

# RELIGIOUS FREEDOM IN TURKEY



April 12, 2005

Briefing of the  
Commission on Security and Cooperation in Europe

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**Commission on Security and Cooperation in Europe**  
**234 Ford House Office Building**  
**Washington, DC 20515**  
**202-225-1901**  
**csce@mail.house.gov**  
**http://www.csce.gov**

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## ABOUT THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

The Helsinki process, formally titled the Conference on Security and Cooperation in Europe, traces its origin to the signing of the Helsinki Final Act in Finland on August 1, 1975, by the leaders of 33 European countries, the United States and Canada. As of January 1, 1995, the Helsinki process was renamed the Organization for Security and Cooperation in Europe (OSCE). The membership of the OSCE has expanded to 55 participating States, reflecting the breakup of the Soviet Union, Czechoslovakia, and Yugoslavia.

The OSCE Secretariat is in Vienna, Austria, where weekly meetings of the participating States' permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations. Periodic consultations are held among Senior Officials, Ministers and Heads of State or Government.

Although the OSCE continues to engage in standard setting in the fields of military security, economic and environmental cooperation, and human rights and humanitarian concerns, the Organization is primarily focused on initiatives designed to prevent, manage and resolve conflict within and among the participating States. The Organization deploys numerous missions and field activities located in Southeastern and Eastern Europe, the Caucasus, and Central Asia. The website of the OSCE is: <[www.osce.org](http://www.osce.org)>.

## ABOUT THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE

The Commission on Security and Cooperation in Europe, also known as the Helsinki Commission, is a U.S. Government agency created in 1976 to monitor and encourage compliance by the participating States with their OSCE commitments, with a particular emphasis on human rights.

The Commission consists of nine members from the United States Senate, nine members from the House of Representatives, and one member each from the Departments of State, Defense and Commerce. The positions of Chair and Co-Chair rotate between the Senate and House every two years, when a new Congress convenes. A professional staff assists the Commissioners in their work.

In fulfilling its mandate, the Commission gathers and disseminates relevant information to the U.S. Congress and the public by convening hearings, issuing reports that reflect the views of Members of the Commission and/or its staff, and providing details about the activities of the Helsinki process and developments in OSCE participating States.

The Commission also contributes to the formulation and execution of U.S. policy regarding the OSCE, including through Member and staff participation on U.S. Delegations to OSCE meetings. Members of the Commission have regular contact with parliamentarians, government officials, representatives of non-governmental organizations, and private individuals from participating States. The website of the Commission is: <[www.csce.gov](http://www.csce.gov)>.

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# RELIGIOUS FREEDOM IN TURKEY

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April 12, 2005

## Commission on Security and Cooperation in Europe Washington, DC

The briefing was held at 10 a.m. in room 2200, Rayburn House Office Building, Washington, DC, Elizabeth B. Pryor, Senior Advisor, Commission on Security and Cooperation in Europe, moderating.

*Commissioner present:* Hon. Alcee L. Hastings, Commissioner, Commission on Security and Cooperation in Europe.

*Participants present:* Elizabeth B. Pryor, Senior Advisor, Commission on Security and Cooperation in Europe; Merve Kavakci, Former Member, Turkish Grand National Assembly; Rev. Fr. Vertanes Kalayjian, Pastor, St. Mary Armenian Apostolic Church, and Representative, Eastern Diocese of the Armenian Apostolic Church of America; Van Krikorian, Founding Member, Turkish-Armenian Reconciliation Commission; Jeff King, President, International Christian Concern; and Barry Jacobs, Director of Strategic Studies, Office of Government and International Affairs, American Jewish Committee.

Ms. PRYOR. Good morning, ladies and gentlemen. I'd like to welcome you all to the CSCE briefing that we're having to examine the situation faced by Muslims, Protestants, members of the Armenian Orthodox Church, and the Jewish community in the Republic of Turkey.

Congressman Smith has hoped to be with us. We're going to go ahead and start, though. I'll read his statement for him, and then we'll open the floor to our distinguished group of panelists this morning, and then also open the floor for questions and answers.

As many of you are aware, last month we highlighted the serious problems experienced by the Greek Orthodox Ecumenical Patriarchate.

We plan to hold a Commission hearing soon on Turkey to discuss human rights issues overall, Ankara's efforts to meet EU criteria for accession, and that country's implementation record as a longstanding OSCE participating State.

First of all, we want to applaud the efforts by Turkey to bring its legal system into conformity with OSCE commitments on religious freedom. The current government has taken significant steps to improve conditions for the enjoyment of religious liberty, steps that were unthinkable just a few years ago.

At the same time, as we learned last month, about the Greek Orthodox Church, there are important areas requiring close attention and urgent action.

Turkey's system of regulating religious groups remains problematic, especially the ban on headscarves in public institutions and the secular government's strict control of Islamic teaching and practice. While the EU has rightfully focused much attention on the religious freedom's of non-Muslim religious groups, it has been virtually silent regarding the rights of Muslims to practice their own faith.

As members of the Helsinki Commission have consistently urged every prime minister over the past decade, the right of women to openly manifest their religious beliefs, including in public places and schools, must be fully respected.

While the president of Turkey recently approved legislation to allow thousands of students expelled from universities to return, including women who violated the ban on headscarves, the ban nevertheless remains. The time has come to end this injustice.

The Armenian Orthodox Church has suffered the loss of important properties through government expropriations. Similar to the situation of the Greek Orthodox, Syrian Orthodox, and Catholic Churches, the Armenian Orthodox Church has lost much under current laws that enable the government to assume direct administration of properties that fall into disuse when the size of the local communities falls below a certain point.

In addition, the Armenian Patriarchate continues to seek recognition of its legal status. Last September, Turkey did adopt regulations to improve the way the size of the religious community is gauged, and to give communities with legal status the ability to acquire these properties.

However, the loss of property has done much damage to the church, and the legislation does not allow for the reclamation of property unjustly expropriated by the state.

Protestant and evangelical groups are experiencing problems in meeting openly, despite reforms that purportedly allow non-Muslim religious communities to build churches and to buy property.

Groups without legal standing or unable to afford these options cannot meet in other locations such as private homes or rented facilities, as authorities have actively sought to close these meeting places under the pretext of zoning laws. Worse yet, the reforms are enforced in varying degrees depending on the will of the local officials.

We urge the government to explicitly allow for the holding of religious meetings in rented facilities or private homes.

Turkey has a special relationship with the Turkish Jewish community dating back to the Ottoman period, when Sephardic Jews fleeing the Spanish Inquisition were welcomed and given refuge.

After the November 2003 bombings of two Jewish synagogues, not only did Prime Minister Erdogan publicly denounce the bombings, but he also met with Jewish leaders, reportedly a first in the history of the Republic.

At the same time, there were disturbing reports that "Mein Kampf," Hitler's notorious work outlining an anti-Semitic world view, has become a bestseller in Turkey. We urge the Prime Minister and other leaders in Turkey to speak up publicly against resurgent interest in such racist materials.

In closing, Turkey has done much to earn a date to begin negotiations with the European Union. We urge the Government of Turkey to continue its good work and redouble efforts to fully respect the rights of individuals and their communities to freely profess and practice their faiths.

As I noted, we have a very distinguished group of panelists here this morning. Before I commence with the introductions, I'd like to remind the audience that a transcript of this briefing will be available on the Helsinki Commission Web site, which is [www.csce.gov](http://www.csce.gov). Usually, it's within 24 hours.

Our first panelist this morning is Merve Kavakci. She's a former member of the Turkish Grand National Assembly. In 1999, she became the first female conservative to be elected to the Turkish Parliament, where she served for 2 years.

During that time, Ms. Kavakci acted as the spokesperson for human rights, women's rights and the process of democratization in Turkey and the Middle East before the United Nations, the Governments of the U.S. and Great Britain, international organizations, American and European universities.

Prior to that, she spent 5 years as the head of foreign affairs for the Welfare-Virtue Party. She currently serves as an adjunct professor at the Elliott School of International Affairs at the George Washington University, and is a visiting scholar at the Institute for European, Russian and Eurasian Studies.

We welcome you this morning, and you have the floor, madam.

Ms. KAVAKCI. I thank Senator Brownback, Representative Smith, and Mrs. Chair, and the Commission in general, for giving us this opportunity.

While I do love my country, I believe that we have to speak about some of the things that we want changed, to bring about to Turkey.

To be able to enter and speak at the American Congress as a woman with a headscarf is something that I cannot take for granted. I'm a member of a family whose lives have been torn about by the ban on headscarves in Turkey for over three decades now.

My mother was a professor of German literature when she was coerced to choose between her profession and religious convictions in the early 1980s. She chose not to take her headscarf off, and resigned at a young age.

My father, though not directly, was also a victim of the ban. As the Dean of the College of Islamic Studies in Ataturk University, he was coerced to enforce the ban on his female students at the very college where Islam and its mandate on women to wear scarves were taught.

Little I knew then that only a few years later I would face a similar challenge and would have to quit my medical school education as a freshman. The school administration was just not able to get past my looks. My family had to move to a free land to live and learn and work freely.

In 1999, I paid another price for wearing a headscarf, this time as a duly elected parliamentarian. I walked into the Grand National Assembly of Turkey to take my oath of office to serve my country. My fellow parliamentarians chanted, "Get out, get out." The Prime Minister called upon the MPs, as he pointed at me and said, "Put this woman in her place."

It took then the government only 11 days to revoke my citizenship with a pretext of my dual citizenship, and to start the persecution for instigating hatred and discriminating against people, despite the very fact that I had parliamentary immunity.

I was never permitted in. My seat remains vacant, and my constituents were denied from representation. The result was the closure of my party and a ban on my political activities for 5 years. The scarf that I wore was perceived to be a threat to the secular state edifice.

My ordeal, however, was not an exception. Rather, it was typical of the civil liberties violations that have been carried out against female citizens.

Originally, what began as merely a provision to regulate the dress code of Federal employees in the early 1980s has become a means of patent discrimination against religious women. While the state promotes equality for its citizens, it stifles and ostracizes women with headscarves.

With a headscarf, a girl cannot get education in a junior high, high school, or a university. She cannot work at a state or military office. She cannot enter the university or the military grounds.

Private realm is no exception to this rule. She even cannot give or get education at a private institution. She is not only precluded from providing service, but at the same time from receiving service, as well.

Medine Bircan was a senior citizen who paid the ultimate price by losing her life in 2002. Because she wore a headscarf on her ID picture, she was denied health care at an emergency room at an Istanbul hospital.

That same year at Ataturk University, mothers who wore headscarves to their children's graduation ceremony were not permitted in unless they wore wigs on top of their headscarves.

In 2003, a woman who appeared before the Supreme Court of Appeals in Ankara was denied the opportunity to give her testimony when the judge decreed that a public place could not be assumed with a headscarf.

The wife of the Prime Minister, wife of the Speaker of the House, cabinet members, wives of MPs are not permitted into the Presidential residence. As a result, thousands of Turkish women are excluded from schools and jobs, some endured interrogations at the "persuasion room"—quote, unquote—established at their institutions.

The proponents of the headscarf ban gave various justifications. Just a couple of them that I would like to point out. That the headscarf is antithetical to the values of the developed world Turkey yearns to be a part of for quite some time now, namely the democratic values.

If that is the case, shall we claim that the police officer who stripped a little girl's headscarf off against her freewill acts within the boundaries of democracy and human liberties? Can a state whose main responsibility is to meet the needs of its citizens and assist them to prosper justify discrimination, simply because their subjects choose to be religious? How can a state legitimize not only the social, but more importantly, maybe, the economical ramifications of its systematic discrimination against its citizens?

On one hand, the state promotes social and economic growth for women, via education. On the other hand, it still has discrimination on women with a headscarf. While promoting gender equality, it's brought inequality against particular women.

The second justification claim which I would like to point out and pass on is that in a secular country, your public space cannot be assumed by any religious symbols. This simply involves the question of what the public realm is and is not. Seventy percent of the Turkish women do wear headscarves. It is part of our culture, part of our religion and part of our history.

We can inquire on what basis that the public be denied from existing in public. Despite the fact of the ban on headscarves in almost many facets of the women's life, the

ban does not have legal status. It contravenes the Turkish constitution, as well as the international conventions Turkey is signatory to.

Since the establishment of the Republic, women's clothing has not been regulated via a law. Women had never been mandated to dress in a certain, particular way. On the other hand, men are mandated to wear hats.

The ban on the headscarf is obviously the most ostentatious, yet not the only manifestation of staunch secularism.

The provision that mandates inequality vis-a-vis the graduates of Imam Hatip's religious faith school is another consequence of the secularism in Turkey. The law that bans the teaching of our holy book, the Quran, to our children under the age of 12 is another reverberation of Turkey's secularism.

The unique construct of secularism espoused by the state is distinct from the secularism adhered in the Western world. While the state adamantly refrains itself from placing religion over state affairs, over time it shifted toward the other extreme, namely, secular fundamentalism.

While it fervently rejects the concept of religious faith, it creates a state religion. Due to this very fact, the Turkish religious authority, Diyanet, is a faith institution.

Therefore, in conclusion, the conceptualization of such unique [inaudible] of Turkish secularism must be overhauled. It must be reexamined through open discourse. We must bring Turkish secularism from where it is at the far right to where it is supposed to be on the continuum.

Meanwhile, the recent reforms Turkey has undertaken to meet the Copenhagen criteria give new hope to women with headscarves. We know that the current government acknowledges the discrimination. The pain caused by the ban hit the homes of the members of the current government.

Recently, the speaker of the parliament enunciated that he was waiting in patience for the revoke of the ban. We, the victims, are waiting. The parliament is waiting. The Turkish people are waiting.

A recent study depicts that 71 percent of the people believe that the ban must be lifted. This accounts for national consensus. U.S. Congress must urge the Turkish officials to hear the people of Turkey and act upon the will of the people to cease the blatant discrimination against women.

Every woman deserves the right to live and work in dignity.

Thank you.

Ms. PRYOR. Thank you very much, Ms. Kavakci.

I see that we've been joined by Congressman Hastings. Mr. Hastings, did you have a statement you wanted to make now?

Mr. HASTINGS. Not at this time.

Ms. PRYOR. All right. Well, welcome. Glad to have you here.

The next speaker that we have is Father Kalayjian, originally from Syria. He's an archpriest in the Armenian Orthodox Church. Prior to this, he served as a parish priest in the Eastern Diocese of the Armenian Church of America.

He has worked both in the United States and Jerusalem and Amman in various capacities. He's also served as a representative of the Diocese of the Armenian Church, on the State Department's pornography commission and its reports on South Africa, as

well as the state of the affairs of the church communities in Eastern Europe and the former Soviet Republics.

Father, we're pleased that you're here this morning, and you have the floor.

Father KALAYJIAN. Thank you, Madam Moderator. And it is indeed the pleasure to be here and share this podium with the rest of the distinguished guests, and with the Helsinki Commission members and the audience.

As it was said, I am Father Vertanes Kalayjian, pastor of St. Mary, Armenian Apostolic Church. And I am here representing the Armenian Apostolic Church, Eastern Diocese, headquartered in New York.

I thank you for the opportunity to address this briefing, and to voice our concern relating to the status of the Armenian Church and the Armenian community in Turkey.

Allow me first to speak about myself to provide a background for the statements that I am about to make in this briefing.

I was born in Aleppo, Syria, and I was raised in the northern town of Azaz, only 10 kilometers from the Turkish border. As a teenager, there were many occasions when, with my friends, we would take a hike or take a bike ride to the border. Another 10 kilometers beyond the Turkish border is the town of Kilis, the birthplace of my parents, grandparents and my ancestors, a place which I could never visit.

That was 50 years ago. Circumstances have changed, of course, as they do with the passing of time. Now, as a U.S. citizen, I can go and visit my ancestral lands and of my parents, and I did so in the year 2001 on the occasion of the 1700th anniversary of Armenia's official declaration of Christianity as the faith of the nation.

The official reception we received in Turkey was beyond our expectation. Swept by the prevailing cordial reception, I suggested to the mayor of Kars, a northeastern city near the border with Armenia, to plant a tree to commemorate the occasion.

Before our departure to Armenia, our final destination of our pilgrimage, we did plant a tree in one of the newest parks created by the mayor himself.

Mrs. Chairman, even though the circumstances have changed to some degree, there are some thick clouds overshadowing the relations between our two nations, the Turks and the Armenians.

In June 2004, a few of our community leaders and I responded to an invitation extended by the Ambassador from the Turkish foreign ministry, Mr. Ecvet Tezcan, for a first-hand exchange of views, as he put it.

Mr. Tezcan went on to say in a followup letter, and I quote, "I hope this exchange of views will bring positive results in the future, paving the way for a better understanding between our societies, and for peace and prosperity in our region. I have every reason to be optimistic." End of quote.

Mrs. Chairman, I regret to say that at this point, we have no reason yet to share that optimism. I want to make clear that my lack of optimism has nothing to do with almost insurmountable issue of the genocide, the Armenian genocide by the Turks, which on this 90th anniversary year, we are commemorating in this month worldwide.

And may I be allowed to observe a moment of silence.

It has, however—thank you—our lack of optimism has everything to do with the steps and measures that the Turkish Government can and must take unilaterally to make life for the Armenian Church and the Armenian community in Turkey bearable, to lift

de facto second class citizenship, bureaucratic obstructionism, and discrimination perpetrated upon the Armenian and the other Christian minorities—and other minorities, as well. And here are the points I really presented to the Ambassador, and I share it with you.

One, safeguarding the ethnic culture and the religious rights of the Armenian citizens of Turkey. It is telling that such minorities which have been part of the landscape for centuries are referred to by the Turkish Government, even today, as indigenous foreigners.

Second, safeguarding uninhibited functioning of the remaining Armenian Church structures and communities under the administrative, legal and spiritual authority of the Armenian Patriarchate of Istanbul. That relationship doesn't exist.

Three, recognizing the legal personality for the Armenian Patriarchate. And that creates its own myriad of problems.

Four, safeguarding the integrity, the independence and even encouraging the positive contributions of the Armenian schools and institutions, such as the press, hospitals, cultural and alumni associations.

And last, granting permission, or more correctly stated, restoring the right of the Armenian Patriarchate to have and maintain a religious seminary to produce the next generation of Armenian clergy to care for the religious, spiritual needs of the Armenian population of Turkey.

It does not make sense at all to impose a requirement that the next patriarch be elected from among the clergy who are Turkish citizens, when the operation of a seminary to produce such candidates is hampered, does it?

Emanating from the points mentioned are also situations such as forcing a government appointed vice principal, or some such official, upon the Armenian schools. The result is lack of freedom of action, intimidation and an untenable suspicious environment, let alone fear.

Routinely, the churches and institutions are denied physical repairs and renovations, as mundane as it may sound. Yes, one may apply for such permits, but you have to apply for it in Ankara, when the church is located in Istanbul. Ankara is where the capital is. And the response, if any, may come detrimentally late, sometimes too late.

Because of demographic changes and shifts, the status of the churches that remain with little or no parishioners are not subject to the Patriarchate's administrative discretion. The result has been confiscation of church properties, because the government has decreed that they are not transferable to the Patriarchate.

The Patriarchate, in the absence of legal identity, cannot address these issues and other—issues of other churches and properties that are abandoned since the 1915 massacres and mass deportations. For the same reason, one cannot bequeath property to the Patriarchate, or any other church, for that matter.

The restrictions were placed on how to identify a citizen in the identity card. It is called Nofus paper, Nofus card.

The removed the previous practice of mentioning an individual's religion—in this case Christian—and ethnic identity—Armenian. And then, by the government decree, one could not enroll into the Armenian school unless you prove you're an Armenian. Catch-22.

These items, Mrs. Chairman, cover some of the basic human, as well civil, rights of the Armenian population of Turkey and the debilitating restrictions imposed upon the Patriarchate and the churches under its jurisdiction.

We hope and pray that sober minded officials in the Turkish Government will find their way to correct them for the benefit of all. And I think this process puts a positive beginning to it, and we hope that it will continue.

Thank you.

Ms. PRYOR. Thank you very much, Father Kalayjian, for that statement.

Our next speaker is Van Krikorian, the founding member of the Turkish-Armenian Reconciliation Commission. He has served as the Deputy Representative and Counselor to the United Nations for the Republic of Armenia, as well as a member of the U.S. delegation to the 1991 Moscow CSCE meeting.

Mr. Krikorian is also active in the Armenian Church and with several charities, including the Armenian Assembly, on whose board he sits.

Additionally, he is a member of the International Experts Group on the Armenian Genocide of the World Armenian Congress.

After a career as an international attorney with extensive work in structuring investments, negotiating agreements and resolving disputes, Mr. Krikorian currently serves as the president of Global Gold Corporation.

Thank you very much for being with us today.

Mr. KRIKORIAN. Thank you. And I thank the CSCE also for convening this hearing, for examining freedom of religion issues in Turkey, and inviting Father Kalayjian and me to participate here today.

This is an especially meaningful event, as Father Kalayjian noted, because April is the month in which Armenian genocide is commemorated. And we rededicate ourselves to building a future in which that crime against humanity does not recur.

As Christians, and as Americans, we also welcome increased concern for religious minorities as part of the United States' foreign policy.

One of our primary considerations today, therefore, is to try to improve, and certainly not be the pretext for further damage to the conditions of life for Armenians or any other group in Turkey.

For reference and for details in connection with my testimony today is attached a report by Dr. Tessa Hoffman, published by the Forum of Armenian Associations in Europe in October 2002, called "Armenia and Turkey Today: A Critical Assessment," which details throughout the 20th century a lot of the specific problems that the Armenian Church and Armenian minority has had in Turkey.

The first-hand experience I had with the CSCE and the Helsinki Commission's remarkable work at the time of the Soviet Union's collapse, the Sumgait and Baku pogroms, the attempted eradication of the Armenians of Nagorno-Karabakh, and the transition to Armenian independence, will always be appreciated. And it's another reason why I'm glad to be with you all here today.

Armenian presence in Turkey, however, is and has been tenuous. It is a different kind of a situation. International commitments to reform, as we've heard and as I'm sure we'll continue to hear, have regularly been followed by backlash, leaving an even more damaged situation than before.

In an effort to break that cycle, Armenians and Turks are increasingly engaged in civil society dialogue. There's a critical role for religious figures and respect for religious rights in this process. If the CSCE can help catalyze and secure progress in these areas, you'd achieve the kind of permanent results you have helped to achieve in other areas. And that's a request that I have.

The dialogue process in which I took part is called the Turkish-Armenian Reconciliation Commission—that's [www.tarc.info](http://www.tarc.info)—began in 2001 and ended last year after, among other things, producing a legal opinion on the applicability of the United Nations Genocide Convention, and producing joint recommendations from the Turkish members and the Armenian members to the government on how relations of Armenians and Turks and Armenian Turkey could be improved.

