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PEOPLES AT RISK/SITUATIONS TO WATCH

Congo. The suffering and rape due to the exploitation of gold and “conflict minerals” there was documented by John Prendergast of *Enough!* on 60 Minutes on November 29. *The New York Times* reported on Dec. 10 that “United Nations peacekeeping officials were explicitly warned months ago by their legal advisers not to participate in combat operations with the Congolese Army if there were a risk that Congolese soldiers might abuse human rights, internal documents show. But the missions went forward—and the abuses took place as feared....A few months later, Congolese government soldiers, who had been supplied with ammunition and food by United Nations peacekeepers, killed hundreds of civilians, gang-raped girls and even cut the heads off some young men, according to human rights groups.”

Iran. Violence against Iranian protestors, threats of nuclear escalation, and genocidal threats against Israel threaten peoples in the mid-East. In an international conference held in Berlin which urged aggressive sanctions against Iran, David Schwammenthal, an editorial writer for *The Wall Street Journal Europe*, said on Dec. 1 that “a fanatical religious regime and one of the world’s

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Joyce Apffel, President
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PEOPLES AT RISK/SITUATIONS TO WATCH

biggest sponsors of terror is threatening to wipe Israel off the map while it is racing toward acquiring the means to carry out this apocalyptic vision. While denying the Holocaust, it is simultaneously threatening another genocide, and yet Germany and much of the rest of the West is idly standing by” (*see www.jpost.com*).

Sudan. The Save Darfur coalition reports on Dec. 10 that “Nearly two years after United Nations peacekeepers were deployed to Darfur, the Government of Sudan works at every turn to block their efforts to protect civilians. Recently, the United Nations Panel of Experts responsible for monitoring the warring parties in Sudan issued a report confirming what we all already know: Bashir’s regime continues to defy the United Nations arms embargo as well as international humanitarian and human rights law.

See *www.SaveDarfur.org* for more information.

TORTURE, DEMOCRACY AND THE CHALLENGE OF THE FUTURE

BY DARIUS REJALI (REED COLLEGE)

Darius Rejali

{Ed. Note: Darius Rejali is the winner of the 2009 Lemkin Award of the Institute for the Study of Genocide for his book, *Torture and Democracy* (Princeton University Press, 2009). This talk was presented at a ceremony of the Institute for the Study of Genocide and New York University at New York University, November 5, 2009}

I'm deeply honored by the recognition you have given my work. Raphael Lemkin was an extraordinary scholar, who was willing to speak truth to power repeatedly. I hope I can continue in his footsteps, thinking outside of the box on matters of global importance.

Today, let me start an overview of what I'm going to talk about and then get into the details. First I would like to go over some preliminaries such as what I mean by torture, what I study, some general misconceptions I would like to set aside, and then I would like to talk about the demand and the supply of torture in the twentieth century. I will close some thoughts on preventing torture in the future.

This year is a little past the 60th anniversary of the Universal Declaration of Human Rights in 1948. It was like today a period of hope. And in that period, just as now, many well meaning people were putting a tremendous amount of effort to prevent torture at home in their countries as well as preventing human rights abuses abroad.

It is important to remember that this was not just a time of hope, but also a time of forgetfulness. Because we came to believe that no one on our side had ever been a torturer, never had been. Because being a winner was all about being morally pure.

Torture in our imaginations soon found its home in the Nazis and the Stalinists. It was the method of the enemy.

Before World War II, the English, Americans and Frenchall practiced torture. The French and British in their colonies, the Americans in the Philippines, and in American cities large and small, including electro torture and watertorture. Sometimes this was done in collusion with locals, and sometimes with quiet, if not explicit, approval from governments. And all this before the CIA ever existed.

So at the end of World War II, we forgot our past. And torture lived on to come back another day. And now in this time of change and hope, I hope we don't make the same mistake twice.

Now I have used the word torture several times so let me explain to you what I mean by this, or at least what I study. When I talk about torture I'm talking about something that meets four criteria. First, it has to involve a state official or a designated state official such as a death squad. Second, the purpose for which it is being used is for an authorized state purpose: intimidation, confession (false or true), or information. Third, it involves physical coercion that is painful.

Fourth, the person to whom it is applied is detained and helpless. I'm not interested in cases of police brutality and riots. And I'm not interested in the kind of violence police must perform as part of their lawful obligations. There is a broader history of cruelty of which the history of torture is a subpart, and there is obviously a relationship.

But this is what I study. No doubt you could slice it many other ways, and you could call practices that

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meet these four criteria whatever you want, but, whatever you call them, this practice has a long history in the world's democracies, from ancient Greece and Rome, to the Renaissance republics of Venice and Florence, to the great modern democracies.

