

TRAPPED IN LEGAL CONSTRAINTS OR IN STATES' OWN HISTORY? INTERNATIONAL LAW AS AN EXPLANATION FOR THE RELUCTANCE TO RECOGNIZE THE ARMENIAN GENOCIDE

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Abstract

International legal constraints may partly explain states' reluctance to recognize the 1915 massacres of Armenians as genocide. The principle of non-retroactivity precludes applying the Genocide Convention to events that occurred before its adoption in 1948. Nonetheless, evolving state practice could ultimately lead to a gradual shift toward retrospective application, thereby highlighting the risk that formal recognition might compel states to confront their own colonial or genocidal pasts. A notable correlation thus appears: states that actively engage in reckoning with colonial injustices are more inclined to characterize the Armenian events as genocide, whereas those still entangled in unresolved debates over their colonial or violent histories tend to abstain from recognition. Furthermore, some governments invoke the requirement of a judicial determination of genocide as a precondition for recognition, relying on a supposed legal constraint that, in fact, has no foundation in the Genocide Convention.

Keywords: international law and genocide; non-retroactivity of treaties; colonial violence and historical responsibility; subsequent state practice; judicial determination of genocide

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Introduction

Whenever a state moves to recognize the Armenian Genocide, Turkey's reaction is immediate and typically expressed through diplomatic protests¹ or other retaliatory measures.² When circumstances and history allow, Ankara also engages in what may be termed *genocide shaming* or *atrocity shaming*, publicly invoking the recognizing state's own record of mass violence. For example, in response to statements by the Russian president and prime minister and a resolution by the State Duma marking the centenary of the Armenian Genocide, the Turkish Ministry of Foreign Affairs accused Russia of committing mass killings during the previous century and declared that it had "no moral right to accuse other states of genocide."³ Similarly, in June 2016, two days after the German Bundestag adopted a resolution recognizing the Armenian Genocide, President Erdogan referred on national television to the genocide of the Herero and Nama peoples by Imperial German forces in 1904-1905.⁴ Likewise, in April 2021, after U.S. President Joe Biden formally recognized the mass killings of Armenians in the Ottoman Empire as genocide,⁵ Erdogan retorted that Biden should "look in the mirror" before accusing others of such crimes.⁶

Turkey's *whataboutism* raises issues that are not only political but also legal in nature. When the atrocities suffered by Armenians in the Ottoman Empire occurred, the term *genocide* had not yet been coined, nor had it been codified under international law. Since many states have episodes of mass violence or atrocities in their own histories, President Erdogan's "genocide shaming" can be understood as an implicit challenge, asking whether those states, too, are prepared to assume responsibility for their pasts, and how far they are willing to go in doing so. Indeed, the recognition of the Armenian Genocide by any state may be interpreted as a willingness to examine its own history through the same moral and legal lens, and to acknowledge its corresponding responsibilities. This gesture carries particular risk for many Western nations whose colonial histories are marked by systemic violence. Thus, while the reluctance to recognize the Armenian Genocide is most often

1 For instance, by calling its ambassador back to Ankara for consultations, as illustrated in Francis X. Rocca and Emre Peker, "Pope Francis Calls Armenian Deaths 'First Genocide of 20th Century,'" *The Wall Street Journal*, 12 April 2015, <https://www.wsj.com/articles/pope-francis-calls-armenian-slaughter-first-genocide-of-20th-century-1428824472>, accessed 12.09.2023; Sertan Sanderson, "Armenian 'genocide' motion clears Bundestag," *DW*, 2 June 2016, <https://www.dw.com/en/bundestag-passes-armenia-genocide-resolution-unanimously-turkey-recalls-ambassador/a-19299936>, accessed 12.09.2023.

2 Vahagn Avedian, "Recognition, Responsibility and Reconciliation: The Trinity of the Armenian Genocide," *Europa Ethnica* 70, no. 3/4 (2013): 77-78.

3 Emil Danielyan, "Russia Stands by Armenian Genocide Recognition," *Azatutyun Radiokayan*, 28 April 2015, <https://www.azatutyun.am/a/26983710.html>, accessed 12.09.2023.

4 "Erdogan Vows 'Never to Accept' Genocide Charges," *DW*, 4 June 2016, <https://www.dw.com/en/erdogan-turkey-will-never-accept-genocide-charges/a-19307115>, accessed 12.09.2023.

5 "US President Joe Biden Officially Recognises 'Armenian Genocide,'" *Al Jazeera*, 24 April 2021, <https://www.aljazeera.com/news/2021/4/24/joe-biden-officially-recognises-armenian-genocide>.

6 "Erdogan Slams Biden's Recognition of Armenian 'Genocide,'" *Al Jazeera*, 26 April 2021, <https://www.aljazeera.com/news/2021/4/26/erdogan-slams-bidens-armenian-genocide-recognition>.

attributed to geopolitical considerations, chiefly, its potential repercussions on relations with Turkey,⁷ attention must also be given to the possible international legal consequences of such recognition, which may serve as an additional explanatory factor.

This paper examines what I consider to be the principal international legal constraints on recognizing the Armenian Genocide. In particular, it explores how, in doing so, Western states may find themselves compelled to acknowledge and assume responsibility for atrocities committed during the colonial period. To this end, the paper begins by analysing the principle of non-retroactivity under the Convention on the Prevention and Punishment of the Crime of Genocide⁸ (hereinafter Genocide Convention or 1948 Convention) and the possible exceptions to that rule. It then considers evidence suggesting a potential correlation between recognition of the Armenian Genocide and state-led initiatives to confront past episodes of mass violence, especially those committed during the colonial era. A third section addresses an additional legal argument frequently invoked by governments to avoid recognition, namely the claim that genocide must first be formally declared by a competent court, thereby illustrating the extent to which international legal norms may influence political decisions regarding recognition. The paper concludes by summarizing the key findings of this analysis.

A Genocide Before Genocide: The Issue of Non-Retroactivity

There is no doubt that the atrocities suffered by Armenians under the Ottoman Empire constitute an archetypal example of genocide.⁹ Viewed through the lens of the 1948 Convention, all the constitutive elements are present—the *actus reus*, the *mens rea*, the specific intent to destroy, in whole or in part, a national, ethnical, racial, or religious group.¹⁰ The key question, however, is whether the Genocide Convention can govern events that occurred in the first quarter of the twentieth century. Under international law,

⁷ See, for instance, Avedian, “Recognition, Responsibility and Reconciliation,” 77-86; Eldad Ben Aharon, “Recognition of the Armenian Genocide after Its Centenary: A Comparative Analysis of Changing Parliamentary Positions,” *Israel Journal of Foreign Affairs* 13, no. 3 (2019): 339-352, <https://doi.org/10.1080/23739770.2019.1737911>; Boris Adjemian and Julien Zarifian, “La reconnaissance internationale du génocide des Arméniens. Histoire, enjeux, pratiques,” 20 & 21. *Revue d’histoire* 158, no. 2 (2023): 149-165, <https://doi.org/10.3917/vin.158.0149>.

⁸ General Assembly Resolution 260 A (III), 9 December 1948. Entry into force: 12 January 1951.