This process is also the subject of a recently published book called "Unsilencing the Past," by our former chairman, David Phillips.

One of our joint recommendations—and I've also attached those recommendations to my testimony—one of our joint recommendations dealt with encouraging religious understanding. It stated that among civil society initiatives there also opportunities for religious leaders to develop contacts and engage in joint activities, as well as activities within their own groups, to promote reconciliation between Turks and Armenians.

Those activities should be encouraged by government, including the restoration of religious life and supporting the rights and functioning of religious foundations.

It's fair to say that progress in Turkey is being driven by both external and internal factors. Certainly, the European harmonization packages, as were noted earlier, that were passed into Turkish law, are a testament to that combination.

But it seems that a growing number of public figures understand that entering the European Union for Turkey is not some kind of standardized test where they meet some objective criteria, by passing laws they'll get a passing grade.

They're increasingly understanding that fundamental change needs to take place in Turkey, and that charges of religious prejudice against the European Union ring hollow unless all Christian, Jewish and non-majority religious rights are restored and respected in Turkey, in practice as well as on paper.

With that background and that suggestion for future CSCE activity, let me now briefly discuss the specific situation of Armenian churches in Turkey.

There is an Armenian Protestant community in Turkey, which is active. And there's also an Armenian Catholic community which is active. The majority of Armenians in Turkey, as elsewhere, however, are members of the Armenian Apostolic Orthodox Church led by Patriarch Mesrob II Mutafyan.

That Patriarchate is one of the four hierarchical sees of the Armenian Church, and the other patriarchate is in Jerusalem, one in Antelias, Lebanon, and then the Catholicos of all Armenians, who is in Etchmiadzin, Armenia.

In 301, Armenia, as Father Kalayjian noted, was the first state to adopt Christianity. And the vast majority of the Armenian homeland then, and for millennia, stretches over modern Turkey.

In 1914, there were approximately 5,000 Armenian churches, seminaries and schools registered by the Patriarchate, which attest to this historic presence in Christian faith. Less than 50 Armenian churches are under the jurisdiction of the Armenian Patriarchate today.

For centuries, Armenians paid—and in many places still pay—a high price for their Christianity. The seizure and often destruction of Armenian church property, of this Christian legacy, thus presents itself as a ripe area to demonstrate reform and begin building confidence.

Like other perversions of history, many of these ancient structures—and quite a few of them are more than 1,000 years old—which were not destroyed were desecrated to remove their true identity. Such sites as Ani and Akhtamar are recognized as sites critical to world civilization. And the progress that's been made there so far—for example, Ani's been listed on the world monuments fund—need to move to the next level.

In addition, the multitude of sites, such as the holy Garabed monastery in Moosh, also need attention.

The Armenian Patriarchate of Constantinople was established in 1461.

Patriarch Mesrob himself was born in Turkey, and I won't go into the rules which Father Kalayjian noted, but he attended the University of Memphis here in the United States. And so, I'd like to note that he has those roots, as well, as well as the Hebrew University of Jerusalem, and the Pontifical University of St. Thomas in Rome.

He was elected Patriarch in March 1998 by a large margin, and has proven to be a thoughtful, spiritual, and well respected leader.

Although the population of Armenians in Turkey is estimated at 70,000 to 82,000, the Turkish Government has also stated that another 30,000 to 40,000 Armenians from Armenia work in Istanbul.

These Armenians and the Armenians from Turkey are well known for their piety. Church services are held daily. They are packed, and it's something that's impressive for Armenians and other Christians all over the world, that they are so pious, attend church and practice their faith in difficult circumstances the way they do.

Especially for Armenians, because these are the remnants of the 2,100,000 Armenians that lived there before the genocide. Those numbers I know don't take account of the progeny of Armenian children taken from their parents or forcibly converted, or Muslim Armenians that exist there as well.

Turning to the current situation, on March 16th, the CSCE took testimony on the situation of the Greek Orthodox Church, the Ecumenical Patriarchate. The same types of problems apply to Armenians, as can be seen from Dr. Hoffman's report.

These issues generally fall into three main categories.

First, the ability to conduct services, which includes the ability to train and employ clergy.

Second, the ability to maintain Armenian schools without censorship and with the ability for any Armenian student to attend whose parents so desire.

Third, the ability to fund, administer and operate the church and properties, including restoring religious properties to their relevant religious group, rectifying denials of parishioners rights to gift or bequeath property to support their religious institutions, self governance and the ability to repair or improve physical structures.

On March 16, Co-Chairman Smith I think summed this all up very well in his opening statement. And I've quoted that in my written testimony, and I won't go over it again. But basically, we know what the problems are. They're not new problems. Con-

gressman Smith recognized them, I'm sure. Everyone that participated or read that testimony recognized them as well.

At one point he summed up that the issue is indeed black and white. Property must be returned and expropriations must end.

The issue of allowing churches to train clergy really should not even exist. Axiomatic to freedom of religion is the ability to train clergy to administer religion. Denial or curtailment of that right is not only a denial of freedom of religion established by law, but also counterproductive to fostering a tolerant society.

The issue of allowing parishioners to support their church should also be a black-and-white issue. Last month, a Turkish newspaper reported efforts to deprive the Armenian hospital Surp Prgich, Holy Savior, of a multimillion U.S. dollar bequest.

The Istanbul building was left to the hospital in 1952. The deed was registered. And then in 1992, the government declared that the bequest violated the 1936 decree disallowing non-Muslims from donating real estate. And the property was seized, as the original owners and their heirs were long gone.

The courts complied with the government. Not until there was an appeal to the European Court of Human Rights did the ministry of finance refuse to approve the pre-arranged sale. Proper compliance with the Treaty of Lausanne, which I know has been examined in prior hearings as well, and other standards that apply in Turkey protecting religious rights, would have never let this case get so far.

The good news, I think, that we can take out of this, though, is that it is a Turkish newspaper that printed this story and exposed the situation and drew attention to it. And that's a positive role that civil society is playing, and it should be encouraged to play.

The issue of obstacles to repairing churches also recurs. A recent example is the report on the Samatya Armenian Church, where permits to fix the roof went unissued for months. And when the parish took it upon themselves just to simply fix the roof themselves, the authorities sealed the church doors and closed it.

This is not behavior compatible with the rule of law or the type of society many Turkish people want to see in their country.

But again, from that we can also see sort of the seeds of progress, because one parish member actually was able to talk about it in public.

Unfortunately, and in addition to the list of current problems, the problems of Christians in the 1930s, the 1940s, the 1950s, the 1960s, the 1970s and every decade, virtually, need to be openly discussed without fear of reprisal, and with an eye to reconciliation.

Many of these problems are more in the nature of human rights, such as acts of violence, extortion and theft against minorities, changing Armenian names to Turkish names, persecution and denial of identity. And they've all been very well documented over time.

A study titled, "The Christian Minorities of Turkey" was published in 1979 by the church's committee on migrant workers in Europe, which thoroughly documents much of that behavior. A former Patriarch, Shnork Kaloustian, also published reports describing adverse conditions, confiscatory acts, denial of Armenian identity and interference with self governance. And I believe that the CSCE has also those things on file going back to those years.

Accounts of other problems encountered by Armenians more recently in Turkey, including violence to churches and holy places, violence against persons, perpetuation of

hostile atmosphere against the Patriarchate and Armenians also bear the CSCE's and other's review and understanding.

The State Department's record on reporting infringements in the international religious freedom report shows improvement from the past, but still does not do justice to the situation.

For example, continuing breaches of Articles 38, 40, 41, 42 and 43 of the Treaty of Lausanne, which in theory guaranteed Armenians many of the same religious rights which were promised before and are being promised again are soft pedaled or overlooked. A simple comparison with other publicly available even journalistic reports now coming from Turkey, those reports shows the deficiencies.

Today, we're also concerned with the fate of an Armenian evangelical Protestant pastor in Turkey. He struggled and ended up in jail to avoid confiscation of his church's property in the past, and last month discussed Armenian genocide on television.

The past pattern has been retaliation and preemptive anti-Armenian and anti-Christian activity for such behavior. Our hope and our prayers, however, are that the historical patterns on that subject will also change, and the experience of basic religious rights—the exercise of basic religious rights—and basic rights such as freedom of speech will not be persecuted.

Here I can note that the study on the applicability of the genocide convention, of which the reconciliation commission in which I participated, was translated into Turkish, published by the "Turkish Daily News" and actually serves as a basis for discussion in Turkey.

I can also say that there are more members of Turkish civil society willing to discuss these problems than ever before, and that the government has so far at least tacitly allowed more discussion to take place is a small but important step. That trend really needs to continue.

Like the Armenian Government and the majority of populations in both countries, according to a poll taken jointly by Armenians and Turks, I also believe that the establishment of diplomatic relations, as well as Turkey's lifting of its blockade of Armenia, which ironically, but characteristically, is also the subject of treaty obligations requiring Turkey to maintain an open border with Armenia, would be positive contributions to this trend.

These are areas, like genocide recognition, where the United States can and should be publicly engaged. There's a leadership role for the CSCE here. I hope you accept it.

Thank you again for your efforts in promoting progress in this area.

Ms. PRYOR. Thank you very much, Mr. Krikorian, for your thoughtful remarks.

I'd like to now introduce our next speaker, who is Jeff King, the president of International Christian Concern, who will give a statement on behalf of the Turkish Protestant evangelical community.

The ICC is a nonprofit and interdenominational human rights organization dedicated to assisting and sustaining Christians who are victims of persecution and discrimination due to the practicing of faith. Core activities of the ICC are to provide training for pastors in persecuted countries, advocates for the persecuted in Washington, delivers humanitarian aid and raise awareness in the West about the existence and severity of persecution worldwide.

Mr. King, welcome. You have the floor.

Mr. KING. Thank you, Madam Chairwoman.

The Republic of Turkey has traditionally identified minority citizens in terms of ethno-religious affiliation. Christian minority citizens traditionally have been of non-Turkish ethnic origin, and during the Ottoman Empire, as well as later during the republic period, they have accepted their minority status and lived according to the regulations of the Turkish Government.

The rights of these ethnic minority Christians in the Turkish republic are regulated by the Lausanne Treaty of 1923, which dates back to an era before ethnically Turkish Protestants began to emerge.

Within some limits, the Turkish state protected the ethnic minorities and allowed them autonomy in their own religious and cultural affairs. In the last quarter century—last quarter of the 20th century—a small number of ethnically Turkish citizens, members of the majority Muslim population, converted from Islam to Christianity. And consequently, they have found themselves outside the protection of this treaty.

Some, but by no means all, of these ethnically Turkish citizens who identify themselves as Protestants, or as evangelicals, officially changed their religious affiliation on their national identification cards. This official documentation of their change of faith was permitted, albeit often with some official opposition by the secular state of Turkey.

They refused to call themselves minority citizens, as ethnically they are not. We can say that ethnically, they are not a minority, but in terms of religion they are.

When identification of Turkish Protestants is strictly on a religious basis, these citizens may be regarded as a miniscule minority in their own country. They themselves estimate their numbers at 3,000 to 5,000. The major part of this community has formed a network under the title of Alliance of Protestant Churches of Turkey.

While this alliance, under current regulations, has not been able to register as a legal entity, it has nevertheless been able to represent the Protestant Christian community before national and international bodies.

The major root of present difficulties lies in the fact that outside of the Sunni Muslim majority, all religious groups, including Protestants, find themselves in a legal no man's land, as there have been no laws regarding the legal identity of religious bodies. Therefore, churches have been unable to own property, employ people, have bank accounts or conduct any activities on an official basis.

Another root source of the problems has been the absence of laws regarding the opening of places of worship. However, in the last couple of years through local and international pressure, there have been steps toward legal reforms in these areas, as Turkey is seeking to comply with European Union standards.

These reforms theoretically now allow for places of worship to be opened upon receiving the permission of local authorities.

Also, changes in associations laws have now permitted Protestant churches to take steps toward being legal entities in the form of associations. However, churches and other religious communities have as yet to see the practical outworking of these changes.

As a trial case, a local Protestant church in Ankara applied to become an association and was ratified as such in March 2005. It remains to be seen how this will officially work.

With regard to places of worship, church buildings that have been in existence since the pre-republic era of Turkey remain zoned and protected as churches through inter-

national treaties. These buildings, even though many may stand empty today, are not easily available to the Turkish Protestants. There are some exceptions, primarily Turkish Christian Protestant congregations meeting weekly for worship in ethnic minority Christian church buildings by permission from these minorities.

Therefore, ethnically Turkish Protestants have felt obliged to rent apartments or buildings not zoned for religious purposes in order to gather weekly for worship.

Although there has been one exception to this recently, the great majority of those seeking to meet as congregations face the near impossible regulatory situation, and currently, over 20 churches have ongoing court cases in this area, including some at the European Court of Human Rights.

Turkish Protestants have been consistently granted their constitutional rights by the judicial branch of the Turkish Government. However, laws, regulations, or ordinances which would allow them to structure their church are either nonexistent or vague, and thus leaving Protestant churches to the mercy and prejudices of the local authorities.

Thankfully, ethnically Turkish Protestants do not have too many instances of human rights violations to report. However, from time to time, and most intensively since the start of 2005, the popular media and other institutions, including some state officials and offices, such as the directorate of religious affairs, has waged a relentless slander and blatant disinformation campaign, particularly against the Protestant Christian community and any form of evangelism.

An ugly picture is being continually presented of the Christian community, portraying them as a public enemy out to undermine Turkey.

People have been incited to make attacks on Christian individuals and churches in a number of cities, including Izmit, Samsun, and Ankara. Since these churches do not have a legal existence, individual Turkish Christians have opened court cases against some of the perpetrating media.

But this small community of faith is hard pressed to keep up with, much less cope with this onslaught. Sadly, the government has turned a blind eye to all this recent increase in negative attitudes and attacks, seeming to be supportive of this active disinformation campaign.

Across the country, numerous converts within Protestant churches are being harassed by members of state security, either directly or through visits to relatives and neighbors. These tactics are aimed at denigrating and shaming these Christians among their family and acquaintances. The goal seems to be to try to instill fear and separate the Protestant converts from their immediate social network.

These present activities against the Protestant community in Turkey are currently the greatest concern for this faith community. Hopefully, in the coming months and years, the legal process will be slowly but gradually ironed out. But until this happens, the struggle for these men and women and children will be to gain acceptance by their own government and their society, as both sincere citizens as well as sincere Christians.

Ms. PRYOR. Thank you, Mr. King.

We now turn to our final speaker, Barry Jacobs. He's the Director of Strategic Studies at the American Jewish Committee's Office of Government and International Affairs.

The AJC has a cooperative agreement with the Turkish Jewish community. As a result, Mr. Jacobs is a regular visitor to Turkey, and a close observer of Turkish affairs.

Mr. Jacobs was a senior foreign service officer with the United States Information Agency for 26 years, serving on four continents in seven countries, including Greece, Cyprus, and Israel.

He has also served as deputy director of the Washington Foreign Press Center, deputy program manager for USIA's WorldNet Television service, director of USIA's Latin America Wireless Cloud, and vice president for international media for the Discovery Channel's network in Latin America and Asia.

I now turn the floor to you, Mr. Jacobs. Welcome.

Mr. JACOBS. Thank you, Madam Chairwoman. Thank you, Congressman Hastings. I would also like to thank Senator Brownback and Representative Smith for the outstanding work they have done in overseeing this Commission.

I am Barry Jacobs. I'm the Director of Strategic Studies for the American Jewish Committee. I appreciate this opportunity to appear before you.

As the chairwoman has said, I am not Turkish. But for the last 8 years I have followed the affairs of Turkey and the welfare of the Turkish Jewish community very closely. My organization has a cooperative agreement with the Turkish Jewish community. I am a regular visitor to Turkey, and a close observer of Turkish affairs.

As a foreign service officer, I never served in Turkey itself, but I did spend 2 years in Greece, 3 years on the island of Cyprus, where my first child was born, and visited Turkey several times as a tourist. I now follow events closely, and I'm a frequent visitor to the Republic.

I have talked with the Jewish community of Turkey in Istanbul in preparing these remarks. I would like to start by stating that the 25,000 person Jewish community of Turkey is free to practice its religion as it wishes. Its synagogues and institutions are protected by the Turkish authorities. Its leaders meet regularly with Turkish political leaders, and its members live and work as they wish.

It is a strong middle class community, well represented in the professions, with a small number of top-level, wealthy industrialists and business executives.

For over 500 years, the peoples of Turkish and its predecessor, the Ottoman Empire, offered refuge to Jews driven by rampant and murderous anti-Semitism from Europe.

In August 1492, when Columbus embarked on his most famous expedition to the New World, his fleet departed from the relatively unknown seaport of Palos, because the shipping lanes of Cadiz and Seville were clogged with Sephardic Jews expelled from Spain by the edict of Queen Isabella and King Ferdinand.

Sultan Bayazid II, offerer of refuge, gave new hope to the persecuted Spanish Jews. In 1492, Sultan ordered the Governors of the provinces of the Ottoman Empire, and I quote, not to refuse the Jews entry or cause them difficulties, but to receive them cordially.

Moreover, even before 1492, the Jews welcomed the military successes of the Ottomans in the 14th and 15th centuries, when the Ottomans captured Bursa in 1326, they found a Jewish community that had been persecuted during long centuries of Byzantine rule.

Over the next decades, the country became a haven for Jews fleeing repression and expulsion for various parts of Europe, including Hungary, France, Spain, Sicily, Salonika, and Bavaria. In the liberal atmosphere of Ottoman rule, Jewish activity flourished, and many Jews held important positions. Istanbul was the home of great rabbis and scholars, and was a Hebrew book printing center.

This history is important, because it sets the tone for Jewish religious practices in today's Turkey. This history is even more remarkable today, in that Turkey is a country that is 99 percent Muslim. It is a tribute to the greatness of the founder of modern Turkey, Kemal Ataturk, that the Republic of Turkey is the only secular democratic state besides Israel in a difficult region.

It is a loyal member and the only Muslim member state of NATO. And it was the first Muslim country, and only the second state overall, to recognize the newborn Jewish state of Israel in 1948.

During the Second World War, as historian Stanford Shaw, Professor Emeritus of Turkish and Judeo-Turkish history at the University of California in Los Angeles, UCLA, writes, "While six million Jews were being exterminated by the Nazis, the rescue of some 15,000 Turkish Jews from France, and even of some 100,000 Jews from Eastern Europe, might well be considered as relatively insignificant in comparison."

It was, however, very significant to the people who were rescued. And above all, it showed that, as had been the case for more than five centuries, Turks and Jews continued to help each other in times of great crises.

Nevertheless, being a Jew in Turkey is not always easy. In November 2003, on Shabbat, suicide terrorists with ties to al Qaeda detonated truck bombs in front of two synagogues in Istanbul, killing 25 people and wounding hundreds, most of them Turkish Muslims who happened to be in the vicinity.

This was the second murderous attack on Neveh Shalom, the chief synagogue, in the past quarter of a century. The first took place in 1986, when two foreign terrorists tied to Abu Nidal entered the temple firing machine guns and throwing hand grenades, killing 22 of the 30 worshippers present that Saturday morning.

A large clock stands near the boarded entrance of Neveh Shalom, its hands stopped forever at the time that the attack occurred. Above it, the name of each victim is carved into stone.

Turkey is currently going through a period of fevered nationalism. Its media and political comment is stridently anti-West, anti-American and anti-Israel. Attitudes the frequently bleed into outright anti-Semitism. "Mein Kampf," as has been mentioned, is a bestseller.

My former colleague and longtime friend, Ambassador Eric Edelman, a distinguished career diplomat who has been our envoy in Ankara these past 2 years, was greeted by a headline in the daily newspaper "Vakit"—and I must apologize, I identified in the papers out in the hall as "Vatan," it was "Vakit"—welcoming, in quotes, the Jew Ambassador.

Turkey has a free press, but both the American Jewish Committee and the friends of the Turkish Jewish committee call on the Turkish leadership in the media and intellectual and academic circles—and, most importantly, in the political leadership—to openly and vigorously denounce this rising cacophony of anti-Semitic pronouncements. These create a dangerous and hostile atmosphere, especially toward the community of loyal Jewish Turkish citizens and stain the tapestry of 500 years of Turkish tolerance for diverse religious communities.

Moreover, much of the worst religious slander pours forth from newspapers that, if not official organs of the ruling Justice and Development Party, are nonetheless closely

aligned with its leadership. Two of the most notorious publications are “Yeni Safak” and “Terkurman.” And I should add “Vakit” and—“Milli Gazete.” Excuse me, I had to think.

Turkey, in line with many European nations, has so-called anti-hate legislation. We urge Turkey’s prosecutor of the Republic, that is, its attorney general, to both openly denounce such messages and to employ this legislation to actively prosecute religious slander and libelous articles in the media.

On the positive side, AJC praises the new legislation that brings Turkish jurisprudence more in line with that of the European Union.

On an issue of great importance to the Turkish Jewish community, new laws have fundamentally improved the property management of minority foundations. This now permits the Jewish community to buy, sell, and rent property belonging to its synagogue foundations, and this new system is functioning to the community’s satisfaction. The community has purchased and sold property, and has encountered no obstacles.

There is an official list of religious foundations, and the community hopes that those of its unlisted foundations will soon be included.

There is another issue that may appear humorous, but is actually quite serious. Both Islam and Judaism include ritual circumcision. Those Jews in Turkey who perform this operation lack the official sanction of their Muslim counterparts. This results from the fact that they have not received the same training as their Muslim colleagues, but have taken equivalent courses in Israel, and have obtained the necessary certification there.

It would be useful if arrangements could be enacted to grant recognition and equivalency to the Israeli certification.

There is one outstanding issue that is of great importance to the Turkish Jewish community, and that is supported by Jews throughout the world. Jewish synagogues in Turkey are located in built-up urban areas that are almost impossible to secure without greatly inconveniencing Muslim neighbors and businessmen.

Even before the November 2003 attacks on the two synagogues, the community has been seeking a plot of land in Istanbul to construct a secure community and religious center, large enough to accommodate community celebrations including weddings bar mitzvahs.

Both the current AK Party administration and its predecessors have promised to accommodate this request, but little has been done, because of bureaucratic obstructionism. We urge the responsible governments, particularly the Istanbul municipality, to work with the community to solve this grave danger resulting from the lack of a secure location to both worship and to celebrate.

We, at the American Jewish Committee, stress that there are actions we would like to see Turkish authorities take to help secure and ameliorate the concerns of its Jewish citizens. These suggestions should not in any way obviate that we believe Turkey’s history and the current situation deserves greater recognition by those outside its borders for the toleration it has shown and still shows.

This is particularly worthy of praise at a time when we see rising and violent anti-Semitism in the rest of Europe.

