lack of Nazi style racism among the Turks. It also bears mention, that Jews fleeing persecution in Christian Europe found peace and prosperity in the Ottoman Empire, enjoying the same rights as Armenians.⁴⁸

Inter-ethnic unity waned as the Ottoman Empire weakened through in the 19th century. Romanians, Greeks, Bulgarians, and Serbs, among other Christian nations, gained independence during this period in conjunction with Russian invasions. The Ottoman Armenians too found provisional champions in Russia, who gained the right to protect Armenians in the 1878 Treaty of San Stefano, and in Great Britain, who along with other states gained similar status in the 1878 Treaty of Berlin. Meanwhile, Armenian revolutionaries made the most of this environment and formed separatist political parties, primarily the Hunchak Party, created in 1887 in Geneva, and the Armenian Revolutionary Federation, or Dashnak Party, formed in 1890 in Tbilisi. Both

47 Between 1876-1915 twenty-nine Armenians served in the highest governmental rank of Pasha. Twenty-two served as ministers, including the ministers of foreign affairs, finance, trade and post. Thirty-three served as members of the parliament. Seven served as ambassadors. Eleven served as consuls-general. Still others served as university professors or in additional positions of societal rank.

48 Sultan Beyazit II welcomed the Jews expelled from Spain and Portugal in 1492 and the Republic of Turkey, provided a safe haven for many Jews who had to flee from the Nazis. See Arnold Reisman, Turkey's Modernization: Refugees from Nazism and Atatürk's Vision (2006).

maintained military wings that carried out armed activities that today would be called terrorism.

One may conclude, then, that the Jews of Europe were completely defenseless and constituted neither a military nor political rival to the Nazi regime, whereas in Armenians of the Ottoman Empire, some heavily armed, were in open military conflict with the state, seeking to separate from it en masse and create a Christian state from a large portion of it. The Ottoman government response was, at least in intention, aimed at eliminating the violence and the dismemberment of its territory. The government was surely also motivated by the fate of tens of thousands of Muslims who had earlier been slaughtered or expelled from the Balkans in Russian-supported Christian uprisings.

In early April 1915, as the war proceeded poorly for the Ottoman government, the Armenian uprising intensified. Russia advanced from the east gaining large swaths of territory with help from Armenians who had defected and those who stayed behind as saboteurs. The Ottoman government then ordered the relocation of nearly all Armenians from the war zone to other parts of the Ottoman territory. The relocation orders betray no intent to annihilate the Armenian population. Yet the relocations themselves proved problematical for a nearly destitute government at war. And disaster struck: elements of the local Muslim and Kurdish population took revenge on some of the Armenian columns in retaliation for atrocities carried out against their communities by armed Armenian revolutionaries. And certainly some government officials contributed or at least connived to this affair. However, just as the record is absolutely clear that thousands upon thousands of Armenians lost their lives during the relocations, it is equally clear that extermination of the Armenians was not the objective of the 1915 relocations.

As discussed above certain officials were held liable in spurious courts for wrongs committed to Armenians, though most others were convicted of other wartime failings by their own embittered countrymen. Afterward, the British, with American aid, attempted a more formal criminal accounting for the alleged Armenian massacres and could not convict a single individual. Compare this to the Nuremberg verdicts, then, also overseen by British and Americans that led to a resounding indictment of many Nazis.

To conclude, in the words of distinguished Professor Bernard Lewis, who has actively advised the U.S. government on foreign policy in the Middle East,

“[T]hat the massacre of the Armenians in the Ottoman Empire was the same as what happened to Jews in Nazi Germany ... is a downright falsehood. What happened to the Armenians was the result of a massive Armenian armed rebellion against the Turks, which began even before war broke out, and continued on a larger scale.

Great numbers of Armenians, including members of the armed forces, deserted, crossed the frontier and joined the Russian forces invading Turkey. Armenian rebels actually seized the city of Van and held it for a while intending to hand it over to the invaders. There was guerilla warfare all over Anatolia. And it is what we nowadays call the National Movement of Armenians Against Turkey. The Turks certainly resorted to very ferocious methods in repelling it.

There is clear evidence of a decision by the Turkish Government, to deport the Armenian population from the sensitive areas. Which meant naturally the whole of Anatolia. Not including the Arab provinces, which were then still part of the Ottoman Empire. There is no evidence of a decision to massacre. On the contrary, there is considerable evidence of attempt to prevent it, which were not very successful. Yes there were tremendous massacres, the numbers are very uncertain but a million nay may well be likely.

The massacres were carried out by irregulars, by local villagers responding to what had been done to them and in number of other ways. But to make this, a parallel with the holocaust in Germany, you would have to assume the Jews of Germany had been engaged in an armed rebellion against the German state, collaborating with the allies against Germany. That in the deportation order the cities of Hamburg and Berlin were exempted, persons in the employment of state were exempted, and the deportation

only applied to the Jews of Germany proper, so that when they got to Poland they were welcomed and sheltered by the Polish Jews. This seems to me a rather absurd parallel.”⁴⁹

⁴⁹ Statement made in response to a question asked of him in an April 14, 2002 appearance on BookTV on the CSPAN-2 network. The question was, “The British press reported in 1997 that your views on the killing of one million Armenians by the Turks in 1915 did not amount to genocide and in this report in the Independent of London, says that a French court fined you one frank in damages after you said there was no genocide. This obviously triggered a debate in Israel where this quoted article [At this moment the moderator cut in and asked the gentleman to ask his question because of time constraints]. My question is, sir, have your views changed on this whether the killing of one million Armenians amounts to genocide and your views on this judgment?” The author of this article was present at that event.

Text of the Resolution:

[Finding] (16) Raphael Lemkin, who coined the term 'genocide' in 1944, and who was the earliest proponent of the United Nations Convention on the Prevention and Punishment of Genocide, invoked the Armenian case as a definitive example of genocide in the 20th century.

Summary Reply:

Though Lemkin's contribution to the jurisprudence concerning mass crimes are notable, Lemkin as not an historian, and clearly not an expert on Ottoman history.

Analysis:

Lemkin, who closely followed, and indeed was inspired by, the murder trial of Soghomon Tehlirian, the assassin of the deposed Ottoman ruler Talat, gained his beliefs about Turks and Armenians through this trial,⁵⁰ in which both prosecution and defense portrayed the Armenians exclusively as victims of the Turks. He forever viewed Turks through this lens. Though a man of many languages and talents, Lemkin never studied Ottoman history, never examined Ottoman, Russian, or Armenian archives, and never learned the languages necessary to examine the complete record on the events about which he drew sweeping and damning conclusions.

Yet perhaps for this very reason Lemkin never commented on the massacre of tens of thousands of Ottoman Muslims in the Balkans and Caucasus in the 20 years preceding World War I, all of which were extensively documented by western historians. Moreover, Lemkin's equivocation on the legal guilt and moral culpability of the assassin Tehlirian, endorsed the discredited tactic of transnational terrorism and assassination.

