

Shared Intent in a Collapsing Empire: Pan-Turkism as Mens Rea Evidence of Genocide against Distinct Populations in the Late Ottoman Period

*Michael J. Kelly**

Several mass atrocities were perpetrated by the government against distinct non-Muslim populations during the waning days of the Ottoman Empire. These occurred against the backdrop of Pan-Turkism – an aspect of the Young Turk Movement through the infamous Committee of Union and Progress, which began as a constitutional reform coalition seeking to curtail the absolute power of the sultan but progressively morphed into a replacement government stripped of its originally liberal democratic leanings. By promoting Turkishness over and above aities within the multi-ethnic empire, Pan-Turkism assumed many forms throughout this progression, including discrimination, persecution, exclusion, and ultimately, extermination. Which form it took depended on the context in which it was expressed (when, where, against whom, and by whom). This enquiry studies several instances of mass killings against non-Turks during the rise of the Young Turks and their consolidation of power within the collapsing Ottoman Empire to determine whether those atrocities qualify as genocide by in turn determining whether the associated expression of Pan-Turkism qualified as specific intent. In other words, can specific intent to commit genocide be inferred in the context of a movement that seeks to exclude rival populations?

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* Professor Kelly holds the Senator Allen A. Sekt Endowed Chair in Law at Creighton University School of Law. He is past president of the American national section and currently serves on the Board of Directors of *L'Association Internationale de Droit Pénal*, a Paris-based society of international criminal law scholars and jurists founded in 1924 that enjoys consultative status with the United Nations. This paper was presented at the International Conference on The Genocide of the Christian Populations of the Ottoman Empire and Its Aftermath (1908-1923) at Aristotle University in Thessaloniki, Greece, and benefited greatly from input and commentary by Professors Hannibal Travis and Kyriakos Chatzikyriakidis, Drs. Theodosios Kyriakidis, Mark A. Wolfgram, and Luca Castiglioni, and the research and editing efforts of Matthew Little – for which much appreciation is owed by the author.

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I. INTRODUCTION

Genocide was not recognized as an international crime until the Genocide Convention of 1948.¹ Nevertheless, the legal elements of this crime have been applied retrospectively, with varying results, to pre-1948 atrocities in order to determine whether those events qualified as genocide within the strict legal meaning of the term.² While the application of facts to determine *actus reus* elements are relatively straightforward, similar applications to determine the mental element, or *mens rea*, of the perpetrators are more nuanced and difficult to ascertain.

This study takes a comparative look into five well-documented mass killings of Christian populations from 1908-1923: the Adana Massacre (1909), the ethnic cleansing of Thracian Bulgarians (1913), the Greek Genocide (1914-1922), the Assyrian Genocide (1914-1920), and the Armenian Genocide (1915). In each instance, a key question is whether the contemporaneous expression of Pan-Turkism sufficed as an element of organized forethought to carry out

¹ Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277.

² See Gerard Mulligan, *Genocide in the Ancient World*, ANCIENT HIST. ENCYCLOPEDIA (Jan. 27, 2013), <https://www.ancient.eu/article/485/genocide-in-the-ancient-world/>; Ben Kiernan, *The First Genocide: Carthage, 146 B.C.*, 51 *DIOGENES* 27, 28 (2004); Lyman H. Legters, *The American Genocide*, 16 *POL'Y STUD. J.* 768 (1988); Hans van Wees, *Genocide in the Ancient World*, in *OXFORD HANDBOOK OF GENOCIDE STUDIES* 240, 244-45 (Donald Bloxham & A. Dirk Moses eds., 2010); Brenden Rensink, *Genocide of Native Americans: Historical Facts and Historiographic Debates*, in *GENOCIDE OF INDIGENOUS PEOPLES: A CRITICAL BIBLIOGRAPHIC REVIEW* 15, 15 (Samuel Totten & Robert K. Hitchcock eds., 2011); Dominik J. Schaller, *Genocide in Colonial South-West Africa: The German War Against the Herero and Nama 1904-1907*, in *GENOCIDE OF INDIGENOUS PEOPLES: A CRITICAL BIBLIOGRAPHIC REVIEW* 37, 37 (Samuel Totten & Robert K. Hitchcock eds., 2011); Andrew Woolford & Jasmine Thomas, *Genocide of the Canadian First Nations*, in *GENOCIDE OF INDIGENOUS PEOPLES: A CRITICAL BIBLIOGRAPHIC REVIEW* 61, 61 (Samuel Totten & Robert K. Hitchcock eds., 2011); Jenneke Arens, *Genocide in the Chittagong Hill Tracts, Bangladesh*, in *GENOCIDE OF INDIGENOUS PEOPLES: A CRITICAL BIBLIOGRAPHIC REVIEW* 117, 117 (Samuel Totten & Robert K. Hitchcock eds., 2011); Robert K. Hitchcock & Wayne A. Babchuck, *Genocide of the Khoekhoe and San Peoples of South Africa*, in *GENOCIDE OF INDIGENOUS PEOPLES: A CRITICAL BIBLIOGRAPHIC REVIEW* 143, 143 (Samuel Totten & Robert K. Hitchcock eds., 2011);

the atrocity such that it could provide a foundation for a finding of adequate *mens rea* to support a genocide charge.

As a movement, Pan-Turkism was in part a response to the 19th century advent of Pan-Slavism and Pan-Germanism – both of which collided in dramatic fashion within and around the confines of the Austro-Hungarian Empire and which lead to a significant degree to the outbreak of the First World War. Consequently, for the central tenets of this movement to evolve into a much more sinister mental commitment to commit genocide, it must be sufficiently coupled with a desire to eliminate entire populations based on race, ethnicity, nationality, or religion.

Although the International Criminal Tribunal for Rwanda's decision in the *Akayesu* case³ allows specific intent to commit genocide to be inferred from the surrounding facts,⁴ this allowance does not truly alleviate the necessity of proving the existence of a mental element altogether. In that case, Jean-Paul Akayesu was found guilty on nine counts of genocide for associated massacres in the Rwandan commune for which he served as mayor and in which he used his office to facilitate the commission of those atrocities. Whether the rationale of *Akayesu*, the ability to infer specific intent, can be extended to include the ability to infer specific intent from the existence of a movement that seeks to eliminate rival populations is examined here via the case studies of certain Christian populations in late Ottoman Empire.

II. SPECIFIC INTENT IN THE CONTEXT OF PAN-MOVEMENTS

Genocide was criminalized by the international community in the wake of the Holocaust.⁵ Prior to that, it was historically considered yet another tool of state power to be used to further state interests – typically in wartime.⁶ Indeed, it took a widespread and prolonged series of massacres and population exterminations like the Holocaust to shame the collective conscience of the world into action. Much evidence of this crime was presented during the Nuremberg prosecutions of Nazi leaders in 1945-46, but the crime itself did not

³ Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement, ¶ 729 (Sept. 2, 1998).

⁴ *Id.* ¶ 523.

⁵ Steven R. Ratner, *The Genocide Convention After Fifty Years: Contemporary Strategies for Combating a Crime Against Humanity*, in *Proceedings of the Annual Meeting*, 92 AM. SOC'Y INT'L L. 1, 1 (1998); see also Guénaél Mettraux, *INTERNATIONAL CRIMES: LAW AND PRACTICE*, VOL. I: GENOCIDE 16 (2019).

⁶ Michael J. Kelly, *Can Sovereigns Be Brought to Justice? The Crime of Genocide's Evolution and the Meaning of the Milosevic Trial*, 76 SAINT JOHN'S L. REV. 257, 260–66 (2002).

stand as a separate charge.⁷ In fact, both the term and the concept of genocide as a crime were relatively new in that period.⁸ After these prosecutions, however, the newly formed United Nations quickly passed a resolution decrying genocide,⁹ leading to a treaty in 1948 that made this atrocity a crime under international law and fully prosecutable.¹⁰ According to the treaty, genocide is:

[A]ny 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;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.¹¹

The intent referenced above in Article 2 is taken to mean “specific intent” to eliminate a population via one of the five methods indicated.¹² This requirement is quite a high hurdle for prosecutors to clear, as most perpetrators of genocide have not been meticulous in recording their specific intent in documentary form as the Nazis during World War II. Although the intent elements of other atrocities like war crimes and crimes against humanity also involve showings of *mens rea* elements ranging from knowledge

⁷ Henry T. King et al., *Origins of the Genocide Convention: From Nuremberg to Paris*, 40 CASE W. RESV. J. INT'L L. 13 (2007–08).

⁸ *Id.* at 13–15; see also Raphael Lemkin, *AXIS RULE IN OCCUPIED EUROPE: LAWS OF OCCUPATION, ANALYSIS OF GOVERNMENT, PROPOSALS FOR REDRESS* 79 (1944).

⁹ G.A. Res. 96 (I), (Dec. 11, 1946).

¹⁰ Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277. [hereinafter *Genocide Convention*].

¹¹ *Genocide Convention*, *supra* note 10.

¹² Alexander K.A. Greenawalt, *Rethinking Genocidal Intent: The Case for a Knowledge-Based Interpretation*, 99 COLUM. L. REV. 2259, 2264 (1999).

to intent, they do not rise to the level of showing specific intent.¹³ Indeed, while crimes against humanity and genocide are sometimes conflated, a deeper consideration demonstrates that this is not the case.

