the occurrence of the denied event has enough of a historical consensus to warrant the imposition of a fine or a criminal conviction.

II. BACKGROUND

One must not examine *Perincek* in a vacuum. To fully grasp *Perincek*'s effect on Turkey and the international Armenian community, and where the *Perincek* decision fits in the Armenian-Turkish narrative, the ECtHR should have more extensively considered the history of the Armenian Genocide and the long history of denial in Turkey. Without a development of such historical background, any discussion determining whether the denial of a mass killing equates to hate speech fails to capture the true international effect of hate speech. As will be further illustrated below, the events surrounding *Perincek* can be characterized as a distant echo of the Ottoman Empire's dangerous ideology towards its minority, specifically Armenian, population. Ottoman policies and, after the fall of the Empire, Turkish policies and government actions effectuated an anti-Armenian ethno-nationalism,[7] resulting in the Armenian Genocide, which continued afterwards as a state supported program of denial and censorship.

A. History of the Genocide

In 1375, the Armenian sovereign state fell, not forming again until a short lived stint in 1918 and then again in 1991.[8] Less than a hundred years after the 1375 collapse, the Ottoman Empire took control of the area, leaving the Armenians under Ottoman rule.[9] The Ottomans eventually placed their minority residents in their own millet system, "which involved a structured organization of non-Muslim communities autonomous in their internal affairs and answerable to the central government through patriarchs."[10] By the late eighteenth century, ethnic minorities, including Armenians, "played an important role in the Ottoman social structure," securing key positions in trade

7. *See* Guenter Lewy, *The First Genocide of the 20th Century?*, 120 COMMENTARY, Dec. 2005, at 47-48; Waal, *supra* note 1, at 139.

8. *See* GEORGE A. BOUMOUTIAN, A CONCISE HISTORY OF THE ARMENIAN PEOPLE 297 (5th ed. 2006); Lewy, *supra* note 7, at 48; Sergey Minasyan, *Multi-Vectorism in the Foreign Policy of Post-Soviet Eurasian States*, 20 DEMOKRATIZATSIYA 268, 269 (2012).

9. *See* Lewy, *supra* note 7, at 48-49; Sergey, *supra* note 8, at 268-69.

10. Suraiya Faroqhi, *Ronald Jennings*, 15 TURK. STUD. ASS'N BULLETIN 217, 218 (1991); *see also* Lewy, *supra* note 7, at 48.

("CUP"), massacred 20,000 Armenians in the Adana province of Cilicia as a reactionary crackdown to "supposedly . . . repress increasingly forthright calls for Armenian separatism."[22]

Despite the Ottoman Empire's new leadership, the start of the twentieth century ushered an era of continued Ottoman destabilization.[23]

Dink.[70] Although it may seem as though the Turkish government had no culpability in Dink's assassination, as it vowed to prosecute the orchestrators and perpetrators of Dink's murder, the ECtHR had a different opinion.[71] In *Dink v. Turkey*, the ECtHR found that Turkish officials, including the police in both Trabzon and Istanbul, and the Trabzon gendarmerie, had been informed of the likelihood of an assassination attempt and even of the identity of the suspected instigators, providing the Turkish government with ample reason to protect Dink.[72] Among other issues considered, the Court concluded that the Turkish government violated Dink's Article 2 right to life by not protecting Dink from a known, imminent threat.[73] Even more disturbing, upon taking Dink's assassin into custody, officers at the Turkish police station welcomed the murderer as a hero, posing for pictures with him while hoisting the Turkish flag.[74]

Turkey's silencing of the truth about the Genocide goes beyond domestic bounds, as seen by the extraterritorial scope of Article 301 of Turkey's Penal Code.[75] Furthermore, Turkey has engaged in an active international campaign in spreading its own, softened version of the story, while keeping the Armenian cause at bay.[76]

C. The ECtHR, Perincek, and its Legal Context

As the historical and international contexts of *Perincek* have now been sufficiently developed, I will move on to discuss the case and its legal context. As will be implied in this section, and expanded in greater detail in later sections, courts need to examine the effects of

70. Holly Case, *Two Rights and A Wrong: On Taner Akcam*, THE NATION (Mar. 13, 2013), https://www.thenation.com/article/two-rights-and-wrong-taner-akcam/.