Therefore, although one may rightly adorn Lemkin with praise for his work toward the Genocide Convention, similar praise should be withheld for his retroactive, unscholarly comments on Ottoman history.⁵¹

⁵⁰ See Samantha Power, *A Problem From Hell, America and the Age of Genocide*, (New York Basic Books 2002)

⁵¹ Though Lemkin clearly was interested in the Armenian cause, his masterwork, *Axis Rule in Occupied Europe* (Washington, DC Carnegie Endowment, 1944), though introducing the term genocide, mentions not at all the Armenian case.

Text of the Resolution:

[Finding] (17) The first resolution on genocide adopted by the United Nations at Lemkin's urging, the December 11, 1946, United Nations General Assembly Resolution 96(1) and the United Nations Convention on the Prevention and Punishment of Genocide itself recognized the Armenian Genocide as the type of crime the United Nations intended to prevent and punish by codifying existing standards.

Summary Reply and Analysis:

This U.N. document refers directly to and quotes in its entirety the British, French, and Russian declaration discussed in Findings 2 and 3 of H. Res. 106 and takes all of its allegations as true. It adds little more to the debate than to reiterate old accusations that the British post-WWI prosecutors notably were unable to prove, with American assistance, against the Malta detainees. Nowhere does the term Armenian Genocide appear in the 1946 resolution, however. Also, the U.N. Resolution merely affirmed the principles of the Charter of the Nuremberg Tribunal and its judgment, and the judgment was unequivocal that the tribunal would not claim jurisdiction over crimes committed before the outbreak of war in Europe on September 1, 1939.

Text of the Resolution:

[Finding] (18) In 1948, the United Nations War Crimes Commission invoked the Armenian Genocide ‘precisely . . . one of the types of acts which the modern term crimes against humanity’ is intended to cover’ as a precedent for the Nuremberg tribunals.

[Finding] (19) The Commission stated that [t]he provisions of Article 230 of the Peace Treaty of Sèvres were obviously intended to cover, in conformity with the Allied note of 1915 . . . , offenses which had been committed on Turkish territory against persons of Turkish citizenship, though of Armenian or Greek race. This article constitutes therefore a precedent for Article 6c and 5c of the Nuremberg and Tokyo Charters, and offers an example of one of the categories of ‘crimes against humanity’ as understood by these enactments’.

Summary Reply and Analysis:

If taken at face value, the May 24, 1915 note alleges odious crimes indeed. However, much of what was stated in the four-sentence declaration has, upon further examination, been proven untrue. For example the allegation that Kurds besieged the Armenian quarter of Van was later proven false. Additionally, one need only review the records of the British Malta Tribunals, discussed at length above, to understand that although heinous crimes were charged, a rigorous examination, even among U.S. records, could not provide evidence to convict those accused of these very crimes.

In light of the results of Malta, one would expect the U.N. War Crimes Commission to have been more circumspect. In stark contrast to the failures of Malta, the Nuremberg Tribunals obtained numerous convictions.

The importance of the Sèvres Treaty reference in Finding 19 is to note that post-war victors’ tribunals can try war crimes. Indeed, the attempted trials of the Malta detainees fit within this mold and their results – release without trial across the board – should be acknowledged by the drafters of this resolution. In fact, the willful ignorance of the Malta Tribunals by this resolution may be its greatest defect.

H. Res. 106 skirts the fact that the Sèvres Treaty was never valid and was rejected by the Ankara government. Even the U.S. government chose not to be represented at its signing.⁵² After all, the U.S. was not a party to the treaty and had never declared war on the Ottoman Empire. The subject matter discussed in the Sèvres Treaty was later included in the Treaty of Lausanne,⁵³ all of whose clauses, including penalty and compensation clauses, have long been satisfied by the Republic of Turkey.

⁵² Greece was the only country to ratify the Sèvres Treaty.

⁵³ 32 L.N.T.S. 75 (July 24, 1923). The U.S. is not a party to this agreement.

Text of the Resolution:

[Finding] (20) House Joint Resolution 148, adopted on April 8, 1975, resolved: '[t]hat April 24, 1975, is hereby designated as 'National Day of Remembrance of Man's Inhumanity to Man', and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day as a day of remembrance for all the victims of genocide, especially those of Armenian ancestry . . . '.

[Finding] (21) President Ronald Reagan in proclamation number 4838, dated April 22, 1981, stated in part 'like the genocide of the Armenians before it, and the genocide of the Cambodians, which followed it--and like too many other persecutions of too many other people--the lessons of the Holocaust must never be forgotten'.

[Finding] (22) House Joint Resolution 247, adopted on September 10, 1984, resolved: '[t]hat April 24, 1985, is hereby designated as 'National Day of Remembrance of Man's Inhumanity to Man'', and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day as a day of remembrance for all the victims of genocide, especially the one and one-half million people of Armenian ancestry . . . '.

Summary Reply and Analysis:

At a White House luncheon in October 1983, President Reagan, speaking to editors and broadcasters in effect retracted his 1981 statement quoted above. Moreover, proclamations and resolutions prior to 1988, when the U.S. ratified the U.N. Genocide Convention are utterly without weight. And resolutions and proclamations made after that date that allege the crime of genocide are equally meritless unless followed by executive action to bring the matter before the International Court of Justice ("ICJ"), as required by the U.N. Genocide Convention.

None of these statements resulted in any action by the U.S. government. Even if passed, simple resolutions are not bills and, therefore, do not make law. Thus, House

Joint Resolution 148 (1975) and House Joint Resolution of 247 (1984) only express the opinion of the House of Representatives as constituted on the date of the resolutions' passage. Resolutions from prior Congresses do not survive into subsequent ones.

In the alternative, one must ask, if these statements hold any weight, then why has H. Res. 106 and its recent predecessors been proposed? At what point will promoters of the Armenian allegation of genocide feel vindicated?⁵⁴

Finally, President Reagan was clearly against congressional action on the genocide allegation. On March 29, 1985 President Reagan responded to questions posed by a Turkish newspaper. He was asked, "Congress is about to vote on an Armenian resolution-referring to the so-called genocide in 1915. Do you approve congressional action on such a sensitive issue?" The President responded: "...[M]y administration opposes congressional action on the kind of resolution to which you refer. We are concerned such resolutions might inadvertently encourage or reward terrorist attacks on Turks and Turkish-Americans. We also oppose them because they could harm relations with an important ally." Despite the claims made in Findings 21 and 22 of H. Res. 106, when pressed, President Reagan admitted that he had no official stand on the

