The European Journal of International Law Vol. 23 no. 3

State Identity, Continuity, and Responsibility: The Ottoman Empire, the Republic of Turkey and the Armenian Genocide

Vahagn Avedian*

Abstract

By studying the continuity between the Ottoman Empire and its succeeding Turkish Republic, this article aims to address one crucial aspect of the denial of the Armenian genocide by the Turkish state, namely the issue of state responsibility. There are psychological barriers in Turkey which have largely suppressed the memories of possible wrongdoings during World War I and the ensuing 'Independence War'. However, the barrier that is created by the issue of state responsibility is identified here as the fundamental obstacle for genocide recognition by the Turkish state. This article aims to apply some of the existing legal principles and theories of international law in order to test their applicability to the two Turkish states and the issue of internationally wrongful acts committed during World War I and the ensuing years. In addition to the Turkish Republic bearing the identity of the Ottoman Empire, this article suggests that the Republic not only failed to stop doing the wrongful acts of its predecessor, but it also continued the very internationally wrongful acts committed by the Young Turk government. Thus, the insurgent National Movement, which later became the Republic, made itself responsible for not only its own wrongful acts but also those of its predecessor, including the act of genocide committed in 1915–1916. The issue of possible liability has ever since the creation of the Republic formed the denialist policy which is Turkey's to this day.

On 12 March 2010, the Swedish Riksdag recognized the 1915 Genocide in Ottoman Turkey.[1] The decision was preceded by a long debate, in which one of the arguments against recognition was that the present Republic of Turkey could not be blamed for

* PhD candidate, Department of History, Lund University; Chief Editor of Armenica.org. Email: vahagn.avedian@armenica.org.

1 Sveriges Riksdag, *Kammarens protokoll: Riksdagens protokoll 2009/10:86*, Stockholm, 11 Mar. 2010.

what happened in the Ottoman era. This remark was noteworthy, since the resolution did not mention the guilt issue of the current Turkish Republic, but only called upon it to cease its policy of genocide denial.[2] However, the issue of continuity had been mentioned in the debate, among others by Foreign Minister Carl Bildt, who now refused to adhere to the Riksdag's decision.[3] The issue of possible responsibility is also closely connected to those of identity and continuity, through which Turkish spokespersons criticized the Riksdag's recognition of the 1915 genocide, pointing out the clear discontinuity between the Ottoman Empire and the Turkish Republic.[4] If this is the case why does present-day Turkey, in contrast to the post World War II German states, hesitate to recognize and condemn the wrongful actions of its predecessor and move on? This article will outline one of the factors behind the Turkish denial by applying the legal principles of international law to the historical data of the period.

With this being regarded as the second most researched case of genocide,[5] the research includes a number of comparative analyses of the Armenian case and the Holocaust. While scholars such as Steven Katz and Lucy Dawidowicz emphasize the differences,[6] others such as Vahakn Dadrian and Robert Melson highlight the common denominators of the two genocides.[7] There is, however, one clear difference that few scholars have dealt with in a comparative manner: the response of the successor state to the crimes committed by its predecessor. While the two successor German states admitted the wrongdoings of Nazi Germany, the Republic of Turkey has ardently rejected any accusations about a genocide committed on Turkish soil during World War I. Although the events have received wide recognition as genocide, from both a historical and a legal perspective,[8] there are those who deny that the measures of the Unionist Government during World War I were genocide. The prominent

2 Sveriges Riksdag, *Motion 2008/09:U332: Folkmordet 1915 på armenier, assyrier/syrianer/kaldéer och pontiska greker*, Stockholm, 7 Oct. 2008.

3 Among others see an answer from Foreign Minister Carl Bildt to Cecilia Wikström (Liberal party), *Svar på skriftlig fråga 2008/09:891*, Swedish Parliament, Stockholm, 13 May 2009.

4 For an example in the Swedish discussion see Ünsal, 'Sahlins svek mot oss turkar en seger för Alliansen', in *Newsmill*, Stockholm, 13 Mar. 2010, available at: www.newsmill.se/artikel/2010/03/13/v-nstern-forts-tter-att-sabba-f-r-sverige. It is, however, noteworthy that this discontinuity seems to be limited to the state alone, while the cultural, social, and historical continuity (with the obvious exception of World War I and the period prior to it) is embraced openly. Among others see Karpat, 'Introduction', in K.H. Karpat (ed.), *Ottoman Past and Today's Turkey* (2000), at pp. ix, x, xvii.

5 Magnusson, 'Holocaust and Genocide Studies: Survey of Previous Research', Research Agenda, The Uppsala Programme for Holocaust and Genocide Studies, Uppsala, 1999, at 24–26.

6 Katz, 'The Uniqueness of the Holocaust; The Historical Dimension', in A.S. Rosenbaum (ed.), *Is the Holocaust Unique?* (1996). For Dawidowicz see P. Novick, *The Holocaust in the American Life* (1999).

7 Dadrian, 'The Comparative Aspects of the Armenian and Jewish Cases of Genocide: A Sociohistorical Perspective', in Rosenbaum, *supra* note 6, at 101; R.F. Melson, *Revolution and Genocide, On the Origins of the Armenian Genocide and the Holocaust* (1992).

8 For a scholarly view see the resolutions by the International Association of Genocide Scholars (IAGS), 'About Us' *Resolutions and Statements*, available at: www.genocidescholars.org/about-us/statements-resolutions. For a strictly legal analysis concluding that the events were a case of genocide see The International Center of Transitional Justice, *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*

spokesperson for the latter perspective is the present-day Turkish state.[9] The denialist strategy of the Turkish Republic is twofold: (1) by dwelling on the issue of recognition of the events as genocide, it prevents the evolution of the issue in order for one better to understand its dynamics other than just the historical evidence itself; and (2) it avoids any possible liability charges and subsequent claims for indemnity and reparations, both financial and territorial.

There are some limitations worth mentioning. A proper comparative study on state identity and responsibility of the two Turkish states would take an entire book, thus it is necessary to circumscribe the theoretical discussion as well as the full scope of the existing material on continuity between the two Turkish states. A desirable setup would also include a comparative study with the German case to illustrate the common denominators but also the striking differences between the predecessor and successor states.

1 Identity and Continuity in International Law

The issue of state continuity and succession, especially with regard to the obligations and the responsibilities of a successor state, is a vast subject, encompassing different approaches and aspects, with seemingly no common coherence. These include, among others, treaties, state property, nationality, public and foreign debts, as well as *rights and obligations arising from internationally wrongful acts*. This article is mainly focused on the last aspect, trying to apply international doctrine to the case of the genocide committed during the collapse of the Ottoman Empire and the establishment of the Republic of Turkey.

A prerequisite for the discussion about state succession and responsibility is one on the issue of state identity and continuity as key factors. 'The possession of international rights and duties inheres in an entity with appropriate legal personality', i.e., state identity.[10] Krystyna Marek proposes the following definition: '[t]he legal identity of a state is the identity of the sum total of its rights and obligations under both customary and conventional international law. It is clear that the term "obligations" includes international responsibility'. As for state continuity, she defines it as the 'dynamic predicate of State identity', where these two are inseparable.[11] While there are different views on the subject, general international law establishes the firm rule that 'territorial changes and internal revolutions in no way affect the identity and continuity of States'.[12] The rulings are, however, entirely dependent on specific cases and prevailing circumstances. While the District Court of Amsterdam 'denied the

(2002), available at: www.ictj.org/sites/default/files/ICTJ-Turkey-Armenian-Reconciliation-2002-English.pdf.

9 See Smith, Markusen, and Lifton, 'Professional Ethics and the Denial of Armenian Genocide', in 9 *Holocaust & Genocide Studies* (1995) 1; V.N. Dadrian, *The Key Elements in the Turkish Denial of the Armenian Genocide: A Case Study of Distortion and Falsification* (1999).

10 Craven, 'The Problem of State Succession and the Identity of States under International Law', 9 *EJIL* (1998) 153.

11 K. Marek, *Identity and Continuity of States in Public International Law* (1968), at 5.

12 *Ibid.*, at 15. See also J. Crawford, *The Creation of States in International Law* (2007), at 678–679.

identity of the Turkish Republic with the Ottoman Empire', based on differences in size and government seats at Constantinople and Ankara respectively,[13] in the *Ottoman Debt Arbitration* case, the ruling was that 'in international law, the Turkish Republic was deemed to continue the international personality of the former Turkish Empire'.[14] Notwithstanding this, Marek argues that actions such as moving a capital (or territorial alterations) do not affect either continuity or the identity of a state.[15] 'The identity of a State is the identity of its international rights and obligations, as before and after the event which called such identity in question, and solely on the basis of the customary norm "pacta sunt servanda"'.[16]

The aim of the principle that identity and continuity are not affected by changes of government (e.g., revolution) is to prevent a state from repudiating its international obligations by simply making changes in its government. This applies equally to constitutional changes.[17] This is also reflected in the International Law Association's statement enumerating as follows factors not affecting state identity or continuity:

(1) the name of the state and its capital;
(2) (minor) territorial changes;
(3) changes in the population (e.g., migration);
(4) changes of governmental or state power and constitutional changes (e.g., change of government, revolution);
(5) (temporary) military occupation (*occupatio bellica*).[18]

This becomes one of the cornerstones which this study will emphasize, namely the extent to which the Turkish state's identity really changed when the nationalists took power.