And I should like to add that the American Jewish community supports and openly encourages the Turkish Government to grant the same conditions that the Jewish community experiences to our friends in both the Armenian and the Greek Orthodox communities, the need for the ability to train their own clergy, to reopen religious institutions

for the training of such clergy, and to regularize the conditions both in theory, but also in practice that will allow the religious communities to care for, expand and modify, as they see fit, their own properties.

Thank you.

Ms. PRYOR. Mr. Jacobs, thank you very much.

We're going to open the floor in a few minutes for questions, but first we welcome some remarks by Congressman Hastings.

Mr. HASTINGS. Thank you very much, Ms. Pryor, for presiding. And I want to thank the panelists all for coming today to this important briefing on religious freedom in Turkey.

I also apologize for being a bit tardy. Rather interestingly and ironically, I was meeting with 20 representatives of the Black Sea region, which includes Armenia and Azerbaijan, and also Turkish representatives, before coming here. And interestingly, they raised the subject of religious freedom. And I informed them that I would be coming to this Commission meeting.

As has been mentioned, Senator Brownback and Congressman Smith, our other colleagues in the Helsinki Commission, have been very active not only in this particular aspect of the Commission's mandate, but in a general way, to advance the cause of religious freedom and human rights.

I have traveled to Turkey many times. And I've also traveled to Armenia and Azerbaijan. I've always enjoyed Turkish hospitality, and am mindful that Turkey and the United States are allies and founding OSCE participating States.

I also support Turkish accession into the European Union. And in my most recent visit, I said to President Erdogan that it would be my great hope that that would happen sooner rather than later.

I'd like to recognize the great improvements made to Turkish law and policy. Still, as have been pointed out here, there are areas that need improvement. And I hope that the Turkish Government will take note of the areas highlighted today in such a succinct and candid manner as all of our presenters have put forward, so that all Turkish citizens can enjoy their religious freedom.

Religious freedom is a fundamental human right. So I urge the government to continue with its reforms in this sphere.

I guess it's accidental and coincidental that this hearing is established shortly after the death and funereal experiences that all of us have witnessed with reference to Pope John Paul II, and the ongoing commemoration of one individual's extraordinary work in reaching out. Notwithstanding some of his critics, all, I think, would agree that he made an effort to try to bring the world's religions into focus together.

We state the obvious, so that we don't leave this hearing thinking that religious freedom issues exist just in Turkey. Recently in Russia, same subject. Some years back in China, same subject. All over Europe, with the advent of a substantial number of Muslims and scarf issues in France and elsewhere, the U.K., same subject.

And lest I give the impression that it's everywhere else in every other country, the United States still has some issues concerning religious freedom. Notwithstanding the fact that people can openly practice their religions here, there are times when certain religions are identified by some, in a way to refer to them as cults. A fellow said to me once that

one man's cult is another man's religion. And somehow or another, we have to come to terms with all of this.

I, week before last, was at the Church of Nations in Israel. And I saw the Lord's Prayer in each of the languages that was represented there.

After being there, I went to Greece. And in Greece on the Greek side of the green line and on the Turkish side of the green line, I watched and listened to the song birds. And I thought to myself, you know, it's us humans that create these divisions and these lines. The birds, I'm sure don't always agree on nesting rights and territories, but at least they were free to cross the green line, back and forth, without there being difficulties.

I would urge their leaders to follow the birds, and perhaps all of us would be very wise to take into consideration the need for strong ecumenism, interdenominational undertakings on behalf of all of us, intercultural and interfaith actions on behalf of all of us.

And it would be helpful if those of us that are Christians would spend some time trying to walk two miles in the moccasins of those in Islam, and that those in Islam would take time to recognize that Buddhists exist in this world. And I could go on and on and on.

Part of the problem is, we isolate ourselves within the framework of our own convictions and our own beliefs, and are not willing to reach out and try and understand others.

I hope that's what we advance here today. I think the panelists have given us an extraordinary amount of food for thought. And I'm sure that the Helsinki Commission will accept this mandate in pursuing religious freedom for all of humankind.

Thank you.

Ms. PRYOR. Thank you very much, Congressman Hastings.

We're going to open the floor now. And if I may, I'd like to ask those who want to ask questions and make statements do three things for us.

One is to come to the microphone to ask a question. That helps those who are recording for our transcript.

Second is to identify yourself and your affiliation. And the third is to stay within the boundaries of the subject matter today, and not stray too far away. And remember that this session today, we're really looking at the situation faced by Muslims, Protestants, members of the Armenian Orthodox and the Jewish community with the Republic of Turkey.

So I now open the floor.

Yes, Mr. Yildiz? Mr. Yildiz, I think, was going to ask first. Please.

Mr. YILDIZ. Hi. This is Fatih Yildiz from the Turkish Embassy, first section of the Embassy dealing with human rights issues.

Since Turkey is the subject matter, I hope you can bear some comments of my side. I will not have any questions to the speakers.

First of all, I would like to thank the Commission for the interest shown in the religious freedoms in Turkey. And I assure you that [inaudible] has things in this [inaudible] end, and the speakers, of course, that the testimonies of them will be transmitted back to Ankara.

This is the second meeting that's held within the framework of this Commission. It's a series of meetings on religious freedom in Turkey. And the first meeting was held last

month under the title of recourse to the Greek Orthodox Church in Turkey, with the most systematic expropriation.

So, be [inaudible] very much, it's only 4 days before that conference, that meeting, to attend the meeting, which was biased, I should say, not only as with the title, but to its composition of speakers, I should say.

Unfortunately, this meeting has been convened at least under an unbiased title, I should say, saying that religious freedom is something to get appreciated, of course.

But as to the speakers, except for Mr. Barry Jacobs, maybe, to a certain extent, I see that this special effort which was [inaudible] during the first meeting, as regards to selecting the speakers, was preserved.

You may wonder why we were not, you know—why we—you refrain from participating to the conference as speakers.

I believe it's Turkey's right to let's say reserve its position as regards to participating at a gathering which consists of people who are, in fact, I should say, striving for promotion of their mostly personal and restricted agendas, who didn't even, let's say, miss the opportunity to reserve [inaudible] in such a, under such a title, to the so-called Armenian genocide, which has got nothing to do with the title of the meeting, let's just say.

Turkey will continue to let its, let's say, efforts and reforms on the religious freedom be known by the world public opinion and American public opinion, of course, in the appropriate forums, like OSCE and during our celebrations with the European Union. We will continue our efforts to let the world public opinion and U.S. and EU public opinion know about our efforts in the course and within the framework of appropriate forums.

Thank you for giving me the chance to speak. Thank you.

Ms. PRYOR. Thank you very much.

Again, questions from the floor. Gentleman on the front row?

Mr. ELIAN. My name is Hague Elian. I have no organizational affiliations except for being a Christian Armenian since 301 A.D. I wear my age well, I know, but—

[Laughter.]

Mr. ELIAN. As a young reporter on the "Miami Herald," Congressman Hastings' home State, in the 1950s, I was working the night desk. And a one-line item came across the desk from the wire services.

And it said merely that Armenians, Jews, and Greeks were being taxed in the middle of the night in the Turkish provinces. And because they didn't have the necessary gold pieces, their homes, and properties were being confiscated—1950s.

Fast forward to the set of a cable television station in Maryland where I have a talk show. And my guest was a Turkish artist of Jewish ethnic faith. And we were discussing this situation. And he said—and I quote—"Oh, no. The Jews were not victims, but the Turks thought that they were Armenians."

In legal circles we laughingly refer to this as the mistaken victim, accidental victim defense.

And he said it with a straight face. And now I read Congressman Cardin's comment that when the Jewish synagogues were bombed in Istanbul, that it was not aimed at the Turkish minorities in Istanbul. Again, the accidental victim.

Turkey has been getting away with this since 1895, as far as their minorities are concerned. And we sit here with straight faces and talk about the progress in Turkey. There has been no progress in Turkey. The persecutions continue.

Mr. Jacobs pointed out that they do have some issues. And, yes, they do. And the issues have not gone away, and probably will not go away for years to come.

My question generally speaking is, we appear to be preaching to the choir this morning. And that's not enough.

If anything is to be done, Turkey is to be called to blame for their actions. Pure honesty is all we ask for.

For Mr. Jacobs' edification, it is said that German officers in Turkey, their allies during World War I, advised the Turkish Government on the genocidal attacks on the Armenians. And in 1936 in Munich, when Adolf Hitler told the world that he was going to exterminate the Jewish population of Germany, he used the Armenian genocide as an example and as a pattern for that genocide.

And as a matter of fact, it is said that the German officers that were in Turkey in 1915 were the same German officers that were advising Mr. Hitler in 1936.

Accidental? I don't think so. Not according to the history books.

But we are preaching to the choir here. I urge to Commission to take what has been said here very seriously, and to not cajole Turkey with words of, or promises of entering into the European Union, but to very firmly state, it's time to fess up, fellows.

Thanks for your indulgence.

Ms. PRYOR. Any comments?

Who else has a question? A few in the back?

Ms. COSMAN. Cathy Cosman, U.S. Commission on International Religious Freedom. Thank you so much for holding this very valuable event, and the previous one.

I did have a question about the situation of the syncretic religious group known as the Alawites, who consider themselves to be Muslims. And I believe they are up to 20 percent of the Turkish, the ethnic Turkish population.

I was wondering if one of the speakers could address their situation. I imagine that their legal situation may be rather similar to that described by Mr. King, but I don't know. And if someone could describe that, I'd be very grateful. Thank you.

Ms. PRYOR. Anybody want to tackle this? No?

UNIDENTIFIED MALE. Only that they did appear before the same commission, it seems to me, several months ago.

Ms. PRYOR. I'm being told by the experts here that they were invited, but nobody was able to appear.

Yes?

Father KALAYJIAN. The only thought that I can offer, is the fact that any reference to the word minority, Turkish Government considers that as a threat to their national security. Take it from there.

Mr. HASTINGS. I'd ask that you do one thing, and that's leave your name and number, and we'll make an effort here in the Commission to get you more finite information.

Mr. KRİKORIAN. And just anecdotally I could say that when I was in Istanbul a while ago, I was talking to an Armenian friend who said that Alawites were persecuted and had problems. They're not a minority as was understood under the Treaty of Lausanne.

But it really came home, because on one occasion, a family of that faith came to Istanbul and asked to be converted to Armenian. And they were asked why. And they said, well, we just found out that we were Armenians, but they told us not to identify ourselves as Armenians, because we would have been persecuted because of that.

And we're persecuted because we're Alawites, so we might as well be persecuted for what we are instead of something for what we're not.

Ms. PRYOR. Questions?

The young woman [inaudible]?

Ms. FENDERSON. Rebecca Fenderson. Howard University, Department of International Relations.

My question is for Ms. Kavakci. You mentioned the social ramifications of the ban on the headscarf. Can you please elaborate?

Ms. KAVAKCI. The social ramifications of the ban includes emergence of what we consider as a step [inaudible], a social class of women who identify themselves with the victims—as the victims—of the headscarf ban.

Most—some of the very privileged women or girls who had the opportunity to leave the country, continue their education and their lives in other countries, including the United States. Canada has been very welcoming. Some of them live there through receiving Canadian citizenship and political asylum for such matters.

Some well-to-do ones are in the United States. But the large population of those women who have been banned from wearing their headscarves are in Europe. Some of them do go to school in Austria. Especially medical school students, the Austrian Government has been very receptive.

The rest, the underprivileged ones go, have either succumbed to the system for a variety of reasons, from family pressures to economic concerns, decided to take their headscarves off and continue.

The rest basically, they emerged as these women who identified themselves as former teachers, former attorneys, former medical doctors or academics. But yet, simply homemakers. These women established this, a social stratum, if you will, of the victimized women with headscarves.

Ms. PRYOR. Yes. I see one in the front row here.

Ms. MANDEL. Thank you. My name is Ruth Mandel. I'm an anthropologist working at the Woodrow Wilson Center for International Scholars in Washington. I'm a visiting fellow.

This is in response to two questions ago about Alevis, just for the record. I've been doing research on the Alevi communities for about 20 years. And just very briefly, they—the situation has improved there. There was a 1998 court case forbidding the building of what's called a "cemevi," an Alevi's place of worship. And so, that has been overturned.

In addition, there has been what's called by many scholars a renaissance and a revival of Alevilik, of Alevism and expressions. Twenty years ago it was very underground and covert. Today it's very open, much more open. There's hundreds of Web sites and publications and all kinds of things.

This is not to say that there's not enduring public prejudice. There's a great deal of animosity on a colloquial, vernacular level, if you will, throughout the Sunni Muslim community. And there is not a great deal of intermarriage between Sunnis and Alevis.

There's no direct population figures, because people are not—there's no census data about that, but the estimates range anywhere from 10 to 25 percent of the population being Alevi. And within the Alevi community there are many different types and languages spoken.

And last, about the Armenian Alevi connection, I've just done some research on that. And there's very interesting connections, even that go back to Apolic (ph) period. And there's been a lot of mutual influence among the Alevis in the eastern Anatolia Dersen region in particular.

And many Armenians were actually, during the massacres, sheltered and taken in by Alevis, and eventually now have become Alevis. Don't speak Armenian anymore, but still have some Armenian identification. They have ritual kinship relations with each other.

Thank you.

Ms. PRYOR. Thank you very much for filling in that information for us. It's good that you were here.

Are there other questions or comments?

Father KALAYJIAN. May—

Ms. PRYOR. I have one comment.

Father KALAYJIAN. May I—

Ms. PRYOR. Yes.

Father KALAYJIAN. In the light of the presentation by Mr. Jacobs, it occurred to me that probably we sounded a little bit limited in the scope of our presentation—or may presentation, at least—vis-a-vis Turkish-Armenian relationship.

If we want to go as far back as history, as Mr. Jacobs did, one should acknowledge the fact that the Armenian Church is the beneficiary of the Ottoman Empire's policy, in that it guaranteed or secured the Armenian legal presence in Jerusalem, in the holy places, and all over the Palestine and Israel landscape where the Armenian Church owns and operates many sanctuaries related to Christian tradition.

And also, the fact that Armenian arts and literature flourished in Istanbul. And we consider the 19th century as the awakening, or the great activities of Armenian literature and arts, and et cetera.

We're not talking about past history to give accolades on the Ottoman Empire in the past. And there are many reasons to probably go over that in the appropriate environment.

But we are talking about what happened after 1890s or 1860s. Maybe even we can go and say 1800s.

Something very drastic thing happened. And that was the disintegration of the Ottoman Empire. And with that, unfortunately, the paranoid attitude of the leaders, both sultans and the successive, the ittihat ve Terakki firkasi Party [the Committee of Union and Progress, it was the ruling party during the reign of Abdul Hamid the 2nd, from 1876–1908], and their successor, Kemal, which now is being imagined as a hero, it was another butcher, if you ask me.

And these people, to guarantee the ethnic survival of the Turkish nation, on the same land where the Armenians were there for thousands and thousands of years, one of them had to go, and the Turks prevailed. That's the bottom line of this history.

Now, however, we are dealing with a real situation on the ground. And I respect the hospitality that Mr. Hastings has received in Turkey, and they're very good at it. But that doesn't change that their mistreatment of their own citizens, Mr. Hastings. And that's the issue here. Not how good they were for the Jews fleeing from Spain, or how good they were for the Armenians in Jerusalem.

What's happening today? And that's the important.

And I didn't even mention as a request or as a demand, as a case, the Armenian genocide. It was only passing. And we didn't mention that with Mr. Tezcan, when we met to discuss some of his issues, to create a more positive and more hopeful environment. We never received a goodwill gesture, a confidence building something that you can latch on and go on from that point.

This is what we are looking for. An extended hand that will say, let's start solving today's problems. And that's what we are asking.

Ms. PRYOR. We'll take this one question, and then we'll go back with you. You had a question, madam?

Ms. CHILTON. Hi. I'm Elizabeth Chilton. I'm with the Armenian National Committee of America. And I really, really do appreciate the CSCE for opening up the forum today to be focusing on this very important topic, because the issue of religious repression within Turkey is certainly something that Armenian Americans, [inaudible] Christian minorities know about.

I'd like to kind of extend that and follow in Father Kalayjian's kind of vein. The repression, of course, is not just religious. It also focuses on Armenian genocide denial. And while we do see positives, perhaps, in civil society, we see a constant, constant dual message of repression from the Turkish Government, specifically with criminalizing the mention of the Armenian genocide within their laws—Turkish Penal Code Number 306.

And then forcing students within Turkey to learn genocide denial, according to the Turkish education minister's decree just a couple of years ago.

And so, my question is, for all those who talk about progress in terms of civil society, isn't this, in fact, really just a subterfuge? And the reality of what we're seeing is the Turkish Government following the same policy of denial, policy of repression that it's had, unfortunately, for 90 years on the genocide. And can we hear some comments from our speakers with respect to that? Thank you.

Ms. PRYOR. Comments from the panelists?

Mr. HASTINGS. If no one wants to comment, I would urge that while we are speaking, genocide is occurring in Darfur. I'm curious if many of us who are concerned about past genocides are prepared to let them become lessons learned and move forward, or to try and avert the occurrences that take place and have taken place very recently. Not meant to detract from the awesomeness of your concern, which I full well understand.

But I come again to the past and what took place in Rwanda. And I happened to be in this very same room with an African American named George Moose, seated in chairs assemble. And he held the African desk for the United States State Department.

Congressman Donald Payne and I asked him repeatedly whether or not what was transpiring in genocide, and they were upwards of 360—there were upwards of 360,000

people at that point, Don and I having been there and seen some of it. And they kept talking all sorts of fancy words all the way throughout that process. And it wasn't until 3 years later that Bill Clinton and Madeleine Albright said that it was genocide.

Now, I don't mean to put down anybody's notion about what they consider to be right with reference to their own set of circumstances. But I leave you, because I have to go to another meeting with a thought, just to show you how it's pervasive. And not only can Turkey, according to some, have an accusing finger pointed at them.

I don't recall anywhere in the United States of America that anybody that has led this country has apologized for slavery. And I'll leave it at that.

Ms. PRYOR. Mr. Hastings, thank you for being with us.

And for those comments, Mr. Yildiz, I believe you had some comments.

Mr. YILDIZ. Sorry for taking the floor once more.

That was exactly what I meant when Father Kalayjian referred to us [inaudible] as butchers.

As long as you cannot condone calling George Washington a butcher in this, under this group, you cannot condone calling the founder of the nation, the founder of a state, being called that, as butcher. Because Ataturk in his personality represents the dignity of this nation.

And the insult that has just been made was an insult to my country and my nation, I should say. And this should be taken note of by the Commission, bearing in mind for the future events that you will organize, that you should be scrutinizing the background of the persons that you are inviting to this forum, or you should maybe set a code of conduct, which the speakers would refrain from making general insults to the dignity of the nation.

Thank you.

Ms. PRYOR. Thank you for your comments.

I'm going to close the briefing at this point. We want to thank all of our distinguished panelists, who gave us most stimulating presentations this morning. Thank you for your time in being with us.

Thank everybody who came. The hearing is closed.

[Whereupon the briefing ended at 11:50 a.m.]

# APPENDICES

## PREPARED STATEMENT OF HON. CHRISTOPHER H. SMITH, CO-CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Good morning, ladies and gentlemen. Today's briefing will examine the situation faced by Muslims, Protestants, members of the Armenian Orthodox Church and the Jewish community in the Republic of Turkey. Last month we highlighted the serious problems experienced by the Greek Orthodox Ecumenical Patriarchate. We plan to hold a Commission hearing soon on Turkey to discuss human rights issues overall, Ankara's efforts to meet EU criteria for accession, and that country's implementation record as a longstanding OSCE participating State.

First, I do applaud efforts by Turkey to bring its legal system into conformity with OSCE commitments on religious freedom. The current government has taken significant steps to improve conditions for the enjoyment of religious liberties, steps that were unthinkable just a few years ago. At the same time, as we learned last month about the Greek Orthodox Church, there are important areas still requiring close attention and urgent action.

Turkey's system of regulating religious groups remains problematic, especially the ban on headscarves in public institutions and the secular government's strict control of Islamic teaching and practice. While the EU has rightfully focused much attention on the religious freedoms of non-Muslim religious groups, it has been virtually silent regarding the rights of Muslims to practice their faith. As Members of the Helsinki Commission have consistently urged every prime minister over the past decade, the right of women to openly manifest their religious beliefs, including in public places and schools must be fully respected. While the President of Turkey recently approved legislation to allow thousands of students expelled from universities to return, including women who violated the ban on headscarves, the ban nevertheless remains. The time has come to end this injustice.

The Armenian Orthodox Church has suffered the loss of important properties through government expropriations. Similar to the situation of the Greek Orthodox, Syrian Orthodox and Catholic Churches, the Armenian Orthodox Church has lost much under current laws that enable the government to assume direct administration of properties that fall into "disuse" when the size of the local community falls below a certain point. In addition, the Armenian Patriarchate continues to seek recognition of its legal status. Last September, Turkey did adopt regulations to improve the way the size of a religious community is gauged and to give communities with legal status the ability to acquire new property. However, the loss of property has done much damage to the church and the legislation does not allow for the reclamation of properties unjustly expropriated by the State.

Protestant and evangelical groups are experiencing problems in meeting openly, despite reforms that purportedly allow non-Muslim religious communities to build churches and buy property. Groups without legal standing or unable to afford these options cannot meet in other locations, such as private homes or rented facilities, as authorities have actively sought to close these meeting places under the pretext of zoning laws. Worse yet, the reforms are enforced in varying degrees depending upon the will of

the local officials. I urge the government to explicitly allow for the holding of religious meetings in rented facilities or private homes.

Turkey has a special relationship with the Turkish Jewish community dating back to the Ottoman period, when Sephardic Jews fleeing the Spanish Inquisition were welcomed and given refuge. After the November 2003 bombings of two Jewish synagogues, not only did Prime Minister Erdogan publicly denounce the bombings, but he also met with Jewish leaders, reportedly a first in the history of the Republic. At the same time, there are disturbing reports that "Mein Kampf," Hitler's notorious work outlining his anti-Semitic world view, has become a bestseller in Turkey. I urge the prime minister and other leaders in Turkey to speak out publicly against resurgent interest in such racist materials.

In closing, Turkey has done much to earn a date to begin negotiations with the European Union. I urge the Government of Turkey to continue its good work and redouble efforts to fully respect the rights of individuals and their communities to freely profess and practice their faith.

## **PREPARED STATEMENT OF VAN KRİKORIAN, FOUNDING MEMBER, TURKISH-ARMENIAN RECONCILIATION COMMISSION**

I thank the CSCE for convening this hearing, examining freedom of religion issues in Turkey, and inviting Father Kalayjian and me to participate here today. This is an especially meaningful event, as April is the month in which the Armenian genocide is commemorated, and we rededicate ourselves to building a future in which that crime against humanity does not recur.