The concept of genocide grew in part out of the Nuremberg Charter's¹⁴ definition of the crime against humanity of 'persecutions on political, religious, or racial grounds.'¹⁵ Accordingly, from its genesis, genocide can be viewed as a special type of crime against humanity. Particularly now that the definition of crimes against humanity has been defined to include acts committed during peacetime or in completely internal conflicts, "it is virtually certain that any act of genocide will also constitute a crime against humanity."¹⁶ However, "despite inevitable similarities, it is equally clear that genocide is a special crime":

As the International Criminal Tribunal for Rwanda (ICTR) noted in its *Akayesu* judgment, genocide and crimes against humanity 'have different elements, and, moreover, are intended to protect different interests. The crime of genocide exists to protect certain groups from extermination or attempted extermination. The concept of crimes against humanity exists to protect civilian populations from persecution.' It is the threat to group survival, then, that distinguishes genocidal liability....¹⁷

Specific intent is required for genocide to exist and must be possessed by those committing the genocidal acts. Accomplice liability or complicity liability, however – two distinct crimes with two distinct *mens rea* standards that are

¹³ Sarah Finnin, *Mental Elements Under Article 30 of the Rome Statute of the International Criminal Court: A Comparative Analysis*, 61 INT'L & COMPAR. L. Q. 325, 357 (2012).

¹⁴ Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis art. 6, Aug. 8, 1945, 82 U.N.T.C. 280.

¹⁵ William A. Schabas, *Origins of the Genocide Convention: From Nuremberg to Paris*, 40 CASE W. RESV. J. INT'L L. 35, 35–37 (2007). For more discussion on the conceptual development of crimes against humanity by Hersh Lauterpacht, who succeeded in having it included as a separate chargeable offense in the Nuremberg Charter but not as the object of a multilateral treaty, and the similar development of genocide by Rafael Lemkin, who did not succeed in having it included in the Nuremberg Charter but did as an object of a multilateral treaty, see PHILIPPE SANDS, *EAST WEST STREET: ON THE ORIGINS OF "GENOCIDE" AND "CRIMES AGAINST HUMANITY"* (2017).

¹⁶ JEREMY SARKIN, *COLONIAL GENOCIDE AND REPARATIONS CLAIMS IN THE 21ST CENTURY: THE SOCIO-LEGAL CONTEXT OF CLAIMS UNDER INTERNATIONAL LAW BY THE HERERO AGAINST GERMANY FOR GENOCIDE IN NAMIBIA, 1904-1908* 105 (2008) (quoting Greenawalt, *supra* note 12, at 2293).

¹⁷ Greenawalt, *supra* note 12, at 2293 (quoting Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement, ¶ 469 (Int'l Crim. Trib. Rwanda Sept. 2, 1998) (footnote omitted)).

nevertheless also often conflated – were designed to capture those perpetrators, often in authority, who direct the killings but do not participate in them physically.¹⁸

“[A] perpetrator can be convicted of ‘complicity in genocide’ merely if he knew or had reason to know that the principal was acting with genocidal intent, whereas a conviction for ‘aiding and abetting’ the crime of genocide requires proof of specific genocidal intent....”¹⁹

Moreover, defendants facing genocide charges may attempt to defeat the intent element by arguing plausible alternate intents.²⁰ At the time of the atrocity, this argument can amount to a rationale for their actions. For example, in the case of the destruction of the Ottoman Armenians, the Turkish perpetrators

¹⁸ See Daniel M. Greenfield, *The Crime of Complicity in Genocide: How the International Criminal Tribunals for Rwanda and Yugoslavia Got It Wrong, and Why It Matters*, 98 J. CRIM. L. AND CRIMINOLOGY 926–927 (2008) (citing William A. Schabas, *Enforcing International Humanitarian Law: Catching the Accomplices*, 83 INT’L REV. RED CROSS 439, 442–446 (2001); Prosecutor v. Tadić, Case No. IT-94-1-A, Judgment, ¶ 191 (Int’l Crim. Trib. for the Former Yugoslavia July 15, 1999). Since the Nuremberg Trials, international criminal efforts have frequently focused as much on those in leadership positions, such as Hermann Goring or Julius Streicher who are, technically speaking, just accomplices, as on the physical perpetrators - those who perform the actual action that results in death or injury to the victim. As the ICTY Appeals Chamber suggested in reference to this distinction:

Although only some members of the group may physically perpetrate the criminal act (murder, extermination, wanton destruction of cities, towns or villages, etc.), the participation and contribution of the other members of the group is often vital in facilitating the commission of the offence in question. It follows that the moral gravity of such participation is often no less – or indeed no different – from that of those actually carrying out the acts in question.

WILLIAM A. SCHABAS, *GENOCIDE IN INTERNATIONAL LAW: THE CRIME OF CRIMES*, 340 (2009) (quoting *Tadić*, Case No. IT-94-1-A, Judgment, ¶ 191) (footnote omitted).

Indeed, according to Professor Schabas: “Complicity is sometimes described as secondary participation, but, when applied to genocide, there is nothing ‘secondary’ about it. The ‘accomplice’ is often the real villain, and the ‘principal offender’ a small cog in the machine. Hitler did not, apparently, physically murder or brutalize anybody; technically, some might describe him as ‘only’ an accomplice to the crime of genocide.” *Id.*

Nevertheless, Hitler was in every sense the person most responsible for the Holocaust. Therefore, the drafters of the Genocide Convention recognized that it was essential to include “a provision authorizing prosecution for complicity” in order to capture “those who organize, direct or otherwise encourage genocide but who never actually wield machine guns or machetes.” *Id.* at 340–341.

¹⁹ Greenfield, *supra* note 17, at 928 n.28 (citing *Akayesu*, Case No. ICTR-96-4-T at ¶485; Larissa Van Den Herik & Elies Van Sliedregt, *Ten Years Later, the Rwanda Tribunal Still Faces Legal Complexities: Some Comments on the Vagueness of the Indictment, Complicity in Genocide, and the Nexus Requirement for War Crimes*, 17 LEIDEN J. INT’L L. 537, 545 (2004)).

²⁰ Michael J. Kelly, *The Tricky Nature of Proving Genocide Against Saddam Hussein Before the Iraqi Special Tribunal*, 38 CORNELL INT’L L.J. 983, 1007 (2005).

argued the military necessity for wartime mass population transfer. And until more and more atrocious field reports flooded into the West, many were willing to believe this argument even if they disagreed with the execution of the policy. In a 1916 letter to U.S. President Woodrow Wilson, Secretary of State Robert Lansing notes:

The mere fact of the deportation of civilians from a particular region by military authorities is not, in my opinion, reprehensible. There may be ample justification for such action because of military necessity. . . .

In the case of the Armenians, I could see that their well-known disloyalty to the Ottoman Government and the fact that the territory which they inhabited was within the zone of military operations constituted grounds more or less justifiable for compelling them to depart from their homes. It was not to my mind the deportation which was objectionable but the horrible brutality which attended its execution. It is one of the blackest pages in the history of this war²¹

What the *Akayesu* case, discussed later in Section II.D, allows one to do, however, is turn to the facts of the case, including the existence of government policies such as Pan-Turkism, to rebut such alternate intent arguments.

A. *The Nature of Pan-Movements*

Pan-movements can exist within nationalist movements, but they are not necessarily coterminous. They can also erupt during points in time when new components are fused with underlying nationalist movements, but again, this conclusion is not foregone. Nationalist movements during the late 19th and early 20th centuries took on both consolidationist and expansionist orthodoxies, depending upon their individual context. Compare the historic examples of Italy, Germany, and Spain.

The Italian Risorgimento, which began at the Congress of Vienna in 1815 and culminated in 1871 with the final unification of Italian states into a single kingdom with its capital in Rome, was a consolidationist nationalist movement. It was not until the 1920's era dictatorship of Benito Mussolini that fascist ideology was grafted onto Italian nationalism, yielding an expansionist philosophy – although not one that was considered Pan-Italian.

²¹ Robert Lansing, *Letter to President Wilson (Nov. 21, 1916)*, in 1 FOREIGN RELATIONS OF THE UNITED STATES: THE LANSING PAPERS, 1914–1920 42 (1939).



Figure 1: Italian Unification 1859-70, map available at Pearson Education, Inc.²²

Similarly, the 19th Century nationalist movement driving the unification of German states that began under Bismarck was completed after the defeat of France in the Franco-Prussian War in 1871, where it was (ironically) proclaimed in the Hall of Mirrors at the Palace of Versailles outside Paris. Thus, Germany was consolidated into a large, basically homogenic nation-state. The expansionist form of Pan-Germanism did not arise until many years after this consolidation took place. Lebensraum, or “living space” for the German people, conceptually took hold in the late 19th century and was given expression as an official policy goal of Imperial Germany by Chancellor Theobald von Bethmann-Hollweg (1909-1917). After their defeat in World War I, German nationalism, as such, became dormant until Hitler’s rise to power in the 1930’s.

²² *The Unification of Italy, 1859-1870*, PEARSON EDUCATION, INC., http://wps.pearsoncustom.com/wps/media/objects/2426/2484749/chap_assets/maps/at1_map21_15.html (last visited Oct. 19, 2020).



Figure 2: German Unification 1866-1871, available at Pearson Education, Inc.²³

Although it had survived largely intact, unlike the Austro-Hungarian and Ottoman Empires, the Germany that emerged from the First World War did so in somewhat truncated form from the vast central European version that existed prior to 1919. Adolf Hitler embraced this loss of territory, used it to nurse mass resentment in the psyche of the German people, and combined that with their collective memory of Lebensraum. Like Mussolini, Hitler grafted fascism onto the newly resurgent German nationalism he had stoked, but from the start, expansionism and Pan-Germanism were key elements of this notion.

²³ *The Unification of Germany, 1866-1871*, PEARSON EDUCATION, INC., https://wpscms.pearsoncmg.com/wps/media/objects/1748/1790587/chap_assets/maps/atl_map21_14.html (last visited Oct. 19, 2020).