My goal then is to speak intelligently about torture and cruelty, if that is possible. And it begins by setting aside any notion that winners are morally pure, or the notion that democracies have no history of torture. Democracies just have a DIFFERENT history, though we have forgotten it. And let me be clear, the democratic record is not as bad as that of authoritarian states. Nazis and Stalinists deserve their terrible reputation. But what requires explanation is not whether torture is compatible with democratic life, but how is it compatible, and why have democracies have been such torture innovators?

Now ever since the global economic downturn, I'm sure you like I have lost a significant chunk of retirement savings. We've all become economists, so I'm going to talk about torture as having a supply side and a demand side.

Where does the demand for torture come from? We may think that demand for torture arises mainly out of national emergencies where there is a genuine or perceived threat.

The so called "ticking time bomb" cases. But those cases add up to no more than a third of the cases we know.

Torture can also arise in democracies for many other reasons, much more common and mundane. First it can arise locally, as a quiet arrangement between

police, local businessmen and homeowners. The latter want safe streets and good house values and quietly look the other way. This is clearly what torture was like in Chicago between 1973 and 1991. It involved over 50 detectives, most incidents implicating Jon Burge, second in command of the Chicago police. And this is how torture appears today in Johannesburg and Sao Paolo, Mexico City and Chicago.

Torture can also arise if the judicial system is permissive. When judges favor confessions, cops will get the confession any way they can including torture. When judges allow indefinite detention without charges, torture is almost inevitable. This is what triggered Japan's torture crisis in the 1980s, one that involved ordinary criminals, not terror suspects.

The demand also arises from decommissioned soldiers coming back from war. Think about this. You're a military policeman, and you've tortured, and you need a job. What kind of job are you going to get? Private security or diplomatic policing. And this is how torture comes back in. If you got ahead doing torture in the military, you think you'll get ahead using those techniques back home. This has happened twice in American and French history.

For example, all of you know waterboarding, a loose word for group of water tortures. American soldiers brought these techniques back with them from war in the Philippines in 1905, and by the 1920s these techniques could be found in police stations large and small across America, especially in the American south. And the techniques that Commander Burge introduced to the police force in Chicago were first documented that in American hands in Vietnam, near where he was stationed.

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Likewise, the techniques post 9/11 are not a sharp break from torture documented in American INS prisons and bootcamps for juveniles in the 1990s.

We may think the war will end, and we'll be safe. No that is not the way it works. There is no sharp line between domestic and international policing. What happens out there comes back here. Typically it will come back. And typically over a twenty year period, it will come back to a neighborhood near you.

Lastly, once a government authorizes torture, many are drawn to government service because they want to be the Jack Bauers of tomorrow. Unless all security forces decide to torture, a split soon develops between the professionals and the torturers, such as the split that developed in between the FBI and the CIA. Sooner or later, one side or another loses. In some cases, the torturers lose. In the 1970s, for example, the Brazilian military turned on its own torturers, recognizing how torture led to military indiscipline, black marketeering, and bureaucratic devolution by its torture squads. And sometimes the policing professionals lose, and they retire from the government agencies in large numbers. Torture has a well known deprofessionalizing effect. Those who remain are the torture camp, those who believe in the folklore of torture and practice faith based intelligence. The demand for torture thus resides deep within these security bureaucracies and simply awaits the next opportunity to come forward. I will have more to say on this later.

So those are the five ways that that the demand for torture can come: national emergencies, local arrangements, permissive judicial systems, decommissioned officers returning from war, and

torturers embedded in the security forces.

Let me turn now to the supply side of torture.

Often think that a torturer's choice of technique comes from his own abnormal psychology. But that is not the case. Our studies of torturers show they are mainly normal people, not sadists. They're usually chosen because they're loyal, patriotic, obedient and can keep a secret. Organizations that torture don't like sadists because they don't obey the rules; they seek pleasure in what they do. This is also true by the way for terrorist organizations.

Both organizations choose for normalcy, people who can go under the radar and obey rules, not for craziness, because these people will get the job done.

Torture is in fact a craft, like massage or tailoring. You can get bad massages or bad tailors who do one size fits all or those who try to do individual fits. And so to with torture, you can get the one size fits all or the individualized approach. And like masseurs, torturers have styles. They are creatures of habit, and they induct people into their group by saying "this is how we do it here." They combine torture techniques in unpredictable ways, and each style has a history.

Twelve years ago, I began the difficult project of mapping how torture technology spread around the globe over the course of the last 200 years. I mapped each technique as it changed over the decades, noting who used it, when, how it spread, and its effects. Now this is unpleasant work, I would not wish it on anyone. For example, I had to think of how a leg clamp works, or that the Gestapo used it first in interrogations in the 1940s, or that it and

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other crushing devices spread in a broad arc from northern France, through Belgium and Holland to Norway and Denmark, but nowhere else in Gestapo Europe. It took three summers to do the Gestapo spread sheet but I can tell you where every major Gestapo torture happened, when and where; it was an very unpleasant period of my life.