As Christians and Americans, we also welcome increased concern for religious minorities as a part of United States foreign policy. Freedom of religion is a fundamental human right, which for Christians and many others throughout the world is acknowledged in rhetoric and in law, but denied in practice. The Armenian diaspora has experience with life in countries dominated by every major religion, in secular countries, and in countries opposed to all religion.

One of our primary considerations today therefore is to try to improve and certainly not to be the pretext for further damage to the conditions of life for Armenians or any other group in Turkey. For reference and for details, attached to my testimony you will find a report by Dr. Tessa Hoffman published by the Forum of Armenian Associations in Europe in October 2002, titled "Armenians in Turkey Today, a Critical Assessment of the Situation of the Armenin Minority in the Turkish Republic." It is a difficult and delicate line to walk.

The firsthand experience I had with the CSCE's remarkable work at the time of the Soviet Union's collapse, the Sumgait and Baku pogroms, the attempted eradication of the Armenians of Nagorno-karabakh, and the transition to Armenian independence will always be appreciated and hopefully replicated.

The Armenian presence in Turkey, however, is and has been tenuous. International commitments to reform have regularly been followed by backlash leaving an even more damaged situation than before.

In an effort to break that cycle, Armenians and Turks are increasingly engaging in civil society dialogues. There is a critical role for religious figures and respect for religious rights in this process. If the CSCE can help catalyze and secure progress in these areas, you would help achieve the kind of permanent results you have helped to achieved in other areas.

The dialogue process in which I took part, the Turkish Armenian Reconciliation Commission ([www.tarc.info](http://www.tarc.info)) began in 2001 and ended last year, after producing a legal opinion on the applicability of the United Nations Genocide Convention and joint recommendations to the concerned governments (attached). This process is the subject of a recently published book "Unsilencing the past" by David Phillips who served as the Commission's Chairman. One of our joint recommendations stated:

Religious understanding should be encouraged. Among civil society initiatives, there are also opportunities for religious leaders to develop contacts and engage in joint activities as well as activities within their own groups to promote reconciliation between Turks and Armenians. Those activities should be encouraged by governments including the restoration of religious sites, and supporting the rights and functioning of religious foundations.

It is fair to say that progress in Turkey is being driven by both external and internal democratizing forces. Certainly the European Union harmonization packages passed into

Turkish law are a testament to that combination. But, it seems that a growing number of public figures understand that entering the European Union is not a type of standardized test in which the simple enactment of laws will result in a passing grade. They understand that fundamental change should take place in Turkey and that charges of religious prejudice by the European Union ring hollow unless all Christian, Jewish, and non-majority religious rights are restored and respected in Turkey.

With that background and suggestion for future CSCE activity, let me now briefly discuss the specific situation of the Armenian churches in Turkey. There is an Armenian Protestant community in Turkey which is active and there is also an active Armenian Catholic community. The majority of Armenians in Turkey, as elsewhere, however, are members of the Armenian Apostolic, Orthodox Church, led by Patriarch Mesrob ii Mutafyan.

The Armenian Patriarchate in Istanbul is one of four hierarchical centers of the Armenian church. There is also a Patriarchate in Jerusalem led by Patriarch Torkom Manoogian. There are two catholicosates of the Armenian Orthodox church. His Holiness Aram leads the catholicosate in Antelias, Lebanon. His Holiness Karekin ii, is the supreme patriarch and catholicos of all Armenians located at the Mother See in Etchmiadzin, Armenia and presides over the worldwide Supreme Spiritual Council of all Orthodox Armenians.

In 301, Armenia was the first state to adopt Christianity and the vast majority of the Armenian homeland then and for millenia stretches over modern Turkey. In 1914, there were approximately 5,000 Armenian churches, seminaries and schools registered by the Patriarchate, which attest to this historic presence and Christian faith. Less than 50 Armenian churches are under the jurisdiction of the Armenian Patriarchate today.

For centuries, Armenians paid and in many places still pay a high price for their Christianity. The seizure and often destruction of Armenian church property, of this Christian legacy, thus presents itself as a ripe area to demonstrate reform and begin building confidence. Like other perversions of history, many of these ancient structures (quite a few more than a thousand years old) which were not destroyed were desecrated to remove their true identity. Sites such as Ani and Akhtamar are a part of world civilization and progress made there so far to restore them needs to move to the next level. In addition, the multitude of sites, such as Holy Garabed Monastery in Mush, also needs attention.

The Armenian Patriarchate of Constantinople was established in 1461. Patriarch Mesrob himself was born in Turkey (as is required by Turkish authorities to become Patriarch), attended the University of Memphis in the United States, the Armenian Seminary and Hebrew University of Jerusalem, and the Pontifical University of St. Thomas in Rome. He was elected Patriarch in March 1998 by a large margin, and has proven to be a thoughtful, spiritual, and respected leader.

Although the population of Armenians in Turkey is estimated at 70,000 to 82,000, the Turkish Government has stated another 30,000 to 40,000 Armenians from Armenia work in Istanbul. Armenians in Turkey are known for their piety and love of the church; services are held and attended daily, and services are remarkably well-attended, which is a point of pride for all Armenians as these are the known remnants of the 2,100,000 Armenian population before the genocide. I should note that these numbers do not account for the progeny of Armenian children taken from their parents and/or forcibly converted.

Turning to the current situation, on March 16, 2005 the CSCE took testimony on the situation of the Greek Orthodox Church, the Ecumenical Patriarchate, in Turkey. The same types of problems apply to Armenians, as can be seen from Dr. Hoffman's report. But, these issues generally fall into three main categories:

1. Ability to conduct services, which includes the ability to train and employ clergy;
2. Ability to maintain Armenian schools, without censorship and with the ability for any Armenian student to attend whose parents so desire; and
3. Ability to fund, administer, and operate the church and properties, including restoring religious properties to the relevant religious group, rectifying denials of parishoners rights to gift or bequeath property to support their religious institutions, self-governance, and the ability to repair or improve physical structures.

On March 16, Co-Chairman Smith stated:

The most glaring property issues regarding the Orthodox Theological School of Halki, seized in 1971, when the government nationalized all institutions of higher education.

The continued closure of the only educational institution in Turkey for Orthodox Christian leadership is untenable and unconscionable.

This has had a deleterious effect on the ability of Turkey's Greek Orthodox citizens to train the next generation of clergy.

The Greek Orthodox Church in other communities, like the Armenian Orthodox, Syrian Orthodox and Catholic churches, have been deprived of important cultural sites and places of worship.

Reformers should terminate the ability of the government agencies to seize the property of a religious community, while also simplifying the process for groups to regain clear title to their lost holdings.

Should there be no local community, the property should revert to the religious community and not to the state.

Reportedly, the foreign ministry's reform monitoring committee is advocating for reforms that ensure the return of seized property or the payment of compensation. I certainly hope this happens.

The issue is, indeed, black and white. Property must be returned and expropriations must end.

This issue of allowing churches to train clergy should not exist. Axiomatic to freedom of religion is the ability to train clergy to administer religion. Denial or curtailment of that right is not only a denial of freedom of religion established by law but also counter-productive to fostering a tolerant society.

The issue of allowing parishoners to support their church should also be a black and white issue. Last month, a Turkish newspaper reported efforts to deprive the Armenian hospital "Soorp Purgich" (Holy Savior) of a multi million (US dollar) bequest. The Istanbul building was left to the hospital in 1952 and the deed registered. But in 1992, the government declared that the bequest violated the 1936 decree disallowing non-Moslems from donating real estate, and the property was seized as the original owners and their heirs were gone.

The courts complied with the government. Not until there was an appeal to the European Court of Human Rights did the Ministry of Finance refuse to approve the pre-arranged sale. Proper compliance with the Treaty of Lausanne or other standards pro-

tecting religious rights would have never let this case get so far. Interestingly, the good news is that a Turkish newspaper could report this injustice and so far without reprisal.

The issue of obstacles to repairing churches also recurs too often. A recent example is the report on the Samatya Armenian church, where permits to fix the roof went unissued for months. When the parish fixed the roof itself, the authorities sealed the church doors. This is not behavior compatible with the rule of law or the type of society many Turkish people want to see in their country. But, again, one parish member had the courage to publicly question whether the government would behave that way toward a mosque and more and more Turks themselves understand that this behavior must not continue.

Unfortunately, in addition to the lists of current problems, the problems of Christians in the 30s, 40s, 50s, 60s, and 70s need to be openly discussed without fear of reprisal and with an eye to reconciliation. Many of these problems are more in the nature of human rights, such as acts of violence, extortion, and theft against minorities, changing Armenian names to Turkish names, persecution, and denial of identity. A study titled "The Christian Minorities of Turkey" was published in 1979 by the churches Committee on Migrant Workers in Europe which thoroughly documents much of that behavior. Former Patriarch Shnork Kaloustian also published reports describing adverse conditions, confiscatory acts, denial of Armenian identity, interference with self-governance, for Armenian Christians in the 1970s in Turkey which I believe the CSCE has on file.

Accounts of other problems encountered by Armenians more recently in Turkey including violence to churches and holy places, violence against persons, perpetuation of a hostile atmosphere against the Patriarchate and Armenians also bear the CSCE's and others' review and understanding. The State Department's record on reporting infringements in the international religious freedom report shows improvements from the past but still does not do justice to the situation. For example, continuing breaches of Articles 38, 40, 41, 42, and 43 of the Treaty of Lausanne which in theory guaranteed Armenians many of the same religious rights which were promised before and are being promised again are softpedaled or overlooked. A simple comparison with other publicly available reports shows the deficiencies.

Today, we are also concerned with the fate of an Armenian evangelical protestant pastor in Turkey. He struggled and ended up in jail to avoid confiscation of his church's property in the past, and last month discussed the Armenian genocide on television. The past pattern has been retaliation and preemptive anti-Armenian and anti-Christian activity for such behavior. Our hope and our prayer, however, are that the historical patterns on that subject will also change, and that the exercise of basic religious rights and basic rights such as freedom of speech will not be persecuted. Here, I can note that the study on the applicability of the genocide convention procured and released by the Turkish Armenian Reconciliation Commission was translated into Turkish, published in the Turkish Daily News, is available in Turkey, and actually serves as a basis for discussion on the subject.

Thankfully, I can at least say that there are more members of Turkish civil society willing to discuss these problems than ever before and that the government has so far at least tacitly allowed more discussion to take place. That trend needs to continue.

Like the Armenian Government and the majority of the populations in both countries according to a poll taken jointly by Armenians and Turks, I also believe the establishment of diplomatic relations as well as Turkey's lifting of its blockade of Armenia (which iron-

ically but characteristically is already the subject of treaty obligations requiring Turkey to maintain an open border with Armenia) would be positive contributions to this trend. These are areas like genocide recognition where the United States can and should be publicly engaged. There is a leadership role for the CSCE to play here as well.

Thank you again for your efforts in promoting progress in this regard.

# RECOMMENDATIONS TO CONCERNED GOVERNMENTS REGARDING IMPROVEMENT OF TURKISH ARMENIAN RELATIONS

TURKISH ARMENIAN RECONCILIATION COMMISSION

April 14, 2004

## INTRODUCTION

The Turkish Armenian Reconciliation Commission (“TARC”) was formed in Geneva in July 2001 with the express purpose of working to improve relations between Turkey and Armenia and between Turks and Armenians. The primary mechanism for achieving these goals was and is to promote increased contact on both governmental and non-governmental levels. Significant advances have been registered since 2001. These advances have been more visible in the field of civil society, where the most difficult barriers to direct contact are no longer present and the reconciliation process is not only underway but has assumed courses independent of TARC and official relations. Fundamental differences still exist, but the growing movement to engage directly in an effort to resolve them is exactly what TARC was designed to achieve.

Official contacts between the governments have also grown since 2001, but, it must be acknowledged, have not kept pace. Another of TARC’s purposes was to make recommendations to governments to promote reconciliation, and since its formation the Commission has actively done so, both in public and in private. With this document, TARC presents its consensus recommendations on how to improve official relations.

These recommendations are being provided after substantial deliberations. Consultations have been held with concerned representatives of society from many different points of view. The majority and clearly the mainstream point of view in Armenian and Turkish societies while acknowledging the seriousness of the differences recognizes the need to promote better relations. Thus, our strong recommendation to the government officials is to not only establish opportunities for but also to actively and publicly encourage contacts and confidence building measures between Turkey and Armenia and within their region.

At the same time, TARC is announcing that its work as a commission is ending. TARC’s term was to be one year, but the course of events required a longer period to accomplish our goals. We feel that advances in civil society contacts are now permanent and will only grow in time. We also feel that beyond our recommendations, official relations can now best be continued and advanced independent of the TARC structure.

Instead, we have decided to convene an initial meeting of a larger group than TARC’s working membership to discuss the subject of Turkish Armenian rapprochement and reconciliation. This conference is planned for fall of 2004. In addition, we intend to support a new Turkish Armenian consultative group which would meet at least annually to exchange views, review progress, and recommend actions to promote improved relations. TARC’s website, [www.tarc.info](http://www.tarc.info), will continue to function under the editorship of one Turkish and one Armenian TARC member. Its mandate is the same as TARC’s original purposes and the editors are entrusted with fulfilling that mandate as they see fit.

TARC’s progress since 2001 could not have been possible without the critical support of many people and institutions. First among these has been our chairman, David L. Phil-

lips. By publicly thanking him as well as Ted Sorensen, Alex Borraïne and the International Center for Transitional Justice, the Henri Dunant Center, the Vienna Diplomatic Academy, and the Royal United Services Institute, we do not mean to minimize the contributions of so many others who have shared their wisdom, efforts and goodwill towards the cause of a better future for the Turkish and Armenian people. We sincerely thank them all. But, in part, we are making this point just prior to listing our recommendations to give officials and others some comfort in knowing that taking risks to improve relations uncovers support from unanticipated places and yields benefits which may not be immediately visible.

#### RECOMMENDATIONS

Turks and Armenians have a shared heritage. The ultimate goal of the Turkish and Armenian Governments should be to have full bilateral diplomatic relations with open social, economic, and cultural activity between the two neighboring countries. Toward this goal of good neighborly relations, we offer the following recommendations:

1. Official contacts should be further improved. Official contacts at the foreign minister and other levels have improved substantially since 2001. The presence of Armenian diplomatic representation to the BSEC in Istanbul is to be commended. The governments should accelerate their contacts, devise new frameworks for consultation, and consolidate relations by considering additional treaty arrangements. In the transition to full diplomatic relations, the governments should also consider means of providing diplomatic protection for their nationals in their respective countries.

2. Opening of the Turkish Armenian border should be announced and implemented in 2004. Our recommendation is guided by three factors. First, the treaties between the two countries while recognizing the existing borders also call for unhampered transportation and trade across these borders. Second, an open border would significantly improve the economic condition of people living on both sides of the border; and third, an open border is consistent with establishing a basis for normalized bilateral relations and with the international system favored by both countries.

3. The two governments should publicly support civil society programs focused on education, science, culture, and tourism. Since 2001, some of the most successful civil society exchanges between Armenians and Turks have taken place in these areas. They deserve credit and encouragement. They also show great promise in dealing with problems in a creative and productive manner. Governments should be more supportive of these efforts by supporting and even initiating programs such as guest lectureships and studies by Turkish and Armenian academics and scientists, joint studies by Turkish and Armenian students, summer studies and targeted scholarship programs, and projects which generate mutual understanding and respect.

4. Standing mechanisms for cooperation on humanitarian disaster assistance and health care should be established. Both Armenia and Turkey are prone to natural disasters, most notably but not exclusively earthquakes. The record of cooperation in emergencies between the two countries can easily be improved to the benefit of all. In addition, both countries have the opportunity to develop substantial goodwill with each other by increasing and publicizing cooperation in health care and medicine.

5. Security and confidence building measures between Turkey and Armenia should be enhanced. Our meetings have taught that the overwhelming mainstream of both

Turkish and Armenian people desire and are best served by peaceful relations. In both Turkey and Armenia, security, antiterrorism, and related issues are important concerns. Thus, in the process of improving relations, security issues should be directly addressed through international and regional security arrangements and bilateral contacts in a way that will generate public confidence.

6. The Turkish and Armenian people need to develop more confidence that their governments are working to surmount the difficulties related to the past. Those who have followed TARC's work know how difficult this issue was for us. The opinion of the International Center for Transitional Justice (ICTJ), carried out upon our referral for a legal analysis, is on the TARC website for consideration, is on the TARC website for consideration: "The applicability of the United Nations Convention on the Prevention and Punishment of the crime of genocide to events which occurred during the early twentieth century."

#### CONCLUSION

We conclude with the same idea with which we began this process. There are substantial differences, but there is a growing good faith trend toward resolving those differences. That trend specifically is toward moving beyond the state which existed for decades and is strongly in favor of increased direct contacts as a means to mutual understanding. We recognize that some of our recommendations may appear ambitious in the circumstances; in conclusion, therefore, we re-emphasize the need for governments to support those who are ready to work for improved relations. Rapprochement and reconciliation in our case will be a process not an event, and the difficulty of that process should not be underestimated.

# ARMENIANS IN TURKEY TODAY

(By Dr. Tessa Hofmann)

A Critical Assessment of the Situation of the Armenian Minority in the Turkish Republic

## THE AUTHOR

Dr. Phil. Tessa Hofmann is a member of the Eastern Europe Institute of the Free University of Berlin and author or editor of ten books on Armenian history and culture. She is also a volunteer human rights activist and defender of minority rights since 1979 and has published or lectured on many occasions on the situation of the Armenian minority of Turkey. In this capacity, she is also an expert for German federal authorities and administrative courts dealing with asylum applications of Turkish citizens of Armenian ethnic background. The Armenian Benevolent Foundation, New York, gave her the first Garbis Papazian award in 1988 in recognition of her scholarly and humanitarian activities and the Hrachia Ajarian University of Yerevan awarded her the academic title of Professor.

## THE FORUM OF ARMENIAN ASSOCIATIONS IN EUROPE

The Forum of Armenian Associations in Europe was established in 1998 to assemble and facilitate co-operation between Armenian organizations in the European Diaspora. It now counts member organizations in 18 European countries and growing. The Forum is pluralistic and deals with all issues of interest to its member organizations, including international relations, human rights issues, economic co-operation and cultural matters.

The EU Office for the Armenian Associations of Europe assists Armenians associations in working with the European institutions; it helps provide information of the highest standard to the European institutions on Armenians issues and disseminates information on EU policies that are relevant to Armenians.

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The EU Office of Armenian Associations of Europe 40 rue de Washington, B-1050 Bruxelles, Belgium Tel : ++ 32 2 640 81 88. Fax : ++32 2 646 05 25. October 2002. Responsible editor: Nicolas Tavitian

## FOREWORD

87 years after Turkey's Armenian population was exterminated, the country's small remaining Armenian minority is still the target of intense prejudice, often nurtured by part of the country's media and political establishment. Armenians are still subject today

to an impressive array of discriminatory measures, whose apparent purpose is to make life as an Armenian impossible in Turkey.

Turkey is now knocking insistently at the door of the European Union. Should not the country's current policies towards the survivors of the genocide be an essential litmus test of its willingness to adopt 'European values' and consolidate democracy?

The purpose of this report is to provide accurate information on the current situation of Armenians in the Turkish Republic to all those, including political leaders, elected representatives, diplomats, officials, journalists and experts who are involved in Turkey's preparations to join the European Union. The report was written by Dr. Tessa Hofmann, one of the foremost specialists in her field; and our hope is that it might help contribute to an improvement in the policies of the Turkish Republic regarding its Armenian minority in particular and Armenians in general.

NICOLAS TAVITIAN

*Advisor, EU Contact and Information Office of the FAAE*

#### EXECUTIVE SUMMARY

Some 70 000 Armenians still live in Turkey, most of them in Istanbul. The Eastern part of Turkey is this people's original homeland, which was emptied of Armenians in the course of the genocide of 1915, of follow-up cleansing operations in the following decades, and of persistent discrimination towards Armenians and other Christians in these areas. Most Armenians belong to the Apostolic church, while a small minority are Catholics or Protestant.

The situation of Armenians can be described as the combination of intense prejudice with an impressive range of discriminatory legal and administrative measures. The accumulation of the many restrictions, the arbitrariness with which changes occur and the legal uncertainty, which favours arbitrariness, determine the daily life of the Armenian community in Turkey. The aim of these restrictions is the assimilation or emigration of the Armenians.

The activities of Armenian organisations, like those of all non-Muslim minorities, are strictly restricted to the religious, social and educational fields, under the authority of the church and of religious foundations. The right of association is not recognized to minorities. Yet even strictly religious activities are gravely hindered through government measures resulting inter alia in a critical shortage of priests, confiscation of church property, dissolution or paralysis of essential decision-making bodies within the church, and interference in church elections.

Schools are subjected to similarly abusive interference concerning the education of teachers, the number of weekly hours teaching is allowed in the Armenian language, (currently 4), who is and is not allowed to attend an Armenian school or how schools are run. For instance, the authorities can and do paralyse the operations of schools at will. Violent attacks on schools also occur on occasions, though they are more often targeted at churches or cemeteries.

Nor are individual rights and freedoms respected as far as Armenians are concerned. Armenians (and other non-Muslim minorities) are barred from the civil service, army careers and the legal professions; Armenians doing their military service are the victims

of discrimination and abuse; and freedom of speech is carefully circumscribed. Criticism of the government's treatment of minorities, in particular, is out of the question.

Armenians are regularly the target of campaigns and harassment, in which part of the media and political elite join forces to whip up public fear, resentment and anger toward an urban minority now representing at most 0.1% of the country's population and routinely blamed for the country's troubles. The school curriculum also contributes to teaching hatred of the Armenians. As a result, "Armenian" remains a term of abuse and polls indicate that Armenians are the most hated people in Turkey, while 73% of Turkish children think Armenians are "bad people".

The country's thousands of Armenian historical monuments, furthermore, are also being intentionally destroyed or left to decay, in a massive effort at obliterating the memory of the Armenian presence in Anatolia.

#### RECENT REFORMS AND CHANGES

The Turkish Grand Assembly passed a package of reforms in August 2002 to prepare the way for EU accession. As far as Armenians and other non-Muslim minorities are concerned, this package introduces two relevant changes.

—It is now allowed to broadcast TV or radio programmes in their mother tongue.

—Religious foundations belonging to minorities can now acquire property—providing they obtain a specific authorization from the Council of Ministers.

Both reforms mark progress of sorts. But the changes concerning the rights of religious foundations to own property is considerably limited by the obligation to obtain permission from the Council of Ministers, a procedure wide open to abuse and discrimination. Furthermore, while these reforms do address real problems, they address only a small fraction of the wide range of measures affecting the situation of Armenians and other minorities.

#### RECOMMENDATIONS

The following demands and recommendations stem from the available evidence.