71. *See* Dink v. Turkey, App Nos. 2668/07, 6102/08, 30079/08, 7072/09, 7124/09, para. 139 (Eur. Ct. H.R. Dec. 14, 2010), HUDOC, http://hudoc.echr.coe.int/eng?i=001-100383; *see also Turkish-Armenian Writer Shot Dead*, *supra* note 68.

72. *Dink*, App Nos. 2668/07, 6102/08, 30079/08, 7072/09, 7124/09, para. 67, 88 (2010).

73. *Id.* para. 139.

74. *New video shows hero's welcome at police station for Hrant Dink's murderer VIDEO*, TURKISH

hate speech internationally and not just in the country where the speech takes place, especially when considering statements denying extraterritorial genocides. Any other approach disregards the justifications underlying genocide denial laws.

1. Freedom of Expression in the European Convention on Human Rights and the ECtHR's Two-Tier System of Analysis

The Convention–the binding authority for the ECtHR–has established several freedoms and restrictions.[77] Since Article 10 and Article 17 of the Convention relate to freedom of expression and its limits, the two Articles are the most relevant here and will therefore be discussed more extensively below. Article 10 ensures individuals' freedom of expression.[78] Specifically, Article 10 (1) ensures individuals the right to freely express themselves while it mandates a negative obligation for party countries to not interfere with such expression.[79] Article 10 (2), on the other hand, allows party countries to prescribe limits on individuals' expression to maintain social harmony and prevent chaos.[80] Article 17 bars individuals' Article 10 (1) freedom of expression where speech runs contrary to the fundamental values of the Convention.[81]

In terms of procedure, the ECtHR has developed a two-tier analysis in handling freedom of expression cases.[82] When an applicant files a claim with the ECtHR, asserting that a state has unjustly punished them for their speech, the Court first determines whether the speech in question contravenes the Convention's underlying values under Ar-

77. Council of Europe, European Convention on Human Rights (Nov. 4, 1950) [hereinafter European Convention on Human Rights].

78. *Id.* art. 10 (1)-(2) ("1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions . . . without interference by public authority . . . . 2. The exercise of these freedoms . . . may be subject to such . . . conditions [or] restrictions . . . as are . . . necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others[.]").

79. *Id.* art. 10 (1).

80. *Id.* art. 10 (2).

81. *Id.* art. 17 ("Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."); *see also* Paolo Lobba, *Holocaust Denial before the European Court of Human Rights: Evolution of an Exceptional Regime*, 26 EUROPEAN J. INT'L L. 237, 249 (2015).

82. *See* Lobba, *supra* note 81, at 241-42.

ticle 17.[83] This Article is known as the abuse clause or, more informally, the guillotine effect, since, if the Court preliminarily determines that the applicant's speech violated Article 17, it need not analyze whether prosecution of that speech violated the applicant's Article 10

3. Perinçek v. Switzerland

The central case for this discussion, *Perincek v. Swit erland*, falls under a unique procedural category. The Court in *Perincek* stated that Article 17 is only applicable on an exceptional basis,[105] seemingly retracting from its position in *Garaudy* concerning Article 17's applicability to the denial of the occurrence of historically established atrocities.[106] cek cek6.1495j/F1 1 Tf91 6 -1.miscs were's atior occurrenvaluesl

> which wanted to divide the Ottoman Empire, provoked a section of the Armenians, with whom we had lived in peace for centuries, and incited them to violence. The Turks . . . defended their homeland from these attacks. . . . It should not be forgotten that Hitler used the same methods . . . [of] exploiting ethnic groups . . . to divide up countries for his own imperialistic designs . . . Don't believe the Hitler-style lies such as that of the 'Armenian genocide.' Seek the truth like Galileo, and stand up for it.[113]