This is nasty work, but the truth is that we know more about how hybrid corn spread between farmers in Iowa than how torture techniques are spread by policemen.

And this work yielded a surprising conclusion. With some exceptions, very few modern techniques originated with the Nazis, the Stalinists or the Inquisition. The pattern is weird and unexpected. *What has driven torture technology turns out to be something that no one considers having anything to do with torture, namely international monitoring and democracy.*

To make this clear, let me distinguish simply between two types of techniques: those that leave marks and those that do not. Over the last two centuries, the more scarring techniques are disappearing. No one uses leg clamps today, nor has it been documented anywhere for the last sixty years.

On the other hand, clean techniques are spreading. There are two main clean styles, what I call French Modern and Anglo Saxon Modern. French modern is the classic combination of electricity and water and saves few marks. It appeared in French colonies in 1931 and the Nazis picked it up from the Vichy police, that is now how it came to be common around the world

Anglo-Saxon Modern is older, a combination of sleep deprivation, exhaustion exercises, forced standing. These come from old British and French military punishments, some from American prison practice, and some from the global slave trade. Now why the slave trade? After all slavery was about whipping, and whipping leaves scars, so why would this claim be true? Yes, if you were a slave owner, but not necessarily if you were a slave dealer. Marks reduced the price of a slave because a slave with marks meant that the slave was a disciplinary problem. So slave dealers used cleaner techniques, it a niche market for clean techniques.

Most techniques you've heard about in the papers come from the Anglo Saxon tradition. Now these are painful techniques. Sleep deprivation isn't depriving you of your naps. It reduces people's ability to tolerate muscelskeletal pain. It causes deep aches first in the legs and then in the upper body. Animal tests suggest that it makes people more sensitive to pain caused by heat, electricity and punches. That is why sleep deprivation is commonly used by torturers to complement other painful techniques, like stress positions.

Clean torture isn't then a psychological tool, just because it leaves no marks.

Now if you map how clean techniques appear, there is a surprising conclusion: whenever we watch, torturers become sneaky. Whenever there's a free press, church groups, politicians to watch police, the interrogators literally pull their punches. There are actually ways of striking someone with your bare hands that will leave marks, and there are other ways of striking, for hours, and leave no marks.

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Here's another example. Electrotorture is relatively unknown for most of the twentieth century except in the US and France in Vietnam. It doesn't really start spreading between police forces until the 1960s. And then the contagion effect is huge, with the numbers doubling every decade. It starts in Latin America, the Middle East and Asia and then to Africa in the 80s and then Southern and Eastern Europe in the 90s.

What makes clean techniques so valuable? Why do they spread? Clean techniques are valuable because allegations of torture are simply less credible when there is nothing to show for it. In the absence of visible wounds or photographs of actual torture, who are you going to believe. Clean torture breaks down the ability to communicate between the victim and the wider community. And stealthy tortures are calculated to subvert this relationship, and that's why they become more common first in democracies and then as human rights monitoring spreads.

And frankly, as Machiavelli says, people judge more by what they see than by what they hear. Would Americans have been so outraged by Abu Ghraib without the pictures? In fact, the Army charged the first defendants in January 2004, Reuters had a story on it in February 2004, and the first trials began in March 2004, but it wasn't till the end of April 2004 when CBS broke the story with the photos, and then there was a crisis.

This is a very common phenomenon. Long before the war on terror, I used to talk to audiences and ask how many of them remember the Rodney King affair. And I say, well we all remember Officer Powell beat Rodney King with a PR-24 baton, but then I ask: how many of you remember how

much electroshock Mr. King got while the camera was running. In fact, Mr. King had two taser bolts in his body, and there were close to 50,000 volts being delivered to his body, which you didn't see. Violence that you can see, you can be upset about and you can write your minister or prosecutor. Violence you can't see, who is to say it happened?

So let me turn now to prevention. And let me start by quickly setting aside a common misconception about how torture changes.

We are inclined to think that torture changes as governments change. Torture, we think, is a policy, and so that when governments issue a new policy, torture changes. The war ends and so torture won't be needed any more. Guantanamo closes, torturers retire, and scholars like myself go out of business and I'll miss the frequently flyer miles.

But that is not the way it works. Torture changes least when governments change. Times of instability are not periods of innovation.

There are two reasons for this. When governments are insecure, they will reach for, or at least leave the door open so that they can reach for, what the guys before them did.

Torture changes most during periods of relative stability, when governments are secure and they can experiment with alternatives without political risk.