1. The authorities must protect the members of the Armenian community in Turkey as well as their institutions against attacks and threats; they must also investigate and prosecute those responsible for such offences more consistently than in the past.

2. The discrimination and mistreatment of servicemen belonging to non-Muslim minorities must be stopped, and a control body as well as a complaint procedure must be created for that purpose in the army.

3. The systematic financial pilferage of religious foundations must be put an end to. In this respect, a series of laws governing the situation of minorities must be revised, and all the properties of foundations confiscated under the previous law must be returned to their owners.

4. Discriminatory and offensive reporting on minorities in general and on Armenians in particular must be stopped. This also applies to the Turkish media, who must exercise self-control and must recognize their responsibility for the creation and hardening of prejudices against minorities. Appropriate measures must also be taken so that Turkish

citizens commenting on the Armenian genocide as a historical fact are protected from attacks in the Turkish media.

5. The disturbing anti-Armenians atmosphere, based on ignorance and prejudice, which obviously prevails in broad sections of society, must be countered through education in schools aimed at reducing ethnic and religious prejudice. This must also involve a revision of schoolbooks, particularly in the field of history.

6. Turkish politicians and high-level representatives of the authorities must also recognize their own responsibility for the protection of minorities and be called to answer for public statements hostile to minorities.

7. Those Armenians still remaining in Turkey as well as the members of others non-Muslim minorities should no longer have to feel threatened. Among the confidence-building measures to be implemented, the Turkish State must guarantee unrestricted access to all levels of the civil service to members of non-Muslim minorities. Members of minorities must furthermore actively and forcefully be encouraged to apply for positions in the civil service, as they have de facto been excluded from such opportunities for decades.

8. The practice of prosecuting those Turkish citizens who publicly express the opinion in words or in writing that the Armenian genocide is a historical fact must be stopped immediately. The European Community, in line with previous European Parliament resolutions, should for its part take appropriate measures to encourage Turkish academics, publishers and journalists to contribute to the inter-ethnic reconciliation through a critical reassessment of history.

9. The Turkish government is called upon to comply with its obligation under numerous international agreement and treaties to protect and maintain Armenian cultural assets. In particular, it should prevent any further manipulation or destruction of Armenian cultural monuments under the pretext of their protection, of their restoration or of archaeological research. It would be desirable for that matter to set up international teams of researchers and experts in the field of conservation and restoration, in which experts from Armenia should also take part.

# EVALUATION OF THE HEADSCARF BAN IN THE LIGHT OF SURVEYS AND REPORTS OF HUMAN RIGHTS ORGANIZATIONS

2004-ISTANBUL

Prepared by a Board Chaired by Fatma Benli, Att. For Organization for Women's Rights Against Discrimination (AKDER)

## INTRODUCTION

In this study where the views of Turkish people on headscarf have been investigated the data from the following questionnaires and reports have been made use of: 'Religion, community, and politics in Turkey' of the Foundation of Social and Economic Studies in Turkey (TESEV); 'Freedom of speech with regards to the Legal and Social aspects in Turkey', by Association for Liberal Thinking (LTD); the general study of Academic Research Centre AKART; 'December 1997 Report of the Research of Political and Social Trends' of Social Research Centre of Social Studies Faculty Graduates Foundation (IMV-SAM); 'Headscarf File' of Milliyet newspaper which was published for fifteen days, 'The Questionnaire of Bare Headed' which has been published in Gerçek Hayat magazine lasted Three weeks, "The Sufferers of the Headscarf Ban" research made by MODUS Research Centre; "Ethnic/Religious Identities and Political Tendencies of Turkish Political Party Adherents and Voters, 1994–2004), carried out by Turkey Socio-Economic Political Research Association (TUSES).

In addition to these, the assessments concerning the headscarf in the Reports of International Helsinki Human Rights Federation (IHF), Human Rights Watch (HRW) and the "2003 International Religious Freedoms Reports" of USA Ministry of Foreign Affairs, and the Reports of Educators Union, and one of the local human rights organization MAZLUMDER, The Association for Human Rights and Relief For the Oppressed have been quoted.

The numbers and evaluations related to the subject of the research presented on the supplement are transferred without any comment. Thus, through general polls and the reports of human rights organizations, it has been analysed and the findings presented as to whether or not the headscarf is a tool for discrimination and oppression, and how women adopting different dress codes view the headscarf ban.

## I—SURVEYS

### 1) FOUNDATION FOR SOCIAL AND ECONOMIC STUDIES IN TURKEY (TESEV) SURVEY

One of the most important polls taken on the subject of freedom of religion and conscience in Turkey is the 'Religion, Society and Politics in Turkey' titled research study that was made in February 1999 in order to investigate relationship between religion and social and political manners and behaviours. Thanks to financial support of the Foundation for Social and Economic Studies (TESEV), this research was made by the lecturers from Boğaziçi University, which is a State university and one that is internationally recognised for its success.

The research of Foundation for Social and Economic Studies gives a general idea as to what Turkish people think. The research that investigates the relationship between religion and political attitude is based on the study of questionnaire including 105 questions and it has been carried out face to face in residential areas which would be representative of the Turkish population.

In this research which has been recognised as a serious and scientific statistic, the percentage of people who agree that not allowing students to enter school with headscarf is wrong is %76, the percentage of those who do not find it wrong is only %16. Rate of people who agree with the statement 'Female government officials should be allowed cover their heads if they want' is %74.2 (Annex 2)

The research gives interesting clues about the relations between religion and politics in Turkey. According to these results, the majority of Turkish people consists of Muslims who are religious and believers who worship regularly. The answers that are given to the question about the worship rituals show that the majority of the society is not only religious but also perform their religious practices. The majority like %91.4 believes that 'the protection of differences of belief in tolerance and peace is indispensable for the social peace', the rate of people who disagree is only %2.1

"The protection of differences of belief in tolerance and peace" is considered to be indispensable for the social peace for a great majority. The answers that were received to questions that measured the religious tolerance of the Turkish public demonstrate that Turkish people's understanding of Islam is very tolerant indeed. For instance, the percentage of those who believe that people who adhere to other religions could be good people is %89.2. The percentage of those who oppose this view is 4.7. Those who believe that people of other faiths who have not committed sins will go to heaven are 41.9%, those who disagree 28.7%. The high percentage for the former demonstrates the difference in theory and practice. The questionnaire, indeed, was designed to capture the State of "living Islam". In other words, the goal was not to determine the religious knowledge of the Turkish people, but to see how Turkish people conceive of religion and practice it. On that Point, the research shows that people are tolerant towards one another and that they have no problems in between them.

Similarly, the percentage of those who say that a person is a Muslim even if he/she doesn't pray five times a day as long as he/she believes in Allah and the Prophet Muhammad is 85.4%, those who say he/she is a Muslim even if he/she doesn't fast is 82%, and those who say he/she is a Muslim even if he/she drinks alcohol is 66.3%. The percentage of those who believe that all Muslim women should wear headscarves is 58.9%. A considerable portion of the population believe that a woman could be a Muslim even if she doesn't wear a headscarf: when put that way, the percentage of people who say that a woman who believes in Allah and Prophet Muhammad would be a Muslim, even if she doesn't wear a headscarf is 84.8%. Those who believe the contrary are of a percentage of only 8.3%.

The research has shown that the fact that the majority of Muslim population is composed of Muslims does not present a support for letting religion play a role in political life as some Islamic circles would suppose, nor does it present a base for the establishment for the setting up of a sharia State as the secular circles fear.

The research has also shown that the claim that the Turkish public has been divided into two poles of Islamist and Secularist as a result of the strengthening of political Islam,

and that this has led the society to be divided into groups that cannot tolerate each other, is not valid.

Black and White categories like Extreme Islamist and the Extreme Secularist can be only a very small fraction of the population. The percentage of those who consider themselves to be not religious at all and those who consider themselves to very religious are 2.8% and 6.1% respectively. On the other hand, a considerable percentage, of 54.9, has included him/her in the category of “I can be considered religious”. The questions designed to measure the dimensions of the so-called balkanization of the public have yielded results that show that no such great divisions exist. For instance, to the question of “Would you feel disturbed if the majority of your city or town consisted of women and Young ladies who wear headscarves?” 83.5% have given the answer No. The percentage of those who say that they would be disturbed is 12.8. Similarly, to the question of “Would you eat in a restaurant which is mostly frequented by women and Young ladies in hijab?” 86.0% have given the answer “Yes”. Those who said “No” were 11.2%

The questions pertaining to women, by the expression of researchers show that the majority of Turkish women wear headscarves. The rate of women who say they don't wear headscarves when they go out is only %27.3, whereas %53.4 say that they wear headscarves, %15.7 day they wear turban. Among the men who give answer to the question, the rate of men who say their spouse doesn't wear a headscarf is only %16.4.

In the research some current topics are questioned about the place of women in society and state policies on women's participation in public life. While 76.1% of pollers believe that girls in university should be allowed to cover their heads if they want, the rate of people who do not share this opinion is nearly 16%. The percentage of people who are of the conviction that “the government official women should be able to cover their heads if they want” is 74.2, the percent of those who disagree is 16.0. Half of Turkish people (%50.2) believe that religious people are oppressed, nearly %65 of those who think that religious people are oppressed gives the headscarf ban as an example. Another important finding of the research is that the people who think that religion should not be effective on society and politics are in the majority, but at the same time those who think state mustn't interfere religious life are in the majority as well.

## 2) PUBLIC POLL OF ASSOCIATION FOR LIBERAL THINKING

With the opinion poll that was announced to the public about “Human Right and Freedom of Expression” by the Association for Liberal Thinking, the same facts are iterated. Conducted with the contributions of European Commission, the project entitled ‘Freedom of speech with regards to the legal and social aspects in Turkey’ was carried out by a research team including three associate professors.

According to explanation published on 2003 ,70 per cent of them who join the poll think that using headscarf in universities should be free and 61 per cent of them think that who use headscarf must be allowed to work as state official.(Annex 3)

The following table has been presented according to the data:

Table K52: Should headscarf be allowed in universities?

	%
Those who say that it should be allowed .....	70,0
Those who say that it should not be allowed .....	22,9
Those who do not express opinions .....	7,1
<b>TOTAL</b> .....	<b>100,0</b>

Table K53: Should wearing headscarf be allowed for civil servants?

	%
Those who say that it should be allowed .....	61,0
Those who say that it should not be allowed .....	31,2
Those who do not express opinions .....	7,8
<b>TOTAL</b> .....	<b>100,0</b>

As expressed in the “Basic Rights and Freedoms and Freedom of Expression: Current Situation and Expectation” section of the said report announced by press explanation , 73% of the population are of the belief that there are wide-based violations of human rights in Turkey. More than half of the population believe that cover women, women, religious people, homosexuals and Kurds are subjected to oppression.(Annex 3)

Table 7: According to you, is there any oppression on the following groups in Turkey or not?

	Answers 'Yes there is' %	Answers 'No there isn't' %	No comment %	total
Those who wear Headscarf .....	78, 2	17, 8	4, 0	100, 0
Women .....	77, 3	20, 2	2, 5	100, 0
Religious people .....	63, 3	29, 4	7, 3	100, 0
Homosexual/transvestite .....	53, 3	28, 7	17, 9	100, 0
Kurds .....	50, 7	36, 7	12, 6	100, 0
leftists .....	40, 7	42, 1	17, 2	100, 0
alevis .....	38, 5	41, 2	20, 3	100, 0
gypsies .....	24, 4	54, 1	21, 5	100, 0
Nonmuslims,minorities .....	21, 3	60, 1	18, 6	100, 0

### 3) ACADEMIC RESEARCH CENTER (AKART) POLL

AKART was set up in 1995, prepared a public survey featured ‘Turkey Research’ is date of April 2002 that agenda about are political tendency, Europe Union, unemployment, economic crisis ,earthquake, internet, immigration.

Aims of this research are to determine and to analysis the sight of about political tendency in Turkey with European Union, unemployment, economic crisis, earthquake, internet, immigration and another subject; besides, to determine public opinion about these subjects healthly and to shed light on politics of these critical subject. (Annex 9)

The research of director is Prof.Dr. Kemal GÖRMEZ, who is one of the academicians of Financial and Managerial Faculty of Gazi University, show us 66,7 % of who join this research says: advocate that headscarf can be worn freely everywhere including the schools and state offices, 15% of them says just can be free in religious schools but other no can be free, 12,7 %says must be prohibit in schools and offices, according to 4,8% of them must be prohibite in state office but must be free in schools. According to that 86,5% of the Turkish population express opinions in favor of the headscarf, 12.7% of people exactly has negative opinion. (p.g. 143)

According to the research that was made in 16 provinces with 3224 persons of Academic Researches Centre that was founded by lecturers from Gazi University (operating under Higher Education Council), two third of population want to freedom for headscarf from everywhere has found expression in the press as well. The research 70 % of society believes that there is no threat of reaction. And it was published in the newspapers. (Annex 9)

4) SOCIAL RESEARCH CENTER OF SOCIAL STUDIES FACULTY GRADUATES FOUNDATION,  
ISTANBUL (IMV-SAM) POLL

According to the December 1997 Issue, page 18 of the research of IMV-SAM, on social and political trends, the most frequent reason given by the 67.3% of the survey subjects who approve the freedom for the female students to cover their heads, is that the freedom of headscarf is “related to freedom and democracy”.

Again in the report the survey subjects have answered the question of “Do you approve female students wanting to attend university with head cover?” as follows: 63% have approved, 27.3% have disapproved and 9.7% have expressed no view on the matter. (Annex 5)

5) THE FEATURE SERIES ENTITLED “TURBAN FILE” IN MILLIYET NEWSPAPER

On this subject, the newspaper ‘Milliyet’ that is known to have a circulation of 300000 a article series titled ‘the headscarf files’. According to result of questionnaire the newspaper investigates the headscarf problem in their series that lasted twelve days.<sup>1</sup> (Annex 6)

According to the expression of newspaper Milliyet this research is the most comprehensive and the most reliable one that has been made till now. The French press agency AFP has announced the headscarf research of Milliyet to the effect that ‘In this country where the Muslims are in the majority and which is strongly attached to secularism, 6 of every 10 women wear headscarf.”

According to result of research % 64 of Turkish women cover their head while going out. In 77 of all 100 houses in Turkey there is a woman who covers her head. (27/05/2003 dated newspaper of Milliyet).

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<sup>1</sup>The research has been made with the method of “speaking face to face at home” in the 7 geographic regions of Turkey, in 38 cities and 128 townships, and 157 districts and villages that are connected to them. The survey has been done with 1881 people, 927 of whom were women, above the age of 18, representing the voter population. The method of many stages- strata- and random has been used and there has been a gender and age quota in the determination of those who were surveyed.

To the question ‘Is there anyone in this House who covers her head while going to bazaar, shopping or walking around?’ the percentage of those who says ‘yes’ is %77,2. (27/05/2003 dated newspaper of Milliyet).

In this research, the will to abolishing the headscarf ban comes out clearly. Three of fourths of society is opposed to the application of headscarf ban at universities. The difference of age and sexuality doesn’t change the rate of this will. The rate of people who say ‘there must not be headscarf ban’ is %75.5.

The rate of people who says women in official department can cover their heads if they want is %62,6. And also to the question ‘Would it disturb you if an official who serves you such as judge, teacher, police etc. dresses in particular a way as to show how he thinks politically (if the person wears a rosette, hat, turban or any sign etc) the rate of those who says ‘no’ is %54.1.

Among those who call their headscarf turban, 81.8% say “Turban is not a symbol”. This research shows that a great majority of the Turkish population (78%, if we do not take into consideration those who have not answered,), do not regard turban as “a symbol for anti-secularism”.

—Among this 78%, there are those who conceive of “turban” rather as “headscarf”. For those who are asked “Is headscarf a symbol?” it is Natural that they should say “No”. Even if such differences are set apart, it is obvious that the majority of people in Turkey do not see covering the head as a political symbol. (28/05/2003 dated Milliyet Newspaper)

—To the question of “Do you thing the turban is a symbol of anti-secularism?” 70% have answered “No”. Those who have said “Yes, the turban is a symbol of anti-secularism” is only 19.2% (28/05/2003 dated Milliyet Newspaper)

—63.4% of women who cover their head say that they do so “due to their religious beliefs”, 19.2% say they do so due to the influence of tradition, 13.3% due to habit and 4.1% due to the will of their elders.

In the research, it is exposed that the higher education level is , the more women say (among those who cover their head) ‘I wear headscarf due to my religious beliefs’. Among the headscarved women who are university graduates %100 say they cover their heads due to their beliefs, this rate drops to %61 among primary schools graduates and among high school graduates to %81.8.

Newspaper’s evaluation about public survey is below

- Almost two thirds 22 million women Older than 17 years old, i.e. million, cover head with something when they go out.

- 11 million of 14 million women which cover head, call that cover “head scarf” or “scarf”, 800 thousand of them call it “turban”. 2 million women say they use “local cover”, 270 thousand of our women say they use ‘çarşaf’ (Turkish version of the chador).

- In our villages and cities in more than 10 million of 15 million houses there is at least one woman who covers her head when she goes out.

- Most women, covering or not covering her head do not think “turban” as a problem. Only for 6 million of adults in our country (42–44 million people) there is a “turban problem” in our country (31/05/2003 dated Milliyet Newspaper)

In this study the subject was attempted to be evaluated from every angle each day, various experts’ opinions have been asked. Ankara University Faculty of Theology lecturer theologian Prof. Dr. Beyza Bilgin answered the question “What is the head scarf’s place in Islam religion?” in the following manner: “The head scarf’s place in Islam at Sura of

Nur, 31st verse. In this verse it was revealed to the Prophet to tell the believing women to let their headscarves reach over to their chests and except for those that are normally seen, not to show their ornaments to men except for those from their family . . . Allah's order can't be change by others, the yare laws that cannot be interpreted in any other way . . .”

Prof. Dr. Beyza Bilgin answered the question “Can head scarf be worn in government offices?”saying “Of course can be. But we made this subject problem of domination due to obstinate attitudes of those who use head scarf and those who don't want to see it worn, so this question now has to be discussed by politicians and not theologians. (29/05/2003 dated Milliyet newspaper)

Prof. Dr. Elizabeth Özdalga who teaches sociology at ODTÜ (Middle East Technical University) and who has made studies on students who wear head scarf and who organizes broad based discussion meetings concerning issues in Turkey as a Project Manager of Sweden Research Institute, explained her opinion about Turban file as the following:

Is the turban problem in Turkey a freedom of religion issue? Radical secular sector which includes on a large scale the top elite in Turkey, claim they know and understand subject of tesettür (turban) better than everybody. According to them the head scarf is an expression of political Islam and reactionism. But women who choose head scarf think it as a religion duty. When it is obstructed, they think their freedom of religion is damaged. Religious belief is the main dimension of head scarf problem. While this problem has not been solved, it will continue to be a freedom problem concerning religion.

Doesn't turban have an aspect that motivates political Islam? An Islamic movement has formed in the last in last thirty years in Turkey. The head scarf is part of it. But the Islamic movements have not threatened the democratic regime. Party of National Salvation (MSP) and Welfare Party of (RP), didn't have any intention to demolish the secular regime. The same goes for so Party of Enlightenment and Progress (AKP). But those against the head scarf, rather than the realities of Turkey, ground their fears upon the radical groups that exist in Iran, Egypt, Pakistan and Algeria. What they take as reference are the most radical, most militant movements . . . Groups which have intentions for set up a Shariat government in Turkey have failed to find any support. It's impossible to understand why there is such a pressure on head scarf though their is no Islamic radical base as the above examples. (30/05/2003 dated Milliyet Newspaper)

—Holland Party of Worker deputy Nebahat Albayrak spoke about the turban problem in Holland, the structure of religious and secular schools, as well as Islamic schools.

Is it possible to work in Holland government Office, carrying political or religious symbols? An officer can carry on neck a cross freely.

Can women work government office with head scarf? Yes, their numbers are increasing tooà Turban is within rights and freedoms that are protected under the constitution. For example there is a lawyer working with head scarf à

Does the lawyer attend the trial with her turban? Yes, she does. But this is one of the most controversial subjects in Holland. . . . There is a argument about “Is it possible work with head scarf at posts where neutrality has to be kept?”. The question has not been resolved. There the is the opinion that if it effects her impartiality, she shouldn't work with head scarf”. For instance there is the debate of “Can be a police with head scarf?” It is said that in some case that police with headscarf “May not be able to guard

her impartiality due to head scarf". Holland is quite liberal on this subject. There the plan of producing head scarf in keeping with the police uniform, even part of it. This has had not results yet. The most tangible debate was at a courthouse. A girl with head scarf applied for the protocol secretary job, when she was refused she went to court and won the case. (01/06/2003 dated Milliyet Newspaper)

The date in the Milliyet Newspaper has led to analyses by different writers in various newspaper. Columnist Gülay Göktürk from the Newspaper "Dünden Bu Güne Tercüman Gazetesi" says: "A particular group in Turkey believes that the "resolution" of the problem will be achieved by the educating, transformation and persuasion of those who wear headscarves Today, in an appropriate fashion that will lead them to take their headscarves off. Another portion of the society however thinks that the resolution will be reached when those who have problems with headscarves are educated, persuaded and transformed so that they understand that the headscarf is a democratic right . . ."

So who will change? I think the most impressive result Milliyet's research was to make clear how few who think in the former way are. 75% of people want the cancelling of the headscarf ban at universities. That is to say people expect that those who think "turban is symbol of reaction "will change their minds. 75 per cent of people are very big majority and if this regime is democracy, it has to respond to this strong request.

Has expressed the following: ". . . the infringement of a big mass of people's rights cannot be continued due to the obstinacy of a little minority. In fact the issue is not a problem minority-majority. Even if there should be one person one side and millions of people with prejudices on the other, the situation should not change. Not one person's rights can be sacrificed due to the prejudices of millions" ( Annex 6)

#### 6) "THE BARE HEADED POLL" OF GERÇEK HAYAT MAGAZINE

A public survey which was Carried out in 21 different cities, polling only women who don't wear head scarf was published for three weeks at "Gerçek Hayat Magazine" with different sociologists' opinions. (Annex 7) Gerçek Hayat Magazine has reached the following results at the end of the public survey; "According to public survey, contrary to what is assumed, most women in Turkey who don't wear head scarf hold onto their religious approach." It has been shown that being bare headed does not necessarily imply being against the headscarf. This has been demonstrated by the answers that the women without headscarves have given to questions concerning religion. For example 76% of women who participated in the public survey answered "yes" the question "Do you want your children have religious Education?"

As a matter of fact 60.6 percent of women who participated in the public survey answered "unnecessary" the question "How do you evaluate head scarf debates?" 20.7% said "everybody must be free", 2.9% said "head scarf must be free", 1.9 per cent said "head scarf must be banned", 1.9% said "it should not be mixed up with politics".