⁹ Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Revised and updated report on the question of the prevention and punishment of the crime of genocide prepared by Mr. B. Whitaker*, 2 July 1985, UN Doc. E/CN.4/Sub.2/1985/6, para. 24. See also John Quigley, *The Genocide Convention. An International Law Analysis* (Ashgate, 2006), 3.

¹⁰ See Geoffrey Robertson, QC, “Armenia and the G-word: The Law and the Politics,” in *The Armenian Genocide Legacy*, ed. Alexis Demirdjian (Palgrave Macmillan, 2016), 71-72; Susan L. Karamanian, “The International Court of Justice and the Armenian Genocide,” in *The Armenian Genocide Legacy*, 91-92; International Center for Transitional Justice [ICTJ], *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* (2002), 11-17, <https://www.ictj.org/sites/default/files/ICTJ-Turkey-Armenian-Reconciliation-2002-English.pdf>.

the answer, at least at present, is negative. The reason lies in the element of time: as a general principle, treaties do not apply retroactively. The principle of non-retroactivity of treaties is codified in Article 28 of the 1969 Vienna Convention on the Law of Treaties (hereinafter 1969 VCLT): “Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.”¹¹

Although Article 4 of the 1969 VCLT expressly provides for the Convention’s own non-retroactive application, it is widely accepted that the principle of non-retroactivity reflects a general rule of international law.¹² Consequently, since the Genocide Convention was adopted on 9 December 1948 and entered into force on 12 January 1951, it cannot apply to acts of genocide committed prior to those dates,¹³ even to those that occurred before the very concept of “genocide” was coined by Raphael Lemkin.¹⁴

The principle of non-retroactivity has most likely played a major role in facilitating the ratification of the Genocide Convention by a large number of states,¹⁵ including those with a history of genocide, such as Turkey, since this legal principle prevents genocides committed before the 1948 Convention’s adoption from falling within its scope of application. The *travaux préparatoires* indeed confirm that states intended to adopt a forward-looking instrument with purely prospective effects.¹⁶ Consequently, States Parties have no legal obligations under the Convention in respect of pre-1948 events, nor can such events give rise to the international responsibility of a state,¹⁷ an outcome

11 Done at Vienna on 23 May 1969. Entry into force: 27 January 1980. *United Nations Treaty Series*, vol. 1155, 331.

12 See International Law Commission [ILC], Draft Articles on the Law of Treaties with Commentaries, in *Yearbook of the International Law Commission* 1966, vol. 2 (United Nations, 1967): 211-13; João Grandino Bodas, “The Doctrine of Non-Retroactivity of International Treaties,” *Revista da Faculdade de Direito Universidade de São Paulo* 68, no. 2 (1973): 343-344, <https://revistas.usp.br/rfdusp/article/view/66677>; ICTJ, *Application*, 5.

13 See, e. g., ICTJ, *Applicability*, 4, 7; Geoffrey Robertson, QC, *Was There an Armenian Genocide?* 9 October 2009, para. 29, <https://groong.org/Geoffrey-Robertson-QC-Genocide.pdf>.

14 Raphael Lemkin, *Axis Rule in Occupied Europe* (Carnegie Endowment for International Peace, 1944), 79-82.

15 To date, 153 States are parties to the Convention, and one more (Dominican Republic) signed it without further action.

16 United Nations, *Official Records of the Third Session of the General Assembly*, Part I: Legal Questions. Sixth Committee: Summary Records of Meetings, 21 September - 10 December 1948, UN Doc. A/C.6/SR.61-140, 13 (statement of Mr. Morozov: “A convention was necessary for the prevention of future crimes of that type [...]”), 30 (statement of Mr. Prochazka: “[...] to punish all those who, in the future, might be tempted to repeat the appalling crimes which had been committed”), 60 (statement of Mr. Maúrtua: “the existing draft was the first attempt to introduce international legislation to deal with the crime of genocide”), 143 (statement of Mr. Ti-tsun Li: “those acts which, in the future, might be considered by judges or jurists as acts of genocide”), 340 (statement of Mr. Inglés: “it was generally the heads of State who had committed genocide. It was therefore essential to provide for their punishment in future”). See also 706 (statement of Mr. Litauer) and 708 (statement of Mr. Kacijan).

17 In line with non-retroactivity, the rule is that “[a]n act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs” (ILC, Articles on Responsibility of States for Internationally Wrongful Acts, annex to General Assembly Resolution 56/83, 12 December 2001, Article 13).

that is undoubtedly reassuring for many, given the burden of their own pasts. The same logic excludes individual criminal accountability: if the temporal applicability of a norm is decisive for establishing state responsibility, it is even more crucial in the realm of individual criminal liability, as required by the principle of *nullum crimen, nulla poena sine lege* (no crime or punishment without law).¹⁸

However, the opening clause of Article 28 of the 1969 VCLT should not be overlooked, as it admits the possibility of retroactive application of a treaty where one of two conditions is met: (i) a different intention appears from the treaty itself, or (ii) such an intention is otherwise established.

With regard to the first condition, no such intention appears from the Genocide Convention. Its preamble does acknowledge that genocide is not a new phenomenon, “Recognizing that at all periods of history genocide has inflicted great losses on humanity,”¹⁹ but this recognition of historical occurrences does not imply that the Convention was meant to apply retroactively. So, while the term “genocide” may be applied to events that predated the convention,²⁰ it is a different matter if the genocide was internationally considered a punishable crime prior to the convention²¹ and if the obligations under the convention were to be applied to events prior to its entry into force.²² In this regard, the Genocide Convention does not expressly include historical genocides within its scope, and nothing in its wording suggests the intention to do so.

Admittedly, this silence may also be interpreted in the opposite direction. William A. Schabas, for instance, argues that nothing in the Genocide Convention expressly indicates its non-retroactive application either.²³ Yet this reasoning is not entirely persuasive. While he contends that “the general rule for treaties dealing with international criminal liability for atrocity crimes actually seems to favour retrospective application,”²⁴ the examples he cites²⁵—the Treaty of Versailles, which provided for the prosecution of Kaiser Wilhelm II; the Treaty of Sèvres, which provided for the prosecution of the massacres against the Armenians; the Charter of the International Military Tribunal of Nuremberg, which provided for retroactive prosecution of war crimes and crimes against humanity—all explicitly provided for such retroactive effect. Accordingly, the rule codified in Article 28

18 As Article 15.1 of the International Covenant on Civil and Political Rights puts it, “[n]o one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.”

19 The *travaux préparatoires* also refer to genocide as a historical fact (see ICTJ, *Applicability*, 4, 10-11).

20 ICTJ, *Applicability*, 10-11.

21 William A. Schabas, “Retroactive Application of the Genocide Convention,” *University of St. Thomas Journal of Law and Public Policy* 4, no. 2 (2010): 40.

22 Christian J. Tams, Lars Berster and Bjorn Schiffbauer, *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary* (C.H. Beck, 2014), 25-26, para. 45-47.

23 Schabas, “Retroactive Application,” 41.

24 Ibid.

25 Ibid., 42.

of the 1969 VCLT, which, moreover, must be interpreted restrictively,²⁶ remains unaffected.