More importantly, torture is not just a government policy. It is a social practice, and it lives in society. Once it appears, it does not fade easily. It casts a very long shadow.

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And the fight against torture remains a fight in society. Government may authorize torture, but it is society that runs forward with demands and supplying the required techniques. Torture does not hide in a vault in the CIA.

The bad news here is that torture is among the most corrosive practices a government can authorize. It destroys the lives of victims and torturers alike, and it sets into motion powerful corrupting forces that destroy the judicial, intelligence and military institutions that use it. And its presence in social institutions lingers for decades.

But there is good news, and that is that it is relatively easy to put an end to most organized torture in a society. There are plenty of cases where this has happened in both authoritarian and democratic societies. Americans themselves managed to do this in the 1930s. In the 1930s, they managed to put an end to most violent domestic torture, and there is no reason Americans cannot do it again if they have the will to do so.

So how does one prevent torture?

Popular accounts consistently conceptualize torture as expressing the sadistic tendencies of torturers, what is sometimes called the dispositional hypothesis. Prevention then would consist of keeping “bad apples” out of any system. But, empirically, as I have said, torturers are rarely sadists. The social scientific consensus has long been settled in favor of the situational hypothesis, namely, that normal people are violent when simple situational factors are present.

Prevention then means changing situations to inhibit violent behavior. And experts agree these

conditions are straightforward. One needs clear lines of authority, clear rules, clear punishment for infraction of rules, regular medical monitoring at exit and entry points, and remand before judicial authority within 48 hours. Let me call these the five rules.

Abu Ghraib is a classic example of all the things that can go wrong when these rules are not present. When authority is divided or distant, when rules are ambiguous, when rule violators are not punished, and monitoring is absent; in short when organizations are internally chaotic, violence, including torture ensues. This applies both to policing and military contexts, including the conduct of troops in civil wars.

NGOs implement the five rules by lobbying or shaming states. They appeal directly to leaders to discipline their organizations, as in the confidential Red Cross Reports. They mobilize public outrage to pressure leaders to control their organizations, for example, Amnesty International’s letter writing campaigns. They initiate professional legal training in human rights for security forces. They urge politicians to sign onto the optional protocol of the Convention against Torture and undertake criminal justice reforms, thereby voluntarily intensifying monitoring and other changes that inhibit torture.

Now let me complicate this rosy picture and suggest a further agenda for action and research.

Together the NGO strategies I just described constitute a global auditing regime that has been in effect roughly since the 1960s. Some argue that these strategies have reduced the frequency of torture, or at least prevented far worse things

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from happening, while others contest claims while acknowledging occasional successes.

What is certain is that these strategies had unintended effects, making torture harder to prevent.

Amnesty campaigns are undermined when police charge prisoners with unpopular drug crimes and organize counterpublics who won't tolerate foreign interference or those soft on terrorism. Red Cross reports may move leaders to change policy, but middle level managers defend their units from scrutiny, and torturers squelch any whistleblowers through peer pressure. Soldiers may be trained to disobey manifestly illegal commands,

But Abu Ghraib shows that situational variables can trump human rights training. All the soldiers there had been trained to disobey manifestly illegal orders, but they performed them in any case. Human rights training may educate officers on what to do to evade the law, as I have suggested

All these perverse effects have a common thread: closed insular groups who resist pressures from above, keep pressure on members to keep secrets, and induct others into the group, that is, torture subcultures. Torture may begin as a policy, but it rapidly becomes a subculture. This subculture influences other violent subcultures (fraternities, gangs) and is one that even those who authorized it can't regulate.

In torture, the importance of group bonding and peer solidarity is well known. Torturers spin out of control of governments due to peer pressure, interrogator rivalry, tunnel vision and confused self-understandings, time pressures, and not least,

the dynamics of pain in torture itself a dynamic driving the push to every greater brutality and deprofessionalization.

And when a subculture has formed, police will find ways to frustrate these five rules and this allows torture to flourish another day. Subcultures retain knowledge during periods of intense governmental supervision; police return to torture when they know others are powerless or sense that others will look the other way.

Altering or dislodging subcultures is a critical element in reducing the frequency or at least scope of torture in the future. And that requires knowing more about how torture subcultures form, how they transmit knowledge to each other, and how they respond to prevention efforts. The famous psychological experiments by Milgram and Zimbardo told us how ordinary people can turn to violence, but not what happens to groups of serial violence workers who bond together around their torture activities.

In my work, I have grown to appreciate the power of subcultures. I have also tried to advance a behavioral measure for measuring the density of subcultures, namely, the concept of torture styles. By studying styles in the future, we can learn how subcultures form, and how they transmit knowledge, testing out various hypotheses. We can, I hope, evaluate and narrow the prevention strategies we have and supplement the five rules with new approaches to create a durable prevention strategy.