In Spain, Franco's nationalists prevailed in the Spanish Civil War of the 1930's, providing a solid base for Spanish fascism to thrive, however, most of Franco's energies thereafter were directed at consolidation of power and repression of opposition. No real expansionist policy emerged in Spain during this period apart from continuing to secure the Spanish Sahara and arguing with the British over Gibraltar.²⁴ Moreover, despite particularly vicious attacks such as the indiscriminate bombing of the Basque town of Guernica, non-Castilian populations in Catalonia and the Basque Country were not targeted for expulsion or extermination as such but rather repression and incorporation or assimilation.²⁵ For the most extreme form of consolidation in Spain, one would have to look to the 15th Century during the final phases of the *Reconquista* to observe the elimination of the Muslim population on the Iberian peninsula by Christian forces – a feat that took no fewer than 781 years.²⁶

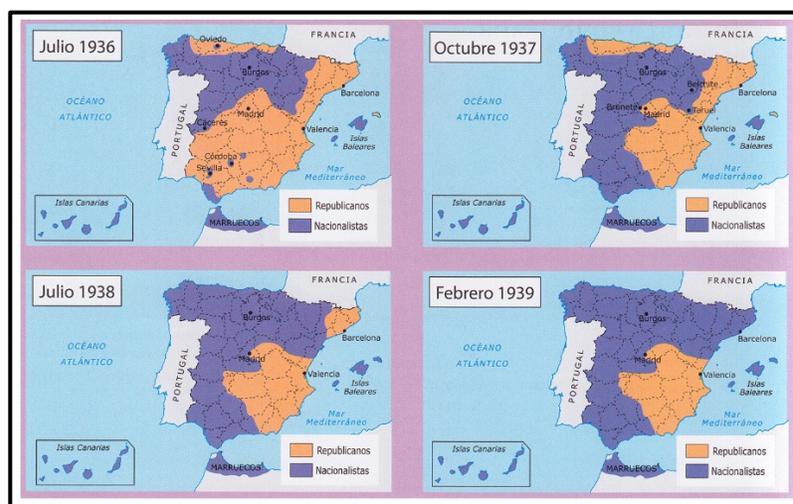


Figure 3: Consolidation of Iberian Spain by Franco's Nationalist Forces 1936-1939²⁷

²⁴ WILLIAM G.F. JACKSON, *THE ROCK OF THE GIBRALTARIANS: A HISTORY OF GIBRALTAR 300–316* (1986); Thomas A. Marks, *Spanish Sahara – Background to Conflict*, 75 *AFRICAN AFF.* 3 (1975).

²⁵ Stanley Payne, *Catalan and Basque Nationalism*, 6 *J. CONTEMP. HIST.* 15, 49 (1971).

²⁶ MATTHEW CARR, *THE PURGING OF MUSLIM SPAIN* (2009).

²⁷ FASES DA GUERRA CIVIL, <https://sites.google.com/site/pasandootempo/cursos/5-historia-de-espana-20-bach/tema-3-segunda-republica-e-guerra-civil/2-guerra-civil-1936-1939/3--fases-da-guerra-civil> (last visited Oct. 19, 2020).

Consequently, pan-movements, whether consolidationist or expansionist or blended, *can* incorporate elimination policies for ethnically distinct rival populations but do not necessarily need to. For example, the Italian and Spanish versions discussed above did not. Nor did the German consolidationist movement of the Bismark era, however the German expansionist movement of the Hitler era specifically did include elimination policy. As we compare the pan-movements below, we look especially to how those elimination policies are (1) expressed and (2) implemented to determine whether genocidal intent can be demonstrated. In the case of greater Germany in the Hitler era, this intent is a positive policy expression (geographic exclusion specifically via organized mass murder). In the cases of greater Serbia and greater Turkey, it is more of a negative policy expression (geographic exclusion via any means possible).

B. Pan-Turkism

Pan-Turkism emerged as an intellectual movement in the late 19th century Ottoman and Russian empires, simultaneous with the union of Germanic peoples into modern Germany and Italian peoples into modern Italy, as a similarly unifying philosophy. The aim was cultural and political union of all Turkic peoples across Eurasia and the Middle East, using language and religion as key ethnic identifiers.²⁸

In 1904, a former soldier of Tatar origin turned Turkish intellectual named Yusuf Akçura, posited the choices that were before the Ottoman government with respect to key policy organizing principles. From among the options of Pan-Ottomanism, Pan-Islamism, and Pan-Turkism, he argued that Pan-Turkism offered the clearest and most reliable path forward as a means “to pursue a Turkish nationalism based on race.”²⁹ Although he favored a secular state, because Akçura feared Islamism might hamper the nationalist advancement he sought, his philosophy came to influence the Young Turk movement – which was at that time reformist only. Indeed, many question how the CUP, that evolved as the dominant political expression of the Young Turks, could be turned from the inclusive, liberal, and progressive political body that it was in 1908, to the nationalist proponent of eliminationalist Pan-Turkism that committed so many atrocities against Christian minorities only a short time later.³⁰

²⁸ See JACOB M. LANDAU, PAN-TURKISM: FROM IRREDENTISM TO COOPERATION (1995).

²⁹ Yusuf Akçura, *Three Types of Policy*, in DISCOURSES OF COLLECTIVE IDENTITY IN CENTRAL AND SOUTHEAST EUROPE (1770-1943), VOL. III, MODERNISM: THE CREATION OF NATION-STATES 218 (Ahmet Ersoy, Maciej Górný, Vangelis Kechriotis eds., 2010).

Several historical forces were at work during the turn of the century that vaulted this once-fringe idea into actual state policy. First, the official policy of the Ottoman Empire of unifying ethnically diverse peoples into a single polity under the Sultan was breaking down rapidly. Just as the extensive colonial systems of Britain, France, Portugal and Spain were experiencing the strain of governing multi-ethnic populations seeking further autonomy, so to the Ottoman Empire struggled to peacefully keep Arabs, Kurds, and Jews to the south within the same political unit as Greeks and Balkan peoples to the North and Armenians and Persians to the West. In this respect, the Austro-Hungarian empire experienced similar multi-ethnically driven strains against continued control from Vienna.

Second, political instability led to an overthrow in 1908 by the Young Turks, who eventually succeeded to relegating the Sultan to a symbolic figurehead and re-invigorating parliament with a multi-party political system under the restored 1876 constitution. Fracturing the political system in this way, which created space for the proliferation of parties, allowed Pan-Turkism to anchor itself into mainstream politics much as National Socialism was able to do in the multi-party system of Weimar Germany twenty years later. The Committee of Union and Progress (CUP) would come to be taken over from within by Pan-Turkism proponents who then succeeded in bringing about this policy.

Third, the Ottoman Empire was contracting. By 1900, Bulgaria and Montenegro had been lost in the North and Bosnia was under Austrian occupation, Tunisia had been lost to the East, Egypt was under British occupation, and Cyprus had been lost to the South. Libya and Rhodes were lost after the failed Italo-Turkish War of 1911, and the rest of the Balkans including Greece, Macedonia, Serbia and Albania were lost after the two successive Balkan Wars of 1912 and 1913. Thus, not only had the empire reached a state of collapse from within but geographically as well.

³⁰ Erik-Jan Zürcher, *The Young Turk Attitude Toward the Ottoman Minorities: An Offer of Conditional Equality*, in *Ο ΠΟΝΤΟΣ ΣΤΗΝ ΎΣΤΕΡΗ ΟΘΩΜΑΝΙΚΗ ΑΥΤΟΚΡΑΤΟΡΙΑ (1774-1908)* 32 (2018).

The usual answer to this question is to say that indeed the Young Turks turned from liberal Ottomanism to Islamism, and ultimately to Turkish Nationalism, as they grew disenchanted with the reactions of the non-Muslim, and later on also the Muslim but not Turkish, communities in the Empire like the Albanians and Arabs. In other words, that was a narrowing of the options; that they felt that pretty soon it was clear that Ottomanism would not work, because non-Muslim communities were not fundamentally subscribing to that, and then that the disaffection of the Albanians and Arabs showed that Islamism would not work either, so that Turkism remained the only option. *Id.* at 33.



Figure 4: Geographic Contraction of the Ottoman Empire³¹

Consequently, something of a perfect storm allowed Pan-Turkism to anchor itself as an organizing philosophy leading to genocidal policy. Not only was it offered as a political vehicle to enter the mainstream by the Young Turk Revolution, the actual shrinkage of the empire back to its mainly Turkish core established both a common sense argument for the popular embrace of this “Turks only” mindset but also fired the survivalist aspect of it that could then be used to rationalize the atrocities that would follow.

While the CUP originated as a reformist party seeking to stabilize the Ottoman Empire as it was buffeted by the forces discussed above, Pan-Turkism supplanted that reformist agenda with a nationalist agenda. The exclusionary aspect of Pan-Turkism, intolerant of non-Turks, thereby offered a permanent solution to a seemingly intractable security problem. But how did the once liberal democratic movement of Young Turks turn so quickly to and so harshly to this attractive policy? The U.S. Ambassador to Turkey, Henry Morgenthau summarized that descent this way:

As far back as 1908 I remember reading news of Turkey that appealed strongly to my democratic sympathies. These reports informed me that a body of young revolutionists had swept from the mountains of Macedonia, had marched upon

³¹ A. R. Momin, *Muslims in Greece*, THE IOS MINARET (Apr. 16, 2013), https://www.iosminaret.org/vol-7/issue23/Muslims_in_Greece.php.

Constantinople, had deposed the bloody Sultan, Abdul Hamid, and had established a constitutional system. Turkey, these glowing newspaper stories told us, had become a democracy, with a parliament, a responsible ministry, universal suffrage, equality of all citizens before the law, freedom of speech and of the press, and all the other essentials of a free, liberty-loving commonwealth....

