

# The Armenian *Metz Yeghern*, one hundred years later: an "unresolved" case of genocide and the development of international norms

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**ABSTRACT:** Intersubjective recognition of human rights abuses affirms them and exerts pressure to acknowledge them in international norms and institutions. It is in this way that the transnational memory of genocides, made part of the common lifeworld of humanity, can assert itself against the contrary interests of states and shape institutions and conduct in international affairs. Thus, human rights abuses do indeed foster the development of the international human rights regime. The Armenian Genocide, an unresolved and massive human rights abuse, contributed powerfully to the development of the current law on genocide and demonstrates how transnational memory, encapsulated in legal concepts, can transmit intersubjectively recognized norms of state conduct through time and institutions. In spite of the fact that there was no meaningful remedial action for the Armenian Genocide, and despite the fact that it is not universally recognized and is to some extent the subject of dispute, the Armenian Genocide played a significant role in the development of the international law on genocide and, because it is still the subject of dispute, remains a focal point for discussion of the concept of genocide a century later. The Armenian Genocide offers evidence that memory of unresolved human rights abuses can drive the development of international norms, and the ways in which this historical case is remembered have played a constructive role in the development of the global human rights regime.

**Keywords:** Armenian Genocide, transnational memory, constructivism, international norms, international law.

It is often argued that the current international human rights regime is rooted in the trauma of the Holocaust, which has become an archetypal symbol of large-scale violations of human rights. There is a vast body of literature exploring the ways in which the Holocaust affected the development of human rights regime (Kiernan, 2007; Levy and Sznajder, 2010; Power, 2013). The ways in which other genocides, especially disputed or “unresolved” ones in which the perpetrators avoided punishment, have affected this regime are much less researched (the exceptions include Bassiouni (1996); Dadrian (1998a, 1998b, 1998c)). Here I address this question by focusing on the Armenian Genocide, which is still disputed by the Turkish government and still not officially recognized as a genocide by the United States government and others. The perpetrators of this

genocide generally avoided punishment, and there has never been a meaningful remedy for the offenses committed from 1915-1923 against the Armenian people by the Ottoman Empire. Nevertheless, the Armenian Genocide was important in the development of international law regarding genocide.

I argue that the Armenian Genocide and the ways in which it is remembered have played a constructive role in the development of the global human rights regime. It is well-established that the legal concepts developed in the aftermath of the First World War associated with the Armenian Genocide formed part of the legal model and background for the International Military Tribunal that tried Nazi war criminals after the Second World War and, in turn, influenced the substance of the Convention for the Prevention and Punishment of Genocide (the "Genocide Convention") adopted by the United Nations in 1948. This history illustrates how an unresolved genocide can influence the course of the development of international law. The transnational memory contained within these legal concepts remained after the particular dispute that gave rise to them remained unresolved. Moreover, there is evidence that the fact that this was an unresolved genocide made it relevant to the establishment of the Nuremberg tribunal and the prosecutions of the defendants in those trials. The transnational memory of the Armenian Genocide — as evidenced in the statements of statesmen and lawyers who were not Armenian — offered a sense of urgency and purpose to resolving the Holocaust.

These observations suggest that additional research is needed to understand specific processes during which memories about "unresolved" genocides are constructed and are accepted transnationally. To gain insights into these questions, this essay is structured in the following way. In the first section, I define "unresolved" genocide with application to the Armenian case. In the second section, I present a theory regarding the role that transnational memory of genocides, both resolved and unresolved, has played in the emergence of an international norm against genocide and in the institutionalization of that norm. In the final section, I analyze the ongoing struggles regarding the recognition of the Armenian Genocide and the lack of any punishment for the Turkish government, highlighting the intersections between the "unresolved" genocide and the assertion of international expectations about "responsible complicity" (an expectation that responsible members of international community will recognize the crimes of the past). The political interests of states, I conclude, may offer challenges to the recognition of and remedy for an "unresolved" genocide, as illustrated by the Armenian Genocide.

## The Armenian Genocide as an unresolved genocide

During the First World War, the Ottoman Empire regarded Armenians as disloyal and favoring Russia. In addition, the Committee of Union and Progress (CUP), representing the Young Turks' nationalistic ideology, sought the suppression and expulsion of Armenians from the Empire. In furtherance of that ideology, the Ottoman Empire engaged in genocide against the Armenian people from 1915 to 1923, killing hundreds of thousands of men, women, and children. Forced marches

and brutal mass murder of civilians were a means by which the Ottoman Empire sought to resist what it saw as Russian sympathy among the Armenians and to establish complete Turkish dominion and control over the Empire.