So I have talked quite a bit. What I have been trying to communicate to you is that we are in the process of forgetting our history once again.

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Presidential elections sometimes act again as a kind of disruption in our memory, covering up the continuities that have gone on and allowing the subcultures to persist to come back another day.

You know after this last election, I have a colleague, Paul. Paul works on public opinion polling and he specializes in early voting in elections, and that day in November he looked depressed. He said, “You know the media is going to forget me. They are not going to call me for another two years.” And I said, iPaul, you’re just in the wrong business. You should work with me on torture polling. Elections are for a season, torture is forever. And in fact, Paul and I have a major piece out on American public opinion on torture which is really quite fascinating in what it reveals, contrary to many public assumptions.

And the sad fact is that torture is forever. As is the fight against it. Thank you for listening so patiently to everything I had to say today and I would be happy to take your questions.

THE POLITICS OF GENOCIDE AND THE TURKEY-ARMENIA PROTOCOLS BY ROGER SMITH

Roger W. Smith (Chair, Zoryan Institute/College of William and Mary Emeritus)

[Based on a statement from the Zoryan Institute on October 21, 2009]

We must approach all cases of genocide as part of world history. If we believe in “Never again” and want to prevent future genocides, we must treat such epochal events as part of the universal experience and of concern to all.

James Traub writes the following in an October 18 *New York Times Book Review* review of *Daniel Goldhagen’s new book, Worse than War: Genocide, Eliminationism, and the Ongoing Assault on Humanity* :

“But to exclude mass murder from the realm of conscious action offers an exculpation of its own, both to the killers and ourselves – for how could we, ordinary folk who cherish life, descent to such madness? ‘We must stop detaching mass elimination and its mass-murder variant from our understanding of politics,’ Goldhagen writes. ‘Atrocities resemble one another; their differences are shaped by the perpetrators’ ideology, their specific fantasy of a purified world, their view of the victims they seek to eradicate.’”

But, Traub summarizes, if the ultimate goal is to ensure that we never again stand by in the face of a Rwanda-style genocide, public opinion will not be rallied through an earnest accounting of national interest, but through an appeal to conscience. Goldhagen heaps scorn on the United Nations, whose founding principles of respect for sovereignty and of noninterference in internal affairs have served, as he rightly observes, as a

shield for leaders in Sudan and elsewhere who are bent on slaughtering their own people.

This is interesting in light of the press coverage both before and after the signing of the Turkish-Armenian protocols in Zurich on October 10, 2009. The protocols included provisions for diplomatic recognition, opening of the borders between the two countries, finalization of territorial borders, and the focus of this article, the creation of an “impartial” historical commission to examine the question of whether the Armenians were subjected to genocide in 1915 and later by the Young Turk regime, with Turkey and Armenia appointing the members of the commission.

A recurrent theme emerges in the media, particularly in countries which have yet to recognize officially the mass murder of the Armenians in 1915 as genocide: the dispute between Turkey and Armenia over the genocide is exclusively their problem. For example, the BBC, in reporting on the Protocols on October 10, 2009, stated, in effect, the Armenians say it was genocide, Turkey says it wasn’t, so the viewer or reader does not know what to believe:

Armenians have campaigned for the killings to be recognized internationally as genocide – and more than 20 countries have done so. Turkey admits that many Armenians were killed but says the deaths were part of the widespread fighting that took place in World War 1.

On April 9, 2009, when President Barack Obama was in Turkey, he distanced himself from getting directly involved in what is perceived as the Armenian-Turkish issue, stating: “I want to be as encouraging as possible around these negotiations,

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which are moving forward and could bear fruit very quickly, very soon. And as a consequence, what I want to do is not focus on my views, but focus on the views of the Turkish and the Armenian people, if they can move forward and deal with a difficult and tragic history, then I think the entire world should encourage them. So what I told the president [of Turkey] was I want to be as constructive as possible in moving these issues forward quickly. And my sense is that they are moving quickly. I don't want to, as president of the United States, to preempt any possible arrangements or announcements that might be made in the near future. I just want to say that we are going to be a partner in working through these issues in such a way that the most important parties, the Turks and the Armenians, are finally coming to terms in the most constructive way."

It seems that there is a certain point of view prevailing that only Turkey and Armenia have a vested interest in the Armenian Genocide, and that it is no one else's problem.

