To: The European Court of Human Rights **February 14, 2014**

To Whom It May Concern,

It was with great regret and amazement that we found out about the European Court of Human Rights' verdict in the case of *Perinçek vs Switzerland*. The Union of Armenian Associations in Sweden firmly believes that the verdict was highly questionable, especially in regard to the indefensible argumentations and erroneous assertions used as the basis of the verdict, embodied in statements such as:

> The Court doubted that there could be a general consensus as to events such as those at issue, given that historical research was by definition open to discussion and a matter of debate, without necessarily giving rise to final conclusions or to the assertion of objective and absolute truths.[1]

By stating the above mentioned reasoning, ECHR has bluntly demonstrated its surprisingly inadequate knowledge on the existing consensus on the subject, while passing a judgement based on political consequences rather than factual basis, a remarkable worrying lapse by an institution of such nature and stature.

The nature of the Armenian massacres and deportation during WWI in the Ottoman Empire is nowadays widely considered as the most studied case of genocide, second only to the Holocaust. Other than the vast existing literature and research articles in the matter, one could invoke this consensus by referring to the numerous resolutions by the *International Association of Genocide*

[1] European Court of Human Rights, *Criminal conviction for denial that the atrocities perpetrated against the Armenian people in 1915 and years after constituted genocide was unjustified*, Press Release issued by the Registrar of the Court, ECHR 370 (2013), 17 December 2013

Scholars, IAGS, undoubtedly the highest recognised scholarly authority on the field of genocide research. The latest resolution by IAGS, *Resolution on genocides committed by the Ottoman Empire*, dating 13 July 2007, reads:

> WHEREAS the denial of genocide is widely recognized as the final stage of genocide, enshrining impunity for the perpetrators of genocide, and demonstrably paving the way for future genocides;
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> WHEREAS the Ottoman genocide against minority populations during and following the First World War is usually depicted as a genocide against Armenians alone, with little recognition of the qualitatively similar genocides against other Christian minorities of the Ottoman Empire;
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> BE IT RESOLVED that it is the conviction of the International Association of Genocide Scholars that the Ottoman campaign against Christian minorities of the Empire between 1914 and 1923 constituted a genocide against Armenians, Assyrians, and Pontian and Anatolian Greeks.
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> BE IT FURTHER RESOLVED that the Association calls upon the government of Turkey to acknowledge the genocides against these populations, to issue a formal apology, and to take prompt and meaningful steps toward restitution.[2]

Let it also be known that the above stated consensus is far from being limited to the historian scholarly community, since the IAGS, as for the field of genocide research itself, is a true interdisciplinary community consisting of experts within the fields of history, sociology, psychology, philosophy, political science, law etc. Thus, the above mentioned resolution and other similar statements by IAGS should be regarded as a solid consensus compromising *all* different aspects of the Armenian genocide, not only the historical one.

Notwithstanding, looking at the question from a strictly legal perspective, the ECHR seems to have overlooked several predating documents in this regard. The most noticeable should have been the highly relevant document to their examined case, the report compiled by the *International Center for Transitional Justice*, ICTJ. In 2002, in a reconciliatory attempt between Turks and Armenians, a commission was formed to, among other measures, investigate the events during WWI in Ottoman Turkey. The commission, named *Turkish Armenian Reconciliation Commission*, TARC, asked an independent organization, the ICTJ, to examine the events in accordance with current United Nations' *Convention on the Prevention and Punishment of Genocide*. In its turn, ICTJ conducted an independent analysis, whose results were published in an eighteen page report. It is noteworthy that the ICTJ report begins with the following opening statement which would have yet again been highly relevant to the ECHR case: "The memorandum is a legal, not a factual or historical, analysis." The ICTJ report was summarized by the conclusion that:

> the Events, viewed collectively, can thus be said to include all of the elements of the crime of genocide as defined in the Convention, and legal scholars as well as historians, politicians, journalists and other people would be justified in continuing to so describe them.[3]

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[2] International Association of Genocide Scholars, IAGS, *Resolutions,* 13 July 2007; www.genocidescholars.org/resources/resolutions

Needless to say, the denialist side does not wish to acknowledge this report, but continues its ever-lasting search for an "objective" panel for examination of the events.