Estimates range from 800,000 to 1.5 million Armenians killed, up to half of the Armenian population in the Ottoman Empire at the time (Frey, 2009). In addition, the Assyrian and Greek populations also suffered persecution at the hands of the Ottomans. Although it is difficult to determine the number of Assyrians killed by the Ottomans, estimates range from 250,000 to 500,000 (Khosoreva, 2011: 271-72). A conservative estimate of 300,000 killed is about half the Assyrian population of the Ottoman Empire at the time (Gaunt, 2006). The Ottoman government encouraged economic boycotts of Greek businesses and also encouraged gangs to attack Greek Christian businesses and people in 1914 (Bjorlund, 2008). Turkish nationalism was a powerful force that laid claim to the territories occupied by Anatolians, which included Greek Christians in this time (Erimtan, 2008). That Assyrians and Greeks, as well as Armenians, were targeted by the Ottoman government is important because in the final analysis it was the response of the Allied powers to the violence against these groups by the Ottoman regime that left its imprint on the emergent norm against genocide.

The British and French insisted on provisions in the Treaty of Sevres that obligated the Ottoman Empire to turn over persons responsible for the mass murder and deportation of Armenians for trial, but that treaty was abrogated with the collapse of the Empire and its replacement by Ataturk's government in the Turkish War of Independence (Dadrian, 1998a). Division among the allies and the nationalist CUP, which established the Young Turk government that replaced the Ottoman Empire, prevented the Armenian Genocide from being more fully addressed (Dadrian, 2010). The Treaty of Lausanne, which replaced the Treaty of Sevres, did not include a demand that the Ottomans extradite anyone for trial (Dadrian, 1998c). The British, who still had British subjects held prisoner by the Ottomans at the end of the war, did not press the issue, and the French also did not insist on war crimes trials (Dadrian, 1998a). The United States and Japan, concerned about the Bolshevik takeover of Russia, did not want to offer opportunities to a communist Russia by weakening the Turkish government further (Bassiouni, 2011, 1997). There were war crimes trials conducted in the Ottoman Empire in the aftermath of the First World War, the loss of which brought on the downfall of the Young Turk government, and some of the Young Turk leaders were convicted in absentia and sentenced to death, though several escaped to Germany and only a few received punishment (Frey, 2009). Nonetheless, the failure to vigorously pursue those responsible for the Armenian Genocide left the matter unresolved. This failure, motivated by political concerns in the aftermath of the First World War, later "came back to haunt the very same Allies, and particularly the United States, after World War II" (Bassiouni, 1991: 4).

I define an "unresolved" genocide as one for which there was no or little action taken to prosecute those responsible for committing the genocide and one the status of which as a genocide is disputed or not acknowledged by multiple states that are

regarded as legitimate actors in the international community. The Armenian genocide is an unresolved one because there were only a small handful of Ottoman officials prosecuted after the war, several of whom were tried in absentia, and because the Armenian Genocide is still disputed or not acknowledged by legitimate actors in the international community, notable the governments of Turkey and the United States. By contrast, some genocides have been "resolved" in the sense that they are generally acknowledged by legitimate political actors to have been genocides and have resulted in a substantial number of criminal prosecutions. Examples of "resolved" genocides would be the Holocaust, the genocide committed by Bosnian Serbs in the former Yugoslavia, and the genocide committed by Hutus against Tutsis in Rwanda. Each of these are generally acknowledged to have had the status of genocides. The Holocaust resulted in the prosecutions of Nazi war criminals at Nuremberg and elsewhere, such as the prosecution of Adolph Eichmann in Israel. The United Nations established an International Criminal Tribunal for the former Yugoslavia that has prosecuted a number of Bosnian Serb military and political officials and has ongoing criminal proceedings. The United Nations also established an International Criminal Tribunal for Rwanda, which also has ongoing proceedings. As Bass (2000: 285) has argued, "international tribunals are better than the usual alternative, which is simple vengeance by the aggrieved parties". Still, the resolution of genocides presents a continuum of degrees of resolution. There were, for example, a small number of prosecutions of Ottoman officials after the First World War, and many states today do recognize the Armenian Genocide. Nevertheless, it is possible to categorize a genocide as "unresolved" if there are major political actors in the international community that refuse to recognize it as such and for which there have been few or no prosecutions. The Armenian Genocide is such a case. The question I address here is whether, and how, such an "unresolved" genocide can influence the development of international norms.