One wonders, would the Rwandan genocide be characterized as a problem of concern only to Hutus and Tutsis? The complexities of the situation in Rwanda, for example, involved Belgium, France, Burundi, Uganda, the Democratic Republic of Congo, the US, and the UN. The United States' contortions to avoid using the word "genocide" in 1994, and the UN refusal to accept the warning of General Dallaire (Commander of the UN force in Rwanda) of imminent genocide there, in order to avoid getting involved, are well documented. Such obvious political manipulation caused outrage in most people, and the slaughtering of some 800,000 victims made us all emphasize with the plight of our

fellow human beings. The horror of that genocide, where the men, women, children and elderly of one group were targeted with the intent to annihilate them, was an outright violation of international law, and was watched on our television screens, bringing the injustice home to everyone. It may have been easier for some bystanders in the face of that genocide, but no one today would say that this tragedy is of concern only to Hutus and Tutsis.

The same is true for the Holocaust and the Armenian Genocide. In fact, the Armenian genocide is recognized by many scholars as the archetype of modern genocide, and its lessons have universal application. One of the lessons most particularly associated with the Armenian Genocide is how denial of the crime can embolden future perpetrators, as we learned from Adolf Hitler and Albert Speer. In order to be able to prevent genocide in the future, we must raise awareness of it as a scourge against humanity and educate our societies about it. We must resist all attempts to disparage or dismiss any case of genocide. Once you compromise the universality of any genocide, the entire worldwide effort for genocide prevention is undermined. Genocide reduces the biological and cultural possibilities, the plurality and diversity, that is part of the human race, but, more powerfully, when any regime says that it has the right to determine what group can live, that is a threat to all humans. Whatever else genocide is, it is the ultimate denial of equality, and of the most basic of all human rights, the right to life. The threat in itself becomes, in principle, an assertion of a regime's unlimited right to murder.

The prevention of genocide and upholding freedom of expression and thought are mandated

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by the Universal Declaration of Human Rights and the United Nations Convention on the Prevention and Punishment of the Crime of Genocide. It is against this background that the Zoryan Institute is committed to raising awareness of genocide and the necessity of its prevention and to promoting universal human rights. These are the principles reflected in our commentary on the Turkish Armenian Reconciliation Commission in 2001, in our open letter to Prime Minister Erdogan on his call for a joint historians' commission in 2005, in our commentary against the proposed law to criminalize denial of the Armenian genocide in France in 2006, in our co-organizing a Symposium on the Albright-Cohen Genocide Prevention Task Force Report in March 2009 (which, among other issues, was based upon faulty assumptions and the ignoring of past history), and our open letter to President Sargsyan of Armenia regarding the Protocols, in October 2009. A full report on the Symposium is presented in the latest issue of *Genocide Studies and Prevention, Fall 2009, Vol. 4, Issue 2*.

Our position on the Protocols is to make sure that the incontestability of the Armenian Genocide is neither ignored nor called into question. It is from this perspective that we wrote to President Sargsyan:

Numerous distinguished historians, political scientist, sociologists, legal scholars, and authoritative institutions around the world have investigated the Genocide many times over, issued academic publications, and even made public declarations. These scholars have devoted their professional lives to conducting scientific research with the highest level of academic integrity. As

a result of their work, scholars have identified the Armenian Genocide as the archetypal case of modern genocide, whose pattern has many similarities with subsequent cases.

What the Armenian and Turkish governments do or agree upon, as two sovereign nations, is their prerogative. However, our objective is to raise awareness of all those involved in these Protocols (the two signing countries, the three OSCE monitoring countries – the US, Russia and France) - and the EU representative) that the Armenian Genocide is a historical fact, part of the universal human experience, and can not be compromised.

Furthermore, any attempt to deny it was genocide, to trivialize this enormous crime, or to relativize it as an issue only between Armenians and Turks will be firmly opposed by scholars, legal specialists and human rights activists in this field. The recent letter from Prof. William A. Schabas is a vivid testimony of this resolve:

Dear Prime Minister Erdogan and President Sarkisian,

The proposed protocols between Armenia and Turkey call for an “impartial historical commission” to investigate what the world knows as the Armenian Genocide of 1915.

As the leading scholarly organization engaged in the study of genocide, we welcome continued investigation that will enhance our understanding of the 1915 massacres. However, we are extremely wary of any call for allegedly impartial research into what are clearly established historical facts.

Acknowledgement of the Armenian Genocide must

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be the starting point of any “impartial historical commission,” not one of its possible conclusions. The world would not accept an inquiry into the truth of the Nazi Holocaust, or the extermination of the Tutsi in Rwanda, and nor can it do so with the genocide of the Armenians.

William Schabas, President, International Association of Genocide Scholars.

In 1915, against the background of great power politics intervening in the Ottoman Empire and of World war 1, some 1.5 million Armenians were slaughtered or otherwise deliberately exposed to conditions calculated to lead to their death. While on May 24, 1915, the Allied Powers (France, Great Britain and Russia) warned the Ottoman leaders that they would be called to account for their “crimes against humanity,” US Ambassador Henry Morgenthau described on July 16, 1915 what was happening as “race extermination.”