Perinçek appealed his conviction to the ECtHR as a violation of his Article 10 right to freedom of expression.[114] After an initial ruling by a panel of the ECtHR, finding a violation of Perinçek's Article 10 right, Switzerland appealed the case to the Grand Chamber of the ECtHR, which accepted the case for consideration.[115]

As mentioned above, the Grand Chamber bypassed a thorough preliminary analysis of Article 17 because, the Grand Chamber claimed, determining whether Perinçek relied on the Convention to infringe on the conventional rights and freedoms of others overlapped with an Article 10 analysis of whether Switzerland's interference with Perinçek's freedom of expression was necessary in a democratic society.[116] Thus, the Court went on to apply the three factors of Article 10. First, the Court determined that Switzerland's interference with Perinçek's speech was pursuant to Swiss state law–Article 261 *bis* §4.[117] It also held that, even if Perinçek did not actually know that making his statements about the Genocide would lead to criminal liability (despite Switzerland's unclear case-law on whether the Armenian Genocide would fall within the meaning of Article 261 *bis* §4[118]), obtaining legal counsel would have sufficiently put Perinçek on notice; essentially, Perinçek carried the burden of the risks associated with making his statements.[119]

Then, the Court considered the legitimate aims factor of the Article 10 analysis. In arguing their case to the ECtHR, the Swiss government asserted that it could interfere with Perinçek's right to freedom of expression in pursuance of two legitimate aims under Article 10 (2): (1) "'the prevention of disorder[;]'" and (2) "'the protection of the . . .

113. *Id.* para. 13.
114. *Id.* para. 1-9, 23.
115. *Id.* para. 4.
116. *Id.* para. 115.
117. *Id.* para. 137-38.
118. Code P´Code0 29d.

Armenians nor called for hatred, violence, or intolerance against the Armenians.[129] It also noted that this case was different from Holocaust denial cases, where an incitement of hatred or intolerance is presumed, because "the applicant [in *Perincek*] spoke in Switzerland about events which had taken place on the territory of the Ottoman Empire . . . ."[130]

The Court's assessment of the second aspect resulted in no finding of such a pressing social need as to require an interference with Perinçek's right to freedom of expression.[131] A satisfaction of the necessity of interference factor, the Court asserted, requires a rational connection between the measures taken and the ultimate aim sought.[132] With that in mind, the Court considered whether the situation in Turkey justified Perinçek's punishment in Switzerland.[133] Despite conceding that instantaneous electronic communication leaves no statement purely local, the Court found no causal link between the oppression faced by the minority Armenian population in Turkey and the statements made by Perinçek.[134]

Furthermore, the Court expanded on the idea of a "direct link," which is seemingly central to their conclusion in the geographical and historical factors section.[135] As mentioned above, the Court differentiated the present case from Holocaust denial cases, where, regardless of form, a statement made in Western Europe (particularly in those states involved or affected by the Holocaust) denying the Holocaust presumptively implies "an anti-democratic ideology and anti-Semitism."[136] The Court points out that, unlike the events of the Holocaust and the states involved or affected by it, there is no direct link between Switzerland and the events of 1915 in the Ottoman Empire, besides an Armenian community in Switzerland.[137]

With a vote of ten-to-seven, the ECtHR held that Switzerland violated Perinçek's Article 10 right by unjustly interfering with his freedom of expression.[138] The next section provides justifications for

129. *Id.* para. 239-41.
130. *Id.* para. 234.
131. *Id.* para. 242-48.
132. *Id.* para. 245-46.
133. *Id.* para. 245.
134. *Id.* para. 246-47 (asserting, dismissively, that, with regard to the facts of *Perincek* causing the events in *Dink*, "this can hardly be regarded as a result of [Perinçek]'s statements in Switzerland.").
135. *Id.* para. 243-44.
136. *Id.* para. 243.
137. *Id.* para. 244.
138. *Id.* para. 140.