In addition, the legal documents establishing the genocidal nature of the Armenian fate in Ottoman Turkey during WWI (in the light of the UN Convention) even predate the ICTJ report. The first international document was most probably that of Nicodène Ruhashyankiko, United Nation's Special Rapporteur, who in 1978 produced *The Study on the Question of the Prevention and Punishment of the Crime of Genocide*.[4] The first draft did mention the Armenian massacres as an example of committed genocides in the 20th century. However, the mentioning of the Armenian genocide was removed only after immense political pressure by Turkey, a conclusion which is shared by Professor William Schabas, stating that "Ruhashyankiko's unpardonable wavering on the Armenian genocide cast a shadow over what was otherwise an extremely helpful and well-researched report".[5] However, six years later, in 1985, the new UN special Rapporteur, Benjamin Whitaker, produced a *Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide*. His report did also named the Armenian case as an example of genocide during the 20th century:

> The Nazi aberration has unfortunately not been the only case of genocide in the twentieth century. Among other examples which can be cited as qualifying are the German massacre of Hereros in 1904, (12) the Ottoman massacre of Armenians in 1915-1916…[6]

The Whitaker report too came under immense Turkish pressure to exclude any mentioning of the Armenian genocide. However, Whitaker withstood the pressure and the final version of the report did indeed include the references to the Armenian genocide and was approved in August 1985 in the *Sub-Commission on Prevention of Discrimination and Protection of Minorities* with the votes 14 against 1 (4 abstentions), even though the same political pressure prevented the report from being submitted to higher instances. Thus, it should be obvious that it is solely the Turkish State pressure, implemented ferociously through the ardent denial, which has hindered wider official recognition and condemnation of the Armenian genocide and not lack of evidence or legal grounds, facts which the ECHR should be aware of. The *European Court of Human Rights* seems to

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[3] International Center for Transitional Justice, *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; www.ictj.org/sites/default/files/ICTJ-Turkey-Armenian-Reconciliation-2002-English.pdf

[4] Nicodène Ruhashyankiko, *The Study on the Question of the Prevention and Punishment of the Crime of Genocide*, Sub-Commission on Promotion and Protection of Human Rights, United Nations, UE/CN.4/Sub.2/416, 4 July 1979

[5] William Schabas, *Genocide in International Law: The Crimes of Crimes*, Cambridge, 2000, p. 465

[6] Benjamin Whitaker, *Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide*, Sub-Commission on Promotion and Protection of Human Rights, United Nations, E/CN.4/Sub.2/1985/6, 2 July 1985

have fallen short from its *legal* duties and instead have engaged in the *political* polemic of the issue, a recurring epithet in their published verdict which will be mentioned further on in this letter.

However, all these reports should be superfluous, once one recalls that the very definition of term *genocide*, coined by Raphael Lemkin who drafted the *UN Convention on the Prevention and Punishment of the Crime of Genocide*, was partly based on the fate of the Armenians during WWI. [7] In a response to the question by CBS reporter Quincy Howe, asking Lemkin about the creation of the word *genocide* and how he came to be interested in matter, Lemkin replied "I became interested in genocide because it happened so many times. It happened to the Armenians…"[8] Thus, it is clear that the current definition of the word *genocide* as well as the UN Convention have their origins partly in the Armenian fate, which Lemkin re-experienced in the annihilation of the Jews during WWII. It becomes quite ironic that we are confronted with a self-inflicted catch 22 and have to question the applicability of the term *genocide* on the very base case which gave reason to the creation of the word in the first place as well as the UN Convention which ECHR now hesitates to use in *Perinçek vs Switzerland.*