Dividing the determining factors into 'objective' and 'subjective' categories, Bühler nonetheless asserts that it is not merely 'objective' factors such as substantial part of territory, population, and armed forces, that bear upon state identity and continuity, but 'subjective' factors, such as the successor's claim to continuity and its self-conception, also do matter.[19] Sharing this view, Müllerson contends that 'a new state *de facto* succeeds a predecessor state, and this *de facto* succession is a basis for succession to certain rights and duties of predecessor state'.[20] The recent formulations and discussions within the international law community, conjuring up changes, have resulted in a revised stand on the issues of identity and continuity. The major changes in the wake of the dissolution of the Soviet Union and the redrawing of the European map in the

[13] Marek, *supra* note 11, at 17.
[14] *Ibid.*, at 40.
[15] *Ibid.*, at 21, 128; D. O'Connell, *State Succession in Municipal and International Law* (1967), i, at 26–27.
[16] Marek, *supra* note 11, at 14.
[17] *Ibid.*, at 24–25, 31.
[18] K.G. Bühler, *State Succession and Membership in International Organizations: Legal Treaties versus Political Pragmatism* (2001), at 14.
[19] *Ibid.*, at 18.
[20] R. Müllerson, *International Law, Rights and Politics: Developments in Eastern Europe and the CIS* (1994), at 139.

early 1990s are one of the key factors in the revival of this issue. For instance, there seems to be a consensus regarding the relationship between Russia and the continuing identity of the Soviet Union, a case of dissolution of a state. This is due to the fact that Russia not only comprises a large portion of the geographical and demographical part of the Soviet Union, its armed forces and arsenal, former capital, agencies and institutions, but also considers itself as the continuity of its predecessor.[21] Almost all these factors are also true of the dissolution of the Ottoman Empire and the emergence of the Republic of Turkey, where the successor state retained all the instances mentioned in the Soviet/Russian case. In fact, there are two arbitral rulings, in the *Ottoman Debt Arbitration* and *Roselius & Co v. Karsten and the Turkish Republic,* which regard Turkey as the continuation of the Ottoman Empire.[22] This view will be confirmed by the information presented later in the article, showing that several essential institutions in Ottoman Turkey, such as the army, administration, political parties, and figures, as well as the main Turkish heartland, were transferred almost intact to the republic, often with only superficial changes in name and organization.

2 State Succession and Responsibility

For the sake of the argument we could simply assume that the issues of identity and continuity between the Ottoman Empire and the Republic of Turkey are disputed. Thus, the issue of state succession and, more importantly, state responsibility with regard to the successor's continuity of internationally wrongful acts becomes essential to the argument of this article.[23]

If the theoretical aspects of state identity and continuity are matters for discussion, the issue of state succession, and especially state responsibility, is considered to be even more problematic. Unlike state identity and continuity, the issue of the vagueness of state responsibility seems primarily to depend not on diversity of opinions, but rather on the reliance on existing practice, dating back to Roman law, making it almost obsolete and out of kilter with the contemporary world, especially from the 19th century onwards. The ambiguity of international law with regard to state succession and responsibility becomes clear when one studies the existing literature. One reason for this ambiguity could be the scarcity of textbooks, international organizations, and scholars addressing this issue.[24] Another reason could be '[t]he rarity … and the great variety of the events involving the mechanisms of succession of States accounts for both contradictory practice and different and mutually exclusive theories

[21] Bühler, *supra* note 18, at 158–159, 163; Müllerson, *supra* note 20, at 139–143; Crawford, *supra* note 12, at 676–677. The same comparison between predecessor and successor can be applied to Austria and Hungary after the dissolution of the Dual Monarchy in the wake of World War I. See P. Dumberry, *State Succession to International Responsibility* (2007), at 99–102.

[22] Crawford, *supra* note 12, at 676. See also Walker, 'Turkey's Imperial Legacy: Understanding Contemporary Turkey through its Ottoman Past', 8 *Perspectives on Global Development and Technology* (2009) 498.

[23] For a definition of international crimes and internationally wrongful acts see Bowett, 'Crimes of State and the 1996 Report of the International Law Commission on State Responsibility', 9 *EJIL* (1998) 164.

[24] Dumberry, *supra* note 21, at 10–12, 35–37.

in the doctrine'.[25] Thus, it seems that the deeply rooted and unchallenged traditional view of non-succession is accepted by the majority without any deeper analysis. Patrick Dumberry, however, asserts that a survey of writers analysing this issue shows that 'the more time a writer spends on this question of succession of States, the more likely he/she is to reject a *strict and automatic* "rule" of non-succession'.[26]

As already mentioned, the generally accepted (and unchallenged) position is that 'under traditional international law it is firmly established that there is *no* succession in matters of State responsibility'.[27] A new state will not be held internationally responsible for acts that took place on its territory prior to its inception, while logically one and the same state continues to be subject to such responsibility.[28] The gamut of opinion in this regard could be divided into three schools:

(1) the 'universal succession theory', based on Roman law, dating back to Hugo Grotius, believing that the obligations of the predecessor state automatically pass to the successor, with the exception of responsibility for wrongful acts. This is because Roman law states that *ex delicto* liability does not pass from the *cujus* to the heirs;
(2) the theory of 'organic substitution', asserting that the rights and the obligations of the 'defunct' state do not simply disappear as a result of state succession, but are absorbed by the successor. However, they too concur with the non-succession doctrine, since the succession does not encompass political duties, including wrongful acts associated with the predecessor;
(3) the 'negative school' arguing, based on the argument of the 'clean slate' (*tabula rasa*), that a new state on the international scene is free from any obligations incumbent upon the predecessor.[29]

The central argument in the non-succession doctrine is thereby the principle of a state not being responsible for wrongful acts committed by *another* state. Dumberry's study, however, analyses whether there are cases where the predecessor's responsibility for wrongful acts *can* be transferred to the successor state.[30] Furthermore, the non-succession doctrine partly bases this principle on the so-called 'personal character' of the state, and the parallel in Roman law regarding the transfer of liability from a person to his heir. This analogy is contested for at least two reasons: (1) the Roman principle pertaining to private law cannot be applied to international law; and (2) the highly personal character of the internationally wrongful act is founded on the outdated concept of *cupla* ('*faute*') in state responsibility.[31]

[25] *Ibid.*, at 3. See also O'Connell, *supra* note 15, at 29–30.
[26] Dumberry, *supra* note 21, at 35–38.
[27] Bühler, *supra* note 18, at 8.
[28] Marek, *supra* note 11, at 1, 11, 189.
[29] Dumberry, *supra* note 21, at 38–39. See also O'Connell, *supra* note 15, at 9–17.
[30] Dumberry, *supra* note 21, at 45.
[31] *Ibid.*, at 50–51.

As in the concrete case of the *Lighthouse Arbitration*, Daniel O'Connell, pointing out that there is no general ruling regarding state responsibility on the part of the successor, makes the following observation: '[a]s the Court of the *Lighthouse* Case said, concrete factors, especially the continuing nature of the wrong, and its adoption by the successor State, must be taken into account'.[32] This is yet another important factor to be observed in this study. However, while international law may oblige the successor state to undertake its predecessor's duties, it cannot interfere in the internal affairs of the successor's courts. Thus, in practice, it is only by foreign diplomatic pressure that the successor state undertakes these obligations.[33] Furthermore, the successor state is not obliged to undertake the prosecution of criminal proceedings of the predecessor. Nonetheless, the successor seems to be 'competent to prosecute if it acquires jurisdiction over the place where the crime was committed'.[34] This will be discussed with regard to the post-war Turkish trials.