## Intersubjective recognition of the crime of genocide

Daniel Levy and Natan Sznaider (2010), in their analysis of how the Holocaust and subsequent human rights abuses contributed to the development of the contemporary human rights regime, argue that memory of human rights abuses has driven the development of human rights norms and conditioned state sovereignty. Recognition of human rights and their violation is borne of our ability to empathize with others (Levy and Sznaider, 2010: 31). Further, they maintain, memories of human rights violations become most powerful when they are understood abstractly as human rights violations by persons who are not members of the group whose rights were violated (ibid, 14–15). They refer to these as "cosmopolitan memories" (ibid, 43). This abstracted and cosmopolitanized memory may influence the development of international law:

International law and the corresponding human rights legislation draw on particular historical instances, as do political and cultural justifications to establish

human rights as the principal source of the legitimacy of state sovereignty. Accordingly, these cosmopolitanized memories contribute substantially to the reconfiguration of sovereign legitimacy and the scope of political responsibility (Levy and Sznajder, 2010: 43).

Moreover, they argue, the power of historical memory has imposed conditions on state sovereignty, because acknowledging human rights has become a way for states to legitimate themselves (Levy and Sznajder, 2010: 17).

Levy and Sznajder focus their attention on the Holocaust's impact on the modern human rights regime, arguing that The U.N. Declaration of Rights and related human rights conventions "must be understood as direct responses to the shared moral revulsion of the delegates to the Holocaust—a sentiment that was also reflected in the direct connection between the declaration and some of the legal principles established in the Nuremberg trials" (Levy and Sznajder, 2010: 80). The same is true, they argue, of the U.N. War Crimes Commission and U.N. Human Rights Division, in which "concerns about the illegality of retroactive jurisprudence were overcome by replacing conventional (i.e., national) legal principles with the broader notion of international law and its implicit appeal to a civilized consciousness, now viewed as a safeguard against the barbarous potential of national sovereignty" (Levy and Sznajder, 2010: 80).

Levy and Sznajder demonstrate how recognition of governmental abuses of persons has given rise to the human rights regime. Genocide provides an especially powerful source of social memory that, due to its brutal and readily comprehensible nature, is capable of generating transnational consciousness of human rights abuses.

## Trauma, transnational memory, and intersubjectivity

Traumatic events that are on a large collective scale can have great political meaning, and this is a reason why the study of trauma and memory have become important areas of inquiry (Resende and Budryte, 2013). Such events include war and mass killings, but they also include environmental and even natural disasters that change our perception of the world and that are difficult to internalize and understand. One way to view trauma, therefore, is as something that is not supposed to happen according to our previous understanding of the world. This is consistent with the reactions of the victims of historic genocides. Victims of the Holocaust have reported that they could not believe what was happening to them even as it was happening. One victim of the Sobibor camp, for example, states that "I could not believe that this was an extermination camp, because it looked so nice. It was 23 April 1943. The sun was shining and it seemed like a beautiful summer's day. I knew we were going to die but, at the same time, I could not believe it" (ten Have and van Haperen, 2012: 25). This exemplifies the kind of trauma suffered by an individual, which is one kind of politically significant trauma (Resende and Budryte, 2013).

The transnational memory of genocidal acts gave rise to the articulation of genocide as a crime and a moral outrage. Transnational memory has political and cultural dimensions. In the former, actors pursue their aims with their own conception of the relevant memory, and in the latter, affected cultural and ethnic groups transmit their memory to subsequent generations and to others (Budryte, 2013). In diaspora communities, the memory of a trauma is transnational in that it is shared across national boundaries. The form the memory takes in such communities can provide social solidarity and identity among the community (Paul, 2000) and can influence policies in both the countries in which the diaspora community resides as well as the home country (Shain and Barth, 2003). But transnational memory can extend to other groups besides the community affected by the trauma as well. Transnational memory, as Levy and Sznajder (2010: 31) argue, is made possible by shared understandings that arise from our common humanity. Indeed, one function of remembering trauma, for example, in the form of criminal prosecutions for violations of human rights, is “to reconstitute a community of humanity against which there can be crimes (hence, ‘crimes against humanity’)” (Minow, 1999: 430). Culture and time are subjective, because these constitute individuals in their perceptions of events around them and across time. Where individuals are able to cross culture and historicity in their understanding of the experiences of others, there is real sociality because sociality consists of “shared knowledge” (Wendt, 1995: 73).