Ara Sarafian, a historian based in London, picks up on this theme when he comments on the handwritten book of Talaat Pashaa, one of the main figures in the Genocide. This was published in a facsimile edition in 2008. According to Sarafian, it is the “single most important document ever uncovered describing the destruction of Armenians in the Ottoman Empire in 1915-17.” What emerges from the book is a man who is obsessed with the details and progress of his genocidal program. The Black Book summarizes much of the data that Talaat collected: that 90 % of the Armenians outside of Constantinople were deported, and most of those were killed; that in the Eastern provinces of Turkey, over 95% of those who had lived there was dead. That of the some 300,000 persons deported to Der Zor, Talaat’s records recorded 6,778 Armenians

still alive there in 1917.

Sarafian, however, begins his article in the Armenian Reporter (13 March, 2009) with a quotation from Ambassador Morgenthau’s diary for 8 August 1915 that summed up much of what was taking place:

“[Talaat stated that] they had already disposed of three quarters of them [Armenians], that there were none left in Bitlis, Van, Erzeroum, and that hatred was so intense now that they have to finish it ... I told him three times that they were making a serious mistake and would regret it. He said, ‘We know we have made mistakes, but we never regret.’”

And there was Raphael Lemkin, the legal scholar who coined the term “genocide” in 1944, describing in his personal memoir how he became involved in the study of mass destruction: “I identified myself more and more with the sufferings of the victims, whose numbers grew, and I continued my study of history. I understood that the function of memory is not only to register past events, but to stimulate human conscience. Soon contemporary examples of Genocide followed, such as the slaughter of the Armenians.”

We note that monitors at the Protocols signing ceremony, Russia, France, the European Union, and Switzerland (the mediator in the negotiations) all have officially acknowledged the Armenian Genocide through their respective Parliaments. The US, whose official diplomatic archive is one of the richest historical sources on the Armenian Genocide, will eventually have to stop compromising the truth for political expediency. President Ronald Reagan called it genocide in

THE POLITICS OF GENOCIDE AND THE TURKEY-ARMENIA PROTOCOLS BY ROGER SMITH

1981. President George W. Bush described it as “the annihilation of as many as 1.5 million Armenians through forced exile and murder at the end of the Ottoman Empire” in 2004. President Obama, in January 2008, stated:

“I also share with Armenian Americans –so many of whom are descended from genocide survivors – a principled commitment to commemorating and ending genocide. That starts with acknowledging the tragic instances of genocide in world history. As a U.S. Senator, I have stood with the Armenian American community in calling for Turkey’s acknowledgment of the Armenian Genocide. Two years ago, I criticized the Secretary of State for the firing of U.S. Ambassador, John Evans, after he properly used the term ‘genocide’ to describe Turkey’s slaughter of thousands of Armenians starting in 1915. I shared with Secretary Rice my firmly held conviction that the Armenian Genocide is not an allegation, a personal opinion, or a point of view, but rather a widely documented fact supported by an overwhelming body of historical evidence. The facts are undeniable. An official policy that calls on diplomats to distort the historical facts is an untenable policy. As a senator, I strongly support passage of the Armenian Resolution (H.Res. 106 and S.Res. 106), and as President I will recognize the Armenian Genocide.”

Notwithstanding the above, we are of the opinion that while Turks today are not guilty of committing the Genocide, they are responsible for accepting and allowing Turkey’s official state denial. Denial is considered the final stage of genocide, which continues to victimize the survivors and their descendants, aggravating an open wound that cannot heal. The tremendous pain that an

Armenian feels is no different from that a Jew, Pole, or Roma feels because of people, such as President Ahmedinejad of Iran, who deny the Holocaust of WW II, or a Tutsi feels when the Rwandan genocide is denied.

In conclusion, the Armenian Genocide is part of world history. If we want to prevent future genocides, we must treat all cases of genocide as part of the universal experience, and of concern to all.

UK JUDGE EXAMINES RECORD OF UK DENIAL OF ARMENIAN GENOCIDE BY GEOFFREY ROBERTSON

[Ed. note: The following is a verbatim extract of the conclusions of Geoffrey Robinson, QC, founder and head of Doughty Street Chambers. His official biography notes that he has appeared in many countries as counsel in leading cases in constitutional, criminal and international law, and served as first President of the UN War Crimes Court in Sierra Leone. In 2008, he was appointed by the UN Secretary General as one of three distinguished jurist members of the UN Justice Council. His books include *Crimes Against Humanity*, *The Justice Game* and *The Tyrannicide Brief*.