Dumberry distinguishes between 'succession of fact' and 'succession of law', where the former applies to 'the replacement of one State by another in the responsibility for the international relations of territory', while the latter refers to the successor state being invested with all the judicial liabilities for its predecessor's acts.[35] The issue of succession or continuity becomes important due to its use in jurisdictional matters, especially with regard to the state as party to international laws.[36] Article 1 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts states, 'Every internationally wrongful act of a State entails the international responsibility of that State', which is regarded as 'one of the principles most strongly upheld by State practice and judicial decisions and most deeply rooted in the doctrine of international law'. The 'internationally wrongful act' of a state concerns conduct consisting of an action or an omission which (1) is attributable to that state under international law; and (2) constitutes a breach of an international obligation of that state.[37] Furthermore, the article states that, in addition to being obliged to perform the obligation breached (Article 29), the successor state is also 'obliged to cease the wrongful conduct or, in some circumstances, to offer appropriate assurances and guarantee of non-repetition (Article 30)'.[38] This suggests that in reality there is a distinction between crimes committed by the predecessor and the continuation of the same crime after the date of succession. Thus, the doctrine argues that:

> If the new State continues the original internationally wrongful act committed by the predecessor State, that new State should be held accountable not only for *its own* act committed after

[32] O'Connell, *supra* note 15, at 486.
[33] *Ibid.*, at 33.
[34] *Ibid.*, at 169.
[35] Dumberry, *supra* note 21, at 15.
[36] Bühler, *supra* note 18, at 8.
[37] Dumberry, *supra* note 21, at 22–23.
[38] *Ibid.*, at 24–25. Also see J. Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (2002), at 196. Marek asserts also that '[i]nternational obligations survive a change of regime': see Marek, *supra* note 11, at 33.

> the date of succession *but also* for the damage which was caused by the predecessor State *before the date of succession*.[39]

This was, among others, applied by the arbitral tribunal in the *Lighthouse Arbitration*, where 'Greece, having adopted the illegal conduct of Crete in its recent past as autonomous State, was bound, as successor State, to take upon its charge the financial consequences of the breach of the concession contract'.[40] This constitutes the keystone of this study. The arbitral tribunal based its decisions on different types of factors and circumstances with regard to the internationally wrongful acts, all highly relevant to this study:

(1) the position taken by the predecessor state;
(2) the position taken by the successor state and its actual behaviour in addressing the internationally wrongful acts;
(3) the identification of the entity guilty of the internationally wrongful acts;
(4) the consequences, such as unjust enrichment and justice;
(5) the nature, origin, and character of the obligation breached.[41]

More significantly for the Turkish case, these rules apply to insurrectional movements as well: '[t]he conduct of an insurrectional movement which becomes the new government of a State shall be considered an act of that State under international law'.[42]

Dumberry's analysis of numerous municipal law cases, including one before an international arbitral tribunal and one of state practice, indicate that 'the continuing State should continue its previous responsibility for these [internationally wrongful acts]'. Dumberry's research becomes even more relevant for this article since his analysis included cases where the 'wrongful acts were committed by the predecessor State not against another State (or national of another State) but against *its own nationals* who became nationals of the successor State after the date of succession'.[43] Nonetheless, as Marek observes, political considerations and the existing balance of forces play a major part, and international responsibility is decided on those factors rather than in accordance with general international law.[44] This was clearly evident in the Turkish case, where the major power policies of securing economic and political interests simply outweighed the issue of pursuing the question of punishment for Armenian massacres.[45] Nevertheless, Dumberry's examination of several cases indicates:

[39] This has also been reflected in the comments made by ILC Special Rapporteur, Mr James Crawford. See Dumberry, *supra* note 21, at 218–219.

[40] *Ibid.*, at 224. See also O'Connell, *supra* note 15, at 302.

[41] Dumberry, *supra* note 21, at 208–210. For a definition of unjust enrichment see *ibid.*, at 263–268.

[42] Crawford, 'Revising the Draft Articles on State Responsibility', 10 *EJIL* (1999) 450; Silvanie, 'Responsibility of States for Acts of Insurgent Governments', 33 *AJIL* (1939) 78, at 80–81; See also Dumberry, *supra* note 21, at 224–249.

[43] *Ibid.*, at 124–125 and 133.

[44] Marek, *supra* note 11, at 190. See also Bühler, *supra* note 18, at 18.

[45] The skilful manoeuvres of Mustafa Kemal managed to play the Major Powers, in particular the USA, Britain, and France, against each other and use their eagerness to divide the Turkish Empire's vast oil

> a clear tendency in *modern* State practice towards the recognition that successor States should take over the obligations arising from the commission of internationally wrongful acts. It can therefore be concluded that in the context where the predecessor State *ceases to exist* as a result of the events affecting in territorial integrity (integration, unification and dissolution of States), the *tendency is clearly towards succession to the obligation to repair.*[46]

The responsible state is then obliged 'to make full reparation for the injury by the internationally wrongful act', both for material and moral damages.[47]

Using the theoretical grounds presented, the following historical facts will illustrate the continuity between the two Turkish states, and how the Turkish Republic not only failed to cease the wrongful acts committed by the Unionist Government but also continued and fulfilled the very same internationally wrongful acts, committed against the Armenians and other Christian subjects of the country. It is worth pointing out that this study does not necessarily confine itself to the crime of genocide *per se*, but the internationally wrongful acts committed by the two Turkish states towards their own as well as foreign citizens.

3 The Orthodox Kemalist Version of Turkish History Reviewed

Reconsidering the Orthodox Kemalist historiography is an essential step in this study. This official Turkish view of events is mostly based on Kemal's speeches and memoirs, depicting him as the initiator and sole leader of the nationalist movement as well as wiping less desirable facts from the pages of history.[48] This version has also had an immense influence on Turkish history and the historiography of the period, and has furthermore deeply affected foreign research.[49] When studying other contemporary Turkish leaders and historians, it becomes clear that the 'Kemalist version' is a result of the retouching of history, erasing other prominent characters in order to highlight Kemal further, ignoring the internal struggle within the nationalist movement as well

and mineral assets, as well as new investment opportunities in the emerging Turkey. Among others see P. Balakian, *The Burning Tigris: The Armenian Genocide and America's Response* (2003), at 363–372; C. Simpson, *The Splendid Blond Beast: Money, Law, and Genocide in the Twentieth Century* (1995), at 32–33; Bloxham, 'The Roots of American Genocide Denial: Near Eastern Geopolitics and the Interwar Armenian Question', 8 *J Genocide Research* (2006) 27. See also R.H. Davison, *Essays in Ottoman and Turkish History, 1774–1923: The Impact of the West* (1990), at 207.

46 Dumberry, *supra* note 21, at 202–203.

47 Crawford, *supra* note 38, at 201–202; Noyes and Smith, 'State Responsibility and the Principle of Joint and Several Liability', 13 *Yale J Int'l L* (1988) 238.

48 E.J. Zürcher, *The Unionist Factor: The Rôle of the Committee of Union and Progress in the Turkish National Movement 1925–1926* (1984), at 106. On the subject of Armenian Genocide specifically see, e.g., Akçam, 'Anatomy of a Crime: the Turkish Historical Society's Manipulation of Archival Documents', 7 *J Genocide Research* (2005) 255. For an overview of modern Turkish historiography see Bloxham and Müge Göçek, 'The Armenian Genocide', in D. Stone (ed.), *The Historiography of Genocide* (2008), at 344.

49 E.J. Zürcher, *Political Opposition in the Early Turkish Republic: The Progressive Republican Party 1924–1925* (1991), at 1–2. See also D. Bloxham, *The Great Game of Genocide: Imperialism, Nationalism, and the Destruction of the Ottoman Armenians* (2005), at 213–214.

as the contribution of other unwanted individuals and organizations, mostly affiliated to the Committee of Union and Progress (CUP).[50] In the official Turkish version, the nationalist movement broke with the defeated and flawed past, based its power on the basic popular roots movement, initiated and directed by Mustafa Kemal, earning him the title *Atatürk*, 'Father of Turks'. As has been pointed out by researchers such as Donald Bloxham, E.J. Zürcher, and Taner Akçam, the reality was different. The nationalist movement was rather initiated, nourished, and supported by Unionists leaders, many of whom were fugitives from the law, wanted for war crimes and crimes against humanity, as well as individuals who had unlawfully enriched themselves on confiscated properties. Initially, a process of reparations as well as punishment of the guilty in courts martial, like those in Germany after World War II, did exist in Turkey.[51] However, this process was not only halted but was reversed once the nationalist movement gained momentum, since it was entirely reliant on the Unionists, their networks, and their financial assets. What the nationalists did not want was a legacy affiliated with the CUP, a legacy which now needed to be concealed. Later, when Kemal consolidated his position through a Stalinist purge, a new version of history was needed to uphold the illusion of the glorious and stainless history of the Turkish nation. Another reason for this revisionism is that many leading historians of the Republic were politicians and political figures, many of them former Unionists. Thus, modern Turkish history was primarily written by political actors with a strong nationalistic agenda, clearly reflected in the history books of modern Turkey.[52]

4 The Nationalists: New Movement or the Same Old Unionists?

The research done by scholars such as Zürcher and Akçam indicates that the Nationalist movement can be traced back to the early period of World War I. The research shows that Unionists not only dominated the Nationalist movement, but were its initiators. The movement was rather a contingency plan, designed by the CUP in the event of defeat in the war, primarily to continue armed resistance after the imminent risk of the capital (Constantinople, present-day Istanbul) falling into enemy hands (the Gallipoli Campaign), but also to establish a new Turkish nation-state, centred around Anatolia, which they considered to be the 'Turkish heartland'.[53]

[50] Zürcher, *supra* note 49, at 3; Zürcher, *supra* note 48, at 4. Another aspect of this retouching is erasing Armenian presence from the Armenian Highland and Asia Minor. See Bloxham, *supra* note 49, at 213.