Again 29. 6 per cent of women without head scarf who participated in the public survey answered "Yes" the question "Have you ever thought of wearing head scarf?" To the question of "And why have you not worn it?" 21. 3% said "my family, my husband don't let me". 29. 3% said "I thought I will have reaction from my milieu", 12.2% said "because of my job, my business". The magazine makes the following observation "These results show that just like wearing a headscarf, not wearing a headscarf is a State that must be assessed in the framework of particular social and political influences". The

magazine is of the view that When the headscarf is no longer considered to be a sign of being backward, there are many women who may choose to wear it.

7) SURVEY ON THE SUFFERERS OF THE HEADSCARF BAN PREPARED BY THE MODUS RESEARCH CENTRE

In 1997 MODUS Research Centre, with the cooperation of Mazlumder Istanbul Bureau has carried out a survey on “the sufferers of the headscarf ban”, polling 700 headscarved university students in Istanbul, Ankara, Bursa, Trabzon and Konya (Annex 8) In this survey, too, the reasons with which the headscarved women determine their manner of clothing and their thoughts on women who do not wear headscarves are questioned.

93.8% of those who participated in the survey responded “no” to the question “Have you encountered any coercion to wear the headscarf?” 6.2% say they have encountered coercion. 84.3% said that the “the greatest reason for their wearing headscarf was to get a better understanding of their religion.” 10% said they wore a headscarf due to their family values. 2.8% said they wore a headscarf due to the influence of their circle of friends.

To the question of “Where did you encounter the headscarf ban?” 50.5% said university, 35.7% said high school. To the question of “What was your response to the ban?” 71.8% responded “I decided to resist it.”, 8.7% responded “I took off my headscarf.” 11.1% said “I was not able to show much resistance.”

To the question of “If you had to choose between your headscarf and your school or job, what would you do?” 87% responded “I would never take it off.”, 5.7% responded “I could take it off temporarily if I am obliged to.”, and 0.3% responded “I would take it off.”

To the question of “How should the struggle towards the ban be?”, 79.6% responded “a human rights struggle should be enacted within the framework of freedom of belief.”, 16.6% responded “A political struggle should be given within the framework of a Muslim identity, 3.1% responded “only our legal rights must be pursued.”, 5.7% responded “rather than struggling we must wait for the necessary arrangements/reforms to be made.

To the question of “What is your view about the religion’s requisite of headscarf?” 85.6% replied “It is a basic requisite”, 0.7% said “it’s an unimportant detail.”, 12.5% said “it is a detail, but an important one.”

To the question of “Do you think women who do not wear headscarves Muslims?” 86.5% replied “The yare Muslims if they believe in the religions articles of faith”, 6.1% said “Their Islam is in danger since they do not obey one of the basic rules of religion.”, 2.6% said “The yare not Muslims.”

To the question of “What do you think of the moral status of women who do not wear headscarves?” only 2.5% answered “I consider it immoral not to wear headscarf.”, 56.4% said “Morals should be

sought in behaviour and manners rather than clothing.”, 37.3% said “The hijab might add an element of morals but I cannot speak informedly about those who do not wear a headscarf.”

- 8) “ETHNIC/RELIGIOUS IDENTITIES AND POLITICAL TENDENCIES OF TURKISH POLITICAL PARTY ADHERENTS AND VOTERS, 1994–2004), CARRIED OUT BY SOCIO-ECONOMIC POLITICAL RESEARCH ASSOCIATION, TURKEY (TUSES).

TUSES, which has been set up as the think-tank organization for Social-democratic People’s Party has carried out 4 surveys on since 1994, for four times. The fifth of these surveys was carried out before the local government elections in 28th March “ETHNIC/RELIGIOUS IDENTITIES AND POLITICAL TENDENCIES OF TURKISH POLITICAL PARTY ADHERENTS AND VOTERS, 1994–2004

It is expressed by many writers that this research, financed by TUSES and conducted under the supervision of Prof. Necat Erder, applied by Veri Araştırma (Data Research) Ltd., with its periodical nature and serious approach, is a wealth of information for those who are interested in these issues.<sup>2</sup>

The results of this study which was carried out by speaking to 1806 participants face to face in the time period 22.12.2003–07.01.2004, was announced on 01.03.2004 by the Head of TUSES, Burhan Şenatalar, and the owner of Veri Araştırma Ltd., Sezgin Tüzün.

The research of 2004 consists of the following pertaining to Political Party Adherents and Voters: Socio-Demographic characteristics, Ethnic-Religious Identities, Their Views on Turkey’s Problems, Their Views on Sheriat, Their Views on Turkey-EU Relations, Whether or not They See Themselves as Adhering to a Political Party, Their Party Preferences, Their Tendencies in Local Elections, Their Views on Whether Health and Education Services Should be Conducted Through Local Governments, Their Views as to the Closest Ally of Turkey, Countries which they Think Turkey Should Act Together With, Countries Which They Believe Pose a Threat to World Peace, Whether or Not they think USA’s Invasion of Irak, in consort with UK was Correct, Their Views of Turkey’s Position on Sending Troops to Irak, what they understand to be the Cyprus Problem and their solution proposal and Their views on the Headscarf issue.

As it is the last research made carried out on the subject, the study has particular importance. 64% of those who participated believe it to be alright for a female MP to wear a headscarf in the National Assembly, the percentage of those who accept the wearing of headscarf of judges at Court is 65; those who think the headscarf permissible at university for lecturers are 67%, those who find it for permissible for doctors at hospital are 70% and those who find it permissible for students at university is 71%; 80% find it permissible when visiting the National assembly, 81% for the defendants at courts, 90% for being at State establishments, 90% for being at treatment at hospital, 95% for shopping. (Annex 4)

The table is as shown below:

	percent
MP in the parliament .....	64
Lecturer at university .....	67

<sup>2</sup> İSMET BERKAN, 02/3/2004 dated Radikal Newspaper, “The danger of being left with no opposition one more time”

	percent
Doctor at the hospital .....	68
Visitor at the National Assembly .....	70
Going into state office .....	71
Shopping .....	80
	81
	90
	90
	95

## II—THE REPORTS OF HUMAN RIGHTS ORGANISATIONS

### 9) THE ASSESMENT INTERNATIONAL HELSINKI HUMAN RIGHTS FEDERATION (IHF) CONCERNING THE HEADSCARF BAN

International Human Rights organization considers the situation of the prevention of women from using their basic rights due to headscarf a violation of human rights. International Helsinki Human Rights Federation assesses the headscarf ban which is to be placed in French primary schools as “France banning religious symbols will violate the protection of religious freedoms in the international arena” (Annex 10)

In the report it is said that “It is not at the discretion of a state to determine which symbols are legitimate as long as they do not violate other people’s basic human rights or do not endanger public safety, health, or morals, as defined by international law. The IHF believes, however that adopting legislation to ban headscarves in public institutions would not be a fitting measure to promote integration and to combat Islamic militancy but might, indeed, contra-productively result in increased alienation and marginalisation of Muslims living in France.”

For many Muslim women wearing a headscarf is a deeply personal choice and a sign of their religious conviction and has nothing to do with Islamic fundamentalism. A headscarf ban would automatically but mistakenly stigmatize all Muslim women wearing the headscarf as fundamentalists. In addition, barring girls and women wearing the headscarf from schools, universities and other public institutions could lead to numerous girls and women staying out of schools and universities—a result contrary to the pronounced aim of the ban, i.e., integration.

Further, while the IHF supports the equality between all religions and world-views, it is concerned at the fact that the French state now promotes secularism to an extreme extent and fears that this would appear to amount to advocacy of one world-view. Such an attitude would contradict the principle of neutrality to which the state proclaims to be committed.

All major international human rights documents provide for the right to freedom of thought, conscience and religion and the right to its manifestation, observance, practice. This is guaranteed, for example, by article 18 of the International Covenant on Civil and Political Rights (ICCPR). According to this provision, limitations to such a right are acceptable only if “they are necessary to protect public safety, order, health or morals or fundamental rights and freedoms of others” No derogation from article 18 is allowed, even

in time of public emergency. When commenting on this provision, the UN Human Rights Committee has pointed out that the freedom to manifest one's religion or belief as protected by the ICCPR covers a broad scope of activities, including the wearing of distinctive clothing. The related UN committee has also emphasized that restrictions to this right must be non-discriminatory in character and that they must relate directly and be proportionate to the aim they introduced for.<sup>3</sup>

Article 9 of the European Convention for the Protection of Human Rights and Fundamental freedoms (ECHR) reiterates the content of article 18 of the ICCPR and lists the same conditions to the acceptable limitations with the addition that all restrictions must be "necessary in democratic society". According to the European Court of Human Rights, in order to meet this requirement, any restriction must correspond to a "pressing social need" and must be "proportionate to the aim pursued"<sup>3</sup> The Court has also concluded that the right to freedom of religion as guaranteed by the ECHR "excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate".<sup>4</sup>

In the 1975 Helsinki Final Act, the member states of the Organization for security and Cooperation in Europe (OSCE) agreed to "respect the freedom for the individual to profess and practice, alone or in community with others, religion and belief acting in accordance with the dictates of his own conscience".<sup>3</sup> They subsequently reaffirmed this commitment on repeated occasions.<sup>4</sup> In the 1989 Vienna Concluding Document, The OSCE states agreed to take effective measures to prevent and eliminate discrimination on the grounds of religion and to foster a climate mutual tolerance and respect between believers of different communities.<sup>5</sup>

#### 10) HUMAN RIGHTS WATCH (HRW)'S ASSESSMENT OF THE HEADSCARF BAN

In the Declaration made in New York, February 27, 2004 Human Rights Watch (HRW) has said that The proposed French law banning Islamic headscarves and other visible religious symbols in state schools would violate the rights to freedom of religion and expression. Human Rights Watch General Director Kenneth Roth said that The law draft, which forbids "signs and dress that conspicuously show the religious affiliation of students," and which will be debated in the French Senate on March 2, is a violation of practicing religious principles. Roth said "For many Muslims wearing headscarf is not only an expression of religious belief but also a religious principle that is to be obeyed."

In the press conference it was said "Under international law, states can only limit religious practices when there is a compelling public safety reason, when the manifestation of religious beliefs would impinge on the rights of others, or when it serves a legitimate educational function (such as prohibiting practices that preclude student-teacher interaction). Muslim headscarves, Sikh turbans, Jewish skullcaps and large Christian crosses—which are among the visible religious symbols that would be prohibited—do not pose a threat to public health, order or morals; they have no effect on the fundamental rights and freedoms of other students; and they do not undermine a school's educational function.

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<sup>3</sup>UN Human Rights Council, General Assessment 22 Freedom of Thought, conscience and religion (Art. 18) 30/06/ 1993.

Even if it should be put down in impartial words, effects of a ban on apparent religious people will be reflected, in proportionate way, on Muslim girls and thus, the decrees against discrimination in the international human rights law will be violated and so the principle of equal Education rights will be violated too. In truth, such differences in values should be accepted with understanding and tolerance, and this is one of the basic characteristics of the application of Education rights. But in practice the said law will leave no alternative to Muslim families other than taking their daughter off from high schools.” (Annex 11)

When we asked Human Rights Watch about their assessment of the headscarf ban, the text attached as annex has been sent to us. (Annex 11) The related sections of the text entitled that the organization has sent entitled “The struggle against the headscarf ban” (2000 report) have been quoted.

#### “Background to the Istanbul OSCE summit November 1999”

A woeful consequence of the persecution of the religious right—and a further freedom of expression issue—has been the campaign to outlaw the headscarf or turban in public life and public space. In the past three years directives drawn up in the name of secularism have resulted in the exclusion or suspension of thousands of female students from higher education, as well as a number of sackings of public employees, including doctors and nurses.

#### “The Destructive Prohibitions on Headscarf”, (from the Turkey Human Rights and the European Union Accession Partnership, September 2000)

A campaign to restrict the wearing of head scarves for religious reasons in educational settings or on state premises has continued unabated, strongly supported by the Office of the Chief of General Staff. This campaign, waged in the name of secularism, has resulted in thousands of devout Muslim women being temporarily or permanently denied access to education, while others have been suspended or discharged from employment in teaching or health care.

Women who wear headscarf say that they have adopted this manner of clothing as an expression of their sincere religious beliefs. The decision to wear (or not to wear.<sup>4</sup>) any clothing, for instance clothing that covers the head has been put within the Scope of articles 9 and 10 of the European Human Rights Convention. These rights can be restricted only when the order, health and moral stature of the society prevails over the rights of the individual can these rights are limited. Women’s choice of wearing the headscarf has not presented a danger to the order; health and moral stature of the society to date and it is really difficult to imagine that it will.

#### Accession Partnership Recommendations:

The Turkish authorities should lift the ban on the wearing of headscarves or other religious head covering by students in higher education, and should be encouraged to

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<sup>4</sup> Human Rights Watch has condemned the restrictions posed on women’s clothing and policies that implement these restrictions in some countries.

reconsider the dress restriction imposed on civil servants. There can be no grounds for dress restrictions imposed on elected representatives in the Turkish parliament. This measure is not specified in the Report or the Calendar.

From A Human Rights Agenda for the Next Phase of Turkey's E.U. Accession Process, briefing paper, January 2003, and Human rights agenda for the 31 January 2003 E.U. Troika—Turkey ministerial meeting.

Another significant chronic violation of human rights in Turkey is the ban imposed by state educational institutions on women wearing the headscarf for religious reasons. Thousands of female students are still denied access to high school and university education because they wear the headscarf. Teachers and doctors are also dismissed if they choose to wear the headscarf on duty.

Choosing to wear or not to wear a particular form of dress is a manifestation of the right to freedom of thought, conscience, and religion. As such, the Turkish government's imposition of a headscarf ban should be considered in breach of articles 9, 10, and 14 of the European Convention on Human Rights. These articles protect freedom of religion and freedom of expression, and safeguard against discrimination; and pursuant to Article 90 of the Turkish Constitution, they supersede conflicting regulations. The headscarf ban also breaches articles 18 and 19 of the International Covenant on Civil and Political Rights, which provide similar protections for free expression, as well as article 13 of the International Covenant on Economic, Social and Cultural Rights, which safeguards access to education. Turkey has signed both covenants, but ratifications are still pending.

The right to freedom of thought, conscience, and religion may only be restricted by law in order to protect public order, safety, health and morals, and the fundamental rights and freedoms of others. Having examined the context of the ban in universities, Human Rights Watch sees no such justification for restricting students' right to wear the headscarf. Nor are there grounds for imposing an indiscriminate ban on head covering by public officials and civil servants, which can only be justified in very limited circumstances when wearing the headscarf would clearly impede such officials in the performance of their duties.

The Turkish authorities should lift the ban on the wearing of headscarves or other religious head-covering by students, and lift such dress restrictions on civil servants except in such circumstances as would clearly impede the performance of their duties.

11) "2003 INTERNATIONAL RELIGIOUS FREEDOMS REPORT" PUBLISHED BY THE USA FOREIGN AFFAIRS MINISTRY

In the "2003 International Religious Freedoms Report" published by the USA Foreign Affairs Ministry, Turkey has been included among the countries that "forbid Muslim clothing in schools" along with France, Germany and Belgium. John Hanford who presented the report Said, concerning Turkey: "We believe that in countries where the use of headscarf is restricted, people actually wear it not as a tool for provocation but because they want to express the belief they carry in their hearts". He added that restrictions on the headscarf could lead to division in Societies." Took part at press with title "Criticism from USA, the ban of headscarf divides the Turkey" (Annex 12)

"France who prohibit the headscarf recently has too much USA's criticisms" said the USA authorized and determined that they condemn the decision of France "Does it nec-

essary to prohibit rights whom living their religion way of peace? People must apply their religion and believes without government interference, by not provoke the others.

This situation took place 25/02/2004 dated we present as annex part of freedom of religion Turkey Human Right Report 2003 by USA (Annex 12)“Government authorities continued to enforce a long-term prohibition on the wearing of religious head coverings at universities and by civil servants in public buildings. In January, Istanbul University prevented a foreign professor it had invited to a conference from entering the campus because she was wearing a headscarf .Un cover women, and who support actively those against the ban had discipline punishment and lost their jobs at public sector.(Nurses,teachers etc.)Cover stodents not allowed to registration. Many laic women accused the muslims by using headsacarf as political means and they said enterprise canceling the ban can constitute pressure on them(uncover women) In January, President Sezer excluded the covered wives of government ministers and Members of Parliament from the guest list for the traditional presidential Republic Day reception.

#### 12) EDUCATORS UNION REPORT

Educators Union Istanbul Bureau has published a Human Rights Report in 1999. (Annex 15) In the report it has been put forward that the headscarf ban is against domestic law and international conventions and also that the violation concerning the civil servants, based on juts one regulation, is a violation oh human rights.

The following statements are present in the report:

“Some forms of dress are a religious requirement for believing people. In the world we live in the governments don’t have the right to determine the form of dress. If people truly believe that certain behaviour is a religious requirement, the state must accept this as a “religious requirement”. It is stated in the 24th article of the Constitution that:

“Everyone has the freedom of religious belief and view and the freedom of worship, and no one can be reproached for their religious beliefs and views.”

In the 9th article of the European Human Rights Agreement, the freedom of thought, conscience and religion are explained as follows: believing, expressing that belief, teaching it, worship and performing religious practices.

Covering of the head (for women) is a religious obligation both adopted by persons and expressed by the Ministry of Religious Affairs, which is a constitutional state institution.

According to article 125 of the Civil Servants Law No: 657, the punishment to be given to a teacher who had her head covered instead of uncovered in public establishment is warning, and if she should repeat it, censure. There is no further penal decree upon the matter. Matters being as they are, the relations of assistant teachers with the civil service have been sundered (saying that her behaviour and acts were not fitting for civil service) due to the fact that some teachers wore headscarf out of their personal choice. And to the Employed teachers and other public personnel immoral and illegal actions like cuts from salary, obstruction of promotion, suspension from work, changing the place of work, not letting assume the work, threatening to dismiss from work, pressuring into resigning, and taking to Court on grounds that the teacher has not obeyed orders. All punishments apart from censure are illegal, and all are in the category of violation of human rights.

Despite this fact, among teachers who cover their heads due to their religious choices; 107 assistant teachers have been taken from their jobs with no legal decision. 245 teachers have received warning punishment; 65 have received censured punishment; 71, cuts from salary; 20, obstruction of promotion. 243 have been suspended from work; a further 41 have been suspended from work twice. 121 teachers have been posted to jobs in other districts, despite the fact that they were needed in their own schools. They have been maltreated and subjected to abuse in their new posts. Dozens of teachers were prevented from benefiting from health care documents that the schools provide. The investigations on 292 teachers still continue. The investigations are carried out with prejudice and with proposed execution in mind; according to political aims and not the law; and they are left to the discretion of the official who's ordered the investigation. 72 teachers have been taken to court and treated like criminals. 44 teachers have not been able to bear the pressure and have resigned.<sup>5</sup>

13) HUMAN RIGHTS ORGANISATION'S (IHD) PRESS STATEMENTS CONCERNING THE HEADSCARF BAN

On this subject, there are reports or press released published different times by non-governmental voluntary human right foundation. One of them is Human Rights Organization, which defines itself as defending human rights are universal and indivisible entity. It adopts fighting with every kind of unequal treatment making by race, language, religion, colour, sex, political opinion and similar causes as a principle. On 03.05.1999 the organization has declared: "IHD does not abide by the so-called contemporariness and civilisation built on symbols, clothing and formality. IHD regards the headscarf issue from the point of view of personal freedoms. We do not consider the headscarf as a threat to take the system back to the middle ages, to undo the gains women's rights. Turkey' problem are the laws and practices that are against human dignity. A law in the lines of "Women shall cover their heads or uncover their heads" is a law that is against human dignity. (Annex 13)

On the same note the IHD said: "the public does not have the authority to meddle with individuals' clothing manner. Not letting people benefit from public services due to their clothing manner or appearance should be considered a discrimination. Such practices that manifest themselves as discrimination against women prevent women from attaining equal status in society and their equal participation in social life.

Within the framework of human rights, people's private lives or individual choices should not lead to them being put under pressure and discriminated against in participating in the social and political life of the society. Depriving women and young ladies from taking their place in education, working and social life due to their clothing style, their choice of wearing or not wearing a headscarf is contrary to the state's responsibility of lifting the obstacles that are on the path of development for people and contrary to the

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<sup>5</sup>The cited numners are the numbers that have been determined only for Istanbul in 1999. As far as we are aware when the headscarf ban started in 1998 there were 700 teachers in headscarf.

It is estimated that 5000–6000 teachers in headscarf work throughout Turkey, and since the start of the investigation it is thought that 70% have been forced to resign or removed from public office and that 30% have taken the route to wear a wig or take the headcover off completely, thus being subjected to a violation of freedom of religion and conscience.

abolishing of discrimination against women; contrary to the efforts that are being out forward for women's human rights.”

14) THE ASSOCIATION FOR HUMAN RIGHTS AND RELIEF FOR THE OPPRESSED MAZLUMDER  
REPORTS ON HUMAN RIGHTS VIOLATIONS

When we asked Mazlumder how they evaluated the practices against women in headscarf as a human rights organization, they responded that the prevention of women from exercising their education and working rights is a violation of human rights. (Annex 14)

The organization publishes a yearly report on human rights. (Annex 14). In the 1998 report on human rights violations in Turkey; the violation of freedom of religion has been numbered 26669; the number of civil servants who have been dismissed or posted to another work place is 1052; the number of civil servants about whom investigations have been launched is 7126, students 4236; the number of students in headscarves who have either not been accepted into school or have been noted down as absent although present in the class 8238; students who received various other punishments 1573.<sup>6</sup>

In 2000 more than 500 complaints were made to the organization. This year, the complaints made concerning “violations made due religious belief, thoughts or views” consist of the following: headscarf ban in Imam-Hatip (curriculum with religious subjects) high schools 287; Imam-hatip students about whom investigations were launched due to headscarf 16; civil servants about whom disciplinary investigations were launched due to clothing 26; headscarf ban sufferers at the open education establishments 32.

In the 2000 human rights report, it is reported that the headscarf has been banned in almost all universities, and that students with headscarves can continue their education only in a couple of university, in a limited way. It is also reported that some private universities that did not apply a headscarf ban have started to apply it due to the threats from the Higher Education Council that their establishments will be closed down. In many universities students who wear headgear such as bonnet, cap, hat, etc. have not been accepted on school grounds either.

The Higher Education Council has broadened the scope of the ban and has published a circular which bans entry on campus grounds, including lodgings, with headscarf. Even in theological faculties this ban has been put into practice. Mazlumder's report reiterates that this ban can have no reasonable ground to ban the headscarf at an establishment which gives religious education.