Such had been the promise; but, by the time I reached Constantinople in 1913, many changes had taken place. Austria had annexed two Turkish provinces, Bosnia and Herzegovina; Italy had wrenched away Tripoli; Turkey had fought a disastrous war with the Balkan states, and has lost all her territories in Europe except Constantinople and a small hinterland. The aims for the regeneration of Turkey that had inspired the revolution had evidently miscarried, and I soon discovered that four years of so-called democratic rule had ended with the nation more degraded, more impoverished, and more dismembered than ever before. Indeed, long before I had arrived, this attempt to establish a Turkish democracy had failed....

[With respect to] the Young Turks, there is no question that, at the beginning, they were sincere. In a speech in Liberty Square, Saloniki, in July 1908, Enver Pasha, . . . had eloquently declared that, 'To-day arbitrary government has disappeared. We are all brothers. There are no longer in Turkey Bulgarians, Greeks, Servians, Rumanians, Musselmans, Jews. Under the same blue sky we are all proud to be Ottomans.' That statement represented the Young Turk ideal for the new Turkish state, but it was an ideal which it was evidently beyond their ability to translate into a reality.

The races which had been maltreated and massacred for centuries by the Turks could not transform themselves overnight into brothers, and the hatreds, jealousies, and religious prejudices of the past still divided Turkey into a medley of warring clans. Above all, the destructive wars and the loss of great sections of the Turkish Empire had destroyed the prestige of the new democracy.... Thus, the Young Turks had disappeared as a positive regenerating force, but they still existed as a political machine. Their leaders, Talaat, Enver, and Djemal, had long since abandoned any expectation of reforming their state, but they had developed an insatiable lust

for personal power.... A more bewildering fall from the highest idealism to the crassest materialism could not be imagined.³²

Pan-Turkism was the unifying ideology that the CUP adopted to organize the state. Much like the dual-option approach (assimilation or exclusion) adopted in 19th century North America with respect to Washington D.C.'s treatment of Native Americans, the choice of what to do with non-Turks in a society dominated by Pan-Turkism thinking was to "Turkify" the non-Turk population if they were Muslims or push them out if they were not Muslim. Thus, religion was the key to whether a group would be assimilated or expelled. Non-Turk Muslims, such as Kurds and Arabs, were thought to have been absorbed once they were Turkified. Non-Turk non-Muslims, such as Christian Greeks and Armenians, were killed or deported.

The map below depicts the degree to which Greeks and Armenians were pushed out of Anatolia under Pan-Turkism policies; thus, clearing the way for the founding of the modern Turkish state.

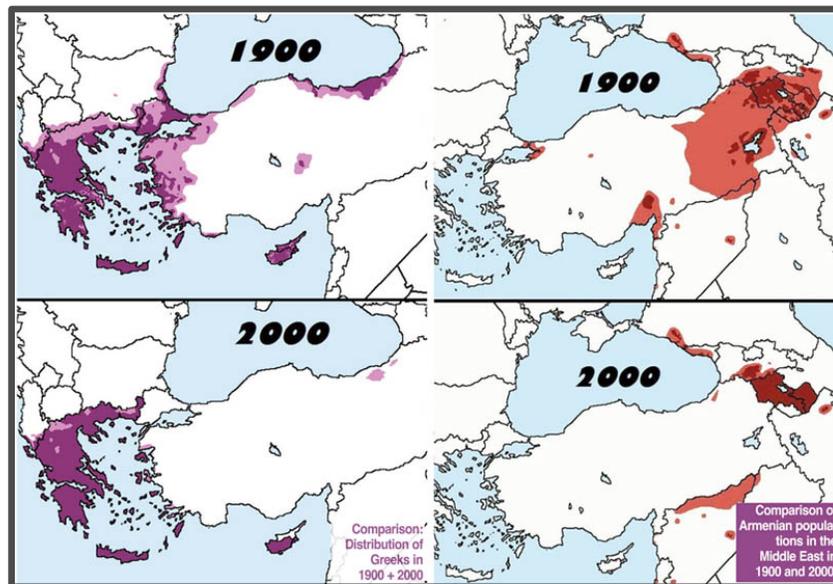


Figure 5: Depopulation of Greeks and Armenians from Anatolia³³

³² HENRY MORGENTHAU, AMBASSADOR MORGENTHAU'S STORY 11–14 (1919).

³³ GMGadmin, *The Hard Truths about Turkey's Continued Denial and Lies*, GREEK MEDIA GROUP (2019), <https://www.greekmediagroup.com.au/the-hard-truths-about-turkeys-continued-denial-and-lies/>.

C. Comparative Ethnic Cleansing Pan-Movements

Among the 20th Century's three major pan-movements containing significant ethnic cleansing policies, Pan-Turkism was like the Hitler-era Pan-Germanism and the Milosevic-era Pan-Serbism movements that followed in that Pan-Turkism was exclusionary in principle and intolerant of competing racial, ethnic, or national identities. Of the two that followed, however, Pan-Turkism was unlike both Pan-Germanism or Pan-Serbism in that it was distinctly consolidationist, not expansionist.

With respect to how the ethnic cleansing policy was operationalized, Pan-Turkism tended to look more like Pan-Serbism—characterized by forced mass deportations with occasional mass murders. In both instances, individual commanders on the ground held great sway in which choices were made with respect to dealing with non-Turk or non-Serb populations. Thus, there was widespread inconsistency in application across the board.

Conversely, in the case of Pan-Germanism, mass deportations from the Reich were quickly followed by mass exterminations in Nazi-held areas. German commanders in the field did not have great leeway to determine the fate of non-German and especially Jewish populations. The Gestapo and the SS enforced these policies rigorously. A large degree of consistency was achieved in the elimination of non-German peoples in the expanding Reich.

Consequently, while the Third Reich's Pan-Germanism policy operated as a "positive policy" of elimination, namely mass extermination ultimately expressed in the Final Solution, the Ottoman Empire's Pan-Turkism policy under the Young Turks and the Serbian government's Pan-Serbism policy under Milosevic operated more as "negative policies" of expulsion with occasional instances of elimination.

Sometimes, one of these occasions of elimination may achieve the status of a "genocidal moment" within a larger conflict. The International Criminal Tribunal for the Former Yugoslavia (ICTY) found the massacre of Bosnian Muslim men and boys in Srebrenica by Bosnian Serb forces under the command of General Ratko Mladic, who was bringing about Pan-Serbism policy, to be one such "genocidal moment." While Pan-Serbism itself may not have been a genocidal policy as such, the massacre at Srebrenica was a genocidal moment that would not have been carried out but for the existence of the underlying policy. Which raises the question of whether enough such genocidal moments may actually transform what begins as a non-genocidal

policy into an actual genocidal policy? The answer to that question is probably affirmative if that new genocidal policy is tolerated and then embraced.

Pan-Turkism, however, was even more diffuse as operationalized by individual field commanders. For example, if there are three Turkish commanders charged by the CUP with bringing Pan-Turkism to reality with respect to three distinct populations, three different results could likely occur. Population #1 may be composed of non-Turk Christians, Population #2 may be composed of non-Turk Jews, and Population #3 may be composed of both non-Turk Muslims and non-Turk Christians. The commander dealing with Population #1 may decide to send them away and the method he selects is to assemble them for transfer and march them into the desert with no food or water toward an impossibly distant destination that may not even exist. This case is genocide. The commander dealing with Population #2 may also decide to send his group away, but with food, water, medicine, and payment for their transport to a secure destination. This case is not genocide. The commander dealing with Population #3 may decide to assimilate the non-Turk Muslims because of their shared religion, beginning the process of Turkifying them, and to eliminate the non-Turk Christians by mass murder. This case is partial genocide.

The above scenario illustrates the inconsistent results of bringing about Pan-Turkism. It is not meant to diminish the terrible atrocities visited upon such peoples but only to highlight the way the policy was carried out. Below, we examine five mass murders carried out in the late Ottoman period against the ethnically and religiously distinct populations of Pontic Greeks, Assyrians, Armenians, Thracian Bulgarians, and the Adana massacre.

D. The Akayesu Case

Having emerged as one of the leading cases to offer serviceable guideposts in the determination of *dolus specialis*, specific intent, for a genocide charge, the Trial Chamber of International Criminal Tribunal for Rwanda (ICTR) in *Akayesu* offered a list of factors to be considered when inferring the requisite specific intent from the facts of a case:

[I]t is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and

systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular act.³⁴

The ICTR in *Akayesu* based its inference of genocidal intent on the general context of the perpetration of other culpable acts directed at the same group, whether they were committed by the accused or other persons, the scale of atrocities and their geographic extent, and the systematic and deliberate targeting of victims based on their membership in the group while excluding members of other groups.³⁵ The Chamber also relied on findings by the International Criminal Tribunal for the former Yugoslavia (ICTY) that genocidal intent may be inferred from the general political doctrine giving rise to the acts, or from acts that the perpetrators believe violate the foundation of the group.³⁶ Furthermore, killing children of a group is evidence of a desire to destroy that group,³⁷ and the existence of a state of war between two peoples is not an extenuating circumstance.³⁸

The factor of targeting victims based on their membership in the group while excluding persons of other groups does not actually require that members of other groups be excluded as victims entirely. Thus, the intent element with respect to this factor is a fairly durable one. In Paragraph 16 of the Indictment, Jean Paul Akayesu, a Hutu, was charged with detaining and threatening to kill victim U, a Tutsi woman, and beating and threatening to kill victim V, a Hutu man.³⁹ The Chamber found these allegations well proven but noted the actions against Victim V could not be used to support a conviction for genocide against the Tustis, because he was a Hutu.⁴⁰ While Victim V was targeted for victimization, Akayesu's inferred genocidal intent was not diminished by Victim V's status as a Hutu. Victim V was not targeted because of his ethnicity but because he was suspected of harboring a Tusti woman Akayesu was hunting. Thus, targeting members of other groups for reasons other than their ethnicity does not undermine an inference of genocidal intent.