[51] For an overview of the Istanbul, Yozgat, and Trabizon trials see V.N. Dadrian, *The History of the Armenian Genocide: Ethnic Conflict from the Balkans to Anatolia to the Caucasus* (2004), at 317–336.

[52] See H. Poulton, *Top Hat, Grey Wolf and Crescent: Turkish Nationalism and the Turkish Republic* (1997), at 103; Bloxham, *supra* note 49, at 207; R.H. Davison, *Turkey: The Modern Nations in Historical Perspective* (1968), at 136; regarding research into dissident historians' versions see Zürcher, *supra* note 48, at 173.

[53] *Ibid.*, at 69–71, 104–105; Akçam, *A Shameful Act, The Armenian Genocide and the Question of Turkish Responsibility* (2006), at 306. See also Üngör, 'Seeing like a Nation-state: Young Turk Social Engineering in Eastern Turkey, 1913–1950', 10 *J Genocide Research* (2008) 28; Çetinğolu, 'İttihat ve Terakki'den Kemalizm'e kardrolar', in R. Zarakolu (ed.), *Resmi Tarih Tartismalari – 3 Ittathiciliktan Kemalizme* (2007), at 2.

With the occupation of the Ottoman capital by the Entente powers in 1918 and the abolition of the CUP, i.e., the power structure which in the 1908 revolution had reduced the authority of the Sultan, Istanbul became the stronghold of the Sultan and anti-CUP leaders, while Ankara was transformed into a safe haven for Unionists.[54] The Allies actually suspected that the nationalist movement was a Unionist plot. The nationalists soon noticed this fact, identifying it as an obstacle to their attempts to strike a better deal with the occupying forces and the government in Istanbul. Thus, nationalists made a tactical choice officially to renounce their affiliation with the CUP at the Congress of Sivas on 4 September 1919.[55] Zürcher asserts that the dominant role of the Unionists was not clear since they were aware of the negative effects of their CUP affiliation, and 'often tried to get figureheads in the form of local notables or religious dignitaries on the boards', thus controlling events from behind the scenes.[56]

A *Karakol: The Vital Link between the Two States*

One of the main forces behind the Nationalist movement was *Karakol* ('the Guard'), an underground organization created by CUP leaders which 'contributed enormously to the success of the national resistance movement and is the most neglected of the pillars on which the national resistance movement was built'.[57] The references to the CUP are myriad. Citing a contemporary source, Akçam mentions that 'Talaat Paşa … wanted to leave the government to a committee whose patriotism he could count on'.[58] Talaat, having fled to Berlin, had instructed Karakol and Vasıf (a Unionist officer and the head of Karakol) to accept Kemal as leader.[59]

Karakol had two aims: (1) 'to protect the Turkish population and especially those Unionists who had stayed behind after the leaders had left the country from reprisals by the Entente or the Christian minorities'. The safest way to do this was to evacuate people from Entente controlled areas to Anatolia; and (2) 'to build up a resistance movement in the unoccupied parts of the country and to strengthen it as much as possible by sending the ablest people to Anatolia to form a cadre'. The majority of the nationalists were smuggled by Karakol to Anatolia.[60] It also arranged for an arms smuggling operation to Anatolia from hidden stores belonging to Tashkilati Mahsusa

[54] See also Akçam, *supra* note 53, at 217.

[55] Zürcher, *supra* note 48, at 68–69. The *Milli Kongre* (National Congress) of 29 Nov. 1918 was the first united front for the Nationalist movement, dominated by Unionist organizations. See *ibid.*, at 78.

[56] *Ibid.*, at 93. This dissociation also made Mustafa Kemal, quite well known within the circle of CUP officers, a suitable choice for the leader of the Nationalist movement. See *ibid.*, at 45, 171–172; Akçam, *supra* note 53, at 304; Davison, *supra* note 45, at 206–207; Poulton, *supra* note 52, at 88.

[57] Zürcher, *supra* note 48, at 80. See also Çetinoğlu, 'Teşkilat-I Mahsusa'dan Kemalist Rejime Gelen Kadrolar Üzerine Bir Deneme', unpublished paper (2006), at 4.

[58] Akçam, *supra* note 53, at 243.

[59] This support was confirmed by a letter from Talaat. See Zürcher, *supra* note 48, at 120. Correspondence between Cemal Pasha and Kemal after World War I shows that he too supported Kemal and the nationalists and did try to cooperate with them. See *ibid.*, at 54.

[60] *Ibid.*, at 82; Akçam, *supra* note 53, at 310.

('the Special Organization', which will be elaborated on further below) and raids on Ottoman depots confiscated by the Entente.[61]

Vasıf and Kamalettin Sami (Lieutenant-Colonel on the Caucasus front) 'acted as nationalist intelligence in the capital and communicated with the nationalists via the War Office telegraph with their own secret code'.[62] Several sources suggest that Karakol was instrumental in getting Mustafa Kemal to Anatolia, persuading him to assume the leadership of the Nationalist movement, and saw to it that the War Ministry would appoint him to the post of military inspector in Anatolia, providing him with the base for leading the movement. Kemal put forward demands, such as financial assurance and his undivided authority over the army commanders in the region, and Karakol secured the necessary funds for the movement.[63] Thus, Karakol regarded itself as 'the vanguard and leader of the national resistance'. This would put it on a collision course with Kemal's claim to be the sole leader, evident in the fact that most of the Karakol's top leaders were among those purged and executed in 1926, erasing important information needed to assess the entire spectrum of its role in the Nationalist movement.[64]

Karakol depended most on two organizations: Esnaf ('the guilds') and Teshkilati Mahsusa. Esnaf was the organization under the Unionist government in charge of creating a Turkish middle class to reduce economic dependency on minorities, foremost the Greeks and the Armenians.[65] During the post-war period, Esnaf 'formed an ideal network for information and illegal transport' for the nationalists.[66] Teshkilati Mahsusa was created by Enver in August 1914. It has been compared with the *Einsatzgruppen*, and was a major actor in charge of the Armenian massacres.[67] It was

[61] *Ibid.*, at 306. Karakol used a wide network within the old institutions and organizations. According to British Intelligence reports, Hilâli Ahmar (the 'Red Crescent') was used by Karakol as 'a channel for clandestine payments and as a means to communicate with Unionists in foreign countries (by special cipher in possession of Dr. Adnan)', while Türk Ocâgı ('Turkish Heart'), created by students of the Military Medical Academy, with Pan Turkish ideology, among others campaigning for 'buy Turkish'. See Zürcher, *supra* note 48, at 76–77, 82. See also Bloxham and Göçek, *supra* note 48, at 350.

[62] Zürcher, *supra* note 48, at 83.

[63] Akçam, *supra* note 53, at 311; Bloxham and Göçek, *supra* note 48, at 350.

[64] Zürcher, *supra* note 48, at 80, 85. See also Zürcher, *supra* note 49, at 93–94. Akçam, *supra* note 53, at 309–312. See also Çetinoğlu, *supra* note 57, at 6.

[65] Zürcher, *supra* note 48, at 83. See also Akçam, *supra* note 53, at 273; Astourian, 'Modern Turkish Identity and the Armenian Genocide', in R.G. Hovannisian (ed.), *Remembrance and Denial: The Case of the Armenian Genocide* (1999), at 35–38. A report from the Swedish Embassy in Constantinople confirms the policy of strengthening the Turkish middle class by simply eliminating the Greek and Armenian merchants and bankers who controlled these circles. See Avedian, 'The Armenian Genocide 1915: From a Neutral Small State's Perspective: Sweden', Unpublished Master's degree paper, Uppsala University, Uppsala, 2009, at 52, available at: www.armenica.org/material.

[66] Zürcher, *supra* note 49, at 15.