A normative principle and an international rule such as the contemporary Genocide Convention is a social structure. Social structures arise from these “intersubjective understandings,” and they are “are real and objective,” because they can be observed and explained, “but this objectivity depends upon shared knowledge” (Wendt, 1995: 73-74). Further, social structures consisting of intersubjective understanding are real because they are “collective phenomena that confront individuals as externally existing social facts,” and we can have objective knowledge of these facts (Wendt, 1995: 75). It is not only what political elites perceive about international norms that is important. Individuals and cultures are important in international relations because what people believe matters, and international norms based on socially constructed ideas can also be changed (Hansen-Magnusson, 2013). An international norm against genocide acknowledges an intersubjectively recognized, and therefore objective, constraint on state action that has arisen not only because political elites have established this principle as an international norm but because it is affirmed by people across national boundaries as norm that constrains the conduct of governments toward their citizens. When conceptualized in this way, even “unresolved” genocides, as large-scale traumatic events, have the capacity to influence international human rights regimes. Memory and communication of trauma then become the key variables.

The concept of the crime of genocide is one that both requires and demonstrates the intersubjectivity of our recognition of states destroying people because of who they are. It is the intersubjective recognition of the crime of genocide that makes it a crime that anyone can declare criminal and reject the authority of the

state to commit. The fact that states must justify their actions demonstrates that state actors acknowledge that their conduct is subject to standards that transcend national boundaries and the authority of states themselves. There are some shared understandings of just conduct that exist across time and culture, and states, despite their claims based on sovereignty and security, cannot avoid criticism of their acts of people worldwide who will subject these claims to criticism on grounds of a shared humanity. This criticism reflects an intersubjective, and therefore objective, rejection of the authority of states.

Transnational memory reflects an intersubjective acknowledgement of a common human experience and genocide, as a particular kind of trauma, is a particularly clear instance of this. This recognition evidences transnational, or as Levy and Sznajder (2010: 36-37) suggest, “cosmopolitan,” moral principles that are constraints on the authority of the state. Cultural memories are intelligible to us as individual participants in a culture. Transnational memories we have as persons who are not members of the affected group are intelligible to us by virtue of our humanity in common with persons across culture and history. Transnational memory, as recognition of our common humanity, can subvert and challenge politically constructed ideas regarding the state’s normative authority to treat its citizens by its own lights. Demands for the construction of principles to constrain the state’s treatment of its own citizens, seen in this way, reflects underlying normative principles that can pierce the subjectivity of nation-states, ideology, and nationalism and that can be reflected in international norms and institutions.

## Transnational memory and the construction of the principle of crimes against humanity

The Armenian Genocide offers a useful case study in how transnational memory of an unresolved and unpunished trauma can nevertheless aid the development of the human rights regime. While the Armenian Genocide did not result in more than a few prosecutions, it was the occasion for the development of the concept of crimes against humanity that would form a basis of the concept of genocide after the Second World War. At the same time, the Armenian Genocide is a useful case study because it shows how the interests of key states may slow or inhibit the recognition and remedy of genocide.

The Armenian Genocide worked a direct influence on the development of international law. It did so because the International Military Tribunal for the trials of Nazi war criminals deliberately adopted the concepts developed by the Commission of Fifteen of the Preliminary Peace Conference of Paris which considered, among other matters, the conduct of the Ottoman Empire that constituted genocide of the Armenian people during the First World War. This legal analysis, in turn, was important in the legal framework the Nuremberg tribunal employed to try Nazi war criminals after the Second World War and subsequently in the formation of

the U.N. Convention for the Prevention and Punishment of Genocide (Bassiouni, 2011; Dadrian, 1998a, 1998b, 1998c; Schabas, 2008, 2009). These historical and legal developments demonstrate how an unresolved genocide can influence the generation of international norms. Further, they illustrate how, in terms of the theoretical framework I have proposed, the transnational memory of a genocide can be impressed upon international law.