Let us now turn to the second possibility, namely that retroactive application is “otherwise established.” The relevance of this exception lies in the fact that, under international law, subsequent state practice may contribute to clarifying how a treaty is to be interpreted and applied.²⁷ In other words, since the Genocide Convention itself contains no explicit indication regarding either retroactive or non-retroactive application, and can therefore, in theory, be interpreted both ways, state practice and statements become particularly significant. What states do or say in this regard may reveal their understanding that the Genocide Convention is (or is not) applicable to genocides committed prior to 1948.²⁸

This consideration provides a compelling reason for some states to refrain from recognizing the Armenian Genocide, as doing so could have a collateral effect, namely, opening the door to confronting their own historical atrocities.²⁹ Indeed, there appears to be a correlation between a state’s reluctance to label the massacres of Armenians under the Ottoman Empire as genocide and the manner in which it addresses its own genocidal or colonial past. Conversely, the more a state has come to terms with its historical injustices, the more likely it is to characterize the Armenian events as genocide, thereby implicitly accepting a retroactive application of the Genocide Convention. Particularly noteworthy is the growing trend of states acknowledging their own past atrocities, especially within colonial contexts, a development that seems, to some extent, to foster greater openness toward the recognition of the Armenian Genocide. This idea will be examined further in the following section, though it is first necessary to clarify several points concerning the concept of subsequent state practice.

Subsequent practice must express a common understanding among states parties to the treaty on how it shall be interpreted.³⁰ According to the United Nations International Law Commission (ILC), this implies that all the states parties are “aware of it and accept

26 Grandino Bodas, “Doctrine of Non-Retroactivity,” 344.

27 Article 31.1 of the 1969 VCLT: “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” Following paragraph 3.b) of the same article, there shall be also “taken into account, together with the context: [...] (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.” On the relevance of practice on the interpretation of the Genocide Convention specifically, see, e.g., International Criminal Tribunal for Former Yugoslavia, *The Prosecutor v. Goran Jelisić*, case no. IT-95-10-T, Judgment, 14 December 1999, para. 61.

28 Whether the treaty could be modified through subsequent practice will not be discussed here, as it is still controversial. See Marcelo G Kohen, “Keeping Subsequent Agreements and Practice in Their Right Limits,” in *Treaties and Subsequent Practice*, edited by Georg Nolte (Oxford University Press, 2013), 35-36.

29 Tams, Berster and Schiffbauer, *Convention on Genocide*, 24, para. 44.

30 ILC, Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, with commentaries, Conclusion 10, in United Nations, *Report of the International Law Commission. Seventieth session (30 April–1 June and 2 July–10 August 2018)*, UN Doc. A/73/10: 75; Matthias Herdegen, “Interpretation in International Law,” *Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2023), <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e723#law-9780199231690-e723-div1-2>.

the interpretation contained therein,”³¹ with no conflicting positions regarding how to interpretate the treaty.³² Nevertheless, not all of them must engage in the practice, as their acceptance “can under certain circumstances be brought about by silence or inaction.”³³

Furthermore, it should be emphasized that not every act of a state would carry the same weight in confirming the existence of subsequent practice. According to the ILC, parliamentary procedures, for instance, are generally less likely to be considered as such by international courts and tribunals,³⁴ which relativizes the significance of recognitions of the Armenian Genocide made primarily through resolutions adopted by national parliaments, and even more so by regional or local institutions.³⁵ This does not mean, however, that every action of legislative bodies is completely irrelevant to establishing the existence of subsequent practice. On the contrary, legislation might be relevant under international law in shaping or evidencing state practice,³⁶ for example, if it would entail the retroactive application of the Convention.³⁷

Moreover, although state practice is not confined to the actions of those who represent the state internationally by virtue of their official functions, namely, heads of state, heads of government, and ministers for foreign affairs,³⁸ it is precisely these actors who are particularly cautious in avoiding the use of the term *genocide* to describe the massacres of Armenians. This caution likely stems from the fact that unilateral acts, defined as declarations made publicly by an authority empowered to bind the state internationally and expressing an intention to be bound, may themselves give rise to legal obligations.³⁹ Even though the status of *recognition* within the category of unilateral acts remains debatable,⁴⁰ prudence appears to prevail. This explains why, when a national parliament adopts a resolution urging the government to recognize the genocide, the executive branch often hastens to clarify publicly that such a resolution does not reflect the official position of the state.⁴¹

31 ILC, Draft conclusions on subsequent agreements, Comment to Conclusion 10, para. 1, 75.

32 Ibid., para. 3, 75.

33 Ibid., para. 12, 78-79.

34 Ibid., para. 19, 80.

35 See the list at “Recognition,” Ministry of Foreign Affairs of the Republic of Armenia, accessed 30 May 2025, <https://www.mfa.am/en/recognition/>.

36 ILC, Second report on identification of customary international law, by Michael Wood, Special Rapporteur, 22 May 2014, UN Doc. A/CN.4/672, para. 41, d).

37 Schabas, “Retroactive Application,” 41.

38 See art. 7 of the 1969 VCLT.

39 ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, in United Nations, *Report of the International Law Commission. Fifty eighth session (1 May-9 June and 3 July-11 August 2006)*, UN Doc. A/61/10, para. 176.

40 Olivier Barsalou, “Les Actes Unilateraux Etatiques en Droit International Public: Observations sur Quelques Incertitudes Théoriques et Pratiques,” *Canadian Yearbook of International Law* 44 (2006): 407, <https://doi.org/10.1017/S0069005800009061>; ILC, Sixth report on unilateral acts of States. By Victor Rodríguez Cedeño, Special Rapporteur, 30 May 2003, UN Doc. A/CN.4/534, para. 17.

41 For instance in Sweden (“Armenia: Swedish Prime Minister Regrets Armenian Genocide Vote,” *Eurasianet*,

Handling Recognition with Care to Avoid Collateral Legal Effects? The Apparent Correlation between the Treatment of Colonial Atrocities and the Recognition of the Armenian Genocide

As mentioned above, and without suggesting the existence of a general rule or principle, since no single factor can fully account for the absence of recognition, countries that have come to terms with their own past, or are in the process of doing so, appear more inclined to recognize the Armenian Genocide. More precisely, officials representing such states at the international level tend to be more willing to use the term *genocide* publicly when referring to the massacres of Armenians. The reverse also seems to hold true: recognition of the Armenian Genocide often acts as a catalyst for confronting a state's own historical atrocities that predate the 1948 Convention, and, in some cases, for designating those acts as *genocide*, particularly in the context of colonial violence.

Several cases illustrate this positive correlation. In April 2015, German President Joachim Gauck described the mass exterminations, deportations, and ethnic cleansing of Armenians in 1915 as *genocide*,⁴² and one year later, the German Bundestag adopted a resolution formally recognizing the Armenian Genocide. In 2021, Germany officially characterized the atrocities committed against the Herero and Nama peoples in present-day Namibia as *genocide*.⁴³ That same year, in June, the Canadian government also recognized the Armenian Genocide, while Prime Minister Justin Trudeau reiterated his acceptance of the conclusions of the 2019 National Inquiry into Missing and Murdered Indigenous Women and Girls, which had found that "what happened amounts to *genocide*."⁴⁴ Also in 2021, immediately after U.S. President Joe Biden recognized the Armenian Genocide,⁴⁵ calls emerged urging the government to take similar steps with respect to the genocide of Native Americans.⁴⁶ A few months later, the government launched an investigation into

15 March 2010, <https://eurasianet.org/armenia-swedish-prime-minister-regrets-armenian-genocide-vote>) or in The Netherlands ("Dutch MPs Vote to Recognise Disputed Armenian 'Genocide,'" *BBC*, 22 February 2018, <https://www.bbc.com/news/world-europe-43161628>).