A. Justification #1: The Prevention of Immediate Violence Within the Borders of a State

The prevention of both temporally and spatially immediate violence is the highest priority for any state, since the immediate safety of citizens is of utmost concern to governments. Hateful genocide denial carries with it a risk of inciting immediate violence against the group targeted by the statement and/or retaliation by that group. Therefore, governments should prosecute speech when it rises to this level.

For instance, in U.S. jurisprudence, speech is protected at a much higher degree than in Europe.[140] However, the U.S. does not have a completely hands-off approach to speech regulation.[141] Despite the extensive scope of one's freedom of speech in the U.S., the Supreme Court has limited free speech where speech has the capacity to cause immediate danger by using the "Brandenburg test."[142] The test, articulated by the U.S. Supreme Court in the 1969 case of *Brandenburg v. Ohio*, limits the protection of the first amendment where: (1) a statement "is directed to inciting or producing imminent lawless action[;]" and (2) that statement "is likely to incite or produce such action."[143] The idea underlying the "Brandenburg test" parallels the justification I propose here.

However, although the U.S. only goes this far in justifying the restriction of speech, the courts of Europe as well as other jurisdictions go further in scrutinizing the admissibility of speech. As controversial as it sounds, I argue that U.S. policies are too lax and allow too much freedom at the cost of safety, security, and dignity, both domestically and abroad.[144] For this reason, I will continue providing justifications for restrictions on speech with genocide denial in mind.

B. Justification #2: The Prevention of Violence, Even Extraterritorially

The general prevention of international violence and hatred should also be a concern for law-making bodies around the world. The world is a much smaller place now than before, due to the advance-

140. *See* Isabelle Rorive, *What Can Be Done Against Cyber Hate? Freedom Of Speech Versus Hate Speech In The Council Of Europe*, 17 CARDOZO J. INT'L & COMP. L. 417, 420-21 (2009).

141. *See id.* at 421.

142. Brandenburg v. Ohio, 395 U.S. 444, 447 (1969).

143. *Id.*

144. *See* JEREMY WALDRON, THE HARM IN HATE SPEECH 18 (2012); Charles R. Lawrence III, *If He Hollers Let Him Go: Regulating Racist Speech on Campus*, 1990 DUKE L.J. 431, 445 (1990); Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2321 (1989).

ment of communication technologies. A statement made on one side of the world can end up on the other side of the world, whether or not sent intentionally. As the means of communication become more sophisticated and immediate, so too does the risk of violence. For example, a recent survey conducted by security firm, Trend Microof, found that alleged terrorists utilize email account applications such as Gmail and Yahoo.[145] ISIS, the Islamic terrorist organization in the Middle East, is estimated to have approximately 46,000 Twitter accounts, using the internet as its main source of recruitment.[146] Gmail, Yahoo, and Twitter are not bound by international borders, accordingly, neither is the threat of the incitement of violence. Law-making bodies should adapt accordingly in order to maintain security and preserve accountability for their citizens.

Additionally, an underlying purpose for human rights is to address wrongful and hurtful conduct and to promote more peaceful communities. However, the principles of promoting peacefulness and preventing harm to others only goes as far as a law enforcing that principle can reach. As mentioned in the dissenting opinion of Judges Spielmann, Casadevall, Berro, De Gaeto, Sicilianos, Silvis, and Kûris in *Perincek*: placing a geographical limit on the determination of the effects of a statement "amounts to seriously watering down the universal, *erga omnes* [which means "towards all" in Latin] scope of human rights."[147]

Generally, legislative bodies pass laws that are enforceable and only prompt considerations of conduct occurring within their own, respective, jurisdictions.[148] Therefore, passing and enforcing laws that seek to prevent extraterritorial violence prompts an issue of legislative jurisdiction. However, certain exceptions apply to this principle: namely, certain crimes of extreme depravity trigger universal jurisdiction. For instance, "[t]he Genocide Convention, which refers explicitly to territorial jurisdiction, has been interpreted [so as part of customary international law] as not prohibiting the application of the principle of

145. Don Reisinger, *The Many Ways Terrorists Communicate Online*, FORTUNE (May 3, 2016), http://fortune.com/2016/05/03/terrorists-email-social-media/.