Methodologically, the *Akayesu* Chamber first considered whether genocide was committed in Rwanda before considering Akayesu's participation. The

³⁴ Prosecutor v. Jean-Paul Akayesu, *supra* note 3, at ¶ 523.

³⁵ *Id.*

³⁶ *Id.* at ¶ 524.

³⁷ *Id.* at ¶ 125.

³⁸ *Id.* at ¶ 128.

³⁹ *Id.* at ¶ 386–387, 395.

⁴⁰ *Id.* at ¶ 711–712.

Chamber based their determination that a genocide took place not only on testimony about the killings and other *actus rei* for genocide, but also from the public statements from leaders of the Hutus and the media.⁴¹ The genocidal intent of the group, demonstrated by their speech and conduct, is therefore a necessary step in holding an individual criminally responsible for genocide.

Evidence of how a genocidal policy is conveyed may be gleaned from multiple sources. When considering the atrocities committed against the five groups examined below, multiple witness accounts of the massacres and deportations by foreign dignitaries as well as multiple press accounts published in Western newspapers were available at the time and would have been grouped together under this factor to infer the requisite intent for genocide. Whether those accounts would locate the nadir of this intent in the actual policy of Pan-Turkism is an open question.

For purposes of this enquiry into the atrocities of the late Ottoman period, the question is whether that specific genocidal intent can be shown to sufficiently lurk within pan-movements like Pan-Turkism such that the shared intent inherent in the policy can be used as a basis to demonstrate the required mens rea element to prove that those atrocities were indeed genocide. Or, rather, is Pan-Turkism itself one of the Akayesu factors to be considered under this test? If that is the case, then it would be a combination of the first and fifth factors. The Akayesu allowance of factual inference is extremely helpful, but the factors listed above must be applied coherently to yield the correct answer to this question. Not surprisingly, this enquiry is complex.

III. MASSACRES OF CHRISTIAN POPULATIONS IN THE LATE OTTOMAN EMPIRE

The five instances of population massacre considered here involved Christian populations living within the Ottoman Empire in the early Twentieth Century. Some of these populations had existed and thrived in these areas of Ottoman control for hundreds of years. What changed? The advent of pan-Turkism, connected with the rise of the Young Turks as a political movement within the Ottoman Empire, is the key differentiating factor in determining how the treatment of these groups suddenly changed.

A. Adana Massacre (1909)

Uniquely among the cases of atrocity discussed here, the Adana massacre occurred between two regimes as the government of the Ottoman Empire shifted with the revolution of the Young Turks, the counter-revolution of the

⁴¹ *Id.* at ¶ 168, 173.

ousted Sultan Abdul Hamid II, and then the restoration of the Young Turks. Hamid was a political conservative who had betrayed an earlier political accommodation with the pre-cursors to the Young Turks struck in 1876 that promulgated both a constitution and a parliament by suspending both in 1878 and reasserting his dictatorial powers. Armenian populations were among the more vocal critics of this turn of events and in response Hamid armed Kurds and other militia to direct attacks and raids against them through the remainder of his sultanate.

It was in this context that the Armenians welcomed the Young Turk Revolution in 1908 that seized power from Hamid. The Young Turk Revolution restored the Constitution of 1876, including equalizing legal status between Muslims and non-Muslims. Armenians in Adana exercised these new political rights, including a right to purchase arms.⁴² They paid the price, however, for this support upon Hamid's brief return to power in April, 1909. The Sultan consolidated his base after deposing the secular Young Turks by appealing to Islamist thought such as implementation of Islamic law and establishment of a Pan-Islamic Caliphate. While the religious intolerance of the Sultan was motivationally different from the nationalist intolerance that later came to characterize the CUP, the effect was the same: suspicion-driven expulsion or elimination of non-Turk non-Muslims.

The Christian Armenians of Adana were suspected by Muslim hard-liners of plotting an insurrection to bring down the newly restored Sultan, which resulted in the formation of a Muslim mob on April 14 that began skirmishing with the Armenians. These incidents led to rioting that in turn led to burning down Armenian neighborhoods and schools and eventually mass murder. By April 27 the counter-coup had been suppressed and the Sultan replaced with his brother, Mehmed V. On May 3, Ottoman soldiers were deployed to keep the peace but stood by as the massacres ensued and spread to neighboring villages. In fact some soldiers reportedly threw kerosene on already burning buildings disguising their actions as a firefighting operations.⁴³ The local governor did not take an active role in the conflict, either by supporting one side or working to quell the violence.⁴⁴ He did, however, supply arms to people claiming to be soldiers without any official command structure.⁴⁵

Thus, at a minimum, the government's inaction exacerbated the situation and drove casualties even higher. Official Ottoman counts downplayed

⁴² *Days of Horror Described*, N.Y. TIMES, Apr. 28, 1909, at 3.

⁴³ *Massacres Continue Adana Terrorized*, N.Y. TIMES, May 5, 1909, at 4.

⁴⁴ H. CHARLES WOODS, *THE DANGER ZONE OF EUROPE* 138 (1911).

⁴⁵ *The Massacre of Christians at Adana*, N.Y. TIMES, July 11, 1909, at 33.

Christian casualties but nevertheless recorded 2,739 Christian deaths and 782 Muslim deaths. Estimates by foreign dignitaries and press witnessing the carnage put Christian deaths more in the range of 15-20,000.

Targeted because of their nationality and religion, it remains unclear whether, with respect to the intent element of this atrocity, the victims of the Adana massacre were murdered as an extension of the Islamist ideology promoted by the Sultan, as a protective measure to ensure against an insurrection to bring down the counter-revolution, or, at least on the part of local Muslims, as a way to capture their relatively disproportionate wealth. Were the Armenians of Adana killed because they were Armenians? The relevant intent must be “to destroy in whole or in part the group as such.”

Destruction of the group was the aim. Thus, regardless of motive, the intent can likely be inferred from the surrounding facts to support a charge of genocide for the Adana massacre. Pan-Turkism, however, played no role in this atrocity, as it was not a policy being espoused by the government at the time of the atrocity. In any case, even if the policy was in effect, the version of Pan-Turkism that was being espoused was subordinate to the reformist elements of the CUP – nationalists had not seized control from within yet.

This conclusion is supported by the actions of the Young Turk government upon its restoration. Trials in July of 1909 of over 100 Turks for their roles in instigating the violence in and around Adana, as well as compensation given to the Armenian victims could indicate that at this point in time, the Young Turk leadership were still attempting to find a way for peaceful coexistence between Turks and non-Turks in a larger Ottoman identity, even if the lower levels of the government and the military did not appear to have shared this goal.⁴⁶

The violence in Adana, while sparked by the same reactionary sentiment as the counter-coup, likely was not connected with the counter-coup. Not only did the violence commence close enough in time that news of events in Constantinople to reach Adana, or vice versa. The Young Turks did not reveal any evidence placing blame on the ex-sultan and his supporters for the violence but instead punished their own local leadership, albeit lightly.⁴⁷ It appears instead the two events were simply both reflections of the displeasure some Muslims had for the new order. Any group genocidal intent would therefore

⁴⁶ *Sincerity of the Young Turks*, N.Y. TIMES, July 29, 1909, at 6.

⁴⁷ WOODS, *supra* note 44.

have to be closely confided to the residents of Adana, not a larger Turkish nationalism.

B. Destruction of Thracian Bulgarians (1913)

The massacre and displacement of Thracian Bulgarians in 1913 took place as part of the Second Balkan War. The First Balkan War began shortly after the Albanian revolt of 1912 and the Italian invasion of Tripolitania, modern day Libya, both of which graphically demonstrated Ottoman military weakness. Greece, Serbia, Montenegro and Bulgaria formed the Balkan League to drive the Ottomans out of their remaining European holdings. Between poor Ottoman transportation lines, continuing conflict with Italy, rebellion in Yemen, and an unwillingness to conscript Christian majorities into military service in Ottoman Europe, the Balkan League was quickly victorious, resulting in the Treaty of London on May 30, 1913.

The Balkan states, however, were unable to agree on how the territory they won should be divided. The Great Powers that mediated the Treaty of London required that an independent Albanian state be created. This requirement was not a part of antebellum agreements on the division of territory. Serbia demanded a larger share of Macedonia, such that their territorial gains would be more in line with their participation in the war. That dispute sparked the Second Balkan War on June 29, 1913 between Bulgaria and the other states of the Balkan League.

With the bulk of Bulgarian forces fighting on the borders with Serbia and Greece, their border with the Ottoman Empire was only weakly defended. The Ottomans seized this opportunity to reclaim territory lost in the first war.⁴⁸ During the Ottoman offensive, express orders were given to soldiers to burn villages, then to kill first the men, followed by the women of the villages.⁴⁹ Further awareness of the unlawfulness of the Turkish activity is demonstrated by reports that the local governor demanded Greeks sign reports blaming the Bulgarian Army for offenses committed by the Ottomans.⁵⁰ Without reducing culpability, it should be noted that other armies were engaging in similar conduct, such as Greek orders “to burn the villages, massacre the young, and spare none but the old people, children and minors.”⁵¹ Such is the chaos normally attendant with wartime atrocities.