⁵⁴ For example, H. Res. 3540 (1996) conditioned U.S. assistance to Turkey on Turkish action to "honor the memory of the victims of the Armenian genocide." It passed the House but not the Senate. H.Con. Res. 148 (1997) alleged genocide against all of the Orthodox Christians in the Ottoman Empire, including Armenians. The House International Relations Committee took no action. H. Res. 155 (1999) was the first to use a title referring to the "United States' Record on the Armenian Genocide." This resolution never made it out of committee in the House. H. Res. 398, whose name later changed to H. Res. 596 (2000), can be seen as the textual forerunner of the pending H. Res. 106, containing no fewer than 33 Findings. The resolution passed the International Relations Committee, but was then removed from consideration by the full House by Speaker Hastert following his receipt of an October 19, 2000 letter from President Bill Clinton. H. Res. 193 (2003) aimed to reaffirm the U.S. support for the U.N. Genocide Convention and celebrate the 15th anniversary of the enactment of the Proxmire Act, which was the legislation by which the convention was ratified by the Senate and incorporated into U.S. law. The Armenian included in a list of genocides within the text. The measure passed out of the House Judiciary Committee upon a quick voice vote. No further action was taken. H. Con. Res. 195 (2005) was grandly entitled, "Commemorating the Armenian Genocide of 1915-1923, urging the Government of the Republic of Turkey to acknowledge the culpability of its predecessor state, the Ottoman Empire, for the Armenian Genocide and engage in rapprochement with the Republic of Armenia and the Armenian people, and supporting the accession of Turkey to the European Union if Turkey meets certain criteria." The House International Relations Committee passed the resolution at mark-up by a vote of 35-11. No further action was taken and H.Res. 316 (2005) immediately began to be promoted. H. Res. 316 is nearly identical to the pending H. Res. 106. The House International Relations Committee passed it 40-7. No further action was taken. This is not an exhaustive list. Rather, it is meant to demonstrate that efforts at gaining a particular type of legislative recognition of the Armenian allegation of genocide have been incessant for more than a decade.

genocide allegation. On the contrary, he seemed to be worried about it being used to galvanize Armenian terrorists. On October 18, 1983 in a question-and-answer session with ethnically oriented publications and radio stations, an Armenian gentleman from California asked, "I would like to know if the American Government has a stand on the Turkish genocide of the Armenians of 1915." The President responded: "[T]he only official stand that I can tell you we have is one opposed to terrorism on both sides." This later statement contradicts and reverses proclamation 4838 insofar as it mentions Armenians.

Text of the Resolution:

[Finding] (23) In August 1985, after extensive study and deliberation, the United Nations SubCommission on Prevention of Discrimination and Protection of Minorities voted 14 to 1 to accept a report entitled 'Study of the Question of the Prevention and Punishment of the Crime of Genocide,' which stated '[t]he Nazi aberration has unfortunately not been the only case of genocide in the 20th century. Among other examples which can be cited as qualifying are . . . the Ottoman massacre of Armenians in 1915-191'.

[Finding] (24) This report also explained that '[a]t least 1,000,000, and possibly well over half of the Armenian population, are reliably estimated to have been killed or death marched by independent authorities and eye-witnesses. This is corroborated by reports in United States, German and British archives and of contemporary diplomats in the Ottoman Empire, including those of its ally Germany.'

Summary Reply: ⁵⁵

Findings 23 and 24 are cunning, but absolutely wrong. The U.N. subcommission did not “accept” the report. Instead, it considered whether even to “receive” the report and decided not to. In the end, it “[took] note” of the study. The 14-1 vote referred to above concerned not whether the report was accepted, but the approval of an amended draft resolution that refused to receive and transmit the report to the Human Rights Committee.

When this report was referred to in legislation concerning the Armenian allegation of genocide, (H. Res. 596, 106th Cong. 2000), on October 5, 2000, U.N. Spokesman Farhan Haq responded unequivocally, “The United Nations has not approved or endorsed a report labeling the Armenian experience as Genocide.” Again referring specifically to the Armenian Allegation, Mr. Haq repeated on April 9, 2007, that the UN does not take a position on events prior to the establishment of the organization. For this reason, the resolution’s claim that the U.N. “corroborates” any archival account or population figure is incorrect.

⁵⁵ This section is partly derived from the pamphlet, “The Truth About the ‘Whitaker Report’” by Turkkaya Ataov (Sistem Ofset, March 1986). As a member of a U.N. committee, Ataov attended some of the meetings in Geneva that considered the Whitaker Report.

Analysis:

Findings 23 and 24 refer to the Benjamin Whitaker Report. The excerpts above are drawn from a footnote in the report, not the main text. The footnote was the source of great argument among the subcommission members. Many wanted the information removed in its entirety. Yet it was kept, but only as footnote, which cited only sources that validate the genocide thesis, omitting all contrary authorities. Despite this effort at compromise, the U.N. did not accept the report. It considered whether even to “receive” the report and declined. After long debate, it decided merely to “take note” of the report. Under U.N. protocol, this constituted a polite rejection.

The history of the Whitaker Report is instructive. The same U.N. subcommission had proposed a similar report in 1978 that included a reference to the Armenian case as genocide. This reference caused sufficient discord among the members of the subcommission that the report was not presented until the reference was removed.⁵⁶ Certain members of the subcommission then sought out another rapporteur who could carry the Armenian issue through another report. They chose in 1983 Benjamin Whitaker, Director of the London-based Minority Rights Group. Mr. Whitaker was the author of a booklet entitled, “The Armenians,” in which he argued for the Armenian version of events to the exclusion of all other views. The book’s bibliography is nearly devoid of Turkish sources. In the August 22, 1985 edition of The Armenian Reporter newspaper, it was approvingly stated that Mr. Whitaker, “clearly sided with the Armenians.”

The U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities (PDPM), held its 34th meeting on August 5-30, 1985 in Geneva. One of its agenda items was a, “Review of further developments in fields with which the Sub-Commission has been concerned” reached the following conclusions, it:

1. Refused to receive this report by deleting the word “receive” from the draft Resolution,⁵⁷
2. Added to the draft Resolution to underline its disapproval: “Noting that

⁵⁶ CN.4/Sub.2/SR.222 (September 15, 1978).

⁵⁷ E/CN.4/1986/5-E/CN.4/Sub.2/1985/57.

divergent opinions have been expressed about the content and the recommendations of the report,”

3. Voted against a proposal to transmit the report to the Human Rights Commission,

4. Deleted the words specifying the “quality of” the proposals, and

5. Stipulated several reservations to paragraphs 41 and 42 of the report of the subcommission:⁵⁸ To paragraph 41, “... Other participants estimated that the Special Reporter should have exclusively concentrated itself on the prevention of genocides in the future without mentioning the past events on which it is impossible to investigate.” To paragraph 42, “Some participants maintained the view that the Armenian massacres were not sufficiently proved by the documents and certain elements of proof were falsified....”

Several delegates, those from the U.S., Bangladesh, Belgium, China, Romania, Egypt, France, Jordan and the then-Soviet Union, expressed specific disagreement with Whitaker’s mention of the Armenian allegation.⁵⁹ The U.S. delegate, Mr. John Carey, stated, “It is certainly impossible to apply juridical norms retrospectively and in the future one should be extremely careful when using words qualifying such vigorous events. ... Certainly there exist other persons that the Special Reporter should have consulted ...” (translated from the French). Commenting on paragraphs 20-24 of the report, he added, “all the existing sources have not been taken into account and the matter has not been elaborated sufficiently in depth. ... The question of genocide has not been elucidated sufficiently.” Questioning Mr. Whitaker directly, Carey proposed, “If the Rapporteur, who happens to be a good friend of mine, still thinks that his Report is objective, he may send it [to] scholarly review, such as *The American Journal of International Law* and [seek their] reaction to it.”