42 Sabrina Toppa, "German President Enrages Turkey by Referring to 1915 Armenian 'Genocide,'" *Time*, 24 April 2015, <https://time.com/3834015/armenian-genocide-german-president-turkey/>.

43 Joint Declaration by the Federal Republic of Germany and the Republic of Namibia: "United in Remembrance of Our Colonial Past, United in Our Will to Reconcile, United in Our Vision of the Future", 15 May 2021, para. 10, <https://www.parliament.na/wp-content/uploads/2021/09/Joint-Declaration-Document-Genocide-rt.pdf>.

44 Maan Alhmidi, "Experts Say Trudeau's Acknowledgment of Indigenous Genocide Could Have Legal Impacts," *The Canadian Press*, 5 June 2021, <https://globalnews.ca/news/7924188/trudeau-indigenous-genocide-legal-impacts/>.

45 Previously, in 2019, the U.S. Congress had passed a resolution formally recognizing the Armenian Genocide. See Julien Zarifian, *The United States and the Armenian Genocide. History, Memory, Politics* (Rutgers University Press, 2024), 147-152.

46 Glenn T. Morris and Simon Maghakyan, "The U.S. has Finally Acknowledged the Genocide of Armenians. What about Native Americans?" *The Washington Post*, 29 April 2021, <https://www.washingtonpost.com/opinions/2021/04/29/us-biden-armenian-genocide-native-americans-recognition/>. See also Emily Prey and Azeem Ibrahim, "The United States Must Reckon With Its Own Genocides," *Foreign Policy*, 11 October 2021, <https://foreignpolicy.com/2021/10/11/us-genocide-china-indigenous-peoples-day-columbus/>. According to Zarifian,

the system of Native American boarding schools,⁴⁷ which culminated in a two-volume report documenting the policy of forced assimilation imposed on Indigenous children.⁴⁸ This process ultimately led to President Biden's formal apology in October 2024.⁴⁹

In contrast, Belgium offers a less conclusive illustration of the correlation described above: it combines governmental recognition of the Armenian Genocide with a declared willingness to confront its colonial past, yet stops short of acknowledging the commission of genocide in the colonies. In 2015, former Prime Minister Charles Michel unequivocally referred to the massacres of Armenians as genocide during a plenary session of Parliament.⁵⁰ Few years later, in 2020, a special parliamentary commission was set to undertake an enquiry into the country's colonial legacy and to consider appropriate reparations. This body, regarded as the first truth commission on colonial atrocities, published its report in 2024.⁵¹ The report documented extensive violence and exploitation of colonized peoples but concluded that these acts were not driven by genocidal intent⁵² and that the legal classification of genocide could not be applied retroactively to the colonial period.⁵³

France presents another striking case. The Armenian Genocide has been formally recognized by the French Parliament,⁵⁴ and several presidents have explicitly described the

"[t]he United States' difficult relationship with its own past made recognition of the Armenian Genocide more difficult." See Zarifian, *The United States*, 206.

47 "Secretary Haaland Announces Federal Indian Boarding School Initiative," U.S. Department of Interior, 22 June 2021, <https://www.doi.gov/pressreleases/secretary-haaland-announces-federal-indian-boarding-school-initiative>.

48 Bryan Newland, *Federal Indian Boarding School Initiative Investigative Report* (May 2022), https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf; Bryan Newland, *Federal Indian Boarding School Initiative Investigative Report*, vol. II (June 2024), https://www.bia.gov/sites/default/files/media_document/doi_federal_indian_boarding_school_initiative_investigative_report_vii_final_508_compliant.pdf.

49 "Remarks by President Biden on the Biden-Harris Administration's Record of Delivering for Tribal Communities, Including Keeping His Promise to Make this Historic Visit to Indian Country," The White House, 24 October 2025, <https://bidenwhitehouse.archives.gov/briefing-room/speeches-remarks/2024/10/25/remarks-by-president-biden-on-the-biden-harris-administrations-record-of-delivering-for-tribal-communities-including-keeping-his-promise-to-make-this-historic-visit-to-indian-country-lavve/>.

50 Chambre des Représentants de Belgique, *Compte rendu intégral avec compte rendu analytique traduit des interventions. Séance plénière. Jeudi 18-06-2015. Après-midi*, CRIV 54 PLEN 054, 3, par. 01.03. Later that year, the Parliament passed a resolution on the Armenian Genocide (Chambre des Représentants de Belgique, *Résolution relative à la commémoration du centenaire du génocide arménien*, 23 July 2015, Doc. 54 1207/009).

51 Rachele Marconi, "States before their colonial past: Practice in addressing responsibility," *Questions of International Law, Zoom-out* 103 (2024): 29.

52 Chambre des Représentants de Belgique, *Commission spéciale chargée d'examiner l'État indépendant du Congo (1885-1908) et le passé colonial de la Belgique au Congo (1908-1960) au Rwanda et au Burundi (1919-1962), ses conséquences et les suites qu'il convient d'y réservier. Constats des experts*, 7 March 2024, Doc. 55 1462/006, 66.

53 Chambre des Représentants de Belgique, *Commission spéciale*, 71.

54 Loi n° 2001-70 du 29 janvier 2001 relative à la reconnaissance du génocide arménien de 1915, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000403928/>.

massacres as genocide.⁵⁵ Yet France continues to struggle with a decisive reckoning of its colonial past.⁵⁶ While recent years have seen gestures of openness toward dialogue with former colonial territories regarding appropriate measures of recognition or reparation, such discussions have consistently excluded any implication of legal responsibility.⁵⁷

In other European countries, such as Italy, Portugal, and the Netherlands, parliamentary recognition of the Armenian Genocide has not yet been matched by recognition at the governmental level. Also, although the details vary across these states, the classification and acknowledgment of colonial violence remain contested issues. When the Italian Parliament debated, and ultimately adopted, a resolution urging the government to recognize the Armenian Genocide,⁵⁸ the government's representative notably avoided any reference to the term *genocide*.⁵⁹ Italy has taken limited steps to address its colonial past, most notably through the Treaty of Friendship, Partnership, and Cooperation signed with Libya in 2008 (the Treaty of Benghazi).⁶⁰ The agreement included a substantial Italian investment package in Libyan infrastructure as a form of compensation for the harm caused during the colonial period, while also seeking to bring an end to long-standing

55 See, e.g., "Chirac pour la reconnaissance du génocide arménien," *L'Humanité*, 2 October 2006, <https://www.humanite.fr/monde/-/chirac-pour-la-reconnaissance-du-genocide-armenien>; Déclaration de M. Nicolas Sarkozy, Président de la République, sur le Génocide arménien, à Paris le 24 avril 2012, 24 April 2012, <https://www.elysee.fr/nicolas-sarkozy/2012/04/24/declaration-de-m-nicolas-sarkozy-president-de-la-republique-sur-le-genocide-armenien-a-paris-le-24-avril-2012>; Déclaration de M. François Hollande, Président de la République, sur le génocide arménien, à Paris le 24 avril 2014, 24 April 2014, <https://www.elysee.fr/francois-hollande/2014/04/24/declaration-de-m-francois-hollande-president-de-la-republique-sur-le-genocide-armenien-a-paris-le-24-avril-2014>; Discours d'Emmanuel Macron au diner du CCAF, 5 February 2019, <https://www.elysee.fr/front/pdf/elysee-module-3217-fr.pdf>.