146. Duane Bean, *How ISIS Made Twitter One of Its Main Recruiting Tools And What Can Be Done About It*, INDEP. J. REV. (Aug. 11, 2015), http://ijr.com/2015/08/380544-how-isis-made-twitter-one-of-its-main-recruiting-tools-and-what-can-be-done-about-it/.

147. Perinçek v. Switzerland, App. No. 27510/08, para. 6 (Eur. Ct. H.R. Oct. 15, 2015), HUDOC, http://hudoc.echr.coe.int/eng?i=001-158235 (Spielmann, Casadevall, Berro, De Gaetano, Sicilianos, Silvis, and Kûris dissenting).

148. *See* RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES §§ 402-03 (AM. LAW INST. 1986) [hereinafter RESTATEMENT OF U.S. FOREIGN RELATIONS].

universal jurisdiction to genocide."[149] Since denial is known as the final stage of genocide and is a sure sign that more mass atrocities are to follow[150] and since genocide prevention and prosecution is a common goal of the international community,[151] genocide denial should also trigger universal jurisdiction insofar as it allows a court to consider conduct and the effects of that conduct within and beyond the borders of their immediate jurisdiction.

C. Justification #3: Prevention of Future Violence and Oppression by Restricting Rhetoric That may Lead to the Rekindling of the Group or Ideology That Carried out the Massacres at Issue

While prevention of future violence or oppression seems more attenuated than preventing imminent violence on the surface, it has the most potential for damage. This is because, as mentioned above, genocides or mass killings have a deep rooted effect on society. Remnants of hateful regimes, unfortunately, still linger, even after governments punish perpetrators for committing crimes against humanity.[152] Allowing hateful genocide denial, in the context of this justification, carries the risk of rekindling the sentiment that motivated the mass killing to begin with, thus, having the potential of reenergizing a movement that may have otherwise withered into non-existence. Laws should, whenever possible, diminish the resurgence of old nationalist death programs.[153]

D. Justification #4: Protection of the Dignity of Survivors and Their Subsequent Generations

Finally, protecting and upholding the dignity of genocide survivors as well as their descendants is, admittedly, the weakest justification of the bunch. Despite this, there is real concern over the well-being of groups who have suffered targeted killings. Such hateful actions, sanctioned by a government or institutional organization, and

149. *Rule 157: Jurisdiction over War Crimes*, INT'L COMM. OF THE RED CROSS, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter44_rule157 (last visited Oct. 21, 2017); *see also* Genocide Convention, *supra* note 139, art. VI; *Jorgic v. Germany*, 17 Eur. Ct. H.R. 1165, 1167 (2006); L.C. Green, *The Eichmann Case*, 23 MOD. L. REV. 507, 513 (1960).

150. Stanton, *supra* note 139.

151. *See* Genocide Convention, *supra* note 139, art. I, IV, V; RESTATEMENT OF U.S. FOREIGN RELATIONS, *supra* note 148, § 404.

152. *See* Anie Kalayjian & Marian Weisberg, *Generational Impact of Mass Trauma: The Post-Ottoman Turkish Genocide of the Armenians*, *in* JIHAD AND SACRED VENGENCE 254, 268 (Jerry S. Piven et al. eds., 2002).

153. *See, e.g.*, Garaudy v. France, 2003-IX Eur. Ct. H.R. 369, 396-98 (2003).

directed at a particular group of people, even affect survivors' subsequent generations.[154] In fact, Article 8 of the Convention implicitly recognizes this concern as it protects the private life of individuals.[155]

As has become clearer at this point, an international context is imperative in ensuring a reasonable and all-encompassing analysis of the effects of hate speech, particularly genocide denial.