[67] Dadrian, 'The Role of the Special Organisation in the Armenian Genocide during the First World War', in P. Payani, *Minorities in Wartime: National and Racial Groupings in Europe, North America and Australia during the Two World Wars* (1993), at 50; A. Alvarez, *Governments, Citizens, and Genocide. A Comparative and Interdisciplinary Approach* (2001), at 93; Dadrian, *supra* note 51, at 236–239; M. Mann, *The Dark Side of Democracy: Explaining Ethnic Cleansing* (2005), at 164–166.

officially dissolved in October 1918, but the organization was secretly kept intact to 'prepare for the second phase of the World War which Turkish resistance would centre on the Caucasus'.[68] Teshkilati Mahsusa agents played an important role in the initiative phase of the resistance when the regular army was still weak. They were often former agents in hiding because of arrest warrants for their roles in Greek and Armenian deportations and massacres, i.e., accused war criminals and fugitives from the law.[69] Thus, Teshkilati Mahsusa constituted an immediate link between the wrongful acts of the CUP and the emerging Republic. Besides its military activities, it was also in charge of 'strengthening Turkish trade and industry at the expense of the Greek and Armenian minorities by forced "Turkification"'. Its primary post-war role, however, was to provide Karakol with 'secret supplies and money and above all expertise in underground activities'.[70]

B *Administrative and Legislative Bodies*

Control over the legislative body was another important requirement for salvaging defeated Turkey, but also for homogenizing the nation. Kemal soon 'gained the legal right to nominate ministers to the Assembly for election, thereby assuring his personal control over top-level personnel'.[71] He secured this even further by sending a circular to the provinces, stating that 'non-Muslim elements shall not be allowed to participate in the elections'.[72] This was yet another measure to ensure the formation of the pure Turkish National state, without any interference from the remaining minorities, especially the Christians who had been maltreated during the war and were about to make demands for reparations as well as self-determination, e.g., for the reunification of West Armenia with the Republic of Armenia in Caucasus. It is noteworthy that the subsequent Lausanne Treaty Articles on 'minority rights' seem redundant in the light of these activities, since by the time of the *negotiations* the nationalists had made sure that there were no significant minorities worth mentioning.[73] Almost all incoming deputies in the new parliament, which convened on 12 January 1920, were nationalists. Not a single debate touched the issue of deportations and massacres.[74] Thus, it should be no surprise that the Sèvres Treaty was not ratified by that Parliament.[75]

[68] Zürcher, *supra* note 48, at 84.

[69] *Ibid.*, at 88.

[70] *Ibid.*, at 84. Çetinoğlu, *supra* note 57, at 1. For Kemalist economic measures to force the Armenians and the Greeks to leave Turkey see Marashlian, 'Finishing the Genocide: Cleansing Turkey of Armenian Survivors, 1920–1923', in Hovannisian (ed.), *supra* note 65, at 113.

[71] Davison, *supra* note 45, at 218.

[72] Akçam, *supra* note 53, at 298. Kemal regarded the 'Christians as unsuitable material for becoming "Turkish"'. See Poulton, *supra* note 52, at 97.

[73] For the Lausanne Treaty see World War I Document Archive, *Treaty of Lausanne*, Harold B. Lee Library, Brigham Young University, Utah, available at: wwi.lib.byu.edu/index.php/Treaty_of_Lausanne.

[74] Akçam, *supra* note 53, at 298.

[75] For the Sèvres Treaty see World War I Document Archive, *Treaty of Sèvres, 1920*, Harold B. Lee Library, Brigham Young University, Utah; available at: wwi.lib.byu.edu/index.php/Peace_Treaty_of_Sèvres.

After the establishment of the Republic and the elimination of external threats from the Entente as well as Greek and Armenian claims, attention was once again directed at potential internal threats. People who had organized secret underground movements (Karakol, Teshkilati Mahsusa) were still around and posed a threat by organizing similar activities to challenge Kemal's supreme authority and had to be got rid of.[76] Banning opposition parties and newspapers in 1925 was the prelude to the purges in 1926.[77] The true nature of the trials, as means for erasing the potential threats, was evident in the fact that 'the defendant did not have the right to take counsel, to call witnesses, or to appeal against the verdict of the tribunal. Moreover, death sentences pronounced by the tribunal had been declared immediately effectual by the assembly.'[78] It was a swift eradication. The Stalinist cleansing allowed Kemal effectively to eliminate all potential political rivals and opponents. The fact that not all Unionists were purged and many prominent CUP figures remained in top positions in the Republic indicates that the purges had nothing to do with the CUP *per se*, but certain individuals who could challenge Kemal's leading position in the Republic.[79] The civil administration also remained almost intact. Hugh Poulton mentions that 85 per cent of Ottoman civil servants retained their positions in the Republic.[80] The purges had also interlinked connections with Kemal's presentation of his version of history, making him the opponent of the old 'flawed' CUP and its misdeeds, wrongful acts of which the Kemalists were aware.[81] The parallels between the 1913 Unionist *coup d'état*, its elimination of any liberal opposition, as well as rivalry within the CUP and the homogenization of Turkey are striking: the Nationalists effectively suffocated any deviating political group which did not advocate the nationalist aims; the potential rivals were eliminated through purges, while the policy of 'Turkey for Turks', through the same Internationally wrongful acts of massacres, confiscations, and deportations, was finalized.[82] In 1925, Turkey was truly a homogenous Turkish nation.

[76] Zürcher, *supra* note 48, at 142; Bloxham and Göçek, *supra* note 48, at 350.

[77] See also Zürcher, *supra* note 48, at 140 and Çetinoğlu, *supra* note 57, at 3–4.

[78] Zürcher, *supra* note 48, at 146. Kemal signed the death 'sentences the same day they were pronounced and they were executed that same night in Ankara'. See *ibid.*, at 136.

[79] *Ibid.*, at 119, 159–160, 170. Abolishing the Caliphate on 3 Mar. 1924 could also be seen as an elimination of a potential competitor to the power, since the Caliph would be the highest religious authority, not only in Turkey but in the all Islamic world, thus an authority with which to reckon. See also Zürcher, *supra* note 49, at 32; Poulton, *supra* note 52, at 91–92; Bloxham, *supra* note 49, at 107; Çetinoğlu, *supra* note 53, at 3; Davison, *supra* note 52, at 129.

[80] See Poulton, *supra* note 52, at 88.

[81] Zürcher, *supra* note 48, at 172.

[82] For the same process in 1913 see the confidential reports dispatched by the Swedish Embassy in Constantinople to Stockholm in Avedian, *supra* note 65, at 52. See also Poulton, *supra* note 52, at 114–115; Davison, *supra* note 45, at 207, 212; Üngör, *supra* note 53, at 21; Tachjian, 'The Expulsion of Non-Turkish Ethnic and Religious Groups from Turkey to Syria during the 1920s and Early 1930s', *Online Encyclopedia of Mass Violence*, 5 Mar. 2009, at 2; available at: www.massviolence.org/The-expulsion-of-non-Turkish-ethnic-and-religious-groups.

C *The Army's Role*

The national movement was led almost entirely by Ottoman military leaders, such as General Mustafa Kemal, but, most importantly, all the activities of the movement would have had little effect if not backed by the armed forces of the Ottoman Army.[83] This was made possible by a major shortcoming in the ceasefire treaty. Unlike those relating to Germany, Austria–Hungary, and Bulgaria, the Mudros Ceasefire Treaty did not disarm Turkey, allowing a regrouping of the Turkish armed forces.[84] For example, in 1918, the Ninth Army on the Caucasus front was at its full strength: 30,000 men plus 20,000 militia and gendarmes. Totalling 110,000–130,000 men, it was still a coherent body, with its intact command and access to its communication channels and ciphers, which, as mentioned earlier, were used by Karakol through the War Ministry.[85] Many of the leading figures in the nationalist movement were young Unionist officers, close friends and classmates from the War Academy prior to the 1908 revolution.[86] This, in combination with the fact that '93% of Ottoman staff officers retained their positions in the new republic',[87] allowed army officers actively to set up a network of emissaries in the provinces, coordinating the national movement.[88] Thus, the Army Command, several of them accused of having committed war crimes during World War I, remained not only intact, but continued its activities in the Republic era and constituted the backbone of the new state.[89]

5 Confiscations, Reparations, Indemnifications, and Re-confiscations

Initially, there were plans to compensate Armenians for the massacres and the confiscations, and for a short period the government returned property to the Armenian survivors and allowed them to return to their homes. In October 1918 '[p]lans were announced to return their property and possessions, or provide compensation if this was not possible'.[90] On 4 November 1918 the temporary decrees of 27 May and 29 September 1915, concerning the Armenian deportations and the sale of the deportees' property, were annulled. Whether this was a genuine attempt at reparation and

[83] Zürcher, *supra* note 48, at 93.

[84] H. Pasdermadjian, *Histoire de l'Arménie depuis les origines jusqu'au traité de Lausanne* (1949), at 498.

[85] Zürcher, *supra* note 48, at 94.

[86] *Ibid.*, at 96. See also Çetinoğlu, *supra* note 53, at 5.

[87] Poulton, *supra* note 52, at 88; Bloxham, *supra* note 49, at 99. See also Çetinoğlu, *supra* note 57, at 9.

[88] Zürcher, *supra* note 48, at 96–97.

[89] For the treatment of the Armenian soldiers see R.P. Adalian, *Remembering and Understanding the Armenian Genocide* (1995), at 17; Akçam, *supra* note 53, at 141–145; A. Jones, *Genocide, A Comprehensive Introduction* (2006), at 106; E.D. Weitz, *A Century of Genocide, Utopia of Race and Nation* (2003), at 4–5. See also Reid, '"Genocide in the 20th Century": The Concept of War and Genocidal Impulses in the Ottoman Empire, 1821–1918', 4 *Holocaust & Genocide Studies* (1989) 175; Mann, *supra* note 67, at 163–164.