⁴⁸ RICHARD C. HALL, *THE BALKAN WARS 1912–1913: PRELUDE TO THE FIRST WORLD WAR passim* (2000).

⁴⁹ CARNEGIE ENDOWMENT FOR INT’L PEACE, REPORT OF THE INTERNATIONAL COMMISSION TO INQUIRE INTO THE CAUSES AND CONDUCT OF THE BALKAN WARS 127 (1914).

⁵⁰ *Id.* at 132.

⁵¹ *Id.* at 148.

A 1914 report by the Carnegie Endowment for International Peace concluded that “there is no clause in international law applicable to land war and to the treatment of the wounded, which was not violated, to a greater or less extent, by all the belligerents.”⁵² As this report is from 1914, it obviously does not consider genocide as that crime would later be understood. It does, however, speak to the tone of the conflict and the willingness of the belligerents to violate international law.

Lyubomir Miletich published a field report after traveling the area ethnically cleansed of Thracian Bulgarians and interviewing survivors. He estimated that up to 200,000 Thracian Bulgarians were killed or forcibly deported by elements of the regular army, then controlled by the Young Turks, together with Ottoman paramilitary units and local Greeks.⁵³ Subsequent population transfers in what is commonly known as European Turkey only exacerbated this ethnic cleansing situation. Miletich’s findings were later referenced in the debate over Bulgarian or Greek control of Thrace following the First World War.⁵⁴

This may be the first instance of ethnic cleansing undertaken on such a large scale by the Young Turk government.⁵⁵ “In Eastern Thrace about one third of the Bulgarian population was massacred by the Ottoman army.”⁵⁶

Strategically, once the Christian Bulgarians had been removed from Eastern Thrace, a second population transfer of Muslims into those now vacant areas was quickly undertaken.

The goal was not simply to empty Thrace but to resettle Muslims in their stead. The [Interior] Ministry stated to the provincial authorities that “it is suitable that the new immigrants coming from the occupied (Balkan) cities be settled in the houses left empty by those who immigrated to Bulgaria.”⁵⁷

⁵² *Id.* at 208.

⁵³ See LYUBOMIR MILETICH, THE RUIN OF THE THRACIAN BULGARIANS IN 1913 (Dimitar Dochev & Stoyan Stoyanov eds., Sofia Press trans., Sofia Press 1987) (1918), (translated sections provide casualty counts undertaken in the field in English).

⁵⁴ Constantine Stephanove, *The Question of Thrace*, 10 J. INT’L RELATIONS 350, 358 (1920).

⁵⁵ See Darko Majstorovic, *The 1913 Ottoman Military Campaign in Eastern Thrace: A Prelude to Genocide?* (2016) (M.A. thesis, Central European University), http://www.etd.ceu.edu/2016/majstorovic_darko.pdf.

⁵⁶ Raymond Detrez, *Refugees as Tools of Irredentist Policies in Interwar Bulgaria*, in MIGRATION IN THE SOUTHERN BALKANS: FROM OTTOMAN TERRITORY TO GLOBALIZED NATION STATES 47, 50 (Hans Vermeulen et al. eds., 2015).

⁵⁷ Majstorovic, *supra* note 55, at 36.

Today there are about 800,000 Thracian Bulgarians living in neighboring Bulgaria. The events of 1913 are annually remembered on “Thrace Day” in Bulgaria, and the descendants of those murdered and displaced are now pressing a \$10 billion claim against Turkey for the destruction of 1913. Turkey recognized the possibility of such claims in a 1925 treaty with Bulgaria and both the Bulgarian and Turkish leaders have discussed it recently, but without resolution.⁵⁸

By 1913, Pan-Turkism was driving CUP policy, and the ethnic cleansing of Thracian Bulgarians should be seen in that context. The intent to clear out one population, by a combination of murder and expulsion, in order to replace them with another population would rise in this instance to the specific intent to destroy in whole or in part the Thracian Bulgarians as such. It is a fair question to ask whether Pan-Turkism provided the specific intent that was then brought about by the military in Eastern Thrace.

C. Greek Genocide (1914-1922)

Having lost most of its European territory over the previous century, the Young Turk government of the Ottoman Empire was concerned that other areas with large multi-ethnic non-Turk—and especially non-Muslim—minority populations could become hotbeds for independence movements. The Greeks were particularly at issue because of the Kingdom of Greece’s hostility in the First Balkan War and during World War I.

Turkish distrust of ethnic Greeks still within the Ottoman Empire led to an economic boycott among the mass population based on fears that Greek merchants in Anatolia were sending money to fund the Kingdom of Greece’s war efforts against the Ottomans. According to the Russian consul in Trebezond, by 1914 this boycott extended beyond buying from Greek merchants to include refusing to sell to Greeks, even with respect to basic necessities such as flour or bread.⁵⁹

Henry Morgenthau, the American Ambassador to the Ottoman Empire, in his memoirs, relates a discussion he had with Talaat Pasha, then the Minister of Finance and the Interior: “If what was left of Turkey was to survive, added Talaat, he must get rid of these alien peoples. ‘Turkey for the Turks’ was now Talaat’s controlling idea. Therefore he proposed to Turkify Smyrna and the

⁵⁸ Angel Krasimirov et al., *Bulgaria Should Press Turkey over Historic Compensation Claim—President*, REUTERS (Mar. 26, 2018, 7:55 AM), <https://uk.reuters.com/article/uk-bulgaria-turkey-compensation/bulgaria-should-press-turkey-over-historic-compensation-claim-president-idUKKBN1H21LL>.

⁵⁹ KONSTANTINOS EMM. FOTIADIS, *THE GENOCIDE OF THE PONTIAN GREEKS* 145–46 (Michael Eleftheriou trans., 2019).

adjoining islands.”⁶⁰ The presence of the many non-Turk Greeks living in vital regions was incompatible with rising Turkish nationalism generally and with Pan-Turkism policy specifically.

Similarly, the Greeks in Pontus became a major concern for the Turks when World War I brought the Ottoman Empire into conflict with Russia. It was feared that, as fellow Orthodox Christians, the Greeks would assist the invading Russians. Previous attempts at Turkification had resulted in many Pontian Greeks fleeing to Russia, exacerbating these fears that Pontian Greeks and Russians may try to carve out and form a new Greek state in Pontus.

Concern over the Greeks in Anatolia was particularly pronounced and, geographically, Anatolia is where the main thrust of what would become the Greek genocide, including the Pontic Greek genocide, would play out. The Greeks would be targeted because of their ethnicity and religion, a protected group under the definition of genocide, and the methods of destroying them that qualify as *actus reus* under the definition included mass killing, forced deportations and “death marches,” arbitrary execution, and bringing about conditions of life calculated to destroy the group.

Pan-Turkism provided the over-arching motive for the destruction of the Greeks, but again, it was unevenly applied with respect to methods selected. For example, as part of the leadup to war, the Ottoman government declared a general mobilization, calling all men from the ages of 19 to 45 to report for duty or be considered deserters.⁶¹ Greeks, instead of being included in the regular army that would be trained in weaponry and deployed in the field, were assigned to work battalions, with the goal of exhausting them with 18-hour workdays with inadequate food and protection from the elements so they could not mount a much-feared resistance movement.⁶² Greek men who escaped the work battalions fled to the mountains and formed partisan militia groups to defend themselves—actually causing the problem the Turks originally sought to prevent by creating resistance battalions.

Another attempt to bring about Pan-Turkism led the Ottoman government to decide that entirely ethnically Greek villages were a major obstacle to Turkification and that military necessity would be an effective excuse to break up and Turkify the residents of these villages.⁶³ After forcing the Greeks to

⁶⁰ MORGENTHAU, *supra* note 32, at 51.

⁶¹ FOTIADIS, *supra* note 59, at 155.

⁶² *Id.* at 156–58.

⁶³ *Id.* at 172.

move, the Turks engaged in what was called “white slaughter”: the displaced Greeks were forced to march through the cold and given inadequate food, water, and shelter during their displacement, so disease, starvation, and exposure would kill them.⁶⁴

The Chancellor of Germany, Turkey’s ally as part of the Central Powers during World War I, noted in 1917, “[T]he Turks plan to eliminate the Greek element as enemies of the state, as they did earlier with the Armenians. The strategy implemented by the Turks is of displacing people to the interior without taking measures for their survival by exposing them to death, hunger, and illness. The abandoned homes are then looted and burnt or destroyed.”⁶⁵ One such deportation involved the Greeks of Tripolis, who were deported to Birk, a village in Armenia whose residents had been slaughtered by the Turks. While 13,000 Greeks set out, three months later only 800 remained.⁶⁶

After World War I, the Greeks invaded Anatolia to take the Ottoman territory they were promised by the Allies for their participation in the war. The Greeks landed in Smyrna on May 15, 1919. Four days later, the Sultan dispatched Mustafa Kemal Pasha—who later became known as Atatürk, founder and leader of modern Turkey—to Pontus on a mission to quell Muslim raiders harassing the Pontic Greeks who remained.⁶⁷ When he arrived, he gave a speech at a mosque calling Muslims to join him in resisting the infidel’s attempts to destroy the empire and recruited the Turks persecuting Greeks to his side.⁶⁸ These nationalists continued killing Greeks, including 5,000 on August 18, 1920 southeast of Izmit.⁶⁹

Deportations also continued, with 30,000 deported from Sivas, 10,000 of whom had died by the time they reached Harpoot, the capital of a neighboring province, on May 4, 1922.⁷⁰ The American liaison on site to protect American interests witnessed many of the atrocities, and observed, “The Turkish authorities frankly state it is their deliberate intention to let all the Greeks die, and their actions support their statements.”⁷¹ After stopping the Greek advance at the battle of Sakarya, Kemal and the Turkish army began to push

⁶⁴ Memorandum from George Rendel to British Foreign Off. (Mar. 20, 1922).