58 These paragraphs read:

41. The Special Rapporteur therefore proposes that there should be added at the end of Article II of the convention words such as: “in any of the above conduct, a conscious act or acts of advertent omission may be as culpable as an act of commission.” Provision for revision of the Convention is set out in Article XVI of the Convention.

42. In the consideration of whether to widen and revise the Convention in other respects, it has rightly been argued that it is necessary not to weaken the over-all governmental support for its central principle. On the one hand, “genocide” in popular modern usage covers many more cases of mass killings than those covered in the Convention. On the other hand, it has also been noted that Article II (b) “Causing serious bodily or mental harm to members of the group” is one wider interpretation than that either in popular usage or in the dictionary. (footnote omitted) However, in certain cases such as apartheid, the degree of mental and other suffering inflicted may be felt to constitute such a comparable crime; (footnote omitted) and apartheid generally is considered in more detail next.

59 See E/CN.4/Sub.2./1985/SR.17, SR 18 and SR 19.

The U.S. record on this matter is clear – the inclusion of the Armenian allegation of genocide in the Whitaker report weakened it and rendered it ineffectual. The above quoted resolution Findings 23 and 24 are, therefore, misleading and incorrect.

Text of the Resolution:

[Finding] (25) The United States Holocaust Memorial Council, an independent Federal agency, unanimously resolved on April 30, 1981, that the United States Holocaust Memorial Museum would include the Armenian Genocide in the Museum and has since done so.

Summary Reply:

Hardly an apolitical creation, the U.S. Holocaust Memorial Council, according to its chronographer, Edward T. Linenthal, consulted no scholars who hold the contra-genocide viewpoint in resolving to include the Armenian case in the Holocaust Museum. As Linenthal recounts, when those holding a contra-genocide viewpoint attempted to engage the museum on this matter, they were dismissed and disparaged..

Analysis:

According to Edward T. Linenthal's book, "Preserving Memory: The Creation of the U.S. Holocaust Memorial Museum,"⁶⁰ the museum's consideration of the Armenian issue sparked controversy. Linenthal writes that as the museum was formed, Turkish and Turkish American opinions arrived and were considered only in response to the apparent decision of the museum, reached without consultation of any individual or organization supporting an opposing thesis, to use the Armenian version of events as a starting point for its consideration of the issue. Linenthal clearly establishes that while Armenians were represented on the Holocaust Memorial Council and their opinions were given the greatest consideration, Turks and Turkish Americans were reduced to the ignoble position of political spoilers and genocide "deniers." Also, weighing heavily in the considerations was an initial one-million dollar donation by an Armenian benefactor, Set Momjian, which was later scaled back to \$100,000.

Linenthal reveals that Michael Berenbaum, who now heads filmmaker Steven Spielberg's Survivors of the Shoah Foundation, was instrumental in the decision to present the

60 Viking Press, New York, 1995, pp. 228-240.

disputed Hitler quotation mentioning the Armenians.⁶¹ His motive, according to Linenthal, was to placate the Armenian community, which had wanted the museum's recognition of the massacres and expulsions they suffered during the First World War. Linenthal notes that Martin Smith, who was at the time serving as director of the permanent exhibition, strongly supported Berenbaum, stating in 1990, "At a minimum, the Hitler quotation should be prominently displayed and addressed. Failure to do so would be craven pandering to the mandarins of the Israeli Foreign Ministry, for whom Turkish-Israeli relations are more important than dealing with the subject of genocide."

Armenians were involved in the planning of the museum from the start, with Armenians such as George Deukmejian and Set Momjian sitting on the council itself. Their aim was to hitch their cause to the much publicized Holocaust and try to conflate these vastly different tragedies. The museum's partisan perspective was exemplified by its careful avoidance of any acknowledgement of the suffering endured by Turks and Ottoman Muslims in a period of nearly unending warfare from roughly 1822-1922. Instead of mentioning the hundreds of thousands of dead Muslims, the Holocaust Memorial Council mainly treated the Turks who sought to engage in the museum's planning as annoying interlopers and "deniers" whose claims to suffering at the hands of Christians did not count as much as those of Armenians at the hands of Turks.

Noting the scholarship that has called into doubt the reliability of the Hitler quotation, the Assembly of Turkish American Associations on October 27, 2000 addressed a letter to the museum requesting clarification on 15 points related to the museum's policies and research methods concerning tragedies other than the Holocaust. The museum, though saying that it periodically reviews its entire permanent collection, including the Hitler quote, has yet to provide a substantive response.

61 Michael Berenbaum is also the Executive Producer of the 2001 documentary, "Desperate Hours," which concerns Turkey's rescue of European Jews during the Holocaust, a subject, incidentally, not given exposition in the permanent collection of the U.S. Holocaust Memorial Museum.

Text of the Resolution:

[Finding] (26) Reviewing an aberrant 1982 expression (later retracted) by the United States Department of State asserting that the facts of the Armenian Genocide may be ambiguous, the United States Court of Appeals for the District of Columbia in 1993, after a review of documents pertaining to the policy record of the United States, noted that the assertion on ambiguity in the United States record about the Armenian Genocide ‘contradicted longstanding United States policy and was eventually retracted’.

Summary Reply:

This finding is extraordinarily misleading and twists the significance of a legal decision, which actually was in reference to Armenian terrorism against Turks, beyond any reasonable interpretation.

Analysis:

In August 1982, the United States Department of State, in its monthly magazine, “Department of State Bulletin,” printed a five-page article entitled, “Armenian Terrorism: A Profile.” The article included a note that read, “Because the historical record of the 1915 events in Asia Minor is ambiguous, the Department of State does not endorse allegations that the Turkish Government committed a genocide against the Armenian people. Armenian terrorists use this allegation to justify in part their continuing attacks on Turkish diplomats and installations.”

The note was retracted by the State Department in May 1983 because it contradicted U.S. policy not to comment in any manner on a purely historical proposition.

Seeking to determine who was originally responsible for the note within the State Department, attorney Van Krikorian filed a broad Freedom of Information Act (FOIA) request with the State Department in October 1983. Not satisfied with the results that the FOIA request returned, Krikorian sued the State Department to force disclosure of additional records. In the line of cases that resulted, one, Krikorian v. Department of State,⁶² mentioned that

62 948 F.2d 461 (D.C. Cir. 1993).

the Note was voluntarily retracted by the State Department. This mere mention has been deceptively contorted into Finding 26.

First, the Department of State Bulletin article, "Armenian Terrorism: A Profile," which contained the note, was written to reveal the activities of Armenian terrorist groups and their bloody activities worldwide. H. Res. 106's drafters have carefully omitted this original context to avoid any reference to Armenian terrorism. According to the FBI, in 1980 and 1981 alone, Armenian terrorism accounted for 24.1% of all terrorist incidents in the United States. Thus, if Krikorian v. Department of State is to be discussed by the resolution, the fact of Armenian terrorism in the United States -- the primary inspiration for the article in the first place -- should certainly be mentioned.