In 2000, a new ban is not accepting photographs in headscarves which are sent for applications for the central standardized test for university entrance OSS. This headscarf ban at universities has forced some students to continue their education abroad, and some have not had this chance due to the heavy financial burden that education abroad presents, and thus many have had to abandon their education halfway. It is estimated that 30000 students have been affected by this ban.

In the report it is stated that in 2000, the headscarf ban started Imam-Hatip schools, with curriculum composed 40% of religious studies; students were not accepted into the school due to them wearing headscarf. After the reaction of the public, they were allowed

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<sup>6</sup>This informatipn is based only on the personal applications made to MAZLUMDER İstanbul Bureau in the year 2000.

in, but this time around they were noted down as being absent in the register. The report also says that investigations were launched about many students who continued to attend high school with headscarf. It has said that due to the ban that was practiced in three Imam-Hatip schools nearly 3000 students have had to pass the first two months of the 2000–2001 academic year at the school gates, in the gardens, with no education whatsoever.

It is also expressed that the hundreds of teachers have been dismissed from their jobs, regardless of law and procedure by the National Education Ministry; that many teachers were made to resign, many civil servants were suspended from work; disciplinary investigations continue about many civil servants; investigations have been launched about teacher who used to wear headscarf and then adopted wearing a wig, despite the fact that they have continued their work for 8–10 years with no problems are all (there are even those who have been state employee for 18–20 years), and that these civil servants have faced the gravest prosecution and pressure in the last three years.

In the human rights report published in 2001 the numbers of various violations at universities are as follows: students who have not been accepted into school, 133; those who were not allowed to register 21; about whom investigation was launched 318. At high school, the numbers are as follows: those not accepted into school, 61; those who received disciplinary punishments 50; those expelled from Imam-Hatip high school 81; those who were not accepted into examinations 55. For civil servants; those who have received punishment 154, those dismissed from office 47.

In the report it is said that the headscarf ban which was put in place after 28th February has reached every university except for a couple of private universities and Bilkent and Bogazici Universities, that the ban is implemented in theology faculties as well, and that Higher Education Council threatens those establishments which it thinks does not implement the ban to the full extent with closing down: although it has opened disciplinary investigations about hundreds of students in headscarves, Fatih University has been punished.

In 2001 the headscarf ban was carried over to Northern Cyprus, that the Higher Education Council coerced the universities in Cyprus to implement the ban. The students who were being educated there were forced to transfer to other universities abroad in order to escape the wrath of the Higher Education Council.

The registration of some students was not carried out due to them wearing wings; the ban was extended to students of other views as well; any student who has participated in a march or a protest has been given suspension punishment. In one case, one student was suspended from school for one term because he had participated in Newroz celebrations.

In secondary education the ban that started in the 2000–2001 academic year continued to spread; the headscarf that had a determined type and colour together with the school uniform was banned; there were problems concerning the Imam-Hatip school headscarf ban throughout Turkey, many students were not accepted into the buildings and given grave disciplinary punishments. In Bartın Imam-Hatip 120 students were given disciplinary punishments, and 64 of them were suspended from school for an indeterminate space of time.

Whereas some headscarved civil servants resigned, others were given various punishments and then dismissed from their jobs (despite the fact that the utmost punishment

could have been “censure” according to article 125 of Civil Servant Law No: 657) The allegations were turned into “disturbing the peace and quiet” of the establishment and for this claim it was enough for the civil servant to be wearing a headscarf. (even if they should adopt the wig or wear the headscarf only outside the school) Apart from their being contrary to pressures, the Higher Education Council did not give the teachers their right of defence many times and dismissed them from work. It is stated that the number of teachers thus dismissed reaches thousands. At Eyup Imam-Hatip only, the number of teachers dismissed due to wearing headscarf is 26. It is stated that these teachers had been working for more than five years. In 2001, the workers at municipals buildings have been added to those who suffer from the headscarf ban; it is stated that investigations have been opened upon the inspections organised by the Internal Affairs Ministry (Annex 15)

### III—RESULT AND GENERAL EVALUATION

Sampled research and the Reports on human rights has made clear that head scarf is not perceived as a tool for discrimination or oppression, that the people do not experience a problem concerning clothing’s and that the ban is considered by local and international human rights organizations to be a violation of human rights. These studies and Reports show that the headscarf ban has no support in the public.

The contrary cannot be thought of in the Turkish society anyway. Whatever the comments that are made may be, there is no dispute among people concerning being headscarved or bare headed in Turkey. People dress as they want to and no one puts pressure on others concerning clothing. It is only Natural that there should be variance of belief and thought among people. It is impossible to expect everyone to be of the same view, regard, belief, language, religion, colour and culture. What is important is the tolerance and respect between those who have difference beliefs and views, and to create an environment where differences can live. In Turkey, even if the same family there can be people of different beliefs, dressing in different clothing manners; and the fact that they can all live together in all walks of social life demonstrates that there is no problem on the level of the public.

Actually there is no problem for nation’s individuals; nobody evaluates the wearing of headscarf by a woman as an interference on that woman’s rights. The main proof of this is the public survey and report of human rights foundation mentioned in this study.

### IV) ATTACHMENTS

- 1) General information on (AKDER)
- 2) February 1999 dated ‘Religion, community, and politics in Turkey’ survey of the Foundation of Social and Economic Studies in Turkey TESEV and general information on TESEV
- 3) Related parts of 2002 dated research ‘Freedom of expression with regards to the legal and social aspects in Turkey’, by Association for Liberal Thinking, whole text of press declaration and general information on LDT

4) Related parts of “Ethnic/Religious Identities and Political Tendencies of Turkish Political Party Adherents and Voters, 1994–2004) Research, carried out by Turkey Socio-Economic Political Research Association (TUSES).

5) ‘December 1997 report of the Research of Political and Social Trends’ of Social Research Centre of Social Studies Faculty Graduates Foundation (IMV–SAM)

6) ‘Headscarf File’ of Milliyet newspaper which was published for fifteen days (27/05/2003– 07/06/2003), Result of Public survey and general information on Milliyet Newspaper 02/06/2003 and 02/06/2003 and 05/06/2003 dated the Dunden Bugune Tercuman newspaper columnist Gülay Göktürk’s piece “File of turban I and II”

7) Gercek Hayat Magazine “The public survey of uncovered”, Year: 3, number: 2003–28 (142) and Year: 3, number: 2003–29 (143) and general information on Gerçek Hayat Magazine

8) “The Sufferers of the Headscarf Ban” research made by MODUS Research Centre in 1997, and general information on MODUS

9) Relevant parts of April 2002 dated report of Academic Research Centre AKART and the related newspaper cutting dated 02/06/2002

10) Helsinki Human Rights Federation declaration about “France ban on religious symbols will violate the protection of religious freedoms in the international arena”

11) 27/03/2004 dated press release of Human Rights Watch and the Turkish translation of their headscarf ban assessment

12) Relevant parts of International Religious Freedoms reports of USA 2003 and 20/12/2003 dated newspaper cutting concerning

13) Human Rights Organization IHD’s declaration concerning the headscarf and the 2001, 2002, 2003 “Human Rights Violations” Reports and general information about IHD.

14) MAZLUMDER, The Association for Human Rights and Relief For the Oppressed (MAZLUMDER)’s 29/10/2003 dated report and the 1998, 2000, 2001, 2002 yearly evaluation reports and general information on MAZLUMDER.

15) Educators Unit Union Istanbul Bureau Human Rights Report and general information on Educators Unit Union

PS: TESEV, TUSES, LTD (Association for Liberal Thinking) and USA Human Rights Reports’ only concerned parts presented at chapter of annex. At this study based on poll a report’s all of software, took place on CD which present file annex. Annexes except Milliyet Newspaper at 6th annex translated into English and added to the CD.

# THE APPLICABILITY OF THE UNITED NATIONS CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE TO EVENTS WHICH OCCURRED DURING THE EARLY TWENTIETH CENTURY

Legal analysis prepared for the International Center for Transitional Justice

This memorandum was drafted by independent legal counsel based on a request made to the International Center for Transitional Justice (“ICTJ”), on the basis of the Memorandum of Understanding (“MoU”) entered into by The Turkish Armenian Reconciliation Commission (“TARC”) on July 12, 2002 and presentations by members of TARC on September 10, 2002, seeking an objective and independent legal analysis regarding the applicability of the United Nations (“UN”) Convention on the Prevention and Punishment of the Crime of Genocide<sup>1</sup> to events which occurred during the early twentieth century.<sup>2</sup>

This memorandum is a legal, not a factual or historical, analysis. In deriving the conclusions contained in this memorandum we have attempted to state explicitly whether our conclusion relies on any factual assumptions. Although we have reviewed various accounts of the relevant facts, we have not undertaken any independent factual investigation.

We emphasize further that this memorandum addresses solely the applicability of the Genocide Convention to the Events. It does not purport to address the applicability to the Events of, or the rights or responsibilities of concerned individuals or entities under, any other rubric of international law or the laws of any nation.

## I. THE GENOCIDE CONVENTION

### A. THE INTERNATIONAL CRIME OF GENOCIDE

Article I of the Convention declares genocide to be a crime under international law which signatories will prevent and punish.<sup>3</sup> Article II of the Convention provides that:

[G]enocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

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<sup>1</sup> Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277, U.N.G.A. Res. 260, U.N. GAOR, 3rd Sess., 179th Plen. Mtg. at 174, U.N. Doc. A/810 (1948) [hereinafter “Genocide Convention” or the “Convention”].

<sup>2</sup> We acknowledge disagreement as to the magnitude and scope of these events, their context and intended effect, and the identities and affiliations of their perpetrators. *See, e.g.*, on the one hand, Turkish Foreign Ministry, *Ten Questions, Ten Answers: Did 1.5 Million Armenians Die During World War I?*, available at <http://www.turkey.org/governmentpolitics/documents/10Q10A.pdf>; and, on the other hand, Armenian National Institute, *Genocide FAQ*, available at <http://www.armenian-genocide.org/genocidefaq.htm#HowMany>. This memorandum adopts the terminology of TARC reflected in the MoU in referring to these events hereinafter as the “Events.”

<sup>3</sup> Genocide Convention, Art. I.

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.<sup>4</sup>

This Article has been imported verbatim into the Statutes of the International Criminal Tribunals for Rwanda and the former Yugoslavia, as well as the new Statute of the International Criminal Court.<sup>5</sup>

Article III clarifies that complicity in genocide and conspiracy, direct and public incitement and attempt to commit genocide, in addition to genocide itself, are punishable.<sup>6</sup>

## B. PUNISHMENT OF GENOCIDE

Article IV of the Convention states that “[p]ersons committing genocide . . . shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.”<sup>7</sup> Articles V, VI and VII impose various obligations on States party to the Convention to enact domestic measures aimed at preventing and punishing genocide.<sup>8</sup> Articles VIII and IX provide mechanisms for States party to the Convention to call upon organs of the UN to take action to prevent and suppress genocide<sup>9</sup> and to refer disputes concerning the “interpretation, application or fulfillment” of the Convention to the ICJ.<sup>10</sup>

The remaining nine articles of the Convention are essentially procedural.<sup>11</sup>

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<sup>4</sup>*Id.*, Art. II.

<sup>5</sup>*See* Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States, S.C. Res. 955, U.N. SCOR, 3453d Mtg. at 3., U.N. Doc. S/RES/955, Annex (1994), *reprinted* in 33 I.L.M. 1598, 1602 (1994) [hereinafter “ICTR Statute”]; Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, U.N. Doc. S/25704, Annex, *reprinted* in 32 I.L.M. 1192 (1994) [hereinafter “ICTY Statute”]; Rome Statute of the International Criminal Court, U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, U.N. Doc. A/CONF. 183/9 (1958), *available at* <http://www.un.org/icc/index.htm> [hereinafter “ICC Statute”].

<sup>6</sup>Genocide Convention, Art. III. The Convention refers in several instances to “genocide or any of the other acts enumerated in article III” (or words to that effect). *See id.*, Arts. IV, V, VI, VII, VIII and IX. For purposes of convenience, references in this memorandum to the international crime of “genocide” are intended, unless the context clearly indicates otherwise, to encompass genocide and the other acts enumerated in article III of the Genocide Convention.

<sup>7</sup>*Id.*, Art. IV. While Article IV provides only that “persons” (rather than states) shall be punished for committing genocide, Article IX of the Convention provides that disputes between states party to the Genocide Convention relating to its interpretation, application or fulfillment, “including those relating to the responsibility of a State for genocide,” shall be submitted to the International Court of Justice (“ICJ”) at the request of any of the parties to the dispute. *Id.*, Art. IX. The ICJ has stated that the reference in Article IV of the Convention to “rulers” or “public officials” “does not exclude any form of State responsibility . . . for acts of its organs” and that Article IX’s reference to State responsibility may include responsibility for the commission of genocide, as well as responsibility for failure to fulfill the State’s obligations to prevent and punish genocide as set forth in Articles V, VI and VII. *See Int’l Ct. of Justice, Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia)*, Preliminary Objections (July 11, 1996), *available at* [http://www.icj-cij.org/icjwww/idocket/ibhy/ibhyjudgment/ibhy\\_ijudgment\\_19960711\\_frame.htm](http://www.icj-cij.org/icjwww/idocket/ibhy/ibhyjudgment/ibhy_ijudgment_19960711_frame.htm), ¶32.

<sup>8</sup>Genocide Convention, Arts. V–VII.

<sup>9</sup>*Id.*, Art. VIII.

<sup>10</sup>*Id.*, Art. IX.

<sup>11</sup>*Id.*, Arts. X–XIX

## II. EXECUTIVE SUMMARY OF LEGAL CONCLUSIONS

International law generally prohibits the retroactive application of treaties unless a different intention appears from the treaty or is otherwise established. The Genocide Convention contains no provision mandating its retroactive application. To the contrary, the text of the Convention strongly suggests that it was intended to impose prospective obligations only on the States party to it. Therefore, no legal, financial or territorial claim arising out of the Events could successfully be made against any individual or state under the Convention.

The term genocide, as used in the Convention to describe the international crime of that name, may be applied, however, to many and various events that occurred prior to the entry into force of the Convention. References to genocide as a historical fact are contained in the text of the Convention and its *travaux preparatoires*.

As it has been developed by the International Criminal Court (whose Statute adopts the Convention's definition of genocide), the crime of genocide has four elements: (i) the perpetrator killed one or more persons; (ii) such person or persons belonged to a particular national, ethnical, racial or religious group; (iii) the perpetrator intended to destroy, in whole or in part, that group, as such; and (iv) the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

There are many accounts of the Events, and significant disagreement among them on many issues of fact. Notwithstanding these disagreements, the core facts common to all of the various accounts of the Events we reviewed establish that three of the elements listed above were met: (1) one or more persons were killed; (2) such persons belonged to a particular national, ethnical, racial or religious group; and (3) the conduct took place in the context of a manifest pattern of similar conduct directed against that group. For purposes of assessing whether the Events, viewed collectively, constituted genocide, the only relevant area of disagreement is on whether the Events were perpetrated with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such. While this legal memorandum is not intended to definitively resolve particular factual disputes, we believe that the most reasonable conclusion to draw from the various accounts of the Events is that at least some of the perpetrators of the Events knew that the consequence of their actions would be the destruction, in whole or in part, of the Armenians of eastern Anatolia, as such, or acted purposively towards this goal, and, therefore, possessed the requisite genocidal intent. Because the other three elements identified above have been definitively established, the Events, viewed collectively, can thus be said to include all of the elements of the crime of genocide as defined in the Convention, and legal scholars as well as historians, politicians, journalists and other people would be justified in continuing to so describe them.

## LEGAL ANALYSIS

### III. THE GENOCIDE CONVENTION DOES NOT BY ITS TERMS APPLY TO ACTS THAT OCCURRED PRIOR TO JANUARY 12, 1951.

#### A. INTERNATIONAL LAW GENERALLY PROHIBITS THE RETROACTIVE APPLICATION OF TREATIES.

Article 28 of the Vienna Convention on the Law of Treaties provides that:

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.<sup>12</sup>

The Vienna Convention on the Law of Treaties did not itself enter into force until January 27, 1980. However, while the convention “constitute[d] both codification and progressive development of international law . . .”<sup>13</sup> at the time it was adopted, “[m]ost provisions of the Vienna Convention . . . are declaratory of customary international law.”<sup>14</sup> The International Court of Justice has noted the customary status of certain provisions of the Vienna Convention on the Law of Treaties, including Article 62 (termination of a treaty by a fundamental change of circumstances)<sup>15</sup> and Article 60 (termination of a treaty due to material breach).<sup>16</sup> U.S. courts have applied the interpretive provisions of the convention as reflecting customary international law (and therefore US law), despite the fact that the United States has signed but not ratified the Vienna Convention on the Law of Treaties, and officials of the U.S. government have made statements to similar effect.<sup>17</sup>

The case law of the International Court of Justice prior to the adoption of the Vienna Convention on the Law of Treaties tends to support the contention that Article 28 codified existing international law. In the *Ambatielos* case, the Court observed:

To accept [the Greek Government’s] theory would mean giving retroactive effect to Article 29 of the Treaty of 1926, whereas Article 32 of this Treaty states that the Treaty, which must mean all the provisions of the Treaty, shall come into force immediately upon ratification. Such a conclusion might have been rebutted if there had

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<sup>12</sup>Vienna Convention on the Law of Treaties, May 23, 1969, U.N. Doc. A/CONF. 39/27 (1969), Art. 28 [hereinafter “Vienna Convention on the Law of Treaties”].

<sup>13</sup>International Law Commission, Reports of the Commission to the General Assembly, [1966] 2 Y.B. Int’l L. Comm’n 169, 177, UN Doc. A/CN.4/SER.A/1966/Add.1.

<sup>14</sup>Marian L. Nash, *Contemporary Practice of the United States relating to International Law*, 75 Am. J. Int’l L. 142, 147 (1981)(quoting text of a letter dated Sept. 12, 1980 from Roberts B. Owen, Legal Adviser of the U.S. Dep’t of State, to Sen. Adlai E. Stevenson, Chairman of the Subcommittee on Science, Technology and Space of the U.S. Senate Committee on Commerce, Science and Transportation).

<sup>15</sup>“This principle, and the conditions and exceptions to which it is subject, have been embodied in Article 62 of the Vienna Convention on the Law of Treaties, which may in many respects be considered as a codification of existing customary law on the subject of the termination of a treaty relationship on account of change of circumstances.” Int’l Ct. of Justice, *Fisheries Jurisdiction (U.K. v. Ice.)*, Jurisdiction of the Court, 1973 I.C.J. 3, 8 (Feb. 2).

<sup>16</sup>“The rules laid down by the Vienna Convention on the Law of Treaties concerning termination of a treaty relationship on account of breach (adopted without a dissenting vote) may in many respects be considered as a codification of existing customary law on the subject.” *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276* (1970 I.C.J. 6, (Jun. 21).

<sup>17</sup>*See generally* Restatement (Third), Foreign Relations Law III, Introductory Note (1987).

been any special clause or any special object necessitating retroactive interpretation. There is no such clause or object in the present case. It is therefore impossible to hold that any of its provisions must be deemed to have been in force earlier.<sup>18</sup>

The Court in the *Ambatielos* case recognized that the States Parties to a treaty could provide for its retroactive application, a position the Permanent Court of International Justice had earlier upheld.<sup>19</sup> The analysis under the Vienna Convention of the Law of Treaties' formulation of the rule therefore turns to whether "a different intention appears from the treaty or is otherwise established" that would permit the Genocide Convention to be applied to acts committed prior to its entry into force.<sup>20</sup>

B. NEITHER THE TEXT NOR THE TRAVAUX PREPARATOIRES OF THE CONVENTION MANIFEST  
AN INTENTION TO APPLY ITS PROVISIONS RETROACTIVELY.

Pursuant to Article 13, the Convention entered into force on January 12, 1951, the ninetieth day following the date of deposit of the twentieth instrument of ratification with the UN Secretary-General. Subsequent ratifications and accessions became effective for the states submitting them on the ninetieth day following the date of their deposit. As noted above, unless a contrary intention appears, a treaty provision stating that a treaty comes into force on a particular date "must mean all the provisions of the Treaty" come into force on that date.<sup>21</sup>

The text of those provisions of the Convention imposing obligations on States Parties to the Convention almost universally obligate the States Parties to take action in the future. For example, the States Parties "undertake" to prevent and punish the crime of genocide,<sup>22</sup> "undertake to enact" the necessary legislation to give effect to the Convention's provisions,<sup>23</sup> and agree that persons charged with genocide "shall be tried" by competent domestic or international tribunals.<sup>24</sup>

The *travaux preparatoires* of the Convention support the contention that the negotiators understood that they were accepting prospective, not retrospective, obligations on behalf of the States they represented, including the "prevention of future crimes."<sup>25</sup> One delegate described the purpose of the Convention as expressing "the peoples' desire to punish all those who, in the future, might be tempted to repeat the appalling crimes that had been committed."<sup>26</sup>

<sup>18</sup> *Ambatielos* Case (Greece v. U.K.), Preliminary Objections, 1952 I.C.J. 27, 40 (July 1).

<sup>19</sup> *Mavrommatis Palestine Concessions* Case, 1924 PCIJ (Ser. A.) No. 2 ("An essential characteristic therefore of Protocol XII [is] that its effects extend to legal situations dating from a time previous to its own existence. If provision were not made in the clauses or the Protocol for the protection of the rights recognized therein as against infringements before the coming into force of that instrument, the Protocol would be ineffective as regards the very period at which the rights in question are most in need of protection.").

<sup>20</sup> Vienna Convention on the Law of Treaties, Art. 28.

<sup>21</sup> *Ambatielos* Case, *supra* note 18. See also Restatement (Third) of the Foreign Relations Law § 322 (1987).

<sup>22</sup> Genocide Convention, Art. 1.

<sup>23</sup> *Id.*, Art. 5.

<sup>24</sup> *Id.*, Art. 6.

<sup>25</sup> Official Records of the Third Session of the General Assembly, Part I, Sixth Committee, p. 13 (Statement of Mr. Morozov) [hereinafter "*Travaux Preparatoires*"]. See also *id.* pp. 4142 (statement of Mr. Dihigo), p.44 (statement of Mr. Kaeckenbeeck).

<sup>26</sup> *Travaux Preparatoires*, p. 30 (statement of Mr. Prochazka). See also *id.* p. 15 (Statement of Mr. Sundaram) ("genocide should be made a punishable crime"), p. 78 (Statement of Mr. Maúrtua)("the concept of genocide was new"), p. 126 (Statement of Mr. Messina)(genocide was "a new crime under international

## C. CONCLUSION

The Genocide Convention does not give rise to individual criminal or state responsibility for events which occurred during the early twentieth century or at any time prior to January 12, 1951.