The Allies failed to significantly punish the Ottoman Empire for the Armenian Genocide, but the transnational memory of Ottoman crimes helped to construct the current human rights regime. It did so immediately in giving birth to the idea of crimes against humanity during the preliminary peace talks to end the First World War, which would later become critically important in the Nuremberg trials and subsequently in the Genocide Convention. It is meaningful too that the idea of crimes against humanity arose from the concept of conduct that "civilized" nations could not tolerate. The empathetic and intersubjective recognition of the suffering of others at the hands of their states abstracts that suffering from those who suffered it and enables it to play a part in the construction of norms of international law that prohibit such abuses. The Armenian Genocide played such a role, both in the immediate aftermath of the First World War and again, to greater practical effect, in the aftermath of the Second World War.

At the end of the First World War, the victorious allies sponsored a Commission of Fifteen to investigate responsibility for wrongful acts in connection with the war in preparation for peace talks. Almost thirty years later, the U.N. War Crimes Commission identified the link between the "crimes against humanity" tried by the International Military Tribunal and the precedent established after the First World War as follows: "the Governments of France, Great Britain and Russia issued a declaration, on the 28<sup>th</sup> of May, 1915, denouncing these massacres as '*crimes against humanity and civilization*' for which all the members of the Turkish Government would be held responsible, together with its agents implicated in the massacres" (United Nations War Crimes Commission, 1948a: 35). The Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties of the Paris Peace Conference, 1919, based upon reports gathered by the Allied powers on the actions of the Ottoman government toward its Armenian and Greek subjects constituted violations of "the laws of humanity" (Commission on Responsibilities, 1919: 16).

This analysis of the Ottoman Empire's conduct against its Armenian population was to become the basis of the international norm establishing crimes against humanity on which the Nuremberg proceedings and the Genocide Convention would be based (Bassiouni, 2011). The Treaty of Sevres (1920) had provided that the Allied powers would prosecute those responsible for these offenses, and this provision "constitutes, therefore, a precedent for Articles 6(c) and 5(c) of the Nuremberg and Tokyo Charters, and offers an example of one of the categories of '*crimes against humanity*' as understood by these enactments" (United Nations War Crimes Commission, 1948a: 45). The U.N. War Crimes Commission, in its report on information regarding human rights arising from war crimes trials,

noted that “the two categories of offences with which the Commission of Fifteen concerned itself, namely, violations of the laws of war, on the one hand, and offences against the laws of humanity, on the other, correspond generally speaking to ‘war crimes’ and ‘crimes against humanity,’ as they are distinguished in the two Charters of 1945 and 1946 and in the Control Council Law No. 10. Thus, in 1919 we find for the first time the specific juxtaposition of these two types of offenses” (United Nations War Crimes Commission, 1948b: 11).

It is well-established that the legal concepts developed in the aftermath of the First World War formed the basis for the prosecution of Nazi war criminals for crimes against humanity (Bassiouni, 2011; Dadrian 1998a, 199b, 1998c; Schabas, 2008, 2009). What I wish to underscore is that these developments can be understood not only as historical facts and evolving legal concepts, but also as elements of transnational memory transmitted by lawyers and statesmen from one catastrophe to another. The theoretical framework offered by Levy and Sznajder contends that human rights abuses drive the emergence and development of international norms through the recognition of human suffering, which, abstracted from their concreteness in the particular features of the victimized population, are articulated in norms that may be applied universally. In Wendt’s terms, the intersubjective recognition of social facts based upon shared knowledge are the objective matter from which social structures can be constructed that give effect to and reflect those shared understandings.

The lawyers who applied the customary international law implied in the Hague Conventions to the facts of the Armenian Genocide to produce the concept of the “laws of humanity” that the Ottoman government violated listed the violent atrocities committed by that government. These included such acts as the massacre and starvation of civilians, rape, mass deportations, and the destruction of religious and cultural monuments (United Nations War Crimes Commission, 1948b: 8). In their plainly stated recognition of the human suffering these actions caused, they denominated these as violations of the “laws of humanity.” In doing so, they proposed a norm that existed on paper, though not given full effect at the time. Their proposed concept, which applied to the atrocities of the Ottoman government the “laws of humanity,” was abstracted from its concreteness in the Armenian Genocide and later articulated and made a social structure in the Nuremberg tribunal and subsequently reflected in the U.N. genocide convention. In this way, the transnational memory of the Armenian Genocide generated international law.