56 Edwy Plenel, "Le négationnisme français des crimes coloniaux," *Mediapart*, 13 March 2025, <https://www.mediapart.fr/journal/france/130325/le-negationnisme-francais-des-crimes-coloniaux>; Franziska Boehme, "Normative Expectations and the Colonial Past: Apologies and Art Restitution to Former Colonies in France and Germany," *Global Studies Quarterly* 2, no. 4 (2022): 5-7, <https://doi.org/10.1093/isagsq/ksac053>.

57 Specifically regarding Niger, see Représentation Permanente de la France auprès de l'Office des Nations Unies à Genève et des organisations internationales en Suisse, Réponse du Gouvernement français à la communication conjointe des procédures spéciales n° AL FRA 5/2025, 19 June 2025, 6, <https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=39057>.

58 Camera dei Deputati, *Mozione 1-00139*, 11 March 2019, <https://aic.camera.it/aic/scheda.html?numero=1-00139&ramo=C&leg=18>.

59 Camera dei Deputati, Discussione della mozione Formentini, Sabrina De Carlo, Delmastro Delle Vedove, Quartapelle Procopio, Colucci ed altri n. 1-00139 concernente il riconoscimento del genocidio del popolo armeno (ore 14,03), in *Resoconto stenografico dell'Assemblea. Seduta n. 158 di lunedì 8 aprile 2019*, 8 April 2019, <https://www.camera.it/leg18/410?idSeduta=0158&tipo=stenografico>, statement by Vincenzo Santangelo, Undersecretary of State to the Presidency of the Council of Ministers.

60 Legge 6 febbraio 2009, no. 7 - Ratifica ed esecuzione del Trattato di amicizia, partenariato e cooperazione tra la Repubblica italiana e la Grande Giamicahiria araba libica popolare socialista, fatto a Bengasi il 30 agosto 2008, *Gazzetta Ufficiale* (Serie Generale) 40, 18 February 2009. English translation available at DCAF—Geneva Centre for Security Sector Governance, Law No. (2) of 1377 FDP/2009 AD on ratifying the Treaty of Friendship, Partnership, and Cooperation between the Great Socialist People's Libyan Arab Jamahiriya and the Republic of Italy, 8 April 2009, <https://security-legislation.ly/latest-laws/law-no-2-of-2009-on-ratifying-the-treaty-of-friendship-and-cooperation-between-the-great-socialist-peoples-libyan-arab-jamahiriya-and-the-republic-of-italy>.

disputes arising from that history.⁶¹ Nonetheless, the question of whether any of the atrocities committed in the colonized territories amount to genocide remains the subject of ongoing debate.⁶²

Similarly, in 2019, the Portuguese Parliament adopted a *voto de pesar* [vote of condolence] concerning the Armenian Genocide, a largely symbolic gesture that expressed compassion for the victims but stopped short of constituting formal governmental recognition.⁶³ Meanwhile, the government's policy toward addressing colonial atrocities remains ambiguous, to say the least.⁶⁴

As for the Netherlands, since 2004 the Parliament has repeatedly called on the government to recognize the Armenian Genocide, yet without success to date.⁶⁵ Nor has it properly addressed a number of atrocities in the colonial period classified as genocidal by some scholars.⁶⁶ Only the massacres committed in Indonesia during the 1940s and slave trade have prompted vague apologies from the government and the king.⁶⁷

The correlation mentioned above also seems to be confirmed in a negative sense:

61 According to its preamble, the parties are “determined to finally close the painful ‘chapter of the past,’ [...] by solving all bilateral disputes.”

62 See, for instance, Ali Abdullatif Ahmida, “Eurocentrism, Silence and Memory of Genocide in Colonial Libya, 1929-1934,” in *The Cambridge World History of Genocide*, vol. III, ed. Ben Kiernan, Wendy Lower, Norman Naimark and Scott Straus (Cambridge University Press, 2023), 118-140. But see Nicola Labanca, “Compensazioni, passato coloniale, crimini italiani. Il generale e il particolare,” *Italia contemporanea* 251 (2008): 243, https://www.reteparrì.it/wp-content/uploads/ic/IC_251_2008_2_r.pdf, excluding that colonial violence can be labelled as genocide.

63 Assembleia da República, *Voto de Pesar Nº 819/XIII em evocação das vítimas do genocídio arménio de 1915*, 24 April 2019, <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailheProjetoVoto.aspx?-BID=112313>.

64 While the President has acknowledged Portugal’s responsibility in some cases (Alberto Massango, “Portugal Takes Responsibility For Wiriaymu Massacre,” *Agência de Informação de Moçambique*, 22 December 2022, <https://aimnews.org/2022/12/22/portugal-takes-responsibility-for-wiriaymu-massacre/>), the government has openly excluded taking any action for past colonial abuses (Alison Roberts, “Portugal’s debate over colonial and slavery reparations resurfaces,” *BBC*, 29 April 2024, <https://www.bbc.com/news/world-europe-68916320>).

65 “Dutch MPs call on their government to finally fully recognize Armenian Genocide / Sayfo,” *SyriacPress*, 11 April 2025, <https://syriacpress.com/blog/2025/04/11/dutch-mps-call-on-their-government-to-finally-fully-recognize-armenian-genocide-sayfo/>.

66 Emmanuel Kreike, “Genocide in the Kampongs? Dutch Nineteenth Century Colonial Warfare in Aceh, Sumatra,” *Journal of Genocide Research* 14, no. 3-4 (2012): 297-315, doi:10.1080/14623528.2012.719367; Mohamed Adhikari, “Settler Genocides of San Peoples of Southern Africa, c. 1700–c. 1940,” in *The Cambridge World History of Genocide*, vol. II, ed. Ned Blackhawk, Ben Kiernan, Benjamin Madley and Rebe Taylor (Cambridge University Press, 2023), 69-96; Frank Dhont, “Genocide in the Spice Islands. The Dutch East India Company and the Destruction of the Banda Archipelago Civilisation in 1621,” in *The Cambridge World History of Genocide*, vol. II, 186-214.