The title of the report “*Was There an Armenian Genocide*” notes its reference to Foreign & Commonwealth Office Documents which show how British ministers, Parliament and people have been misled”. The front page shows a photograph of people on a forced march beneath which is this quote: “HMG is open to criticism in terms of the ethical dimension. But given the importance of our relations (political, strategic and commercial) with Turkey...the current line is the only feasible option.”

Abbreviations: FCO (Foreign & Commonwealth Office); HMG (His Majesty’s Government); ICJ (International Court of Justice); ICTY (International Criminal Tribunal on Yugoslavia); ICTR (International Criminal Tribunal on Rwanda).]

Was There An Armenian Genocide?

Geoffrey Robertson QC’s Opinion 9 October 2009

CONCLUSIONS

91 The result of my examination of the advice provided by the FCO to HMG, and reproduced by ministers in parliamentary answers drafted over the past decade by the FCO, is that this advice reflects neither the law of genocide nor the demonstrable facts of the massacres in 1915 - 16, and has been calculated to mislead parliament into believing that there has been an assessment of evidence and an exercise of judgment on that evidence.

92 The truth is that throughout the life of the present labour government and (so the FCO admits) throughout previous governments, there has been no proper or candid appraisal of 1915 events condemned by HMG at the time and immediately afterwards in terms that anticipate the modern definition of genocide and which were referred to by the drafters of the Genocide Convention as a prime example of the kind of atrocity that would be covered by this new international crime. HMG has consistently (at least until 2007) wrongly maintained both that the decision is one for historians and that historians are divided on the subject, ignoring the fact that the decision is one for legal judgment and no reputable historian could possibly deny the central facts of the deportations and the racial and religious motivations behind the deaths of a significant proportion of the Armenian people. HMG has also maintained the fiction that it is somehow contrary to legal practice to apply the description “genocide” to events that occurred prior to 1948. This and other mistaken or illogical arguments have been made, so the internal policy memoranda reveal, in a hitherto successful effort not to upset the “neuralgic” Turkish government. The dubious ethics involved in this approach have been acknowledged (once, back in 1999)

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but there appears to be no interest in establishing the truth of the matter or re-asserting the position that HMG took at the time, or in understanding (let alone applying) the modern law of genocide as it has emerged from decisions of the ICJ, the ICTY and the ICTR. There is no recognition at all of the importance of nations acknowledging their past crimes against humanity, or of supporting the descendents of victims who still, almost a century later, have to live with the consequences.

93 In my opinion, the law set out at paragraphs 12-27, when applied to the facts stated at paragraphs 30-44, produces the inevitable conclusion that the treatment of the Armenians in 1915 answers to the description of genocide. The historians relied upon by the FCO in support of its refusal to accept this conclusion do not, on analysis, sustain the FCO position or affect my opinion as summarised in paragraph 45. Should the question put by Baroness Cox and others be asked again, the proper answer would be along the following lines:

“In 1915 the Turkish government, then in league with Germany, faced an allied attack in the Dardanelles and a prospective incursion by Russian forces on its eastern front. These circumstances do not, however, justify its orders to deport some 2 million Armenians from Eastern Turkey and its infliction upon them of conditions which were calculated to, and did in fact, bring about the destruction of a significant part of that group. HMG condemned this action at the time as “a crime against humanity” and promised that its perpetrators would be punished. But it was not until 1948 that international law recognised the crime of genocide. HMG has welcomed the recent establishment of diplomatic relations between

Armenia and Turkey and the protocol under which they have agreed to examine objectively these events, and hopes that the Turkish government will abolish section 301 of its Penal Code which would otherwise impede such examination. HMG makes clear that should the same events occur today, in any country with a similar history to that of Turkey in 1915, there can be no doubt that the Genocide Convention would be engaged and would require prosecutions for that crime as well as for crimes against humanity.”

94 I consider that parliament has been routinely misinformed, by ministers who have recited FCO briefs without questioning their accuracy. HMG’s real and only policy has been to evade truthful answers to questions about the Armenian genocide, because the truth would discomfort the Turkish government. It can be predicted that any future question on the subject will be met with the same meaningless formula about “insufficiently unequivocal evidence,” disguising the simple fact that HMG will not now come to terms with an issue on which it was once so volubly certain, namely that the Armenian massacres were a “crime against humanity” which should never be forgiven or forgotten. Times change, but as other civilised nations recognise, the universal crimes of genocide and torture have no statute of limitations. Judge Balthazar Garzon, in opening his investigation of the crimes of the Franco era, declared that their perpetrators should have no posthumous impunity: the same might be said of the authors of the Armenian genocide.

GEOFFREY ROBERTSON QC, DOUGHTY STREET CHAMBERS 9 October 2009

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