In addition to the general historical evidence, there are also statements by statesmen and lawyers that illustrate how the memory of the Armenian Genocide figured in the translation of memory into current action. British political leaders, recalling their government’s failure to successfully prosecute Ottoman war criminals responsible for the Armenian Genocide, urged their government to push for the establishment of a war crimes tribunal before the end of the Second World War. Lord Maugham, a member of the London International Assembly (an unofficial body established by the governments of

the Allied powers to examine the problem of war crimes), argued in the House of Lords in October 1943 in debate over the establishment of the U.N. War Crimes Commission that it was necessary to establish judicial mechanisms before the war's end for trying Axis war criminals promptly upon the conclusion of the war. "I cannot," he said, "too strongly state that delay will mean the escape of the guilty." To illustrate this point, Lord Maugham went on to review the futile attempts at retribution which were made after the First World War, including the Leipzig trials" (United Nations War Crimes Commission, 1948a: 109). In addition, "Lord Cecil of Chelwood, who spoke from his own experience at the Paris Conference after World War I, and who, as President of the London International Assembly, had taken an active part in the deliberations on the subject of war crimes, agreed that too little previous consideration had been given between 1914 and 1918 to the question of war criminals, and urged that plans should be worked out this time before the end of hostilities" (United Nations War Crimes Commission, 1948a: 109).

During the Nuremberg trials, the British Chief Prosecutor, Sir Hartley Shawcross invoked the Ottoman government's offenses against their subjects in explaining the theory on which the Defendants had been indicted and tried during his closing argument to the International Military Tribunal in July 1946:

Yet international law has in the past made some claim that there is a limit to the omnipotence of the state and that the individual human being, the ultimate unit of all law, is not disentitled to the protection of mankind when the state tramples upon his rights in a manner which outrages the conscience of mankind. [...] The same view was acted upon by the European powers which in time past intervened in order to protect the Christian subjects of Turkey against cruel persecution. The fact is that the right of humanitarian intervention by war is not a novelty in international law-can intervention by judicial process then be illegal? The Charter of this Tribunal embodies a beneficent principle-much more limited than some would like it to be-and it gives warning for the future. I say, and repeat again, gives warning for the future, to dictators and tyrants masquerading as a state that if, in order to strengthen or further their crimes against the community of nations, they debase the sanctity of man in their own country they act at their peril, for they affront the international law of mankind. (International Military Tribunal, Trial of the major war criminals before the International Military Tribunal, Nuremberg, 14 November 1945-1, October 1946, (19): 470-71; see also Schwelb (1946), Dadrian (1998c).)

These statements illustrate the manner in which the memory of the Armenian Genocide, translated into abstract principles by persons who were not victims of the Ottoman government, impressed upon them the urgency of establishing social structures to address crimes of the type that had been committed before. Statesmen indicated their regret at having not resolved the past offenses and urged the establishment of social structures to address current offences in light of the past remembered. Shawcross' closing argument directly connects the Allies' efforts after the First World War, not only to Nazi war crimes, but also future

offenses. These illustrate the way in which shared understandings of human suffering may call for the establishment of norms and structures to address their violation with authority.

## The significance of continuing controversy over the Armenian genocide

As both a legal and political concept, the treatment of genocide as crime imposes limitations on the authority of the state by means of a transnational principle of justice. The crime of genocide is regarded as *jus cogens*, that is, a peremptory international norm from which derogation is not permitted and which functions essentially as a principle of natural law (Bassiouni, 1996). *Jus cogens* principles are peremptory because they necessarily trump other international legal principles. As a result, sovereignty and reason of state cannot justify the breach of a *jus cogens* principle, such as the prohibition of genocide, in international law. The concept and term “genocide” changed the discourse of nations as no state can claim that it has a justification for genocide; instead, the state can only deny that it has committed genocide (Bechky, 2012). As Bechky indicates:

By changing the conversation in this way, genocide reconstituted the community of nations: it moved the community from one devoted (almost) exclusively to interstate relations to one concerned as well with (certain of) a nation’s own internal acts. The new community became transnational, rather than international, in nature (p. 623).