IV. CRITIQUE OF THE ECTHR'S DECISION IN *PERINÇEK*

The *Perincek* Court asserted that Perinçek's speech did not have the capacity to incite violence or cause public unrest mainly because it took the limited approach of overemphasizing the importance of effects, or lack thereof, in Switzerland.[156] The Court's determination was limited to Switzerland, when it should have given more weight than in did to the context of modern-day Turkey's treatment of its minority-Armenian population and even non-Armenians who attempt to comment on the occurrence of the Genocide. In fact, among the several hundred violations of Article 10 freedom of expression cases in the ECtHR, Turkey has over 400 cases lodged against it.[157] In this case, the Court should have considered the Turkish political context mentioned in Section 2-B of this paper because Perinçek, as the founder and leader of the Turkish Workers' Party, represented the government of Turkey, albeit to a small degree, and, to some extent, the will of its people. The Court should have considered Perinçek's speech a propagation of the Turkish agenda to accuse the Armenians of fabricating history or, even more disrespectful, to allege that Armenians killed more Turks than vice versa merely as a means to escape the legal and political consequences of committing genocide.[158]

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154. *See* Kalayjian & Weisberg, *supra* note 152.

155. European Convention on Human Rights, *supra* note 77, art. 8.

156. Perinçek v. Switzerland, App. No. 27510/08, para. 196-97 (Eur. Ct. H.R. Oct. 15, 2015), HUDOC, http://hudoc.echr.coe.int/eng?i=001-158235.

157. See *European Court of Human Rights Document Search*, HUDOC, https://goo.gl/psNumA (last visited Oct. 21, 2017), for a list of all article 10 cases filed against Turkey through the European Court of Human Rights.

158. *See, e.g.*, Sevgi Ertan & Cagri A. Savran, *Turks Died Too*, THE TECH, Apr. 30, 1999, at 5; Nick Danforth, *Opinion: What we all get wrong about Armenia, Turkey and genocide*, AL JAZEERA AMERICA (Apr. 24, 2015, 5:00 AM), http://america.aljazeera.com/opinions/2014/4/what-we-all-get-wrongaboutthearmeniangenocide.html ("[T]he one thing both Turks and Armenians in this debate implicitly agree on is that any historical evidence of Turkish victimhood somehow negates Turkish guilt. Thus, Turks tend to highlight examples of crimes committed against them . . . in order to refute accusations of genocide.").

Additionally, as mentioned above, *Garaudy*[159] seems to rest on an unstated premise, which is more expressly pronounced in *Perincek*: the allowable severity of a state's action in prosecuting genocide denial rests on the temporal and geographic proximity of the occurrence.[160] That is, in cases where an extra-European genocide is denied in a European country that did not have any relation to the perpetrators, the Court would not affirm the prosecution of denial, sans an explicit incitation of violence or a call to arms. This is especially troubling when considering justifications two and four mentioned above. Denial of mass killings and accusations of falsifying its history may

V. Proposed Approach to Genocide Denial Laws

Beyond the ECtHR, I will provide a framework for approaching genocide denial cases that sufficiently touches upon the four justifications mentioned above. The approach is not the perfect conception of a universally applicable genocide denial law; however, it is a good starting point. The framework consists of a three part, judicially-determined balancing test that seeks to determine the speaker's objective intent, the statement's domestic and international effect, and the cruelty of the statement when placed in its surrounding historical context. Additionally, I propose that courts, as a threshold matter, should determine whether the occurrence of the denied event has enough of a historical consensus to warrant the imposition of a fine or a criminal conviction. By providing a court with ample historical background of the event, such a determination will also assist a court in determining the third factor of the proposed test, that is, the severity of the statement when considered among its historical context.

A. The Test For Determining Whether A Statement Amounts To a Criminal Violation Should Consist of a Balancing Test

A useful test for determining whether an instance of genocide denial constitutes hate speech, subjecting the speaker to criminal liability, should include a determination of: (1) the objective intent of the speaker; (2) the domestic and international effect of the statement; and (3) the severity of the statement when placed in the historical context. This test would allow for a court to make a determination with all four of the justifications underlying genocide denial laws in mind, unlike the determination made in *Perincek*.