[90] Akçam, *supra* note 53, at 244, 274. See also R. Gingeras, *Sorrowful Shores: Violence, Ethnicity, and the End of the Ottoman Empire, 1912–1923* (2009), at 45–46; Mann, *supra* note 67, at 157.

redemption will be left unaddressed, but it would be safe to assume that the Turkish leaders now saw it as essential to do penance for the wartime measures and ingratiate themselves with the Entente in the face of the inevitable peace negotiations. The sum of the Armenian claims presented at the Paris Peace Conference in 1919, amounted to a significant '$3.7 billions, of which $2.18 billion was for various types of properties. Most of the total losses claimed were for Turkish Armenia.'[91]

This policy, however, did not last long and the growing national movement put an effective end to it. On 26 October 1919 a decree was issued forbidding Armenians trying to return to their homes from entering Western Anatolia, partly due to increasing hostility from the Muslim population.[92] Later, on 14 September 1922, the Nationalist Assembly re-enacted the law on confiscation of Armenian properties.[93] One clear reason for this could be that those who, as a consequence of the deportations and massacres, had enriched themselves on Armenian properties, fearing that returning Armenians would take revenge or demand their properties back started supporting the nationalist movement.[94]

As the nationalist movement grew the official will for reparations diminished, and became one of the essential negotiation issues with the Entente, resulting in one of the major Turkish victories in the Treaty of Lausanne, compared with that in the Sèvres Treaty.[95] The Nationalist Assembly started legislating new laws for the transfer of already confiscated Armenian properties, but also creating circumstances allowing new confiscations and forcing the Armenians to virtually give up their homes and properties, e.g., on the basis of false and fabricated accusations.[96] Furthermore, as Vahé Tachjian points out, the new legislative measures of the Turkish Republic during the 1920s and 1930s regarding asset seizure of minorities' 'abandoned property'

[91] Marashlian, *supra* note 70, at 117. Note that this substantial sum was that of 1922. A rough estimate would be an increase by a factor of 13.70, i.e., $50.67 billion in 2012. See, e.g., US Department of Labor, Bureau of Labor Statistics, Databases, Tables & Calculators by Subject, CPI Inflation Calculator; avaialble at: www.bls.gov/data/inflation_calculator.htm.

[92] Akçam, *supra* note 53, at 296; Balakian, *supra* note 45, at 323.

[93] Akçam, *supra* note 53, at 254. This could be compared with the US Foreign Claims Settlement Commission's decision that 'G.D.R. should be responsible for the illegal taking of property committed *by the Soviet Union* during its military occupation of East Germany (1945–1949) since the Soviet expropriations "were subsequently ratified by [the] G.D.R. after its establishment in 1949"'. See Dumberry, *supra* note 21, at 223. For additional information on the Turkish confiscation of Armenian property see Marashlian, *supra* note 70, at 119.

[94] Akçam, *supra* note 53, at 340–341; Bloxham and Göçek, *supra* note 48, at 350; Gingeras, *supra* note 90, at 53–54. For further information on how the members of the CUP were becoming rich by purchasing properties left behind by Armenians see Akçam, *supra* note 53, at 274. This group of people enriched by confiscated Armenian property has given rise to the common Turkish saying *tehcir zenginleri*, the 'barons of deportation'. See also V. Teghiayan, *Malta belgeleri, Ingiltere Disisleri Bakanlığı "Turk Savas Suclulari" Dosyasi* (2007), at 3, available at: www.kitapdenizi.com/kitap/18550-Malta-Belgeleri-Ingiltere-Disisleri-Bakanligi-Turk-Savas-Suclulari-Dosyasi-kitabi.aspx. For nationalist implication in the confiscation of Armenian property and its justification see Marashlian, *supra* note 70, at 119, 136. See also Tachjian, *supra* note 82, at 5; Mann, *supra* note 67, at 166.

[95] Davison, *supra* note 45, at 230–231. See also Gingeras, *supra* note 90, at 159.

[96] Tachjian, *supra* note 84, at 4.

were in direct conflict with Article 33 of the Treaty of Lausanne, ensuring the return of the property of the survivors who became Syrian and Lebanese subjects.[97] Uğur Ümit Üngör asserts:

> The elimination of the Armenian population left the state an infrastructure of Armenian property, which was used for the progress of Turkish (settler) communities. In other words: the construction of an étatist Turkish 'national economy' was unthinkable without the destruction and expropriation of Armenians.[98]

6 Trials and the Issue of Punishment

As for the short-lived struggle for compensation, justice was pursued briefly in Turkey. The main indictment was based on the Hague Convention 1907, more specifically the Martens Clause, and was a consequence of the Entente ultimatum of 24 May 1915 where:

> In regard to this new crime against humanity and civilisation, the allied governments declare openly to the Sublime Port that they will hold each member of the Turkish Government personally responsible, as well as those who have participated in these massacres.[99]

The ultimatum was realized in Article 226 of the Treaty of Sèvres which maintained the right of the Entente Powers to punish guilty Turks, while Article 230 established Turkey's obligation to surrender suspect individuals to the Entente Powers.[100] Admiral Webb, Deputy High Commissioner in Istanbul, proposed that the Paris Peace Conference put the listed senior officials on trial in order to 'make an example out of them'. Army officers and field commanders were first in focus.[101]

Nonetheless, with the growing national movement, the Entente soon abandoned this process for the sake of securing its own interests in Turkey. Thus, the equivalent of the post-World War II German self-awareness and reconciliation never took place in Turkey. Secret protocols indicate how the nationalists aimed to 'halt the war crimes investigation by the British against some military commanders; return Turkish prisoners exiled to Malta by the British; and prosecute Armenians accused of crimes', while later '[p]rotecting those prosecuted for war crimes became an important part

[97] *Ibid.*, at 10; Üngör, *supra* note 53. at 31.

[98] *Ibid.*, at 34.

[99] R.G. Hovannisian, *Armenia on the Road to Independence, 1918* (1967), at 52. See also Schabas, 'Prosecuting Genocide', in Stone (ed.), *supra* note 48, at 253; Lauren, 'From Impunity to Accountability: Forces of Transformation and the Changing International Human Rights Context', in R. Thakur and P. Malcontent (eds), *From Sovereign Impunity to International Accountability: The Search for Justice in a World of States* (2004), at 22–25.

[100] World War I Document Archive, 2007, Treaty of Sèvres, 1920. See also Schwelb, 'Crimes Against Humanity', *BYBIL* (1946) 179; Segesser, 'Dissolve or Punish? The International Debate Amongst Jurists and Publicists on the Consequences of the Armenian Genocide for the Ottoman Empire,1915–23',10 *J Genocide Research* (2008) 97. For a commission report on charges with regard to 'Violations of the Laws and Customs of War' see Adatci, 'Commission on the Responsibility of the Authors of the War and the Enforcement of Penalties: Report Presented to the Preliminary Peace Conference', 14 *AJIL* (1920) 114. See also Hudson, 'The First Year of the Permanent Court of International Justice', 17 *AJIL* (1923) 17.

[101] Akçam, *supra* note 53, at 216–217, 236; Schabas, *supra* note 99, at 256.

of the nationalist policy'.[102] Soon, even the Istanbul government joined this policy. Succeeding Ottoman governments aided the escape of several CUP leaders, including Talaat and Enver, blocked the investigations of the Unionists and destroyed incriminating documents, including the archive of the Tashkilati Mahsusa.[103] Fearing similar accusations against itself, the government started altering laws and the procedure for forestalling such attempts.[104] Later, Tefvik Pasha's government started to arrest suspects as a 'preventive measure to shield the suspects' since then it could pardon them. The authorities also made sure they notified suspects in good time about the impending arrests, so they could either escape or destroy any compelling evidence in their possession.[105] The lack of evidence, mostly destroyed by the government itself, was indeed a major obstacle, frequently used by present-day deniers of the 1915 genocide. Another factor in this regard is Mustafa Kemal's 'Family Name Law' compelling every Turkish citizen to adopt a family name, which helped the suspect criminals to cover up their identity, thus evading being connected to the crimes.[106] Falih Rıfkı Atay, journalist and confidant of Mustafa Kemal, stated that 'whoever was the object of even the slightest hint of suspicion armed themselves and joined the gang'.[107] The hopelessness of the situation was obvious when the press published lists of people accused of participation in the massacres who were openly living in Istanbul.[108] The Parliament itself was accused several times of being partial and incapable of conducting an efficient and objective investigation, let alone punishing the guilty parties, since it itself consisted of CUP members and it had supported both the war effort and the actions of the government.[109] The Turkish Parliament then actively shelved the issue of the Armenian massacres and subsequent punishment: '[t]he president of the Ottoman Deputy Chamber, Halil Menteşe, and his assistant, Unionist propagandist journalist

[102] Akçam, *supra* note 53, at 220–221. See also Marashlian, *supra* note 70, at 125; Ayse Günaysu, 'Malta Documents', introduction in Teghiayan, *supra* note 94, at 1. Bloxham and Göçek put the number of Muslim victims killed in Armenian atrocities at 40,000–60,000, which became one of the central arguments in the Republic's narrative to counter the 1915 massacres. See Bloxham and Göçek, *supra* note 48, at 349.