Second, the court's opinion in Krikorian v. Department of State, concerned only whether the State Department properly interpreted privileges relating to national security and foreign policy when it withheld certain documents from its FOIA disclosures. In no way did the court discuss why the note was retracted by the State Department. The court only mentioned in a background statement that the note was retracted voluntarily by the State Department because it violated longstanding U.S. policy not to comment on an historical matter. This hardly amounts to a U.S. policy of recognizing the events as genocide. The court's ultimate decision and holding concerned only the privileges that, the court said, were for the most part properly asserted by the State Department.

Third, and perhaps most disturbing, H. Res. 106's drafters irresponsibly imply that because the note was retracted by the State Department, that the converse of the note's substance must ipso facto be true. This is absurd. It is the equivalent of saying that because the U.S. did not declare war on Germany in 1939, it must have been true that Franklin Roosevelt favored the Nazi regime, but changed his mind in late 1941.

Finally, the State Department policy that was contradicted by the note was then as it is now -- that the U.S. has not and likely will not take a position in this historical dispute. On October 24, 2007, Secretary of State Condoleezza Rice testified to the House Foreign Affairs Committee that Turkey and Armenia should be left alone to work together to explore their historical differences.

Text of the Resolution:

[Finding] (27) On June 5, 1996, the House of Representatives adopted an amendment to House Bill 3540 (the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997) to reduce aid to Turkey by \$3,000,000 (an estimate of its payment of lobbying fees in the United States) until the Turkish Government acknowledged the Armenian Genocide and took steps to honor the memory of its victims.

[Finding] (28) President William Jefferson Clinton, on April 24, 1998, stated: 'This year, as in the past, we join with Armenian-Americans throughout the nation in commemorating one of the saddest chapters in the history of this century, the deportations and massacres of a million and a half Armenians in the Ottoman Empire in the years 1915-1923.'

[Finding] (29) President George W. Bush, on April 24, 2004, stated: 'On this day, we pause in remembrance of one of the most horrible tragedies of the 20th century, the annihilation of as many as 1,500,000 Armenians through forced exile and murder at the end of the Ottoman Empire.'

Summary Reply and Analysis:

Armenian groups roundly criticized all of these statements and resolutions for failing to employ the term genocide. For example, on April 24, 2004, the Armenian National Committee of America (ANCA) chastised President Bush for, "Fail[ing] to honor [a] pledge to recognize the Armenian Genocide for the fourth time." On April 20, 1998, the Armenian Assembly of America wrote to President Clinton that it would be sorely disappointed if he did not "Correct [his] recent behavior" and use the word, "Genocide," in his April 24, 1998 statement, which he did not. The supporters of H. Res. 106 have made themselves clear: either elected officials must commemorate this contested period of history exactly as they dictate, or they will incur their ire.

Text of the Resolution:

[Finding] (30) Despite the international recognition and affirmation of the Armenian Genocide, the failure of the domestic and international authorities to punish those responsible for the Armenian Genocide is a reason why similar genocides have recurred and may recur in the future, and that a just resolution will help prevent future genocides.

Summary Reply:

Two sets of tribunals did consider the wrongs of Ottoman individuals. The only apparent “failure of the domestic and international authorities” is that they reached a result that did not declare the Ottoman Armenian experience genocide and did not carve out a mono-ethnic Armenian state in multi-ethnic eastern Anatolia. One could conclude that the unremitting push for genocide recognition has little to do with preventing future tragedies and much to do with seeking damages from Turkey.⁶³

Analysis:

The resolution implies that were it not for the unaddressed Ottoman crimes against the Armenians, Adolf Hitler, for example, may not have conceived of or implemented The Final Solution. This is a long stretch. Hitler’s psychopathy is well established in “Mein Kampf” and elsewhere in the historical record without any reference to Armenians whatsoever. The resolution makes its claim without any offer of proof that any finding with regard or in response to the Armenian tragedy would have, or could have, prevented other atrocious acts of inhumanity. The evidence sadly points in the other direction; genocides in Rwanda, Cambodia, Srebrenica, the Mai Lai massacres, Stalin’s purges, Mao’s Great Leap Forward, and other human tragedies all occurred after the Nazis were publicly held accountable for the Holocaust. It seems inaccurate to suggest that recognizing events in Anatolia would somehow prevent these or future tragedies when the Nuremberg tribunals did not.

⁶³ Turkey apparently bears all of the blame for the fate of the Armenians, though historians have amply shown that the members of the Triple Entente, particularly, Great Britain, France, and Russia, at various times raised the hopes of the Armenians only later to betray them.

Further, although they lacked many of the procedural guarantees accorded defendants in most civilized justice systems, the post-World War I tribunals did an adequate job of ferreting out the details of the Armenian tragedy. The British even relied on an Armenian researcher, Haig Khazarian, in its hunt for incriminating evidence against Ottoman officials. Thus, the judicial response was firm and the guilty, though clearly denied due process, were severely punished, whether by the executive authorities or by assassins.

Finally, were yet another judicial determination on the matter believed to be required, any nation or U.N.-recognized non-governmental organization could attempt to raise this issue for a complete hearing before the International Court of Justice at the Hague pursuant to both the U.N. Charter and the 1948 U.N. Genocide Convention. To date, however, neither the U.S., Armenia, nor any NGO has taken this step. This sidestepping of the required modern judicial procedures by the complaining side strongly implies that a complete hearing on the facts would not favor the accusers.

PART
2

CONSTITUTIONAL CONCERNS

H. Res. 106, despite being a simple resolution,⁶⁴ poses severe constitutional problems. Consider its final section.

Text of the Resolution

SECTION 3. DECLARATION OF POLICY. The House of Representatives-- (1) calls upon the President to ensure that the foreign policy of the United States reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian Genocide and the consequences of the failure to realize a just resolution; and (2) calls upon the President in the President's annual message commemorating the Armenian Genocide issued on or about April 24, to accurately characterize the systematic and deliberate annihilation of 1,500,000 Armenians as genocide and to recall the proud history of United States intervention in opposition to the Armenian Genocide."

Analysis:

A. The Resolution Limits Presidential Speech

In explicitly calling for action by the President, the resolution represents more than the mere exercise of free speech by the House of Representatives.⁶⁵ It impermissibly intrudes upon the foreign policy making powers of the President and would deny the President the freedom he or she requires to carry out his or her duties.⁶⁶

64 Simple resolutions are not legislative in character because they are not "presented" to the President for approval; rather they are employed to express facts, principles, opinions, and purposes of the two Houses. *INS v. Chadha*, 462 U.S. 919 (1983). Upon adoption, simple resolutions are attested to by the Clerk of the House of Representatives or the Secretary of the Senate and are published in the Congressional Record.