1. Objective Intent

Similar to the first element of the "Brandenburg test,"[163] the objective intent factor I propose here seeks to determine the speaker's intent, with the backdrop of the four justifications proposed above.[164] Under the objective intent factor, a court will determine, through in-

nish the dignity of survivors of the massacres at issue and their subsequent generations. Of course, these justifications, as stated above, vary in their degree of importance. Therefore, a court analyzing the objective intent factor should assign varying degrees of culpability based on what it concludes the speaker intended by making their statement(s).

Perinçek, for instance, seemingly intended to further spread the Turkish program of denial and suppression throughout the world,[165] thus perpetuating the Young Turks' and Atatürk's destructive and repressive ideology still present in Turkey today.[166] Therefore, if the ECtHR in *Perincek* analyzed Perinçek's statements using the objective intent factor, it would have likely found that Perinçek intended to cause violence or oppression in the future by rekindling or justifying the ideology underlying the Armenian Genocide and that Perinçek intended to tarnish the dignity of Genocide survivors and their subsequent generations. Additionally, Perinçek arguably intended to cause or justify violence or, at the very least, oppression outside the borders of Switzerland, specifically, within Turkey.

2. Domestic and International Effect

The domestic and international effect of a statement can be seen by surveying the immediate result of the domestic and international landscape and how such statements are used or taken throughout the world. In the context of *Perincek*, for example, genocide denial is used as a means of silencing opposition in modern day Turkey,[167] resulting in the death of journalists[168] and the prosecution and harassment of its historians[169] and novelists.[170] Although no direct causal link exists between Perinçek's statements and violence occurring either within

165. *See Perincek*, App. No. 27510/08, para. 13 (2015) ("*Let me say to European public opinion . . . : the allegations of the 'Armenian genocide' are an international lie . . .* Don't believe the Hitler-style lies such as that of the 'Armenian genocide.'") (emphasis added).

Switzerland or in Turkey, the statements and the ECtHR's weak response to it surely sent a message to the Turkish government and other governing bodies–namely, that the denial and marginalization of a traumatic and atrocious event, in an attempt to shed culpability, are permitted and even lauded as exercises of free expression. Therefore, the domestic and international effects of Perinçek's statements triggered both the third and fourth justifications. Specifically, Perinçek's statements rekindled or justified the ideology underlying the Armenian Genocide, which had the propensity to lead to further violence or oppression, and tarnished the dignity of Genocide survivors and their subsequent generations.

3. Severity Among Historical Context

ods. Ultimately, I will conclude that a court-employed committee of lawyers/court attorneys is the best option available. I propose that the ECtHR adopt this approach for future genocide denial cases that require such a determination.

The first option is testimony provided by historians or experts in the field of history directly to the court. Historians could be called in or introduced by each party, or parties, to testify to their opinions of the available records. Historians may also consider and testify to survivors' stories and evaluate their significance. Since the Court would make the final decision on the consensus, there would be little to no concern of outside influence, as long as judges can withhold any cultural, ethnic, or social biases they may have from their legal determinations. However, this option would be too cumbersome and unwieldy since the testimony of multiple history experts would take an extremely long time and has the potential to convolute the issue. Therefore, this option is often not viable.

The best option for making a determination as to the historical consensus of the occurrence of a mass killing is through a court-employed committee of lawyers/court attorneys. This option, unlike the independent committee mentioned above, eliminates the concern of impartiality since the members of such a committee would be directly under the control of the court, which itself is a neutral body. This committee, like the one mentioned above, can make its determination by considering governmental and institutional records and individual accounts. If need be, the committee can hear from historians or experts in the field of history. This option, assures the timeliness and accuracy of the determination because of the familiarity of the subject to the committee, whose members are already trained in the study of history.

VI. CONCLUSION

Unfortunately, mass killings occur periodically throughout human history and are bound to be repeated in the future. Furthermore, for every mass killing that occurs, statements denying the event or attempting to diminish the gravity of the event seem to follow. Denial statements have the risk of affecting society in an anti-social way. Hence, the importance of genocide denial laws is four-fold: (1)