Continuing efforts to achieve more widespread recognition of the Armenian Genocide reflects both the affirmation of human rights and the resistance of the state and national sovereignty in the development of human rights law. Today, approximately twenty governments and a number of international organizations recognize the Armenian Genocide (Yeginsu, 2015). Most of these official recognitions occurred from 1995 to 2007 (Armenian National Institute, 2015). There was a wave of new resolutions by governments recognizing the Armenian Genocide in April 2015, which was the centenary of the events, and Turkey, which fears calls for reparations, including territorial concessions to Armenia, reacted with harsh and emotional criticism of these resolutions (Garland, 2015). The centenary of the Armenian Genocide was important because it reinvigorated and continued dialogue about the subject of genocide. As Levy and Sznajder (2010) argue, human rights abuses become part of transnational memory and further dialogue about human rights. Over time, more governments, more organizations, and more people worldwide have come to recognize that the conduct of the Ottoman Empire toward its Armenian population from 1915-1923 constituted a genocide. While a number of major powers, such as Germany and France, recognize the Armenian Genocide, others, notably Turkey and the United States, do not, a decision that reflects their particular state interests.

In 2015, Austria (Pamuk, 2015), Belgium ("Turkey Warns," 2015), Brazil (Yackley, 2015), Germany (Busemann and Nienaber, 2015), Luxembourg ("Turkey Pulls Envoy from Luxembourg," 2015), and the European Parliament (Peker and Pop, 2015) adopted resolutions recognizing the Armenian Genocide, and Pope Francis referred to the Armenian Genocide in a speech (Peker and Pop, 2015), each of which resulted in harsh condemnation and recalling of ambassadors by the Turkish government. During this same time, there was widespread discussion of the United States' failure to recognize the Armenian Genocide due to its security relationship with Turkey (see, e.g., DeYoung, 2015; Hudson, 2015).

The "unresolvedness" of the Armenian Genocide can be at least partially attributed to the governments of Turkey and its ally the United States, which have refused to acknowledge that the Ottoman Empire's mass deportations and massacres amounted to genocide. The international response to the centenary of the Armenian Genocide included affirmations of human rights by prominent nations, visceral reactions by Turkey, and commentary on American inaction. These force continuing dialogue and awareness of the crime of genocide as part of the international human rights regime. In this way, the Armenian Genocide contributes a century later to consciousness of human rights and its violation by states.

There are specific political conditions that have enabled key states with an interest in limiting the recognition of the Armenian Genocide the ability to do so. The Ottoman Empire was defeated, but not unconditionally defeated and occupied as was the German government in the Second World War, so the control the allies had over prosecution of these crimes was greatly limited. The unconditional surrender of the Nazi regime enabled the allies to organize and successfully prosecute the war crimes committed by its military and political leaders. By contrast, the British had little ability to require such prosecutions of Ottoman officials, and the French and Americans had little interest in doing so.

In the years after the conclusion of the First World War, the nature of the Armenian diaspora itself placed it in a difficult position to assert its claims against the governments of Turkey and the United States, which have resisted recognizing the Armenian Genocide. Persons who are part of a culture that has experienced a genocide are able to make the genocide a part of transnational memory by communicating their experiences to others outside their culture, who are able to understand and recognize the experience of those who have suffered a genocide, and a diaspora can aid the spread of transnational memory regarding genocide, as in the Armenian case (Budryte, 2013). In the case of Armenian Americans, for example, the memory of the Armenian Genocide is an aid to solidarity and group identity, and political elites use this historical memory to mobilize them for current political action (Paul, 2000). Further, a diaspora may act in international politics by either influencing the policies of the governments of the countries in which the diaspora communities live or by influencing the politics of their home countries (Shain and Barth, 2003).

The location of the largest concentrations of Armenian ethnic populations has presented challenges in seeking recognition and remedies for the Armenian

Genocide. The Armenian diaspora has its largest numbers in Russia, which has an Armenian population of 1.2 million, and former Soviet republics, particularly Georgia, which has an Armenian population of a quarter million, while elsewhere the numbers are much smaller, except for the United States, with an Armenian population of almost a half million, and France, with an Armenian population of approximately 800,000 (“Armenian Population”, n.d.). The location of these populations has limited the ability of Armenians to achieve more widespread recognition of the Armenian Genocide. For most of the twentieth century, Armenians in the Soviet Union were not in a position to press for the development of the human rights regime and recognition of the Armenian Genocide, because their government had little interest in pursuing these objectives. The largest Armenian population not in a former Soviet republic is in the United States. In the United States, the impact of efforts to achieve official recognition of the Armenian Genocide has been limited due to the United States’ aforementioned security relationship with Turkey. The United States has proven unwilling to suffer damage to that security relationship in order to recognize the Armenian Genocide. Thus, state sovereignty and the varied interests of individual states has resisted efforts to recognize and remedy the Armenian Genocide.