65 Article I, Section, 6 Clause 1 of the U.S. Constitution, known as the Speech and Debate Clause, generally guarantees the right of members of Congress to speak freely on any subject of their choosing. The Supreme Court has commented, "Committee reports, resolutions, and the act of voting are equally covered, as are 'things generally done in a session of the House by one of its members in relation to the business before it.'" *Powell v. McCormack*, 395 U.S. 486, 502 (1969) (emphasis added), quoting *Kilbourn v. Thompson*, 103 U.S. 168, 204 (1881). There are limits to the immunity provided to legislators by the Constitution, among them the notion that legislators must be "acting in the sphere of legitimate legislative activity," *Tenney v. Brandhove*, 341 U.S. 367, 376-377 (1972), raising the question whether commenting on disputed historic events that took place over nine decades ago in a country that no longer exists meets this standard.

66 Admittedly, H. Res. 106 is not a criminal prosecution. Yet the mere consideration of a genocide allegation by the federal legislature against a foreign state dangerously intrudes upon the foreign policy power that Article II of the U.S. Constitution invests solely in the President. In *U.S. v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936), the Supreme Court confirmed, "the President alone has the power to speak or listen as a representative of the nation." Quoting an earlier opinion by Justice Marshall, Justice Sutherland later intoned, "The President is the sole organ of the nation in its external relations, and its sole

Compare, for example, H. Res. 121 (2007) in which the House of Representatives urged the government of Japan to apologize for the defiling of “comfort women” during World War II. This resolution made no demands on the President whether to speak or adjust U.S. policy. An element of hubris, then, characterizes H. Res. 106’s declaration of policy. It is no more proper for Congress to ask the President to make an annual statement on Armenian history than it would be to demand that he use certain words in greeting a foreign dignitary or include certain phrases in a State of the Union address.

H. Res. 106’s declaration of policy allows the House further to impose upon the President by seeking his cover for congressional action that might otherwise be criticized for being parochial and meant to appease a limited constituency in certain congressional districts.⁶⁷ That is, by importuning the President, who conducts foreign policy on behalf of the entire nation, to act, the resolution would foist responsibility for the domestic and foreign impacts of its passage upon the White House.⁶⁸ If the House of Representatives would like the President to act in a certain way, it can do so with genuine legislation that is subject to a presidential veto. That it has chosen to not take this course reveals the House’s lack of conviction to bear the consequences of its actions on this matter.

B. The Resolution Impacts Foreign Policy

Invoking foreign policy in its very first line the resolution would force the President’s hand in crafting the United States’ relations with Turkey, the foreign state impliedly

representative with foreign nations.” 299 U.S. 304, 306, *see also* *Crosby v. National Foreign Trade Council*, 99-474, 530 U.S. 363 (2000) (upholding the President’s authority by preventing the State of Massachusetts from independently enacting trade sanctions against a foreign state). Nevertheless, the *Curtiss-Wright* decision does not prohibit Congress from passing laws that impact foreign policy and require the President to administer that policy. Examples would be the Clark Amendment to the Arms Export Control Act of 1976, which terminated the President’s covert CIA action in Angola, and the Boland Amendments that limited President Reagan’s ability to assist the Contras of Nicaragua. These are easily distinguished from H. Res. 106 by being actual legislation passed into law, whereas H. Res. 106 lacks the critical characteristics of legislation.

⁶⁷ For example, all members of the House Foreign Affairs Committee representing congressional districts in California, the state with the largest number of Armenian Americans, voted in favor of H. Res. 106 at the committee markup on October 10 2007, whereas many of the 21 votes against the resolution were by representatives from states with comparatively few Armenian Americans.

⁶⁸ One obvious impact of the resolution’s passage would be the degradation of relations between the United States and Turkey, a foretaste of which was provided when Turkey withdrew its Ambassador from Washington following the approval of H. Res. 106 by the House Foreign Affairs Committee on October 10, 2007.

accused of the high crime of genocide in the resolution. Claims that the resolution is not aimed at Turkey should be dismissed out of hand. The resolution's sponsors make no secret that its intent is punitive toward Turkey.⁶⁹ The foreign policy dimension is also plainly visible when one acknowledges, for example, that the Republic of Armenia has utilized the allegation of genocide as a basis for calling into doubt the continuing validity of a number of international agreements that establish international boundaries.⁷⁰ Therefore, the genocide allegation implies U.S. involvement in what some in Armenia consider a border dispute. Two modern nations, the Republics of Turkey and Armenia, have much riding on whether genocide occurred as accused in the resolution.

Thus, the Congress should yield consideration on this highly controversial issue to the Executive Branch of the U.S. federal government, which has spoken strongly against passage of H. Res. 106.⁷¹

69 See e.g. an Armenian Assembly of America fact sheet on the resolution: http://www.aaainc.org/fileadmin/aaainc/images/PRESS_RELEASES_2007/PDFs_for_releases/AAA_Fact_Sheet_Human_Rights-Talking_Turkey.pdf.

70 Principally, Armenia rejects the Treaty of Lausanne, 28 L.N.T.S 11 (1923), which largely defined the borders of the Republic of Turkey, including its border with the Armenian Soviet Socialist Republic, following the collapse of the Ottoman Empire. And while Armenia appears to abide by many prior boundary agreements, confusion continues to exist as to Armenia's reliance on such prior agreements as: The Treaty of Gumru (Alexandropol) signed by the late Ottoman government and the Armenian Republic on December 3, 1920, the Moscow Treaty with the Soviet Union of March 16, 1921, which established the boundaries between Turkey and the Soviet Union, and the Treaty of Kars of October 13, 1921 between the late Ottoman government and Soviet Union, which confirmed another series of important regional boundaries. The confusion is sufficient to prompt reporters to ask about these agreements. For example, such a question on December 13, 2006 prompted Armenia's Foreign Minister to state, 2006, "Armenia has never made a problem of validity of the Treaty of Kars, as Armenia remains loyal to all agreements inherited from the Soviet Union." Certain Armenian legislators, particularly in Armenian Revolutionary Federation political party, have since opposed that statement, and the Noyan Tapan news agency report that contained the quote finished asking, "A question emerges: how much is the Treaty of Kars valid?" Further, both the preamble and Article 11 of the Armenian declaration of Independence of August 23, 1990, indicate that Armenia may not yet consider its borders settled. See also Omer Engin Lutem, "Unconditional Diplomatic Relations With Armenia," online journal of the Institute for Armenian Studies (Ankara), January 23, 2008 (<http://www.eraren.org/index.php?Lisan=en&Page=Makaleler&MakaleNo=2908>).

71 Indeed, the President has already expressed his opposition to the resolution. In a brief morning news conference on October 10, 2007, President Bush stated, "On another issue before Congress, I urge members to oppose the Armenian genocide resolution now being considered by the House Foreign Affairs Committee. We all deeply regret the tragic suffering of the Armenian people that began in 1915. This resolution is not the right response to these historic mass killings, and its passage would do great harm to our relations with a key ally in NATO and in the global war on terror." Following the Foreign Affairs Committee vote later that day, the State Department spokesman expressed, "regret that the House Foreign Affairs Committee ... approved House Resolution 106 and sent it on for consideration by the full House. The Administration continues strongly to oppose this resolution, passage of which may do grave harm to U.S.-Turkish relations and to U.S. interests in Europe and the Middle East. Nor will it improve Turkish-Armenian relations or advance reconciliation among Turks and Armenians over the terrible events of 1915."