67 Olivia Tasevski, “Forced Atonement? Dutch Apologies and Compensation for Colonial Era Rights Violations,” *Indonesia at Melbourne*, 28 November 2019, <https://indonesiaatmelbourne.unimelb.edu.au/forced-atonement-dutch-apologies-and-compensation-for-colonial-era-rights-violations/>; Christa Wongsodikromo and Anne-Marie Toebosch, “Dutch King’s ‘Apology’ for Colonial Slavery Is an Erasure of History,” *Truthout*, 10 July 2023, <https://truthout.org/articles/dutch-kings-apology-for-colonial-slavery-is-an-erasure-of-history/>; Sayra van den Berg, Emmanuel Akwasi Adu-Ampong, and David Mwambari, “Breaking the silence on colonial crimes,” *Review of African Political Economy*, 1 September 2023, <https://roape.net/2023/09/14/breaking-the-silence-on-colonial-crimes/>.

among those states that do not recognize the Armenian Genocide in any way, there are some where the discussion on a genocidal past is open,⁶⁸ as well as former colonial powers that did not shy away from violence in their quest for expansion. Australia could be among the first, and the lack of recognition of the Armenian Genocide could be explained by their own past,⁶⁹ as atrocities against Aboriginal Australian have been officially recognized, but no federal government has so far labelled them as genocide.⁷⁰ In contrast, the report *Bringing them Home*, by the Human Rights and Equal Opportunity Commission, stated back in 1997 that a genocide had been committed.⁷¹ Similarly, in 2025, the Yoorrook Justice Commission, established in 2022 as part of a joint initiative between the Government of the State of Victoria and the First Peoples' Assembly of Victoria, asserted in its final report that First Peoples had suffered genocide.⁷²

Obviously, responsibility for colonial atrocities in Australia also extends to the United Kingdom as the power that drove settler colonialism in the area.⁷³ In Martin Shaw's words:

British authorities in London and Australia willed colonial settlement knowing that it foretold the often-brutal removal of the indigenous inhabitants, even if sometimes condemned the specific means that settlers adopted. In the light of this conclusion, it is surprising that while Australia has had a vigorous national debate on genocide, British commentators have mostly regarded this as a purely local affair, without implications for the 'home country' from which most settlers came—or, indeed, were sent as a matter of state policy.⁷⁴

68 Israel has also not recognized the Armenian Genocide. However, despite its settler-colonial practices in Palestine (United Nations, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 21 September 2022, UN Doc. A/77/356, para. 36) and its rejection of claims that its attacks on Gaza constitute genocide (United Nations, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 August 2025, UN Doc. A/80/337, paras. 65-70), it has been excluded from this study, as the conduct in question postdates the adoption of the 1948 Genocide Convention.

69 Ellen Van Beukering, "Domestic Origins of Australia's Approach to Genocide," *Young Australians in International Affairs*, 1 August 2021, <https://www.youngausint.org.au/post/domestic-origins-of-australia-s-approach-to-genocide>.

70 On the reluctance to label them as genocide, see, for instance, Tony Barta, "After the Holocaust: Consciousness of Genocide in Australia," *Australian Journal of Politics and History* 31, no. 1 (1985): 154-61, <https://doi.org/10.1111/j.1467-8497.1985.tb01330.x>; Colin Tatz, "Confronting Australian Genocide," *Aboriginal History* 25 (2001): 16-36, <https://press-files.anu.edu.au/downloads/press/p72971/pdf/ch0251.pdf>.

71 Human Rights and Equal Opportunity Commission - Commonwealth of Australia, *Bringing them Home. Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Human Rights and Equal Opportunity Commission, 1997), esp. 235-239, <https://humanrights.gov.au/our-work/projects/bringing-them-home-report-1997>.

72 Yoorrook Justice Commission, *Truth be Told* (Parliament of Victoria, 2025), esp. 432 (Recommendation 100), <https://www.yoorrook.org.au/reports-and-recommendations/reports>.

73 Tony Barta, "A very British Genocide. Acknowledgement of Indigenous Destruction in the Founding of Australia and New Zealand," in *The Cambridge World History of Genocide*, vol. II, 46-68.

74 Martin Shaw, "Britain and Genocide: Historical and Contemporary Parameters of National Responsibility,"

However, the United Kingdom has not officially recognized the genocidal nature of colonial massacres. Nor has it recognized the Armenian Genocide, even though various bills have been presented in the House of Commons demanding formal recognition from the Government.⁷⁵ Another country haunted by the ghost of colonial genocide⁷⁶ that, for the moment, does not appear to have any intention of addressing its colonial past⁷⁷ is Spain, which has also failed to recognize the Armenian Genocide, even at the parliamentary level.⁷⁸

The question that arises is whether the growing trend toward acknowledging colonial atrocities, offering various forms of reparation, most often in the form of apologies, and even characterizing such acts as genocide, may produce any international legal effects, such as constituting a subsequent practice supporting the retroactive application of the Genocide Convention. Considering the safeguards that states have consistently included to exclude the consequences of international responsibility, it appears that, for now, these developments amount to little more than exercises in political or moral accountability.⁷⁹ For instance, in the Joint Declaration between Germany and Namibia, Germany expressly

Review of International Studies 37, no. 5 (2011): 2426, <https://doi.org/10.1017/S0260210510001245>. On the British genocidal practices in Australia, see, for instance, Tom Lawson, *The Last Man: A British Genocide in Tasmania* (Bloomsbury Publishing, 2021).

75 See House of Commons, *Armenian Genocide (Recognition) Bill* (Bill 90 2021-22), 21 June 2021, <https://publications.parliament.uk/pa/bills/cbill/58-02/0090/210090.pdf>; *Recognition of Armenian Genocide Bill* (Bill 190 2021-22), 9 November 2021, <https://publications.parliament.uk/pa/bills/cbill/58-02/0190/210190.pdf>; *Armenian Genocide (Recognition) Bill* (Bill 129 2022-23), 29 June 2022, <https://publications.parliament.uk/pa/bills/cbill/58-03/0129/220129.pdf>; *Recognition of Armenian Genocide Bill* (Bill 133 2022-23), 30 June 2023, <https://publications.parliament.uk/pa/bills/cbill/58-03/0133/220133.pdf>; *Armenian Genocide (Recognition) Bill* (Bill 91 2023-24), 11 December 2023, <https://publications.parliament.uk/pa/bills/cbill/58-04/0091/230091.pdf>.

76 See, for instance, Kristina Charleston, “Reframing the Debate: Spain’s Colonization of the New World as Genocide,” *Graduate Research Journal* 2 (2015): 65-86; Harald E. Braun, “Genocidal Massacres in the Spanish Conquest of the Americas: Xaragua, Cholula and Toxcatl, 1503-1519,” in *The Cambridge World History of Genocide*, vol. I, ed. Ben Kiernan, T. M. Lemos, and Tristan S. Taylor (Cambridge University Press, 2023), 622-647.

77 In 2019, a letter from former Mexican president Andrés Manuel López Obrador to the king of Spain demanding an apology for the wrongs committed during the colonial period sparked considerable controversy in the country (“Mexico Demands Spain Apologize for Colonial abuse of Indigenous People,” *The Guardian*, 25 March 2019, <https://www.theguardian.com/world/2019/mar/25/mexico-demands-spain-apology-colonialism-obrador>). In 2024, president-elect Claudia Sheinbaum refused to invite Philippe VI to her inauguration as a reaction for the lack of apology (Sam Jones, “Mexico’s Snub to King Felipe Rekindles Colonialism Row with Spain,” *The Guardian*, 26 September 2024, <https://www.theguardian.com/world/2024/sep/26/mexicos-snub-to-king-felipe-rekindles-colonialism-row-with-spain>).