Due to the trauma of the Armenian Genocide and its transmission to the world by the memory preserved by the Armenian people, it is probable that, over time, more governments and more international organizations will recognize the Armenian Genocide. It will remain uncertain as to when particular governments will do so, because a particular government is likely to recognize the Armenian Genocide when doing so satisfies a segment of its population and is not contrary to the current interests of the government as understood by its leadership at that time. While this conclusion does not inspire admiration for the moral sense of governments, it should inspire confidence in the power of transnational memory to preserve and expand international awareness of the trauma of the Armenian Genocide. This transnational memory has grown due to the efforts of the Armenians themselves but also due to the efforts of others who recognize the brutality and genocidal nature of the Ottoman government’s conduct, whose sense of justice impels them to promote recognition of the Armenian Genocide worldwide.

## Conclusion

Our common humanity enables us to recognize the horror of genocide and its injustice, which as a result was made a crime under international law. Intersubjective recognition of human rights abuses affirms them and exerts pressure to acknowledge them in international norms and institutions. It is in this way that the transnational memory of genocides, made part of the common lifeworld of humanity, can assert itself against the contrary interests of states and shape institutions and conduct in international affairs. Thus, human rights abuses do indeed foster the development of the international human rights regime. The Armenian Genocide, an unresolved

and massive human rights abuse, contributed powerfully to the development of the current law on genocide and demonstrates how transnational memory, encapsulated in legal concepts, can transmit intersubjectively recognized norms of state conduct through time and institutions. In spite of the fact that there was no meaningful remedial action for the Armenian Genocide, and despite the fact that it has not been universally recognized and is to some extent the subject of dispute, the Armenian Genocide played a significant role in the development of the international law on genocide and, because it is still the subject of dispute, remains a focal point for discussion of the concept of genocide a century later.

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# Armėnų *Metz Yeghern* po šimto metų: „neišspręsto“ genocido atvejis ir tarptautinių teisės normų raida

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**SANTRAUKA:** Intersubjektyvus (kelių asmenų santykio formuojamas) žmogaus teisių pažeidimų atpažinimas ne tik rodo didesnę jų svarbą pripažinimą, bet ir skatina juos įtraukti į tarptautinių normų formavimo praktiką. Būtent taip transnacionalinė genocidų atmintis, tapusi bendro žmonijos gyvenimo dalimi, geba atsispirti priešingiems valstybių interesams ir formuoti institucijas bei elgseną tarptautinių santykių arenoje. Žmogaus teisių pažeidimai skatina tarptautinių žmogaus teisių režimų raidą. Armėnų genocidas – neišspręstas didelio masto žmogaus teisių pažeidimo klausimas – svariai prisidėjo prie dabartinio genocido teisinio reglamentavimo plėtos. Šis atvejis parodo, kaip transnacionalinė atmintis, apipinta teisės sąvokomis, gali perkelti intersubjektyviai pripažintas valstybės elgsenos normas į kitą laiką ir kitas institucijas. Nepaisant to, kad nebuvo imtasi jokių žalos atlyginimo priemonių ir iki šiol armėnų genocidas nesulaukė visuotinio pripažinimo, *Metz Yeghern* atliko svarbų vaidmenį formuojant tarptautinę genocido teisę ir – kadangi tebėra ginčų objektas – išlieka svarbus debatuose apie genocido sąvoką, net ir praėjus šimtmečiui nuo aptariamų įvykių. Armėnų genocidas rodo, kad neišspręstų žmogaus teisių pažeidimų atmintis gali atlikti konstruktyvų vaidmenį formuojant visuotinį žmogaus teisių režimą.

**Pagrindiniai žodžiai:** armėnų genocidas, transnacionalinė atmintis, tarptautinės teisės normos, tarptautinė teisė.