⁶⁵ MANUS I. MIDLARSKY, *THE KILLING TRAP: GENOCIDE IN THE TWENTIETH CENTURY* 342–43 (2005).

⁶⁶ FOTIADIS, *supra* note 59, at 182–83.

⁶⁷ *Id.* at 274.

⁶⁸ *Id.* at 284–86.

⁶⁹ *5000 Christians Massacre*, *THE SCOTSMAN*, Aug. 24, 1920, at 3.

⁷⁰ *Turks’ Insane Savagery*, *TIMES (LONDON)*, May 5, 1922, at 10.

⁷¹ *Id.*

the Greeks all the way back to Smyrna.⁷² Four days after the Turks retook Smyrna, pushing the Greek army out of Anatolia, looting of the Christian quarter of the city led to that portion being intentionally set alight.⁷³ Although the statistics are not verifiable, it is thought that between 10,000⁷⁴ and 100,000⁷⁵ Greek and Armenian Christians were killed in the fire, with tens of thousands deported into the interior.⁷⁶ In all, the Greek genocide is thought to have resulted in between 450,000 and 750,000 deaths.

The post-war population transfers that occurred in 1922 and after, some of which were agreed to via treaty between Turkey and Greece, resulted in a massive influx of ethnic Greeks to Greece—adding over a quarter to the previously existing population in Greece.⁷⁷ “At the time of the Greek disaster in Asia Minor 800,000 Greeks fled across the Aegean Sea to the mainland and islands of Greece, most of them destitute, and 200,000 more with their household goods and flocks trekked out of eastern into western Thrace and Macedonia.”⁷⁸

Thus, the Greek genocide appears to reflect the maturation of Pan-Turkism into a truly exterminationist policy that could be considered one of the *Akayesu* factors in order to infer genocidal intent.

D. Assyrian Genocide (1914-1920)

Like the Greeks and Armenians, the Assyrians were a Christian minority in the Ottoman Empire. During the period when Pan-Turkism came to dominate the policies of the Ottoman government, there was likewise no place for the Assyrians, who were neither Turk nor Muslim and therefore could not be Turkified and assimilated. In the words of Morgenthau, “Their passion for Turkifying the nation seemed to demand logically the extermination of all

⁷² Peter Kincaid Jensen, *The Greco-Turkish War, 1920-1922*, 10 INT’L J. MIDDLE EAST STUD. 553, 561-564 (1979).

⁷³ DAVID ABULAFIA, *THE GREAT SEA: A HUMAN HISTORY OF THE MEDITERRANEAN* 587 (Oxford Univ. Press 2011) (2011).

⁷⁴ MARK BIONDICH, *THE BALKANS: REVOLUTION, WAR, AND POLITICAL VIOLENCE SINCE 1878* 92 (2011).

⁷⁵ NORMAN M. NAIMARK, *FIRES OF HATRED: ETHNIC CLEANSING IN TWENTIETH-CENTURY EUROPE* 52 (Harvard Univ. Press, 2002).

⁷⁶ ABULAFIA, *supra* note 73, at 588.

⁷⁷ Charles P. Howland, *Greece and Her Refugees*, 4 FOREIGN AFFS. 613, 613 (1926).

⁷⁸ *Id.*

Christians—Greeks, [Ass]yrians, and Armenians.”⁷⁹ Indeed, many Assyrians were caught up in the Armenian genocide, the Turks not differentiating between the Christian groups.⁸⁰ The Assyrians in Van, Diyarbekir, and Adana tended to share the fates of the Armenians in those regions.⁸¹

Urmia was, at this time, a region in northwestern Persia that had been occupied by the Russians in 1910. Approximately 35,000 Assyrian Christians lived in Urmia before the war. When the Russians retreated to avoid being surrounded by the Ottomans and their Kurdish allies, about 25,000 Assyrians remained. An eyewitness report by Dr. William Shedd estimated the Turkish and Kurdish soldiers, as well as local Muslims, were responsible for over 1,000 deaths, hundreds of rapes, and over 200 kidnappings of women and girls for forced conversion and marriage between the Russian retreat on January 2, 1915 and their return on May 24, 1915.⁸²

The Persian governor was able to maintain the safety of American and French mission complexes during this time, where 20,000 people took shelter.⁸³ Dr. Jacob Sargis, an American medical missionary, estimated there were 1,500 killings and 7,000 who died of cold and hunger during that same period.⁸⁴ The Presbyterian Medical Mission reported villages where every woman and girl above the age of twelve was raped, as well as many younger.⁸⁵ In early August, the Ottomans advanced again, resulting in 12,000 Assyrians being massacred throughout 150 villages in the region.⁸⁶ The mission in Urmia also received word of a “general massacre” of 30,000 Assyrians by Turks and Kurds in the

⁷⁹ MORGENTHAU, *supra* note 32, at 290.

⁸⁰ Hannibal Travis, “Native Christians Massacred”: *The Ottoman Genocide of the Assyrians during World War I*, 1 *GENOCIDE STUD. & PREVENTION* 327, 327–28 (2006).

⁸¹ *Id.* at 333.

⁸² Urmia: Statement by the Rev. William A. Shedd, in *THE TREATMENT OF ARMENIANS IN THE OTTOMAN EMPIRE 1915–1916* 100, 103 (James Bryce & Arnold J. Toynbee eds., 1916).

⁸³ *Id.* at 104.

⁸⁴ *Urmia: Narrative of Dr. Jacob Sargis, Recorded in a Dispatch (Feb. 12, 1916)*, in *THE TREATMENT OF ARMENIANS IN THE OTTOMAN EMPIRE, 1915–1916* 158, 160 (James Bryce & Arnold J. Toynbee eds., 1916).

⁸⁵ *Urmia: Extracts from the Annual Report of the Medical Department at Urmia*, in *THE TREATMENT OF ARMENIANS IN THE OTTOMAN EMPIRE, 1915–1916* 161, 161 (James Bryce & Arnold J. Toynbee eds., 1916).

⁸⁶ *Urumiah Massacres: Death of 12,000 Nestorian Christians*, *LONDON TIMES*, Oct. 9, 1915.

Bohtan region of the Ottoman Empire, on the Tigris river, southwest of Van. The messenger did not know the extent of the killing.⁸⁷

Unlike with the Greeks and Armenians, the Ottoman government did not accuse the Assyrians specifically of working with enemy nations. Given the similar treatment of Assyrians and Armenians in places where both lived, it appears those responsible for carrying out the genocide did not care to make the distinction. In that case, the stated intent to eliminate all Armenians from the Ottoman Empire must be understood as an intent to eliminate all Christians, including Armenians and Assyrians, from the empire. But as was explained by the ICTR in *Akayesu*, the genocidal intent would remain intact even if this was the case. Moreover, the projection of Pan-Turkism policy as the impetus for the genocide would serve as the intentional policy background for these atrocities.

E. Armenian Genocide (1915)

Like the Greeks, Ottoman Armenians shared a nationality with hostile forces—the Armenians of Russian Transcaucasia—leading to suspicions of their disloyalty during the war between the Ottoman and Russian Empires. In a report to U.S. Secretary of State Robert Lansing, Ambassador Morgenthau corroborates this account:

Shortly after Turkey entered the War, Enver [Pasha] went to the Caucasus and took command of the army. As you know, he was defeated by the Russians and the loss of the Turks . . . [was] enormous. This was greatly due to the assistance rendered to the Russians by the Armenian volunteers who also caused the failure of the Turkish expedition in Azerbaijan. This made a deep impression upon Enver and Talaat and produced in them a great enmity against the Armenians.⁸⁸

On February 25, 1915, after having received blame for the Ottoman Army's failure to defeat the Russians, Armenian soldiers were demobilized and

⁸⁷ *The Nestorians of the Bohtan District: Letter from the Rev. E. W. McDowell (Mar. 6, 1916)*, in *THE TREATMENT OF ARMENIANS IN THE OTTOMAN EMPIRE, 1915–1916* 180, 181 (James Bryce & Arnold Toynbee eds., 1916).

⁸⁸ Henry Morgenthau, *Letter to the Secretary of State (Nov. 18, 1915)*, in *PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES: THE LANSING PAPERS, 1914–1920* 766, 767 (J. S. Beattie ed., 1939).

assigned to the same harsh labor battalions that were working the Greeks to death, again to remove the ability for Armenians to resist their treatment.⁸⁹

Despite conscription, widespread suspicion among Muslims remained with respect to the loyalty of Ottoman Armenians to the Ottoman Empire. A contemporary Turkish newspaper wrote that one could tell the progress of the war from the expression of an Armenian's face: the happier he was, the better the Allies were doing; if he was sad, the Germans and Ottomans were winning.⁹⁰ As the Russian Army retreated, the Ottomans turned their attention to Armenian villages, massacring 24,000 Armenians in three days.⁹¹ This massacre culminated in the siege of the Armenian city of Van, which refused to send their men of fighting age out to be massacred and which held off the Ottoman army until the Russians arrived.⁹² The Turks characterized this siege as a "revolution," which was taken as proof that Ottoman Armenians were working in collusion with the Russians and wished to form an independent Armenia.⁹³

The Ottoman government in 1915 organized a series of forced deportations of Armenians under the direction of a new "Special Organization" to eliminate the Armenian population. Deported Armenians were often given a week's notice before being forced to leave. Muslim immigrants from other parts of Turkey were ready to move into Armenian houses as soon as the Armenians left.⁹⁴ Any carts they were able to hire to bring their belongings quickly turned back because the Muslim cart owners were not willing to accompany Armenians to their destinations.⁹⁵ Some Armenians were taken to be sold as slaves.⁹⁶ Children were often selected for "Turkification" whereby they were forcibly converted to Islam and then given to Turkish families. Those who were too exhausted to continue their march during the deportation process were killed by Turkish soldiers enforcing the march.⁹⁷ The methods of killing included drowning, crucifixion, burning alive, or being thrown off cliffs *en route*.