C. The Term “Genocide” Describes a Crime Specifically Defined by Law, Yet the Resolution Avoids Adjudication of the Crime’s Elements by the Designated Competent Arbiter

Though the terms “murder,” “larceny,” and “arson,” for example, may have a commonly understood usage, they are also crimes specifically described by statute, and enforced according to the terms of the laws of the enforcing state or federal government. The same is true for the term “genocide.” Genocide describes a high crime that is recognized by the United States and that is specifically addressed in the laws of the United States, both in the federal criminal code and by solemn treaty ratified by the U.S. Senate.

The word “genocide” was conceived in 1944 by the jurist Raphael Lemkin in response to the Holocaust. In 1948, following the efforts of Lemkin and others, the United Nations completed the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (the “Genocide Convention”).⁷² The United States became a signatory to the treaty shortly after its presentation and the U.S. Senate ratified the treaty on November 25, 1988, thus making it part of the supreme law of the United States as stipulated by Article VI of the Constitution. The treaty is in force, having been ratified by the required number of nations. The overwhelming majority of United Nations member states have ratified the treaty.

The Genocide Convention specifically delineates the crime of genocide, methods of enforcement against its perpetrators, and the jurisdiction of courts to hear cases alleging genocide. In accordance with Article 5 of the Genocide Convention, the United States has enacted laws giving it effect.⁷³ These laws make it a federal crime not only for U.S. nationals to commit genocide or for others to commit genocide within the U.S., they allow prosecution of individuals for the crime of genocide committed outside the U.S., provided the accused can be brought to the U.S. Yet this portion of the U.S. Code is not applicable to the Armenian tragedy because the crimes were allegedly perpetrated by a no-longer extant foreign government, the Ottoman Empire of 1300-1921, and no individuals

⁷² 78 U.N.T.S. No. 1021, p. 277 (1951).

⁷³ See 18 U.S.C. §§ 1901, 1902, also known as the Proxmire Act, as amended by PL 110-151 (2007), also known as the Genocide Accountability Act.

are named responsible for the acts complained of in H. Res. 106. The Armenian allegation would instead be governed by Article IX of the Genocide Convention, which specifically states, “Disputes ... relating to the responsibility of a State for genocide ... shall be submitted to the International Court of Justice at the request of any parties to the dispute” thus making the ICJ’s jurisdiction over foreign states exclusive.⁷⁴ Article IX requires no additional U.S. legislation to give it effect.

H. Res. 106, strongly infers the culpability of Turkey, the successor state to the Ottoman Empire in which the events complained of are alleged to have occurred. Turkey unequivocally denies the genocide allegation made against it by the U.S. House of Representatives in H. Res. 106. Should the resolution be adopted, therefore, the House should urge that the matter be brought to the International Court of Justice for adjudication.⁷⁵ That H. Res. 106 lacks reference to the one bona fide arbiter of cases alleging state-sponsored genocide is incongruous with the resolution’s stated intent and reveals the derision of the resolution’s drafters toward both the Proxmire Act and the Genocide Convention. In effect, adoption of the resolution as presently drafted would call the Genocide Convention’s efficacy into grave doubt. And though supporters of the resolution have argued that it is better to legislate accusations of genocide than to adjudicate them at the International Court of Justice because it has a poor record of trying such cases, the ICJ has very recently exercised its authority and jurisdiction in a case alleging genocide committed by a state, issuing its judgment on February 26, 2007, in Bosnia and Herzegovina v. Serbia and Montenegro.⁷⁶ And certainly United Nations-sponsored tribunals in Rwanda and the former Yugoslavia have applied effectively the Genocide Convention to individual crimes.⁷⁷

While the resolution does mention the Genocide Convention’s formation in Findings and 16 and 17, the legislative history of the convention indicates that the United States has placed a great amount of confidence in the ICJ. Indeed, the Senate did not ratify

⁷⁴ 78 U.N.T.S. No. 1021 (emphasis added).

⁷⁵ The resolution could have urged that the U.S., for example, urge one of the specified committees of the United Nations to ask the International Court of Justice for an advisory opinion whether the Armenian allegation of genocide is legally valid. See Chapter IV of the Statue of the International Court of Justice of June 26, 1945.

⁷⁶ One can download a copy of the judgment from the ICJ’s website at the following address: <http://www.icj-cij.org/docket/files/91/13685.pdf>. <http://www.icj-cij.org/docket/index.php?p1=3&k=f4&case=91&code=bhy&p3=4>

⁷⁷ For the former Yugoslavia, see <http://www.un.org/icty/>. For Rwanda, see <http://69.94.11.53/>.

the Genocide Convention until 1988 when it was finally assured that the ICJ's standards conformed to U.S. constitutional due process.⁷⁸

D. The Separation of Powers Enshrined in the U.S. Constitution Prohibit Prosecution of a Foreign State by a Federal or State Legislative Body

The Separation of Powers doctrine enshrined in the very structure of U.S. Constitution prevents any legislature, state or federal, from prosecuting crimes. Article I Section 8 of the Constitution delegates to the legislature the power to “define and punish ... [o]ffenses” The U.S. Congress has done so by enacting 18 U.S.C. §§ 1091, 1092 and ratifying the Genocide Convention. Enforcement of those laws, however, is an executive function as provided by Article II Section 3, “The President ... shall take care that the Laws be faithfully executed.” The judiciary provides oversight of these two processes.⁷⁹

Clearly H. Res. 106 is not an actual criminal indictment; yet it is equally clear that no legislature, state or federal, can determine whether a specific crime has been committed, those functions being reserved for other branches of government. Our prosecutorial and judicial systems have been constructed and have evolved to provide the required measure of due process as required by the Constitution. Our legislatures, having a different priority, are not equipped to provide the required due process guaranteed by the Fifth and Fourteenth Amendments to the Constitution. Passage of H. Res. 106, which alleges criminal acts, would, in effect, pronounce a conviction without having provided due process to the accused, in this case the Ottoman Empire and its legatee Turkey.⁸⁰ In short, the proposed legislation, explicitly discussing the high crime of genocide, impermissibly seeks to try and convict a foreign state in a forum that lacks the requisite authority.

78 See e.g. Lawrence LeBlanc, *The United States and the Genocide Convention* at 195 (Duke U. Press, 1991).

79 See U.S. Const. Art. III, Sec. 1, *Marbury v. Madison*, 5 U.S. (Cranch) 137 (1803).

80 One can also analogize the resolution to a Bill of Attainder, which is prohibited expressly by Article I Section 9 of the Constitution, which proclaims that, “No Bill of Attainder or ex post facto law shall be passed.” Relatively few cases have relied on the Bill of Attainder clauses in the Constitution. Nonetheless, because of the strict statutory definition of the crime of genocide any mention of the term outside of its legal context is fraught with the danger that it be misapplied. In *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977), Justice Stevens wrote that Bills of Attainder deprive their victims of, “reputation, property, and ... potential for future leadership.” Were Turkey condemned without due process by H. Res. 106 the taint on its reputation would result in a tremendous diminution of its international standing and would clear the way for spurious territorial and financial claims.