It is also deplorable that the ECHR has referred to the Holocaust denial comparison by stating that "In those cases, the applicants had denied the historical facts even though they were sometimes very concrete, such as the existence of the gas chambers." This would imply that, while denying the irrefutable facts about the Holocaust are punishable by law, denying the irrefutable facts about the Armenian genocide are quite justifiable, since there were no Armenian "Nuremberg Trials". Had the ECHR been more knowledgeable on the subject of the denial of Armenian genocide, it would have certainly recognized this frequently used argument invoked by the Turkish State and its likeminded deniers, when they conveniently disregard the post-WWI trials and court martials in Turkey, which were not only halted but almost all guilty verdicts were even reversed by the same Turkish Republic which has ardently been denying the genocide ever since.

The ECHR has also disregarded the fact that the "Armenian Nuremberg" was in fact on the agenda and was provisioned in the Sèvres Treaty.[9] The inclusion of articles 114 (Turkey's recognition of the unjust law on confiscation of abandoned properties), 226 (right of the Allied parties to prosecute individuals accused of committing war crimes) and 230 (Turkey's obligation to hand over any suspected individual of having committed war crimes) clearly indicates that

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[7] *United States Holocaust Memorial Museum*, Coining a Word and Championing a Cause: The Story of Raphael Lemkin, 10 June 2013; www.ushmm.org/wlc/en/article.php?ModuleId=10007050

[8] E.g. see the PBS documentary *The Armenian Genocide*, 2005, at 45' 02" in the documentary; www.youtube.com/watch?v=NSA1xngFf4s; Used also in the German documentary *Aghet*, 2010, at 1 h 17' 45"; www.youtube.com/watch?v=ybSP04ajCDg

[9] For the Sèvres Treaty see World War I Document Archive, *Treaty of Sèvres, 1920*, Harold B. Lee Library, Brigham Young University, Utah; wwi.lib.byu.edu/index.php/Peace_Treaty_of_Sèvres

there were existing legal frameworks to address this kind of crimes at the time, which if they had been implemented, had very much been the Armenian equivalent to the Nuremberg Trials. The main indictment was based on the 1899 and 1907 Hague Conventions, more specifically the Martens Clause (aimed to protect the rights of the war prisoners as well as the civilians in time of war), and was a consequence of the Entente ultimatum of May 24, 1915 where it was stated that

> In regard to this new crime against humanity and civilisation, the allied governments declare openly to the Sublime Port that they will hold each member of the Turkish Government personally responsible, as well as those who have participated in these massacres.[10]

This was the very same legal mechanism which came to be the foundation of the current-day UN Genocide Convention. That the Turkish Nationalist Movement succeeded to suffocate the Sèvres Treaty and replace it with the Lausanne Treaty is in fact beside the point significant to the ECHR examination. Thus, ECHR, again, seems to have disregarded the existing legal premises on the subject and instead ruled on the realpolitik consequences in which Turkey succeeded to persuade the WWI victors to disregard the issue of justice and the punishment of the crimes against humanity for the sake of securing political and economic interests and continues to do so almost a century later. This was again one of the main reasons why Raphael Lemkin embarked on the creation of the term *genocide* and struggled for the adoption of an international law framework, since the Armenians had been abandoned by the very powers who, much alike the post-WWII trials, should have followed suite with the ultimatum on May 24, 1915. Lemkin points out that, instead "the criminals who committed the [Armenian] genocide were eventually not punished".[11]

That the reasoning of the ECHR is highly remarkable and questionable is also witnessed in the argumentation used to prove the disagreement on the labelling of the Armenian case as genocide by stating that "only about twenty States out of the 190 in the world had officially recognised the Armenian genocide". By doing so, the ECHR seems to have delegated the responsibility laid on the institution itself, namely a court of law, to the judgement made by world parliaments and their governments. In doing so, the ECHR has, yet again, instead of a *legal* examination, resorted to *political* standpoints in parliaments and governments. Let it be abundantly clear that those parliamentarian resolutions and recognitions, unlike the common misunderstanding in regard to their core significance and aim, are in no means historical or legal ratification of the reality of the WWI Armenian massacres or their genocidal nature, but merely measures for confronting the Turkish State denialist policy. Furthermore, it is remarkably ironic that a numerous part of those