⁸⁹ MORGENTHAU, *supra* note 32, at 304.

⁹⁰ *Id.* at 295.

⁹¹ *Id.* at 297.

⁹² *Id.* at 299.

⁹³ *Id.* at 300, 344–45.

⁹⁴ *Id.* at 311.

⁹⁵ THE TREATMENT OF ARMENIANS IN THE OTTOMAN EMPIRE, 1915–1916, *supra* note 85, at 30–38.

⁹⁶ *Id.* at 39; MORGENTHAU, *supra* note 32, at 317.

⁹⁷ MORGENTHAU, *supra* note 32, at 316.

Perhaps most sinister was the participation of medical staff in the exterminations. Physicians ostensibly helping the refugees used morphine overdoses, toxic gas, and injections of blood tainted with Typhoid to kill Armenians. The end point of these marches was Der-el-Zor in the Syrian desert, where the Armenians were left to starve to death.⁹⁸ The devastating death toll of the Armenian genocide is placed between 600,000 and 1.5 million.

The British Parliament commissioned and issued a report by Viscount James Bryce and Arnold Toynbee in 1916 that chronicles the orchestrated destruction of the Armenians by Ottoman forces in 1915 via eyewitness accounts and reports that were collected and reproduced in the report,⁹⁹ the accuracy and authenticity of which was vouched by Oxford University in response to critiques by Turkey. The “accounts described what seemed to be an effort to exterminate a whole nation, without distinction of age or sex....”¹⁰⁰

When questioned, Talaat Pasha of the CUP explained the Turkish treatment of the Armenians to Morgenthau on three bases: they have enriched themselves at the expense of the Turks, they have determined to form a separate state, and they caused the Ottoman Army’s failure in the Caucasus by helping the Russians.¹⁰¹ In Talaat Pasha’s words: “The hatred between the Turks and the Armenians is now so intense that we have got to finish with them. If we don’t, they will plan their revenge.”¹⁰² Thus, he styled the destruction of the Armenians in terms of pre-emptive self-defense.

Further proof of the genocidal intent within Pan-Turkism policy to destroy the Armenians came when Morgenthau suggested to Enver Pasha that the Ottoman government may not be responsible for the deaths of the Armenians.¹⁰³ Enver Pasha replied, “The Cabinet itself has ordered the deportations. I am convinced that we are completely justified in doing this owing to the hostile attitude of the Armenians towards the Ottoman government.”¹⁰⁴ These admissions by the heads of the Ottoman government would relieve a prosecutor of needing to pursue an inference of genocidal intent

⁹⁸ THE TREATMENT OF ARMENIANS IN THE OTTOMAN EMPIRE, 1915–1916, *supra* note 85, at 61–64.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at xxi.

¹⁰¹ MORGENTHAU, *supra* note 32, at 337.

¹⁰² *Id.* at 337–38.

¹⁰³ *Id.* at 351.

¹⁰⁴ *Id.* at 352.

under the *Akayesu* rubric of factors in the case of the Armenians.¹⁰⁵ The *mens rea* is clear and in this case is a direct extension of Pan-Turkism. “Armenians as a whole were ultimately targeted on the basis of their group identity, and this can only be explained by the CUP’s increasingly radical ideology of ethnic exclusivity.”¹⁰⁶

After the war, the brief trials by military court only held the leadership to account for the Armenian genocide. The tribunal found that the CUP intended to eliminate the Armenian population via the Special Organization and sentenced the three controlling pashas, Enver, Talaat, and Jemel to death in absentia.¹⁰⁷ By the time of sentencing they had been removed to Malta. Genocide was not a cognizable crime as such until 1948, so the charges were confined to massacres. The facts of the Armenian genocide, however, and the existence of a specific elimination policy within Pan-Turkism doctrine for the Armenians would yield such a charge before an international criminal tribunal today.

From the standpoint of Turkey, the elimination of the Armenians achieved the chief policy aim of Pan-Turkism, as Donald Bloxham notes:

The Armenian genocide has been dubbed the first modern genocide. To borrow Zygmunt Bauman's metaphor of destruction, the 'garden culture', it was an attempt to reorder a community in the self-image of the perpetrator by the forcible removal of the 'problematic', non-conforming elements - the social 'weeds'. It was also a completely successful genocide in its own nationalist terms, for the Armenians who remained could not form a significant separate national group and many were forcibly assimilated into Muslim Turkish society. After the 'cleansing' of Armenians from Anatolia and most of the rest of Turkey and the removal of the Arab provinces in the post-war settlements, it would be left to the CUP's successor regimes to carry Bauman's logic to its conclusion with only a little less brutality by removing the remainder of the Armenian population of Cilicia, the Ottoman Greeks, and then retargeting the Kurds.¹⁰⁸

¹⁰⁵ Prosecutor v. Jean-Paul Akayesu, *supra* note 3, at ¶ 523.

¹⁰⁶ Donald Bloxham, *The Armenian Genocide of 1915-16: Cumulative Radicalization and the Development of a Destruction Policy*, 181 THE PAST & PRESENT SOC'Y 141, 142 (2003).

¹⁰⁷ GERALD LIBARIDIAN, MODERN ARMENIA: PEOPLE, NATION, STATE 134–35 (2007).

¹⁰⁸ Bloxham, *supra* note 106, at 186–87 (citing ZYGMUNT BAUMAN, MODERNITY AND THE HOLOCAUST (1992); MARK MAZOWER, DARK CONTINENT: EUROPE'S TWENTIETH CENTURY 60–61 (1998)).

Thus, setting aside the insidious notion of relative policy success, in the context of Pan-Movements, genocide can be seen to potentially lurk. With the elimination of the Greek, Assyrian, and Armenian populations within the collapsing Ottoman Empire under a Pan-Turkism policy, this idea was especially true.

IV. CONCLUSION

The goal of Pan-Turkism, like the goals of Pan-Germanism and Pan-Serbism, was to elevate a particular ethnicity and everything associated with it (religion, culture, language) while diminishing to the point of elimination all other competing ethnicities. In this case, Turkism was elevated over all else and competing ethnicities were Turkified if they were Muslim or eliminated if they were non-Muslim. To that end, genocide to one degree or another is a useful tool as its definition “addresses crimes directed against ‘national groups’ rather than against ‘groups’ in general. At the same time, it is broad, to the extent that it contemplates not only physical genocide but also acts aimed at destroying the culture and livelihood of the group.”¹⁰⁹

With respect to actual coordination by the Young Turks’ CUP, “no proof of state involvement, or of a policy or plan, is necessary to establish that genocide has been committed; it may even be perpetrated by an individual acting alone.”¹¹⁰ That’s not to say, however, that Pan-Turkism couldn’t suffice as the vessel within which specific intent lurked to commit genocide against non-Turks; only that proving a genocidal state policy is not prerequisite to proving genocide. And in some of these cases, genocide did in fact emanate from state policy.

Pan-Turkism during the late Ottoman period clearly qualifies as one of the *Akayesu* factors to be taken into account when inferring specific intent from the facts – manifesting in at least three of the criteria:

- Discriminatory Targeting of a Population (ethnic/religious)
- Methodical and Systemic Planning of Genocidal Acts
- Documents Reflecting Knowledge of Atrocities

There are additional qualities of Pan-Turkism, however, to consider that make this analysis less clear-cut:

¹⁰⁹ William A. Schabas, *The “Odious Scourge”: Evolving Interpretations of the Crime of Genocide*, 1 GENOCIDE STUD. & PREVENTION 92, 96 (2006).

¹¹⁰ *Id.* at 102.

- Which version was operational at the time of each atrocity?
- Where was CUP on the sliding policy scale between “reform” and “nationalism”?
- Which part of CUP was implementing it? Leadership?
- Was the military left to interpret and apply it? Did CUP know?

Pan-Turkism, on its own, likely cannot surmount the specific intent requirement of the Genocide Convention, but the *Akayesu* standard lowers the bar sufficiently to at least incorporate Pan-Turkism as a factor (perhaps even dispositive) in establishing the *mens rea* necessary for a legal finding of genocide in some, but not all, of the massacres of Christian populations in the late Ottoman Empire. In the case of those that do not qualify, this is not to say that these were not genocides, only that Pan-Turkism as a shared motive did not rise to the level of specific intent in that instance.

Nationalism comes in many forms. The most benign are positive expressions of unity and determination that can serve a nation well in difficult times, such as the sense of patriotic nationalism that allowed the French to endure the Nazi occupation of the Second World War. The more virulent varieties of nationalism, however, those that refuse to tolerate the national identity of others in a shared polity, are the ones that should trouble mankind, for they tend to draw on our worst human impulses and prejudices. Once in power, they can dominate entire political landscapes and turn into exterminationist extremes.

Nor are these forms of nationalism static. As was the case with Pan-Turkism, what began as a reformist agenda in 1908 can change over time and yield a mass genocide of civilian victims in a lonely desert by 1915. Thus, the evolutionary nature of nationalist movements cannot be forgotten. Vigilance is the key to either altering the negative evolution of such movements toward atrocities while that evolution is in progress or stopping the movement altogether by calling out what it is and appealing to the better nature of humanity with alternate policy options. This struggle is constant, just as is the struggle within ourselves as humans to always be better. But given the alternative, this struggle is worth it.