78 Various proposals for recognition have been submitted to parliament, but they have not been successful. See, for instance, Grupo Parlamentario Republicano, “Proposición no de Ley sobre el reconocimiento del genocidio armenio. (161/000290),” *BOCG. Congreso de los Diputados* D-49, 10 March 2020: 9; Grupo Parlamentario Plural, “Proposición no de Ley relativa a reconocer el genocidio armenio. (162/000637),” *BOCG. Congreso de los Diputados* D-268, 10 May 2021: 38; Grupo Parlamentario Euskal Herria Bildu, “Proposición no de Ley relativa al reconocimiento del genocidio armenio. (161/004943),” *BOCG. Congreso de los Diputados* D-604, 4 April 2023: 3.

79 Carsten Stahn, “Reckoning with Colonial Injustice: International Law as Culprit and as Remedy?” *Leiden Journal of International Law* 33 (2020): 828-29, doi:10.1017/S0922156520000370828; Marconi, “Colonial past,” 26.

accepted “a moral, historical and political obligation to tender an apology for this genocide and subsequently provide the necessary means for reconciliation and reconstruction,” thereby excluding any implication of legal responsibility.⁸⁰ Similarly, the Belgian Special Parliamentary Commission of Inquiry into the country’s colonial past emphasized that the reparations proposed in its 2024 report were *ex gratia* measures, unrelated to any potential legal liability, and thus purely political in nature.⁸¹ The 2008 Treaty of Benghazi likewise seems to preclude any further colonial claims by Libya, including, presumably, renewed discussions concerning genocidal practices.⁸²

As Rachele Marconi observes, these initiatives appear to represent “a last resort for the former colonial power to move forward in these specific situations characterized by strong political and international pressures.”⁸³ Yet, as she also notes, they should not be underestimated, for “their achievements [...] were unthinkable until recently.”⁸⁴ Indeed, they mark a relatively new trend in international practice and may, in time, pave the way for normative developments, although it remains too early to draw firm conclusions. One may reasonably argue that these initiatives have emerged in response to the specific historical context of colonialism and that any normative consequences they could generate would therefore relate only to that phenomenon, leaving the Armenian case outside their direct scope. They are, without question, the product of demands voiced by many states that now form the international community and that were themselves formerly subjected to colonial domination.

If there was a decisive turning point in these demands, it was the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, from 31 August to 8 September 2001.⁸⁵ Significantly, the resulting *Declaration and Programme of Action* adopted an expansive perspective that extended beyond racism and colonialism to encompass religious intolerance⁸⁶ and the broader category of “historical injustices,”⁸⁷ defined as “the crimes or wrongs of the past, wherever and whenever they occurred.”⁸⁸ On this basis, one may argue that the Armenian Genocide is comparable to colonial violence in terms of recognition and reparation claims.

80 Joint Declaration by Germany and Namibia, para. 11.

81 Chambre des Représentants de Belgique, *Commission spéciale*, 84.

82 See Treaty of Benghazi, preamble: “Determined to finally close the painful ‘chapter of the past’ [...] by solving all bilateral disputes.”

83 Marconi, “Colonial past,” 41.

84 Ibid., 42.

85 Marconi, “Colonial past,” 25.

86 Durban Declaration, para. 59-60, in United Nations, *Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Durban, 31 August - 8 September 2001*, UN Doc. A/CONF.189/12, 17.

87 Durban Programme of Action, para. 158, in UN Doc. A/CONF.189/12, 61 (within Section IV, devoted to the provision of effective remedies, recourses, redress, and other measures at the national, regional and international levels).

88 Durban Declaration, para. 106, in UN Doc. A/CONF.189/12, 24.

Another Legal Constraint?

Playing the Courts Card as a Ground for Non-recognition

The correlation proposed here is by no means easy to demonstrate, beyond what can be inferred from the observable history and practice of states. No official document articulates it; no public speech confirms it.⁸⁹ Whether to avoid undesirable legal consequences, to preserve diplomatic relations with Turkey, or for other substantive reasons that mask their own interests, states' official positions on the recognition of the Armenian Genocide strive to be, or at least to appear, neutral. Frequently, governments have framed the issue as a matter best resolved through dialogue between Armenia and Turkey as a pathway toward reconciliation.⁹⁰

Of particular relevance is the fact that several European governments invoke an alleged legal constraint to justify non-recognition: the purported requirement that genocide must first be declared by a court. According to this logic, governments assert that they would be authorized, or even obligated, to recognize the Armenian Genocide only if a judicial body were to determine that the atrocities committed against the Armenians constituted genocide.

For example, during a debate in the House of Lords on whether the Government should reconsider its position regarding recognition of the events of 1915-1917 as genocide, the Minister of State at the Foreign and Commonwealth Office of the United Kingdom stated:

“Genocide” is a precise term and its use is best assessed by a competent court. However, then as now, there is no court with the authority to make such an assessment. Therefore, it is inappropriate for the British Government to apply the term to events on which no legal judgment can be made.⁹¹

Likewise, the official response to a public information request submitted to the Spanish Ministry of Foreign Affairs and Cooperation in September 2024 regarding Spain's position on the non-recognition of the Armenian Genocide stated:

89 Exceptionally, during discussions to adopt resolutions on the Armenian Genocide, some U.S. congresspersons made explicit reference to the relationship between recognition of this genocide and the need to address their own dark past. See Zarifian, *The United States*, 151, 205-206.

90 For instance, see the statements by Geoffrey Hoon, UK Minister for Europe at the time, in House of Commons, “Genocide (Armenia and Assyria),” debated on Wednesday 7 June 2006, *Official Report* 447, col. 137WH; by the UK Minister of State, Foreign and Commonwealth Office at the time, in House of Lords, “Armenia: Genocide,” debated on Thursday 16 June 2011, *Official Report* 728, col. 874-876, and by Vincenzo Santangelo, the Undersecretary of State to the Presidency of the Council of Ministers of Italy in 2019, in Camera dei Deputati, *Discussione della mozione n. 1-00139*.

91 House of Lords, “Armenia,” debated on Monday 29 March 2010, *Official Report* 718, col. 508GC. A document from the Russia, South Caucasus and Central Asia Directorate (RuSCCAD) to the Minister for Europe puts forward this exact argument when responding to the question of whether the massacres should be recognized as genocide, RuSCCAD, Armenian Massacres 1915-1917, 17 June 2010, para. 13, https://assets.publishing.service.gov.uk/media/5a7ebab540f0b62305b82ceb/FOI_ref_0298-14_Attachment_23.pdf.

Spain has not pronounced itself on the matter, considering that the treatment of this type of question corresponds to the competent international judicial bodies and not to the States, in accordance with the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, to which Spain acceded on 13 September 1968.⁹²

In similar, though broader, terms, the coalition agreement of the third Rutte cabinet in the Netherlands set out the conditions under which the government would recognize genocides: "The Dutch government bases its recognition of genocides on rulings by international courts or criminal tribunals, clear conclusions from scientific research and findings by the UN."⁹³

This alignment of the arguments of the European countries has its origin in Article 1.4 of Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, according to which

Any Member State may, on adoption of this Framework Decision or later, make a statement that it will make punishable the act of denying or grossly trivialising the crimes referred to in paragraph 1(c) [publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court] and/or (d) [publicly condoning, denying or grossly trivialising the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945] **only if the crimes referred to in these paragraphs have been established by a final decision of a national court of this Member State and/or an international court, or by a final decision of an international court only.**⁹⁴

Thus, what was originally an optional provision designed to establish jurisdictional safeguards to reconcile legislation against denialism with the protection of freedom of expression has ultimately been repurposed as an argument for not recognizing the Armenian Genocide. Indeed, this requirement now appears to have taken root even within academic discourse,⁹⁵ despite the fact that it raises at least two major problems.