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[10] Richard G. Hovannisian, *Armenia on the Road to Independence, 1918* (Berkeley: Univ. of California P., 1967), p. 52. See also William A. Schabas, Prosecuting Genocide, in Dan Stone (ed.), *The Histography of Genocide* (New York: Palgrave Macmillan, 2008), p. 253; Paul G. Lauren, From Impunity to Accountability: Forces of transformation and the changing international human rights context, in Ramesh Thakur and Peter Malcontent (eds.), *From sovereign impunity to international accountability: The search for justice in a world of states* (Tokyo, United Nations University Press, 2004), p. 22-25.

[11] See quote during the earlier mentioned CBS interview with Lemkin in the *Aghet* documentary.

170 parliaments and governments which ECHR refers to and which have yet not withstood Turkish threats, political and economic, thus refraining from officially recognising the Armenian genocide, often point to the lack of an international court verdict, confirming the genocidal nature of the Armenian case. Thus, it is utterly regrettable that ECHR has not only missed on such an opportunity laid on its institution for protection of human rights, but has done so on such a cursory argumentation. ECHR has now broken virgin ground for further genocide denial by a perpetrator state which wishes escape responsibility for a committed crime against human rights.

The *Perinçek vs Switzerland* is not much as in regard to the defence of the freedom of speech, as it is about abusing that right for justification of the denial of genocide, a crime against humanity. The freedom of speech is one of the cornerstones of democracy and one of the highest virtues in our societies, especially here in Sweden. Therefore, unlike Switzerland, Germany, France and many other countries which have criminalised genocide denial, it is fully legal in Sweden. However, by practising that right, e.g. in the case of the Holocaust, the individual declares itself incompetent and ignorance of the reality proven by the vast documentation at hand. In 2013, that should be the case for the second most researched genocide in modern time as well. The only differing factor between those two cases is the ardent Turkish State denial campaign, a trade mark of the Armenian genocide. The goal of that denial, which has certainly evolved and become much more sophisticated than its initial primitive dismissal of the very existence of the massacres and deportation, is nothing but exoneration of the perpetrating state and its heir in order to avoid responsibility. Mr. Perinçek has apparently not denied the existence of the massacres, but then again the means of the denial of the Armenian genocide has passed that point and while its syntax has changed, the semantics remain the same. Mr. Perinçek's calling the genocide to be "an international lie", while he assertedly does not deny the occurrence of the massacres, still aims to the same goal as the original denial of the massacres themselves: preventing a wider international recognition of a committed crime and the obstruction of justice well overdue. That is why the Armenian genocide, from being the "forgotten genocide" has become the "successful genocide," since the perpetrator not only managed to annihilate the targeted group and confiscate their lands and properties, but has also, at least thus far, managed to successfully escape responsibility. By doing so, the vital chain leading to closure has been severely broken, namely from recognition to restitution as a prerequisite for reconciliation.

In the light of the stated facts and references, the Union of Armenian Associations in Sweden would strongly object to the unfortunate argumentation by ECHR in basing its verdict in the case of *Perinçek vs Switzerland*. It not only reflects the insufficient knowledge of an institution which should embody one of the champions of Human Rights, undermining the stature of the ECHR, but it has also provided further fuel to the Turkish denialist policy by resonating the very same

arguments used by the denialist camp. We hope that our provided brief but basic and important facts in regard to the existing consensus and legal reports on the Armenian genocide will provide grounds for an objective and factual decision making based on given data rather than a political one and prevent similar untenable and flawed argumentation in regard to the widely established nature of the Armenian genocide.

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