



Laws against Genocide Denial: Potential Consequences for Human Rights

May 18, 2006

Today the French National Assembly was set to debate a bill to criminalize the denial of the Armenian Genocide, but has now postponed the debate to November. The Turkish ambassador to France was temporarily recalled in protest of this bill. What are the implications of the French law for Turkish-Armenian relations and freedom of speech?

The International Institute for Genocide and Human Rights Studies, of which I am currently the chair, deals with genocide in a comparative manner, including its causes, methods, aftermath and denial. Our research, based on archival sources both in and outside Turkey, confirms that over a million Armenians perished in an Ottoman state-sponsored campaign between 1915 and 1923 as victims of genocide.

Kemal Ataturk, the founder the new Turkish Republic, also publicly disapproved of the wrongs committed against the Armenians, calling them “a shameful act,” but the true story of other founding fathers of modern Turkey, many of whom had been intimately involved in the Armenian Genocide as perpetrators, was suppressed. This was despite the fact that the Ottoman government itself found the leaders of the Young Turk party guilty in absentia of crimes against the Armenians. Ever since then, successive Turkish governments have denied what they euphemistically called “the events of 1915.”

In this respect, I wrote to Turkish Prime Minister Erdogan on May 5, 2005, regarding his proposal for a joint group, consisting of historians and other experts, to study “the events of 1915.” I found this proposal insincere, given the Turkish state’s numerous attempts to stifle open discussion of the Armenian Genocide, including prosecuting over seventy scholars, writers, journalists and publishers on the grounds that they were denigrating Turkey. In that letter, I made the following points.

...the two sides must listen to and hear each other. As part of this process, a common body of knowledge needs to be created, so that established facts can help alleviate the polarization of opinions. This, in turn, will lead to the “peaceful and friendly environment in which tolerance and mutual respect shall prevail.” [Note, quote taken from P.M. Erdogan’s proposal.]

I then urged that his government take some simple steps to allow for a free and open discussion within Turkish society, such as those listed below.

- 1) Facilitate critical scholars educating society about the events of 1915 from different points of view and not only from the government's perspective.

- 2) Allow the broadcast of a series of lectures on this issue by renowned Armenian, Turkish and/or third party scholars, who do not necessarily reflect the government's official position, through Turkish television networks, without any censorship, and with the accessibility to the public for questions.
- 3) Allow Turkish academics and intellectuals, whose point of view challenges the official version of what happened in 1915, to express their ideas through public lectures, publications, and translations of Ottoman archival materials, without fear of persecution by the state.

I also asked the government to make it unequivocally and publicly clear that Article 305 of the Penal Code should not criminalize ideas which deviate from those of the state's defined position, such as the Armenian Genocide issue, and that individuals who say that the Armenians suffered a genocide will not be persecuted by the state.

The proposed new legislation is intended to give force to the law passed in 2001 officially recognizing the Genocide by providing penalties for those engaged in its denial. One should question how this law, if adopted, would facilitate dialogue between the Armenians and Turks, which is a stated objective of the 2001 law, or between the French and the Turks? Does not this law inadvertently provide new opportunities for the reactionary elements of Turkish state and society to radicalize the masses against the French and the Armenians? By using the French law, which limits freedom of speech as an example, would the Turkish state not justify laws that promote its policy of denial and therefore make it even harder to deviate from the official government position on history? If so, how does that help Turkish civil society in gaining any awareness on this issue? Does this law advance the language of reconciliation or the language of conflict? Can such laws bring a solution to the problem, or do they become part of the problem themselves? Does using the penal code in France for any limitation on the discussion of historical events endanger the prime function of scholars, writers and journalists—to analyze, question, and debate issues? Would it not create a slippery slope that would allow the state to sanction and impose dogmas as to how society should think? Finally, is this not the very method of limiting freedom of speech that countries like Turkey use, as the state attempts to control history in order to control society?

Of course, we do need laws to protect against such problems as racism and neo-Nazism, and there are legal limits to freedom of speech, such as libel, fraud, defamation. Therefore, those who argue that freedom of speech is not absolute are absolutely right. Some observers have argued that you can not have a law criminalizing Holocaust denial and not allow a similar law for denying the Armenian Genocide, which is officially recognized as genocide in France.

The Holocaust denial policy grew out of two things: many European countries were complicit in the death of the Jews, and punishing denial of the Holocaust is seen as a form of atonement; and there was a fear that neo-Nazi and other fascist groups would try to vindicate themselves by eliminating the Holocaust, while maintaining racism. Thus, the idea was that suppression of fascism was in part a matter of suppressing denial of the Holocaust.

On the level of principle, one could argue either for or against treating all denial of genocide as equal. But there is the historical context of the Holocaust denial laws that is different from Armenia, Rwanda, etc. At the same time, if only the Holocaust cannot be legally denied, then

some will take this to mean that only the Holocaust was a genocide; others will feel that the suffering of their people is being slighted. But if we open this up and list all genocides and criminalize denial of all of them, then our minds would be enormously constrained by the State. Freedom of inquiry, expression, thought would be limited in ways that are totally unnecessary and unintended. Accordingly, are laws such as this a mistake and contrary to freedom of speech? Some might argue that governments should eliminate all cases of prosecution of denial, rather than extend the net.

We know Turkey already requires its students to write essays denying the Armenian Genocide and uses its penal code to stifle human rights. As recently as three days ago, an opposition deputy in the Turkish Grand National Assembly presented a bill stipulating prison terms of up to three years for those who claim that Turkey committed genocide against Armenians in 1915. (This bill is not very different from the current Turkish Penal Code article (301) that criminalizes “denigrating Turkishness,” which is what claiming there was a genocide of the Armenians apparently does.) If the bill passes, what would happen to Turkish intellectuals like Taner Akçam, Murat Belge, Halil Berktaş, Hrant Dink, Fatma Müge Göçek, Orhan Pamuk, Ragıp Zarakolu, and others, who openly challenge the Turkish state’s definition of the Armenian Genocide? Who then would dare attempt to educate Turkish civil society? How then would Turkey ever have a chance to become democratic? How then are the Armenian and Turkish people going to have any kind of dialogue on this issue? If one supports such a law in France limiting freedom of speech, then should one not also support such a law in Turkey?

We must do all we can to overcome denial of genocide, by raising awareness, employing scholarship, applying reason, and means other than state sanction, to defend truth, justice and human rights. We must demand that Turkey reform its penal code. The French, German and other governments of Europe who were bystanders or even participants in the crime should provide resources in order to bring the parties together, and give incentives to solve the problem, not widen the divide. Denial should be against the law only if it is in the context of a hate or racist argument.

One wonders if these developments can contribute to the peaceful solution of the problem. Rather than employ the language of conflict, which exacerbates the problem, the parties should be more dispassionate and rational, in order to be open to developing other means and tools that will help with establishing dialogue, and hopefully lead to normalization of relations.

France, for its part, has an option, as well. Instead of criminalizing Armenian Genocide denial, which serves to stifle freedom of speech, it could use its positive influence to support efforts within Turkey for democratization there.

Freedom of speech and debate on the issue of the Armenian Genocide in Turkey is the best hope for eliminating government control of this history. By allowing such debate, Turkey can become open, democratic and pluralistic. There is no guarantee that Turkey will follow suit, but France, with its legacy of “freedom, equality and brotherhood,” and as one of the world’s leaders in democracy and human rights, must show the way by not itself imposing laws that penalize freedom of speech on the Armenian Genocide or any historical event.

Roger W. Smith is Professor Emeritus of Government, College of William and Mary and Chairman, International Institute for Genocide and Human Rights Studies