E. Because Allegations of Mistreatment of Armenians Had Already Been Tried, the Resolution Is Analogous to Double Jeopardy

The criminality associated with the tragic experiences of the Armenians in eastern Anatolia during the last years of the Ottoman Empire has already been addressed. Two tribunals addressed numerous charges against Ottoman officials. No evidence of crimes that would constitute genocide, as the crime is presently defined, could be presented. Indeed, as the resolution clearly notes, persons were indicted, but guilty verdicts for the crime alleged in this resolution, genocide, were not obtained.

As briefly glossed over in Finding 3 and 4 of the Resolution, spurious Ottoman courts, established to at the behest of the Post-World War I Occupation Forces, which included the U.S., tried and convicted over 1,000 individuals for various war crimes. The majority of those tried were political enemies post-World War I Ottoman Government, which had been installed by the victorious Allied Powers who then occupied Istanbul. With almost no presentation of evidence or the application of what might today be considered due process, the courts found nearly every defendant guilty as charged. Sentences and punishments were meted out for a range of offenses, including “outrages to Armenians.” However, no charges of crimes against humanity were raised or sustained.⁸¹ Six officials, members of the Union and Progress Party, were tried in absentia and four were sentenced to death.

Apparently dissatisfied with the post-war Ottoman courts, the British government, on behalf of all Allied Powers, including the U.S., convened the Malta Tribunals. In 1920, 144 Ottoman officials were arrested and deported for trial to the island of Malta. The Allied Powers accused them of three categories of alleged offenses: (i) failure to comply with Armistice terms, (ii) ill-treatment of British prisoners of war, and (iii) outrages to Armenians in Turkey and Transcaucasia. Fifty-six of the deportees were eventually selected for prosecution.

⁸¹ Vakhan Dadrian, widely quoted among Armenian sources, has written that these tribunals dispensed justice fairly and proved that the Armenian massacres were centrally planned in a manner that approximates the requisite intent for the crime of genocide. See Vakhan Dadrian, The Documentation of the World War I Massacres in the Proceedings of the Turkish Military Tribunal, 23 *International Journal of Middle East Studies* 554 (1991). After the publication of Guenter Lewy's, The Armenian Genocide Revisited in the Fall 2005 issue of the *Middle Eastern Quarterly*, Dadrian and Lewy exchanged a series of letters to the editor in which each impugns the other's scholarly abilities. These have been republished at: <http://www.me-forum.org/article/895>. See also Guenter Lewy, The Armenian Massacres in Ottoman Turkey, A Disputed Genocide at 73-82.

At the conclusion of the investigation of all available documents in at least three countries, the British Procurator General determined that it was “improbable that the charges would be capable of proof in a court of law,” exonerated and released all 144 detainees after two years and four months of detention without trial. Thus, the charges were exhaustively probed, investigated, and studied with the Allies agreeing that the charges could not hold.

And finally, the Republic of Turkey has abided by all of the provisions of the Treaty of Lausanne. Specifically, all obligations to persons and nations for real and personal property losses have been long ago discharged.⁸² It also is worth mention that no charges were brought following World War I against the Ottoman Empire for violations of the Geneva Conventions in force at the time.

Thus, though double jeopardy may not exist in the traditional sense,⁸³ H. Res. 106 does a poor job at eliciting these earlier trials. First, it improperly implies that individuals were tried for genocide. Second, it ignores the unfairness of the post-war tribunals. And third, it pays no heed whatsoever to the contemporaneous Malta Tribunals that attempted to provide fair hearings, but which fell apart because the evidence could not support the charges.

The problems above, obvious and pernicious, render H. Res. 106 more than politically inconvenient.

82 See 28 L.N.T.S 11 Part 2, Sec. 1, Arts. 46-57, Art. 58, Part 3, Sec. 1, Annex to Part 3.

83 The legal defense of double jeopardy arises from the Fifth Amendment to the U.S. Constitution, which reads in pertinent part, “nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb.”

CONCLUSION

In short, H. Res. 106 is an exercise in concealment. At its core it is dishonest, attempting to take advantage of a general and understandable lack of knowledge of this complex, contested history to deceive the public. Among other misleading aspects, the resolution is based on the faulty premise that there is a United States record on the “Armenian Genocide.” The U.S. record on what is perhaps more accurately termed, the Armenian Revolt and the Ottoman Military Response, though rife with documents that reflect the U.S.’ policies against the Ottoman Empire and promote the anti-Turkish prejudices of the day, includes ample evidence that the events in question, though undeniably dreadful, describe not a one-sided affair. On the contrary, they clearly demonstrate that Muslims suffered from attacks by Armenian nationalist insurgents and that Muslim civilians suffered from war-induced deprivations alongside Armenians. Yet the resolution not only ignores such evidence that contradicts its glib, partisan view of history, it implies that such evidence must be discounted or dismissed out of hand. The resolution attempts to authenticate an historic narrative not warranted by the historic events that, a survey of the current literature on the matter demonstrates, remain the subject of genuine dispute.⁸⁴ This constricted approach dishonors the pursuit of truth and impedes reconciliation between Turkey and Armenia.⁸⁵

Moreover, the resolution, if passed, would constitute an evasion of the U.S.’ solemn treaty obligations that require accusations of genocide to be assiduously investigated and prosecuted. It would also effectively force the U.S. President to make policy in a strategic region based upon a selective view of late 19th and early 20th century history. Of course, the U.S. House of Representatives ought not be either the investigatory body or the forum of prosecution. As an investigatory body, the House has proven itself on this issue to be more interested in endorsing a partisan viewpoint than in a genuine search for the objective history of these events. And as a forum of prosecution, the House is not equipped to provide the level of due process that the U.S. Constitution and the Genocide Convention demand.

⁸⁴ See Guenter Lewy, *The Armenian Massacres in Ottoman Turkey, A Disputed Genocide* 43-130 (2005) thoroughly describing the rival theses, one concluding that genocide occurred and the other concluding that the genocide term is inappropriate, and referencing the scholarly works and primary sources that support each.

⁸⁵ The cause of reconciliation is inextricably tied to H. Res. 106. On November 26, 2007, Vahan Hovannisian, the Vice Speaker of the Armenian National Assembly, commented on the legislation, “We will gain a victory. However, the matter is not only recognition of the atrocity but restitution as well.” Thus, he clarified that the stakes were not merely to shed light upon the supposed historic record, but also to exact financial and other compensation from Turkey. H. Res. 106, then, is dreadfully serious business.

Legislating history demeans the importance of both legislators and historians. An historian cannot undertake an objective study of events while legislatures are anointing one viewpoint acceptable above all others. And legislators lose credibility when they opine on events about which they clearly lack substantive expertise, but regarding which they have been much lobbied.