92 Ministerio de Asuntos Exteriores y Cooperación, Resolution, file nº 001-095798, 8 October 2024.

93 Rijksoverheid, *Vertrouwen in de toekomst. Regeerakkoord 2017-2021*, 10 October 2017, Section 4.1, 47, <https://www.rijksoverheid.nl/documenten/publicaties/2017/10/10/regeerakkoord-2017-vertrouwen-in-de-toekomst>.

94 *Official Journal* L 328, 6 December 2008: 55-58.

95 For instance, Grandjean refers to three genocides as having been legally recognized at the international level—whatever that may precisely entail—namely the genocide of the Jews, the genocide of the Tutsis, and the

To begin with, strictly speaking, the Holocaust has never been declared a genocide by an international court either. At Nuremberg, the term was merely mentioned in the indictment,⁹⁶ under Count Three (war crimes), but was not a ground for prosecution according to the Charter of the International Military Tribunal. Therefore, if the judicial declaration requirement were to be strictly apply, the Holocaust would technically amount to crimes against humanity or war crimes (the legal classification given by the Nuremberg Tribunal), but not to genocide, a conclusion that could be considered denialist in some countries.⁹⁷ States are not unaware of this contradiction, and they attempt to circumvent it by invoking the Holocaust's role as a definitional moment in the development of the crime of genocide,⁹⁸ even though the Armenian Genocide was likewise central to the conception of the 1948 Convention.⁹⁹

Secondly, no such requirement arises from the 1948 Convention, contrary to what has been argued by the Spanish government. Article VI provides that:

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.¹⁰⁰

However, returning to the principles of treaty interpretation, nothing in the “ordinary meaning to be given to the terms of the treaty”¹⁰¹ indicates that this provision does anything more than allocate criminal jurisdiction—either to domestic courts on a territorial

genocide committed in the former Yugoslavia. He further suggests that the Armenian Genocide was implicitly recognized by the United Nations through the Whitaker Report. See Geoffrey Grandjean, “La répression du négationnisme en Belgique: de la réussite législative au blocage politique,” *Droit et Société* 77, no. 1 (2011): 139, <https://doi.org/10.3917/drs.077.0137>.

96 International Military Tribunal, *Trial of the Major War Criminals before the International Military Tribunal*, vol. I (1945): 43, https://www.loc.gov/item/2011525338_NT_Vol-I/.

97 For instance, in Belgium. There, the Law of 23 March 1995 punishes the denial of the Jewish genocide (Loi tendant à réprimer la négation, la minimisation, la justification ou l'approbation du génocide commis par le régime national-socialiste allemand pendant la seconde guerre mondiale), while Article 20.5 of the Law of 30 July 1981 (Loi tendant à réprimer certains actes inspirés par le racisme ou la xénophobie), as amended by the Law of 5 May 2019 (Loi du 5 mai 2019 portant des dispositions diverses en matière pénale et en matière de cultes, et modifiant la loi du 28 mai 2002 relative à l'euthanasie et le Code pénal social), punishes the denial of a crime of genocide, a crime against humanity, or a war crime “established as such by a final decision rendered by an international court.” On this contradiction, see Noémie Blaise, “Le génocide arménien: le parent pauvre du négationnisme élargi,” *Journal des Tribunaux* 6868 (2021): 581, <https://pure.unamur.be/ws/portalfiles/portal/61139429/D1916.pdf>.

98 See the file, available online at the UK Government website, named “Standard lines—Armenian Massacres” (n.d.), https://assets.publishing.service.gov.uk/media/5a7ddb96ed915d2acb6ee8e8/FOI_ref_0298-14_Attachment_27.pdf.

99 Robertson, QC, *Was There?* para. 65.

100 1948 Genocide Convention.

101 Art. 31.1 1969 VCLT.

basis, or to an international criminal tribunal with appropriate competence. Moreover, it should be stressed that the Convention's purpose is not limited to the punishment of genocide; it expressly includes its prevention. Conditioning recognition on a prior judicial determination, where individual responsibility must be established through lengthy and complex proceedings, would make it practically impossible for a state to adopt timely measures to prevent genocide from occurring or continuing. As the International Court of Justice has emphasized, "a State's obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed."¹⁰²

Accordingly, waiting for a domestic or international court to determine that genocide has taken place would obstruct a state's ability to fulfil its preventive obligations under the 1948 Convention.

Concluding Remarks

Recognition of the Armenian Genocide poses not only geopolitical and political challenges but also legal ones. At present, the rules of international law governing the temporal application of treaties exclude the massacres suffered by Armenians under Ottoman rule from falling within the scope of the 1948 Genocide Convention. However, nothing prevents states from developing, through their practice, a new shared understanding that the Convention may apply to situations predating its adoption. Indeed, there seems to be a growing—although far from being unanimous—trend among Western states toward acknowledging their own past atrocities and offering some form of reparation—even if only apologies—for historical injustices, particularly those linked to colonialism.

This trend appears to correlate, at least to some extent, with the recognition (or lack thereof) of the Armenian Genocide. This is logical: for a state to acknowledge and provide reparation for the atrocities it committed in the past requires a deeper level of engagement with human rights, an engagement that tends to have a universal dimension extending beyond the domestic sphere. Thus, even if a strict cause-and-effect relationship cannot be established, it is reasonable to argue that the recognition of the Armenian Genocide is conditioned, to some degree, by a state's sensitivity to human rights violations and its willingness to confront them retrospectively.

At the same time, it cannot currently be asserted that states share a common understanding that the Genocide Convention applies to situations prior to its adoption. Only a handful of states have gone so far as to classify their own pre-1948 atrocities as genocide. Recognition of the Armenian Genocide remains limited, and even more so if one excludes parliamentary initiatives, whose significance in international relations is considerably less than recognition expressed by a head of state, head of government, or

¹⁰² International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, para. 431.

foreign minister. In the present state of international law, such initiatives occupy a moral and political space rather than a legal one. They remain matters of state discretion, shaped by a multiplicity of factors that lie well beyond the scope of this study.

Another factor that makes it difficult to draw definitive conclusions about the extent to which states' reluctance to retroactively apply the 1948 Convention may have influenced the non-recognition of the Armenian Genocide is the measured neutrality of official state positions. Government statements or documents articulating these positions rarely disclose the underlying interests at play. Nevertheless, in recent years, several Western European states have increasingly argued that recognition requires a prior judicial determination of genocide. Contrary to these claims, such a requirement is entirely absent from the Genocide Convention, and may even impede compliance with its obligations, particularly the duty to prevent.

Ultimately, the use of legal arguments to justify the non-recognition of the Armenian Genocide demonstrates that such constraints, whether genuinely arising from public international law or spuriously invoked, can carry significant weight in shaping state decisions on recognition. These legal considerations, even when misapplied, should therefore not be ignored in understanding why many states continue to refrain from acknowledging the Armenian Genocide.

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