[103] Akçam, *supra* note 53, at 244–245; Kramer, 'The First Wave of International War Crimes Trials: Istanbul and Leipzig', 14 *European Rev* (2006) 443.

[104] See Akçam, *supra* note 53, at 287.

[105] Akçam points out that '[a]ttacks on the government had no validity unless proof was provided. In its absence, the government continued to deny culpability.' See Akçam, *supra* note 53, at 260.

[106] Teghiayan, *supra* note 94, at 2. See also Davison, *supra* note 45, at 206, fn1.

[107] Akçam, *supra* note 53, at 344. The list of the Unionists, wanted war criminals, etc., is far too long to be set out here. A few names that could be mentioned as examples are: Mazhar Müfit, Unionist provincial administrator, Vali of Bitlis in 1919, wanted for war crimes and Armenian massacres, later member of the provincial government in Ankara, member of the National Assembly; Küçük Kâzim, Unionist fedaî in Tashkilati Mahsusa, deeply involved in the Armenian massacres; Halis Turgut, wanted for crimes against Armenians; Topal Osman Aĝa, a member of the Teshkilati Mahsusa, wanted for his role in the Armenian massacres, later head of Mustafa Kemal's bodyguards. For a comprehensive compilation see Zürcher, *supra* note 48; Akçam, *supra* note 53; Dadrian, *supra* note 51; Teghiayan, *supra* note 94; Çetinoğlu, *supra* note 53; Tachjian, *supra* note 82, at 5–6.

[108] Akçam, *supra* note 53, at 247.

[109] *Ibid.*, at 270.

Hüseyin Cahit Yalçın, in particular, worked with the regime to prevent discussion of the matter'.[110]

Notwithstanding this, by the end of 1918 files on 130 suspects under investigation from 28 provinces existed, and by January 1919 a few hundred suspects had been arrested.[111] However, by May 1919, the nationalist sentiments in the country became more evident as public demonstrations were held in Istanbul to protest at the arrests and the trials which were going on.[112] On 17 November 1919, Admiral de Robeck mentioned that arresting suspects of war crimes would be futile because of the government's dependence on the National movement, even if the accused were living openly in Constantinople.[113] On 12 February 1920, the new Nationalist chamber questioned the arrest of the 'the men and the children of the homeland (Ottoman subjects), who had been deported to Malta', and it was proposed that imprisoned notables should be considered 'excused' and their salaries reinstated.[114] Kemal frequently visited the detainees in the Police Ministry building in Istanbul, and the visits continued even after they had been relocated to the prison.[115] That the imprisonment of the accused was regarded as temporary and a minor issue is evident in Kemal's discussions with the Bekirağa prison detainees:

> The basic problem that has to be solved is the future existence of the state, which is presently in danger. As soon as this fundamental question is resolved … a very simple little detail like the Bekirağa prison odyssey will disappear by itself.[116]

The same erasing of past wrongful acts was done with regard to the confiscated Armenian properties as well as the issue of minorities in general.

In response to an examination whether membership of the National Forces, which were the Nationalists' military wing, with lineage tracing back to Unionist organized forces after the Balkan Wars, the Istanbul War Ministry stated on 16 April 1921 that '[c]ollaborating with the National Forces is worthy of applause. Drop all such cases.'[117] Refraining from commenting on the CUP being guilty of crimes (in answer to a question asked by a British representative), Kemal stated that 'the Union and Progress was patriotic association … It may have been very flawed. But its patriotism is beyond dispute.'[118] The flaws, including any wrongful acts, were admitted but overlooked. The

[110] *Ibid.*, at 261.

[111] *Ibid.*, at 283 and 293. See also Marashlian, *supra* note 70, at 117. For the subsequent trials and the key indictment and the key verdicts see Dadrian, *supra* note 51, at 323–328, 330–333. See also Dadrian, 'The Turkish Military Tribunal's Prosecution of the Authors of the Armenian Genocide: Four Major Court-Martial Series', 11 *Holocaust & Genocide Studies* (1997) 28.

[112] Akçam, *supra* note 53, at 295.

[113] *Ibid.*, at 298.

[114] *Ibid.*, at 300. On rewarding the Malta prisoners with high positions within the new Republic see Teghiayan, *supra* note 94, at 2–3. See also Üngör, *supra* note 53, at 28, 30.

[115] The same goes for Kazim Karabekir. See Akçam, *supra* note 53, at 305. See Çetinoğlu, *supra* note 57, at 4–5.

[116] Akçam, *supra* note 53, at 345.

[117] *Ibid.*, at 354.

[118] *Ibid.*, at 313.

general prevailing sentiment was that 'not one Turk in a thousand can conceive that there might be a Turk who deserves to be hanged for the killing of Christians'.[119] By mid-1920, Ankara started to annul and revoke court-martial decisions and verdicts. It did, however, not stop there. Ankara also took action to compensate the accused by reinstating their salaries, proclaiming executed convicts (e.g., Kemal Bey and Nusret Bey) to be 'national' and 'glorious' martyrs, naming neighbourhoods and schools after them.[120] Eventually, the government introduced a bill to honour other defendants, resulting in a general law 'to give a pension, property and land to the twelve families of all the defendants and the victims of Armenian revenge killings after the war, including Talaat, Enver, and Cemal'.[121] The popular Turkish historian Murat Bardakçı emphasizes this matter, claiming that:

> Atatürk's position on the Armenian question is clearly manifested in the way he gave away the [Armenian] property. He put the families of the persons murdered by Armenians on very high salaries and he personally signed the instructions for the transfer of seized Armenian property to these persons.[122]

Finally, the threat to execute British POWs if one single Malta detainee was executed was the bargain leverage which the British could not match.[123] Soon the British admitted that, in spite of heaps of general evidence proving the reality of the genocide, few individual leads were to be found, since the Turkish authorities in charge of the trials had either destroyed the evidence or hidden it.[124] Issues such as securing the Straits as well as the interest of foreign states by exonerating the perpetrators of Internationally wrongful acts and collaboration with the nationalist leaders were much more important; thus the Armenian issue was dropped. It was simply not worth it.[125] Talaat and Cemal, both sentenced to the death *in absentia* for their key involvement in the Armenian massacres and war crimes, were given posthumous state burials in Turkey, and were elevated to the rank of national heroes.[126]

[119] *Ibid.*, at 294.

[120] *Ibid.*, at 352–353. Kemal Bey, the prefect of Boğazliyan, was found guilty of war crimes and involvement in the Armenian massacres, and executed on 10 Apr. 1919. However, his funeral ceremony turned into a celebration of him as 'the Great Martyr of the Turks'. See *ibid.*, at 293. See also Teghiayan, *supra* note 94, at 4.

[121] Akçam, *supra* note 53, at 353.

[122] Talaat's wife was receiving a salary for 'services to the fatherland'. The same applied to the members of Teshkilati Mahsusa and even the daughter of Kemal's arch-rival, Enver. See Teghiayan, *supra* note 94, at 4. For nationalist praising of Talaat as a 'great patriot', 'a political giant', and 'a genius' see Marashlian, *supra* note 70, at 127.

[123] See Akçam, *supra* note 53, at 353.

[124] *Ibid.*, at 358.

[125] *Ibid.*, at 365. For the argument by the newly arrived Swedish Ambassador to Turkey, G.O. Wallenberg, about dropping all support for the Armenian question in favour of Swedish trade interests in the region see Avedian, *supra* note 65, at 64.

[126] Cemal's remains were buried in Turkey in Sept. 1920, while Talaat's remains were moved from Berlin in 1943 and received state burial in Turkey. It is noteworthy that the remains of Enver, the only true threat to Kemal's authority within the national movement, are still buried somewhere in Central Asia. See Çetinoğlu, *supra* note 57, at 6.