### IV. ALTHOUGH THE GENOCIDE CONVENTION DOES NOT GIVE RISE TO STATE OR INDIVIDUAL LIABILITY FOR EVENTS WHICH OCCURRED PRIOR TO JANUARY 12, 1951, THE TERM “GENOCIDE”, AS DEFINED IN THE CONVENTION, MAY BE APPLIED TO DESCRIBE SUCH EVENTS.

#### A. SCOPE OF THIS MEMORANDUM

We have been requested to provide our opinion on the “applicability” of the Genocide Convention to the Events. It is beyond the scope of this memorandum to investigate the extent to which the Convention codified existing international law regarding responsibility for genocidal acts, although we note that the International Court of Justice has opined that, at least following its adoption, the “principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation.”<sup>27</sup> Likewise, this memorandum does not address, as beyond the scope of the request to us, the claim raised as early as 1915<sup>28</sup> that the Events constituted, when committed, an international crime entailing state and individual criminal responsibility under customary international law.

The request to consider the “applicability” of the Convention to the Events does encompass an analysis of whether the term “genocide”, as defined in the Convention, may appropriately be applied, (a) as a general matter, to describe events which occurred in the early twentieth century and (b) to describe the Events.

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law”), p. 127 (Statement of Mr. Fitzmaurice)(“the aim of the convention was to establish the concept of a new crime”).

<sup>27</sup> Int’l Ct. of Justice, Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion (May 28, 1951), 1951 I.C.J. 15, 23. The ICJ recently confirmed that “the rights and obligations enshrined by the [Genocide] Convention are rights and obligations erga omnes.” Int’l Ct. of Justice, Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections (July 11, 1996), 1996 I.C.J. 595, 616.

<sup>28</sup> On May 24, 1915 the Allies issued a joint declaration that “[i]n view of these new crimes of Turkey against humanity and civilization, the Allied governments announce publicly . . . that they will hold personally responsible . . . all members of the Ottoman government and those of their agents who are implicated in such massacres [of Armenians].” See Matthew Lippman, *The Convention on the Prevention and Punishment of the Crime of Genocide: Fifty Years Later*, 15 *Ariz. J. Int’l & Comp. L.* 415, 416 (1998). The 1919 Report of the Commission on Responsibility of the Authors of the War and on Enforcement of Penalties concluded that the Ottoman Empire’s treatment of Armenians in its territory contravened “the established laws and customs of war and the elementary laws of humanity,” and declared that Ottoman officials accused of such acts were liable for prosecution. Commission on the Responsibility of the Authors of the War and on the Enforcement of Penalties, Report Presented to the Preliminary Peace Conference, March 29, 1919, *reprinted* in 14 *Am. J. Int’l L.* 95, 112–17 (1920). The two U.S. delegates dissented, objecting most strenuously to the criminalization of contraventions of the laws of humanity. The laws of humanity were, they believed, a moral rather than a legal concept, and they felt that the prosecution of individuals before a newly created international court for violation of the ill-defined laws of humanity would constitute retroactive prosecution. *Id.*, at 134–36.

B. TERMINOLOGICAL APPLICABILITY OF THE TERM “GENOCIDE” TO EVENTS WHICH OCCURRED DURING THE EARLY TWENTIETH CENTURY.

It is clear, from the text of the Convention and related documents and the *travaux préparatoires*, that the term genocide may be applied to events that pre-dated the adoption of the Convention.

The drafters of the Genocide Convention used the term “genocide” to refer to events that pre-dated the adoption of the Convention. Although Rafael Lemkin did not coin the term “genocide” until 1943, the text of the Convention and other writings conclusively establish that he and the other drafters of the Convention understood and used the word genocide to describe acts perpetrated prior to the Convention’s adoption.<sup>29</sup> The States Parties to the Convention recognize, in the Convention’s preamble, that “at all periods of history genocide has inflicted great losses on humanity.”<sup>30</sup>

The *travaux préparatoires* contain numerous references to genocide as a historical fact. The Cuban delegate stated that “[h]istory revealed innumerable examples of genocide . . .”,<sup>31</sup> while the Egyptian delegate, in arguing against a direct link between genocide and fascism-nazism, spoke of “instances of genocide [which] were to be found in the far more distant past.”<sup>32</sup> The British delegate, who had been the chief British prosecutor before the Nuremberg Tribunal, spoke of genocide as “a crime already known in international law, of which history had furnished many examples throughout the centuries.”<sup>33</sup> The Argentinean delegate referred to genocide as “a crime which, although it had always been known to exist, had only recently been defined.”<sup>34</sup>

Likewise, Resolution 96(I) of the United Nations General Assembly, which was passed unanimously and authorized the drafting of the Convention, refers to “many instances of such crimes of genocide” which “*have occurred* when racial, religious, and other groups have been destroyed, entirely, or in part.”<sup>35</sup>

It is clear from the *travaux préparatoires* that the Committee negotiating the final text considered and rejected text that would have tied the concept of genocide more closely to the actions and motivations of the Nazis,<sup>36</sup> on the grounds that the Holocaust was not the first or only instance of genocide in human history.<sup>37</sup>

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<sup>29</sup> Lemkin uses the term to refer, among other things, to “classical examples of wars of extermination in which nations and groups of the population were completely or almost completely destroyed.” Examples cited include the destruction of Carthage in 146 B.C.; the destruction of Jerusalem by Titus in 72 A.D.; the religious wars of Islam and the Crusades; the massacres of the Albigenses and the Wladenses; and the siege of Magdeburg in the Thirty Years’ War. Raphael Lemkin, *Axis Rule in Occupied Europe* 80 at n. 3 (1944).

<sup>30</sup> Genocide Convention, preamble.

<sup>31</sup> *Travaux Préparatoires*, p. 23 (Statement of Mr. Blanco).

<sup>32</sup> *Id.*, p. 500. (Statement of Mr. Raafat).

<sup>33</sup> *Id.*, p. 40 (Statement of Sir Hartley Shawcross).

<sup>34</sup> *Id.*, p. 28 (Statement of Mr. Bustos Fierro).

<sup>35</sup> G.A. Res. 96 (I), U.N. GAOR, 1st Sess., U.N. Doc. A/64/Add.1 (1946) (emphasis added).

<sup>36</sup> See *Travaux Préparatoires*, at p. 9 (Statement of Mr. Bartos), 19 (Statement of Mr. Lachs), *id.*, p. 30 (Statement of Mr. Prochazka) (referring to the relationship between genocide and the doctrines of Nazism, fascism and Japanese imperialism); *id.*, p. 501 (Statement of Mr. Chaumont (“the convention would never have been drafted if it had not been for the crimes committed under the Nazi and fascist regimes”).

<sup>37</sup> See *Travaux Préparatoires*, p. 17 (Statement of Mr. Manini y Ríos) (“it was generally known that the nazi and fascist parties went to extremes of genocidal crime, but . . . there was no need to include [an explicit] qualification [to that effect] in the convention”), p. 24 (Statement of Mr. Tsien Tai), pp. 489–509, *passim*. It is clear that Lemkin’s awareness of and research into the Events also had an important role in animating his advocacy for the adoption of the Convention. See Samantha Power, “A Problem from Hell: America and the Age of Genocide 17–20 (2002).

## C. APPLICABILITY OF THE TERM “GENOCIDE” TO THE EVENTS.

### 1. Elements of the Crime of Genocide

While it is not seriously disputed that massacres, deportations and other crimes were committed against Armenian citizens of the Ottoman Empire in the early twentieth century, there is disagreement on certain facts, including the number of people affected and, crucially, the identity and intent of the perpetrators.<sup>38</sup>

As a legal matter, to convict a person of the crime of genocide one must establish certain essential elements. In connection with the establishment of the International Criminal Court, the Preparatory Commission for the International Criminal Court has developed an enumeration of four such essential elements, the proof of which would result in a determination that the events in question constituted genocide as defined in ICC Statute (which, as noted above, mirrors the text of the Genocide Convention).<sup>39</sup> The four elements of the crime of “genocide by killing” are:

- (i) the perpetrator killed (or caused the death of) one or more persons;
- (ii) such person or persons belonged to a particular national, ethnical, racial or religious group;
- (iii) the perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; and
- (iv) the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.<sup>40</sup>

It is important to note that these elements were developed in order to assess the guilt or innocence of individuals alleged to have perpetrated genocide, a task which is well beyond the scope of this memorandum. We have been asked to analyze whether the Convention is applicable to the Events, collectively. This memorandum therefore proceeds to analyze whether the Events constituted genocide as defined in the Convention, using the elements of the crime of genocide outlined above as an analytical tool for this purpose.

### 2. The Events as genocide within the meaning of the Convention.

There are many and various accounts of the Events, including contemporary newspaper reports,<sup>41</sup> the memoirs of Ottoman<sup>42</sup> and foreign<sup>43</sup> officials and Armenian sur-

<sup>38</sup> *Supra* note 2.

<sup>39</sup> *Finalized Draft Text of the Elements of Crimes*, Report of the Preparatory Commission for the International Criminal Court, Addendum, Part II, U.N. Doc. PCNICC/2000/1/Add.2 (2000), at 6 [hereinafter “Elements of Crimes”]. The analysis set forth herein is limited to the crime of “genocide by killing.” In analyzing whether the Events constituted genocide by other means (e.g., “genocide by causing serious bodily or mental harm” or “genocide by deliberately inflicting conditions of life calculated to bring about physical destruction”), one or more additional elements might have to be proved. *Id.*, at 6–8.

<sup>40</sup> *Id.*, at 6.

<sup>41</sup> For example, The New York Times printed numerous articles relating to the Events, which are collected and reprinted in Richard D. Kloian, *The Armenian Genocide: News Accounts from the American Press, 1915–1922* (3d ed. 2000).

<sup>42</sup> See, e.g., *Armenian Rebellions and Massacres: Veteran and Eyewitness Accounts in Armenian Issue: Allegations-Facts*, available at [http://www.kultur.gov.tr/portal/tarih\\_en.asp?belgeno=159](http://www.kultur.gov.tr/portal/tarih_en.asp?belgeno=159).

<sup>43</sup> See, e.g., Armin T. Wegner, *Armin T. Wegner and the Armenians in Anatolia, 1915: Images and Testimonies* (1996); Stanley Kerr, *Lions of Marash: Personal Experiences with American Near East Relief* (1973); Henry H. Riggs, *Days of Tragedy in Armenia: Personal Experiences in Harpoot, 1915–1917* (1997); Leslie A.

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vivors,<sup>44</sup> reports of judicial decisions,<sup>45</sup> correspondence and other documents contained in government archives<sup>46</sup> and the work of eminent historians, beginning with Arnold Toynbee.<sup>47</sup> The core facts common to all of the various accounts of the facts we have reviewed in the course of preparing this memorandum establish that, in viewing the Events collectively, at least three of the four elements of the crime of genocide identified in Section II.C.1 of this memorandum occurred during the Events. First, one or more persons were killed. Second, such persons belonged to a particular national, ethnical, racial or religious group. Finally, the conduct took place in the context of a manifest pattern of similar conduct directed against that group.

While the accounts we have reviewed reveal some disagreement on the intent or motives that animated the perpetrators of the Events, the overwhelming majority of the accounts conclude that the Events occurred with some level of intent to effect the destruction of the Armenian communities in the eastern provinces of the Ottoman Empire, with many claiming that this was the specific intent of the most senior government officials.<sup>48</sup>

The Turkish government maintains that no direct evidence has been presented demonstrating that any Ottoman official sought the destruction of the Ottoman Armenians.<sup>49</sup> In light of the frequent references to the participation of Ottoman officials in the Events, we wish to highlight that a finding of genocide does not as a legal matter depend on the participation of state actors. On the contrary, the Genocide Convention confirms that per-

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Davis, *The Slaughterhouse Province: An American Diplomat's Report on the Armenian Genocide of 1915–1917* (1988), Viscount James Bryce and Arnold J. Toynbee (eds.), *The Treatment of the Armenians in the Ottoman Empire, 1915–1916* (2d ed. 1972). Often cited as well are the accounts of Henry Morgenthau, the American ambassador to Turkey from 1913 to 1916, who was reported to have frequently and persistently intervened on behalf of the Armenians with Turkish officials and was instrumental in bringing international attention to the Events. See, e.g., *Morgenthau Intercedes*, N.Y. Times, April 29, 1915, reprinted in Kloian, *supra* note 41, at 10; *Laud Our Ambassador*, N.Y. Times, Sept. 8, 1915, reprinted in Kloian, *supra* note 41, at 29. Morgenthau included his account of what he termed “the murder of a nation” in his memoirs, published in 1918. Henry Morgenthau, *Ambassador Morgenthau's Story* (1918), at 301 et seq.

<sup>44</sup>See, e.g., Abraham Hartunian, *Neither to Laugh nor to Weep: A Memoir of the Armenian Genocide* (2d ed. 1986); John Minassian, *Many Hills Yet to Climb: Memoirs of an Armenian Deportee* (1986); Donald E. Miller and Lorna Touryan Miller, *Survivors: An Oral History of the Armenian Genocide* (1993).

<sup>45</sup>See, e.g., Vahakn Dadrian, *Genocide as a Problem of National and International Law: The World War I Armenian Case and its Contemporary Legal Ramifications*, 14 Yale. J. Int'l L. 221, 291–315 (1989).

<sup>46</sup>For example, documents in the U.S. archives are available in the National Archives and Records Administration, Record Group 59, Decimal Files 867 and 860J. U.K. archives are available in the Public Record Office, Foreign Office Records, Class 371. The Republic of Turkey indicates that the Turkish archives, maintained at the Prime Ministry's State Archives, are open and available to all. See *Important Questions And Answers: Is There Access to the Ottoman Archives? Are Documents Related [to] Relocation Concealed?* in Armenian Issue: Allegations-Facts, available at [http://www.kultur.gov.tr/portal/tarih\\_en.asp?belgeno=253](http://www.kultur.gov.tr/portal/tarih_en.asp?belgeno=253).

<sup>47</sup>*Supra* note 43.

<sup>48</sup>See e.g., Morgenthau, *supra* note 43; Descendants of Survivors of the Armenian Genocide and the Holocaust, *126 Holocaust Scholars Affirm the Incontestable Fact of the Armenian Genocide and Urge Western Democracies to Officially Recognize It*, N.Y. Times, June 9, 2000, at A29 (reproducing a statement “affirming that the World War I Armenian Genocide is an incontestable historical fact”). We note that many Turkish accounts dispute the objectivity and authenticity of these accounts and, in particular, insist that the deportations consisted of preventive measures to relocate certain Armenians who posed a threat, and that most of the killings were the result of inevitable casualties of the war and of banditry (in other words, the Events were animated by political and security-related motives or with ordinary criminal intent, and not with genocidal intent). See, e.g., Ysmet Bynark, Foreword, in *Selected Books: Armenians in Ottoman Turkey* (Oct. 30, 1995), available at <http://www.mfa.gov.tr/grupe/eg/eg11/02.htm>; *Relocation: Attacks on Armenian Convoys and Measures Taken by the Government*, in Armenian Issue: Allegations—Facts, available at <http://www.ermenisorumu.gen.tr/english/relocation/measures.html>.

<sup>49</sup>See *Armenian Allegations of Genocide: The Issue and the Facts*, at <http://www.turkishembassy.org/governmentpolitics/issuesarmenian.htm/>.

petrators of genocide will be punished whether they are “constitutionally responsible rulers, public officials or private individuals.”<sup>50</sup> Thus, it is legally appropriate to maintain that the Events constituted genocide as defined in the Convention on the basis of a conclusion that they were perpetrated with the intent of permanently resolving the “Armenian question”, whether or not this was the official state policy of the Ottoman Empire.

This memorandum sets forth below certain relevant legal considerations that bear on the resolution of the crucial issue of genocidal intent.

### 3. Genocidal Intent.

On its face, the Genocide Convention’s reference to “intent” sets it apart from other crimes under international law. The ICTR and ICTY Statutes define crimes against humanity, for instance, by referring to acts “committed as part of a widespread and systematic attack” against certain civilian populations.<sup>51</sup> Although it is understood that the actor must engage purposively in the prohibited conduct (such as killing or causing serious harm), there is no explicit reference to the actor’s intent with respect to the widespread, systematic character of the attacks.

Genocide, by contrast, requires, at the very least, an awareness on the part of the actor of the discriminatory nature of his actions. While murder in the context of a widespread and systematic attack may constitute a crime against humanity, it cannot meet the legal definition of genocide absent evidence of the perpetrator’s intent to kill with the effect of destroying, in whole or in part, a national, ethnic, racial or religious group as such. The scope and level of the requisite intent, however, involve complex and evolving issues of international law.<sup>52</sup>

The *travaux preparatoires* report debate on the question of the scope and level of intent required to commit genocide.<sup>53</sup> The adoption of the words “as such” after the enumeration of protected groups represented a compromise designed to satisfy both the delegates who favored inclusion of a motive and those who thought it counterproductive.<sup>54</sup> Given this context, the “as such” language is susceptible of both a general and a stricter, motive-based, interpretation. As the delegate from Siam noted, “there were two possible interpretations of the words ‘as such’; they might mean ‘in that the group is a national, racial, religious, or political group’, or ‘because the group is a national, racial, religious or political group.’”<sup>55</sup>

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<sup>50</sup> Genocide Convention, Art. IV.

<sup>51</sup> ICTR Statute, *supra* note 5, Art. 3; ICTY Statute, *supra* note 5, Art. 4.

<sup>52</sup> See Payam Akhavan, *Contributions of the International Criminal Tribunal for the former Yugoslavia and Rwanda to Developments of Definitions of Crimes Against Humanity and Genocide*, 94 Am. Soc’y Int’l L. Proc. 279, 282 (2000); Alexander K.A. Greenawalt, *Rethinking Genocidal Intent: The Case for a Knowledge-Based Interpretation*, 99 Colum. L. Rev. 2259, 2278 (1999).

<sup>53</sup> *Travaux Preparatoires*, pp. 117–139. The term *dolus specialis* was used to connote this particular intent. It was repeatedly argued that what distinguished genocide from murder was the particular intent to destroy a group; as the Brazilian delegate pointed out, “genocide [is] characterized by the factor of particular intent to destroy a group. In the absence of that factor, whatever the degree of atrocity of an act and however similar it might be to the acts described in the convention, that act could still not be called genocide.” *Id.*, pp. 81–89.

<sup>54</sup> *Travaux Preparatoires*, pp. 129–139. See also Greenawalt, *supra* note 52, at 2278.

<sup>55</sup> *Travaux Preparatoires*, p. 133. The protected groups identified by the Siamese delegate later changed.

The judges of the ICTR and ICTY have, on several occasions, been called upon to consider genocidal intent.<sup>56</sup> The decisions thus far have held that a genocide conviction requires a showing of a particular intent. The judgments have referred to this intent variously as specific intent, genocidal intent, or *dolus specialis*.<sup>57</sup> These terms have somewhat divergent meaning in domestic jurisprudence and these decisions have not always been internally consistent in their discussions of intent. Moreover, the decisions have essentially been silent on whether a perpetrator must consciously desire destruction of the group, or whether knowledge that such destruction may ensue in the course of his actions will be sufficient.<sup>58</sup> We note further that the discussion of the appropriate legal standard for intent is inherently fact-specific and, in light of the factual disputes on this point, we do not express an opinion on the standard that might be applied in any particular determination of whether the Events constituted genocide as defined in the Convention.

#### D. CONCLUSION

The crucial issue of genocidal intent is contested, and this legal memorandum is not intended to definitively resolve particular factual disputes. Nonetheless, we believe that the most reasonable conclusion to draw from the various accounts referred to above of the Events is that, notwithstanding the efforts of large numbers of “righteous Turks”<sup>59</sup> who intervened on behalf of the Armenians, at least some of the perpetrators of the Events knew that the consequence of their actions would be the destruction, in whole or in part, of the Armenians of eastern Anatolia, as such, or acted purposively towards this goal, and, therefore, possessed the requisite genocidal intent. Because the other three elements identified above have been definitively established, the Events, viewed collectively, can thus be said to include all of the elements of the crime of genocide as defined in the Convention, and legal scholars as well as historians, politicians, journalists and other people would be justified in continuing to so describe them.



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<sup>56</sup> See, e.g., *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment, (Int’l Crim. Trib. Rwanda, Trial Chamber 1, Sept. 2, 1998), available at <http://www.ictcr.org/>; *Prosecutor v. Clément Kayishema & Obed Ruzindana*, Case No. ICTR-95-1-T, Judgment, 1999 WL 33288417 (Int’l Crim. Trib. Rwanda, Trial Chamber II, May 21, 1999); *Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-IA-T, Judgment, (Int’l Crim. Trib. Rwanda, Trial Chamber 1, June 7, 2001), available at <http://www.ictcr.org/>; *Prosecutor v. Goran Jelusic*, Case No. ICTY-95-10-A, Appeals Judgment (Int’l Crim. Trib. Former Yugoslavia, Appeals Chamber, July 5, 2001), available at [www.un.org/icty/brcko/appeal/judgment/index.htm](http://www.un.org/icty/brcko/appeal/judgment/index.htm); *Prosecutor v. Sikirica*, Case No. ICTY-95-8-T, Judgment, (Int’l Crim. Trib. Former Yugoslavia, Trial Chamber III, September 3, 2001), available at [www.un.org/icty/sikirica/judgment/indexe.htm](http://www.un.org/icty/sikirica/judgment/indexe.htm); *Prosecutor v. Krstic*, Case No. ICTY-98-33, Judgment, (Int’l Crim. Trib. Former Yugoslavia, Trial Chamber 1, Aug. 2, 2001), available at [http://www.un.org/icty/krstic/Trial C1/judgment/index.htm](http://www.un.org/icty/krstic/Trial%20C1/judgment/index.htm).

<sup>57</sup> In a 300-page judgment issued on September 2, 1998, the Trial Chamber of the ICTR found a former Rwandan mayor, Jean Paul Akayesu, guilty of various charges of genocide and crimes against humanity, the first genocide conviction since Nuremberg. Regarding the germane issue of criminal intent, the Trial Chamber said “[g]enocide is distinct from other crimes inasmuch as it embodies a special intent or *dolus specialis*. Special intent of a crime is the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged. Thus, the special intent in the crime of genocide lies in ‘the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.’” *Prosecutor v. Jean-Paul Akayesu*, *supra* note 56, <sup>8</sup>498.

<sup>58</sup> See, e.g., *Prosecutor v. Krstic*, *supra* note 56, <sup>8</sup>571.

<sup>59</sup> Paul Glastris, *Armenia’s History, Turkey’s Dilemma*, Wash. Post, March 11, 2001, at B01; Zoryan Institute, *Turks Who Saved Armenians: An Introduction* (rev. ed.), available at [http://www.zoryaninstitute.org/Table\\_Of\\_Contents/genocide\\_docs\\_turksintro.htm](http://www.zoryaninstitute.org/Table_Of_Contents/genocide_docs_turksintro.htm).



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