7 Renewed Massacres and Finalizing the Unionist Genocidal Plan

The 'new era' in Turkey was a false reality, or at least pertained to Turks alone, while the CUP regime and its policy of 'Turkey for Turks', achieved by the wrongful acts of massacres and confiscations, continued from the minority perspective.[127]

An important part of the nationalist movement and the continued aggression towards the remaining Christians was the national defence councils, created in provinces threatened by Armenian and Greek claims. These councils were created by local CUP branches and CUP representatives of the region in the capital.[128] It is significant that the first of these were established 'through the direct efforts of Talaat Pasha and CUP Central Committee'.[129] One of these was the *Vilayâti Şarkiye Müdafaai Hukuku Milliye Cemiyeti* (Society for the Defence of the National Rights of the Eastern Provinces), created on 4 December 1918. The initiative was taken by Süleyman Nazıf, cousin to Ziya Gökalp and governor of Basra, Trabizon, Mosul, and Baghdad. His aim was to 'stop a number of newspapers that were publishing articles against the *tehcir* (deportations) policy during the World War', counteracting the 'anti-Turkish propaganda concerning the "Armenian massacres" which might endanger Turkish authority over the six "Armenian" provinces in the east of the country'. It is noteworthy that they were also the chief organizers of the famous 'Erzurum Congress', which became the main platform of the Nationalist Movement.[130]

That the Ottoman government regarded the Armenian reforms as 'the deadliest of all threats', finally leading to the genocidal solution, is well discussed in the literature. This threat was still, if not the top, then one of the highest priorities of the Nationalist concerns. In a secret telegram to Karabekir in May 1921 Foreign Minister Ahmet Muhtar made it clear that 'the most important thing is to eliminate Armenia, both politically and materially'.[131] The existence of an Armenian Republic was regarded as the 'greatest' threat to the survival of the Turkish state.[132] The task was simple: to complete the unfinished job of the previous regime by getting rid of all Armenians.[133] In 1921, the massacres of the Black Sea Greeks started, carried out by the Central Army in a joint effort by Ankara and Istanbul as a further measure for the pacification of Anatolia.[134]

Anti-Armenian sentiments were obvious even in late 1922, arguing against any punishment in respect of the Armenian massacres. As a nationalist deputy argued,

[127] With regard to the 'social engineering' aspects see Üngör, *supra* note 53, at 33–34.

[128] Zürcher, *supra* note 48, at 13.

[129] Akçam, *supra* note 53, at 307.

[130] Similar organizations were created to counteract Pontus Greek claims to the Black Sea coast area. See Zürcher, *supra* note 48, at 90–91. See also Tachjian, *supra* note 82, at 4.

[131] Regarding the identification of this threat as a major concern see B. Lewis, *The Emergence of Modern Turkey* (1961), at 356; Akçam, *supra* note 53, at 225–326; Balakian, *supra* note 45, at 325, 328–330.

[132] Akçam, *supra* note 53, at 333.

[133] For examples of reports of the ongoing extermination see Marashlian, *supra* note 70, at 122–124. See also the report by the Swedish Military Attaché, Captain Einar af Wirsén, to Turkey in Avedian, *supra* note 65, at 60.

[134] Akçam, *supra* note 53, at 323.

'If a pig swallowed a diamond, should you spare the diamond or spare the pig? That gem, that diamond must not be sacrificed to spare the Armenian swine.' During a closed session on border disputes between Ankara and Moscow in 1922, one participant declared that 'the Armenians are a scheming nation and they will try to destroy us from the inside', an opinion which Mustafa Kemal confirmed in person.[135] Nothing had really changed compared with the war-time accusations leading to the genocide, and the Armenians were still being labelled the 'traitors within' who threatened the integrity of the Turkish fatherland. Thus the threat needed to be neutralized.

Soon reports about renewed Armenian massacres, this time at the hands of the Nationalists, started to reach foreign countries. Unlike the World War I massacres, the new killings did not stop at Turkish borders and soon reached even beyond, engulfing the Armenians in Caucasus and the Republic of Armenia. Approximately 200,000 Armenians were killed during the Turkish occupation of Caucasus, while property damage is estimated at around 18 million gold rubles.[136] Kemal was aware of the impending war with the Republic of Armenia and was worried about the consequences of the additional Armenian killings. He proposed a delay in the war in order to avoid criticism from the West, at least during this crucial part of the establishment of the republic, trying to win the recognition of the Allies.[137] Nonetheless, Kemal was only talking about a *delay* due to inappropriate timing, not an *abortion* of the campaign and its subsequent massacres. Thus, while Kemalists called for the punishment of the small guilty clique of Unionists for the Armenian atrocities, Ankara fulfilled the genocidal policy of its CUP predecessor.[138] The hollow calls for punishment, especially when the accused were later elevated to the rank of national heroes, can only be regarded as a spectacle for the sake of the current peace negotiations and for the appeasement of the Allied counterparts.

The 'War of Independence' was not against the occupying Allies – a myth invented by Kemalists – but rather a campaign to rid Turkey of remaining non-Turkish elements. In fact, Nationalists never clashed with Entente occupying forces until the French forces with Armenian contingents and Armenian deportees began to return to Cilicia in late 1919.[139] Once the immediate Christian threat was eliminated, the

[135] *Ibid.*, at 355–356. Regarding the nationalists' adoption of the same Unionist accusations of treachery etc. towards the Armenians see Bloxham and Göçek, *supra* note 48, at 348.

[136] These are the numbers mentioned in Soviet sources, while some estimate that the loss was in reality closer to 300,000 people. See Akçam, *supra* note 53, at 327; Dadrian, *supra* note 51, at 358, 361, 367–370, Bloxham, *supra* note 49, at 102; Balakian, *supra* note 45, at 324. See also Swedish diplomatic reports regarding this period in Avedian, *supra* note 65, at 55–80. For the genocide against Anatolian and Pontic Greeks see M. D. Peterson, '*Starving Armenians': America and the Armenian Genocide, 1915–1930 and After* (2004); C.G. Hatzidimitriou, *American Accounts Documenting the Destruction of Smyrna by the Kemalist Turkish Forces: September 1922* (2005); C. Fotiadis, *The Genocide of Greeks of Pontus* (2002–2006), 14 vols. For the impact on the Assyrian/Syrian population see D. Gaunt, *Massacres, Resistance, Protectors: Muslim-Christian Relations in Eastern Anatolia During World War I* (2006); Bloxham, *supra* note 49, at 97–99. See also Tachjian, *supra* note 82.

[137] See Akçam, *supra* note 53, at 346.

[138] Marashlian, *supra* note 70, at 113.

[139] Akçam, *supra* note 53, at 341.

secondary threat came into focus: the Kurds. Due to the limitations of this study, it may be sufficient to mention just one example of the mindset inherited from the genocidal period. Shortly after the suppression of the Kurdish uprising in the 1920s, Minister of Justice Mahmut Esas Bozkurt, stated, 'I believe that the Turk must be the only lord, the only master of this country. Those who are not of pure Turkish stock can have only one right in this country, the right to be servants and slaves.'[140]

8 Conclusion

The compact data presented show how the Republic retained the main essential Ottoman institutions, its administrative bodies, the army, and the main part of the political parties. That a revolution took place in the country does not constitute a change in identity, neither does the constitutional change from empire to republic, or territorial changes, in this case dissolution of the empire. Furthermore, it is suggested that the 'new' nationalist movement was rather the same 'old' Unionists who, having lost the war and their authority, simply renounced their affiliation to the old war crime burdened regime and regrouped their forces in order to continue the process of building a 'Turkey for Turks'.

Even if one were to question the continuity of state identity between the Empire and the Republic, the actions of the insurrectional Nationalist movement, which became the new state, establish a clear link to the predecessor, at least when the internationally wrongful acts pertaining to the massacres, deportations, and confiscations were considered. The Republic not only refrained from halting the CUP era massacres, the persecution of the Christian minorities, and the unlawful confiscation of their assets and properties, but it continued the same internationally wrongful acts, even expanding the massacres beyond its own borders into the Caucasus and the territories of the independent Republic of Armenia. The Republic of Turkey was competent to prosecute the war criminals for crimes committed on its own territory, but refrained from so doing. The new leadership protected individuals accused of war crimes and crimes against humanity and unlawful enrichment, later exonerating them and rewarding them with new positions within the Republic. The punishment of war criminals and the paying of reparations to victims who had lost their homes and properties in massacres, deportations, and confiscations were simply not an alternative, since the majority of the perpetrators and those who had unjustly enriched themselves by these very actions constituted the bulk of the Republic's government, administration, and army. Thus, applying the theoretical approach to state responsibility to the facts presented here, it is suggested that the ardent denialist policy of the Republic of Turkey is due to more than just a physiological barrier, but rooted in the pillars of the Republic

[140] Poulton, *supra* note 52, at 120. It must be remembered that this statement should be seen in the context of the racial views which dominated Europe during this period. Notwithstanding that, this is illustrative of the continuation of the same Unionist attitude and reasoning which resulted in the Armenian Genocide during World War I. Also see Bloxham, *supra* note 49, at 109. Another would be a remark on the Turkish–Greek population exchange. See Tachjian, *supra* note 82, at 1.

and the awareness of possible charges relating to an official recognition of the internationally wrongful acts, among others genocide, which were committed. By continuing the internationally wrongful acts of massacres as well as unlawful confiscations, the Republic of Turkey, from the perspective of the existing international law, made itself responsible not only for its own internationally wrongful acts committed against Armenians and other Christians minorities, but also for the same acts committed by its Ottoman predecessor during World War I.